

By Mr. THOMPSON: Of officers of the Women's Christian Temperance Union of Ohio, for the Blair bill.

By Mr. VIELE: Of 22 citizens of the thirteenth district of New York.

By Mr. WHITING: Of 112 citizens of the eleventh district of Massachusetts.

By Mr. WILKINS: Of the Women's Christian Temperance Union of Ohio, for the passage of a bill aiding public schools.

SENATE.

TUESDAY, January 18, 1887.

Prayer by the Chaplain, Rev. J. G. BUTLER, D. D.

The Journal of yesterday's proceedings was read and approved.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Secretary of the Treasury, transmitting a letter from the Secretary of the Interior submitting an estimate for an appropriation of \$5,000 for the employment of physicians and the purchase of medicines in cases of Indians who have no treaty or gratuity funds to their credit; which, with the accompanying papers, was referred to the Committee on Appropriations, and ordered to be printed.

He also laid before the Senate a communication from the Attorney-General, transmitting, in response to a resolution of January 11, 1887, an estimate of the appropriation for contingent expenses of the Department of Justice; which, with the accompanying papers, was referred to the Committee on Appropriations, and ordered to be printed.

He also laid before the Senate a communication from the Attorney-General, transmitting, in reply to a letter from the chairman of the Committee on Appropriations [Mr. ALLISON], certain information in reference to the expense of additional terms of court in Utah; which was referred to the Committee on Appropriations.

He also laid before the Senate a communication from the Attorney-General, transmitting a letter from the clerk of the United States courts for the district of Indiana in regard to fees of such clerk; which, with the accompanying papers, was referred to the Committee on Appropriations.

SARAH E. NORTON.

The PRESIDENT *pro tempore* laid before the Senate the amendment of the House of Representatives to the bill (S. 2699) granting a pension to Sarah E. Norton, which was, in line 7, after the words "rate of," to strike out "twenty-five" and insert "twelve;" so as to make the bill read:

Be it enacted, &c., That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension-roll, subject to the provisions and limitations of the pension laws, the name of Sarah E. Norton, a volunteer nurse during the war of the rebellion, and pay her a pension at the rate of \$12 per month.

The amendment was concurred in.

WILLIAM ERVIN.

The PRESIDENT *pro tempore* laid before the Senate the amendments of the House of Representatives to the bill (S. 542) for the relief of William Ervin; which were referred to the Committee on Claims.

PETITIONS AND MEMORIALS.

Mr. ALLISON. I present a petition of a committee appointed by the Consolidated Cattle-Growers' Association of the United States, respecting the passage of a bill looking to the extinguishment of pleuro-pneumonia. As it is very short and relates to an important subject I ask that the petition may be inserted in the RECORD.

The petition was referred to the Committee on Agriculture and Forestry, and ordered to be printed in the RECORD, as follows:

IOWA CITY, IOWA, January 12, 1887.

To the Members of the Senate and House of Representatives
from the State of Iowa, Washington, D. C.:

GENTLEMEN: We, the undersigned, a committee appointed by the Consolidated Cattle-Growers' Association of the United States, in behalf of the legal voters of our State of all political parties, our brother farmers and stock-raisers, dependent in a large measure for their support upon the proceeds of cattle raised and fed on their farms, represent that they are at this time suffering great pecuniary loss from the fact that the dread cattle disease—contagious pleuro-pneumonia—has established a foothold in an adjoining State. Should this disease find its way into our herds of cattle we would suffer irreparable loss. That it will do so, unless the most heroic measures are at once resorted to, can not be questioned. The people of this great cattle-growing State of Iowa hereby appeal to you as their representatives to use every possible influence in your power to secure the passage of the bill recently introduced in both the Senate and House of Representatives for the extirpation of contagious pleuro-pneumonia and known as the "Miller bill."

Never before have a like number of your constituents been so vitally interested in a measure to be brought before the Congress of the United States.

THOMAS B. WALES, SR.
WM. LARREBEE.
H. C. WHEELER.
C. C. NOURSE.
JOHN SCOTT.
C. C. CARPENTER.
ROBERT MILLER.
J. J. RICHARDSON.

Mr. MITCHELL, of Pennsylvania, presented a petition of citizens of Philadelphia, Pa., praying for a reduction of internal-revenue taxes; which was referred to the Committee on Finance.

Mr. SAWYER presented a memorial of vessel-owners and persons interested in the carrying trade of the northern chain of lakes, remonstrating against the passage of the bill (H. R. 6104) to authorize the construction of a railroad bridge across the Sainte Marie River, Michigan; which was referred to the Committee on Commerce.

Mr. COCKRELL. I present a letter which was intended, doubtless, as a petition from citizens of Carroll County, Missouri, in regard to pleuro-pneumonia, praying for the passage of what is known as the Miller bill. It is signed by Samuel B. Robertson, J. I. Mansur, and many other leading citizens of Carroll County, Missouri. I ask that it may be received and referred to the Committee on Agriculture and Forestry. I believe that committee is considering the bill.

The PRESIDENT *pro tempore*. That order will be made, there being no objection.

Mr. VEST presented the petition of the Meyer Brothers Drug Company of Kansas City, Mo., praying for a repeal of the laws establishing internal-revenue taxes; which was referred to the Committee on Finance.

He also presented a petition of citizens of Carroll County, Missouri, praying for the passage of the pleuro-pneumonia bill; which was referred to the Committee on Agriculture and Forestry.

Mr. PLUMB. I have a letter from a leading attorney in my State in regard to a very important subject which I desire to call to the attention of the Judiciary Committee. I wish to have the formality of a reference by the Senate of the paper to that committee as though it were a petition. It is not in form a petition, but it is in substance one.

The PRESIDENT *pro tempore*. The paper, being in the nature of a petition, will be received and referred to the Committee on the Judiciary if there be no objection.

Mr. McMILLAN. I have a communication from the Saint Paul Chamber of Commerce, which is defective in form, perhaps, to authorize it to be presented to the Senate, but it is in regard to legislation pending before the Senate, and it is evidently of a character that should go to one of the committees of the Senate. I therefore ask leave to present this memorial in favor of a national bankrupt law, and I ask its reference to the Committee on the Judiciary.

The PRESIDENT *pro tempore*. The paper will be received and so referred if there be no objection.

Mr. McMILLAN presented resolutions adopted by the Saint Paul (Minnesota) Chamber of Commerce, favoring certain amendments of the customs laws; which were referred to the Committee on Commerce.

Mr. CULLOM presented the petition of Mrs. Maria M. Brooks, of Peoria, Ill., praying that her name may be placed upon the pension-roll; which was referred to the Committee on Pensions.

Mr. MANDERSON presented a petition of the Women's Christian Temperance Union of Nebraska, praying for the passage of the Blair educational bill; which was ordered to lie on the table.

Mr. BLAIR presented a petition of citizens of Marion, Ala., praying that an appropriation be made in aid of the Colored People's World's Exposition; which was referred to the Committee on Appropriations.

He also presented petitions of 27 citizens of New York city and 68 citizens of Chicago, Ill., praying for such legislation as will prevent the violation of the Sabbath by interstate railroading and Sunday parades of United States troops; which were referred to the Committee on Education and Labor.

REPORTS OF COMMITTEES.

Mr. ALLISON, from the Committee on Appropriations, to whom were referred the following petitions, asked to be discharged from their further consideration; which was agreed to:

A petition of workmen of the District of Columbia, praying an appropriation to pay John Pope Hodnett for services rendered to them as counsel for the last fifteen years; and

A petition of merchants of Washington, D. C., praying for the passage of the Senate bill providing for the payment of John Pope Hodnett for services rendered as counsel for workmen of the District of Columbia.

Mr. ALLISON, from the Committee on Appropriations, to whom was referred the bill (S. 2542) to pay John Pope Hodnett for services rendered as counsel to the Government in the investigation into affairs of the District of Columbia, acting as such counsel by order of a resolution of the House of Representatives; also for acting as counsel for the workmen of the District of Columbia for fifteen years last past, asked to be discharged from its further consideration; which was agreed to.

Mr. SAWYER, from the Committee on Pensions, to whom was referred the bill (S. 2629) granting a pension to Jane Brown Dunn, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 1321) granting arrears of pension to Richard H. McWhorter, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom were referred the fol-

lowing bills, reported them severally without amendment, and submitted reports thereon:

- A bill (S. 3108) granting a pension to James Lucas;
- A bill (S. 2670) granting an increase of pension to James H. Thomas;
- A bill (H. R. 7748) granting a pension to John H. Stucker; and
- A bill (H. R. 9672) granting a pension to Clara M. Tannehill.

Mr. SAWYER, from the Committee on Pensions, to whom was referred the bill (S. 2102) granting a pension to Amos Baccus, submitted an adverse report thereon; which was agreed to, and the bill was postponed indefinitely.

Mr. MORRILL, from the Committee on Finance, to whom was referred the bill (S. 3114) to reimburse the depositors of the Freedman's Savings and Trust Company for losses incurred by the failure of said company, reported it with amendments.

Mr. BLAIR, from the Committee on Pensions, to whom was referred the bill (H. R. 7716) granting a pension to Lizzie Brown, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (S. 2284) granting a pension to James Moss, submitted an adverse report thereon; which was agreed to, and the bill was postponed indefinitely.

Mr. HAMPTON, from the Committee on Military Affairs, to whom was referred the bill (H. R. 3642) for the relief of the heirs of Jacob Cramer, asked to be discharged from its further consideration and that it be referred to the Committee on Revolutionary Claims; which was agreed to.

Mr. MITCHELL, of Pennsylvania, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

- A bill (H. R. 7390) granting a pension to David B. Caldwell; and
- A bill (S. 3131) granting a pension to Hugh Rogers.

Mr. MANDERSON, from the Committee on Military Affairs, to whom was referred the bill (S. 2921) to authorize the Fremont, Elkhorn and Missouri Valley Railroad Company to build its road across the Fort Meade Military Reservation, reported it without amendment, and submitted a report thereon.

Mr. WHITTHORNE, from the Committee on Pensions, to whom was referred the petition of Mrs. Rachel A. Gould, praying that the sum allowed as pension for the eldest minor child of her deceased husband be continued, notwithstanding the fact that he is beyond the age of sixteen, submitted an adverse report thereon, and the committee were discharged from the further consideration of the petition.

He also, from the same committee, to whom was referred the petition of Sarah A. Kelly, of Pennsylvania, praying to be allowed a pension on account of the services rendered by her deceased husband in the late war, submitted an adverse report thereon; which was agreed to, and the committee were discharged from the further consideration of the petition.

He also, from the same committee, to whom was referred the bill (S. 1588) granting a pension to John C. Adams, submitted an adverse report thereon; which was agreed to, and the bill was postponed indefinitely.

Mr. WALTHALL, from the Committee on Military Affairs, to whom was referred the bill (H. R. 2173) for the relief of George W. Cousins, reported it without amendment, and submitted a report thereon.

Mr. WALTHALL. I am also directed by the Committee on Military Affairs to ask to be discharged from the further consideration of the bill (S. 323) to remove the charge of desertion against David Wood. The committee find that since the introduction of this bill the War Department, upon a re-examination of the case, have removed the charge of desertion.

The PRESIDENT *pro tempore*. The bill will be postponed indefinitely.

Mr. WALTHALL. I ask that the committee be discharged from its further consideration, there being no necessity for the passage of the bill.

The PRESIDENT *pro tempore*. It is the same thing.

Mr. BOWEN, from the Committee on Indian Affairs, to whom was referred the bill (S. 375) to refer the claims of the Eastern and Western bands of the Cherokee Indians to the Court of Claims, moved its indefinite postponement; which was agreed to.

He also, from the same committee, to whom the subject was referred, submitted a report accompanied by a bill (S. 3161) to authorize the Court of Claims to hear, determine, and enter final judgment upon the claims of the Eastern and Western Cherokee Indians; which was read twice by its title.

CONSTITUTIONAL CENTENNIAL CELEBRATION.

Mr. HAWLEY. I am instructed by the Select Committee on the Centennial of the Constitution and the Discovery of America to report a concurrent resolution and to ask for its immediate consideration.

The concurrent resolution was considered by unanimous consent and agreed to as follows:

That a joint committee of five members of the Senate and eight members of the House of Representatives be appointed to take into consideration the expediency of holding in 1892, in commemoration of the discovery of America, an international exhibition of the industries and products of all nations; and if such

an exhibition shall be deemed expedient, to consider the time, place, circumstances, and general plan thereof, and to report by bill or otherwise.

DATE OF MILITARY COMMISSIONS.

Mr. COCKRELL. The Committee on Military Affairs, to which was referred the bill (H. R. 1171) to amend an act entitled "An act to provide for the muster and pay of certain officers and enlisted men of the volunteer forces," approved June 3, 1884, have instructed me to report the same back to the Senate, recommending the passage of the bill without amendment, and the committee have further instructed me to ask the Senate to consider the bill at this time.

By unanimous consent, the Senate, as in Committee of the Whole, proceeded to consider the bill, which proposes to amend section 1 of the act of June 3, 1884, so as to read as follows:

That the joint resolution approved July 11, 1870, entitled "Joint resolution amendatory of joint resolution for the relief of certain officers of the Army, approved July 26, 1866," is hereby so amended and shall be so construed that in all cases arising under the same any person who was duly appointed and commissioned, whether his commission was actually received by him or not, shall be considered as commissioned to the grade therein named from the date from which he was to take rank under and by the terms of his said commission, and shall be entitled to all pay and emoluments as if actually mustered at that date: *Provided*, That at the date from which he was to take rank by the terms of his commission there was a vacancy to which he could be so commissioned, and that he was actually performing the duties of the grade to which he was so commissioned, or, if not so performing such duties, then from such time after the date of his commission as he may have actually entered upon such duties: *And provided further*, That any person held as a prisoner of war, or who may have been absent by reason of wounds, or in hospital by reason of disability received in the service in the line of duty, at the date of his commission, if a vacancy existed for him in the grade to which so commissioned, shall be entitled to the same pay and emoluments as if actually performing the duties of the grade to which he was commissioned and actually mustered at such date: *And provided further*, That this act and the resolution hereby amended shall be construed to apply only in those cases where the commission bears date prior to June 20, 1863, or after that date when their commands were not below the minimum number required by existing laws and regulations: *And provided further*, That the pay and allowances actually received shall be deducted from the sums to be paid under this act.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. ALLISON introduced a bill (S. 3162) for the relief of James Farley; which was read twice by its title, and referred to the Committee on Military Affairs.

He also introduced a bill (S. 3163) for the relief of Mrs. Mary Williams; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. CULLOM introduced a bill (S. 3164) granting a pension to Eugene B. Payne; which was read twice by its title, and referred to the Committee on Pensions.

Mr. McMILLAN introduced a bill (S. 3165) authorizing the construction of a bridge across the Red River of the North; which was read twice by its title, and referred to the Committee on Commerce.

Mr. MITCHELL, of Pennsylvania, introduced a bill (S. 3166) granting increase of pension to Eleanor B. Goodfellow; which was read twice by its title, and referred to the Committee on Pensions.

Mr. MANDERSON (by request) introduced a bill (S. 3167) to amend an act of Congress, approved July 29, 1876, in regard to leave of absence of Army officers; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. INGALLS introduced a bill (S. 3168) to extend Executive avenue in the city of Washington; which was read twice by its title, and referred to the Committee on the District of Columbia.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. CLARK, its Clerk, announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

A bill (H. R. 1261) for the relief of Henry A. Paus;

A bill (H. R. 9868) for the relief of O. F. Adams; and

A bill (H. R. 10457) for the relief of dependent parents and honorably discharged soldiers and sailors who are now disabled and dependent upon their own labor for support.

The message also announced that the House had passed the bill (S. 230) for the erection of a public building at Worcester, Mass.

The message further announced that the House had concurred in the amendments of the Senate to the bill (H. R. 807) granting pensions to soldiers and sailors of the Mexican war.

AMENDMENT TO A BILL.

Mr. McMILLAN submitted an amendment intended to be proposed by him to the post-office appropriation bill; which was ordered to be printed, and, with the accompanying papers, referred to the Committee on Appropriations.

FISHING RIGHTS OF THE UNITED STATES.

Mr. GORMAN submitted the following resolution; which was read:

Whereas it appears from documents laid before the Senate that the ancient rights of the United States fishermen, when bound to the northeast deep sea fisheries, of transit through Canadian waters, with the incidents appertaining thereto, of shelter, repair, and provisioning in the adjacent ports, such rights being founded on international law and on treaty, have been obstructed by Canadian authorities, such obstruction being attended by indignity and annoyance

ance and followed by great loss to the parties interested in such fishing vessels; and.

Whereas such transit, with its incidents of temporary shelter, repair, and provisioning, is part of a system with the transit with similar incidents permitted to Canadian engines, cars, vessels, and goods through the territory and territorial waters of the United States on their way from point to point in Canada, with this distinction, that the transit in the former case is a matter of right, based on international law and treaty, while in the latter case it is a matter of permission and gratuity:

Resolved, That the President of the United States is authorized whenever it shall appear to him that there is an insistence on the part of the Canadian authorities with the obstructions, indignities, and annoyances above recited, to issue his proclamation prohibiting the transit through the United States or the territorial waters thereof from point to point in Canada or from Canada to the ocean, of any engines, cars, goods, or vessels proceeding from Canada.

Mr. GORMAN. I ask that the resolution be referred to the Committee on Foreign Relations.

The PRESIDENT *pro tempore*. That order will be made if there be no objection.

Mr. CONGER. I ask that the resolution may be printed.

The PRESIDENT *pro tempore*. The resolution will be printed under the general rule.

Mr. DAWES. In connection with that reference I should like to inquire, if it is not considered out of the way by the Committee on Foreign Relations, if they have considered the bill which was introduced at the last session by me covering the same point, and are ready to make some report upon it at as early a day as the exigencies of this case now seem to demand. In the latter part of the last session I introduced a bill, the object of which was to cover precisely this point. It was referred to the Committee on Foreign Relations, and I was in hopes to have heard from that committee upon it before this time. If some one of the committee could make some explanation of the delay, which I have no doubt they have good reason for, I should be very much obliged.

Mr. FRYE. The Committee on Foreign Relations was instructed to investigate by a subcommittee the whole question and all the matters which are now in conflict between us and Canada. They did investigate during the vacation. The evidence has now been printed, and that subcommittee has this very morning been in session considering the evidence and the report, and what may be necessary to be done. Undoubtedly that report will be made to the Senate within a very few days.

The resolution just introduced, I will say to the Senator from Maryland, ought to be a joint resolution to be of any effect.

Mr. DAWES. I did not mean to intimate that the committee was negligent, but of course the committee are aware of what is transpiring, and every day the grievances are growing more glaring and more inexcusable. If anything could hasten action on the part of that committee, it would be the very conduct of the British government which calls for the legislation itself.

The PRESIDENT *pro tempore*. The resolution is referred to the Committee on Foreign Relations.

Mr. CONGER. Let the resolution be printed before its reference.

The PRESIDENT *pro tempore*. The order to print has been made.

Mr. CONGER. Let it be printed before its reference. I could only hear indistinctly the resolution, and I do not know what ought to be done with it. I ask that it may be printed and lie over until to-morrow.

The PRESIDENT *pro tempore*. If there be no objection, the resolution will be printed and lie on the table.

Mr. GORMAN. I have no objection to that course.

Mr. FRYE. It should be amended by making it a joint resolution. It is a Senate resolution, which would be of no force at all in authorizing the President of the United States to do anything.

The PRESIDENT *pro tempore*. Being objected to, the resolution goes over until to-morrow without any change.

FLORIDA LAND FORFEITURE.

Mr. CALL. I desire to give notice that to-morrow morning I shall ask the Senate to take from the table the resolution offered by me directing the Interior Department to take some action to enjoin the sales of public lands of the United States in the State of Florida within the limits of the grant to the State made the 17th of May, 1856, for the construction of railroads in that State. At the hour when the order of resolutions shall be called for, I shall ask the Senate to take that resolution up for consideration.

MAIL MESSENGERS.

Mr. CONGER. The Senator from Texas [Mr. MAXEY] is a member of the committee of conference on the part of the Senate on the disagreeing votes of the two Houses on the bill (H. R. 8346) authorizing the employment of mail messengers in the postal service. The Senator from Texas is absent, and may be for some days. The House conferees are here, and I ask the Chair to consider it as a vacancy on the conference committee, and fill it at the present time.

The PRESIDENT *pro tempore*. The Senator from Michigan moves that the Chair be authorized to fill the vacancy on the conference committee stated by him.

Mr. EDMUNDS. It is really not a vacancy, but it is a mere matter

of form, and I suggest that the Chair be authorized to substitute a conferee in the place of the Senator from Texas, who is absent.

Mr. CONGER. Yes; that will be the proper course.

The PRESIDENT *pro tempore*. The Chair will consider that to be the consent of the Senate, and name the Senator from Maryland [Mr. WILSON] in place of the Senator from Texas [Mr. MAXEY].

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. O. L. PRUDEN, one of his Secretaries, announced that the President had yesterday approved and signed the following acts:

An act (S. 1333) for the relief of William H. Randle;

An act (S. 1353) referring to the Court of Claims for adjudication the claims of John H. Kinkead, Samuel Sussman, and Charles O. Wood;

An act (S. 1829) for the relief of the Greensburg Limestone Company and others; and

An act (S. 2901) to authorize the Secretary of the Treasury to sell and convey the United States custom-house and post-office property at Eastport, in the State of Maine, lately destroyed by fire, the proceeds thereof to be invested in the purchase of a new site for, and to provide for the erection of, a new public building at that place.

NEW ORLEANS, BATON ROUGE AND VICKSBURG RAILROAD GRANT.

The PRESIDENT *pro tempore*. If there be no further "concurrent or other resolutions," the morning hour is closed, and the Calendar is in order.

Mr. EUSTIS. I move that the Senate proceed to the consideration of the bill (H. R. 3186) to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes.

Mr. HARRIS. Is that bill on the Calendar under Rule VIII or Rule IX?

The PRESIDENT *pro tempore*. It is a special order.

Mr. EUSTIS. The bill has been made a special order several times.

Mr. MORGAN. If the bill is a special order, it comes up at 2 o'clock, under the rule, does it not?

The PRESIDENT *pro tempore*. Not to-day.

Mr. MORGAN. Whenever reached?

The PRESIDENT *pro tempore*. It does.

Mr. MORGAN. Not before 2 o'clock, anyway.

The PRESIDENT *pro tempore*. It is a special order.

Mr. EUSTIS. My motion is in order. I move that the Senate proceed to the consideration of the bill.

The PRESIDENT *pro tempore*. The question is on agreeing to the motion of the Senator from Louisiana, to proceed to the consideration of the bill indicated by him.

Mr. HOAR. Will the Chair be kind enough to have the title of the bill read?

The Chief Clerk read the bill by its title.

The PRESIDENT *pro tempore*. The question is on the motion to proceed to the consideration of the bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill.

The PRESIDENT *pro tempore*. The clerks inform the Chair that the bill has already been read at length. The bill is open to amendment.

Mr. PLATT. Has the bill been read?

The PRESIDENT *pro tempore*. It has been read. Does the Senator desire to have it read again?

Mr. PLATT. I think it had better be read, unless we can have something equivalent to its reading.

The PRESIDENT *pro tempore*. The bill will be read.

The Chief Clerk read the bill.

Mr. PLATT. I see that some portion of the lands originally granted are forfeited and some are confirmed. I wish the Senator from Louisiana would make a short explanation of the bill showing why the lands forfeited are forfeited and why those confirmed are confirmed.

Mr. EUSTIS. Mr. President—

Mr. MITCHELL, of Oregon. If the Senator from Louisiana will allow me a moment before he proceeds, I should like to know also in the explanation that is about to be made whether any lands are included in this declaration of forfeiture which are adjacent to roads completed at this time. In the second place, I should like to know whether any lands included in the grant, a part of which is to be forfeited by the bill, are omitted from the declaration of the forfeiture, which lie adjacent to that portion of the road not completed within the time specified in the act for the completion of the whole road.

Mr. EUSTIS. In answer to the question of the Senator from Connecticut [Mr. PLATT] I will state that the portion of the road to which the land is adjacent which is forfeited was not built by either the grantee or by the assignee of the grantee. It was a portion of a road built by another company, which was purchased. Therefore, the construction of that portion of the road was not predicated upon any grant which was made by Congress.

Although this is called a forfeiture in the bill, it is really not a forfeiture, because this railroad company has filed a relinquishment of any

claim with reference to any of the lands which are adjacent to about 82 miles of the road.

In answer to the question of the Senator from Oregon, I will state that this grant was made in 1871 to the New Orleans, Baton Rouge and Vicksburg Railroad Company, upon the condition that the road designated in the grant should be constructed and completed within five years. The time would have expired in 1876. There was nothing whatsoever done by the railroad company, which was known as the Backbone Railroad Company, during those five years, nor by that railroad company after the expiration of those five years; but in 1881, which was five years after the time had expired during which the grant existed, the Backbone Railroad Company made an assignment of the grant to the New Orleans Pacific Railroad Company, and the New Orleans Pacific Railroad Company completed the road, and this is an act which is to confirm title in the New Orleans Pacific Railroad Company. The Senator understands that.

Mr. MITCHELL, of Oregon. I understand, then, one purpose of this act is not to forfeit land adjacent to uncompleted road, but to confirm a grant adjacent to completed road, which road was completed after the time fixed for the completion of the road.

Mr. EUSTIS. By another company.

Mr. MITCHELL, of Oregon. By another company. That is about the situation.

Mr. EUSTIS. Now, Mr. President, I do not intend to speak on this question. I had occasion formerly to address the Senate with regard to it, and I then took the ground that the New Orleans Pacific Railroad Company was not entitled to this grant. At that time the New Orleans Pacific Railroad Company claimed this grant by virtue of an assignment from the Backbone Railroad Company. That was the whole basis of its title. I opposed that view. I argued that that assignment was illegal and void—that the Backbone Railroad Company acquired no title to that land, and therefore had no assignable interest in that land. The theory of this bill, I may say, confirms that view. Instead of Congress recognizing the title to exist in the New Orleans Pacific Railroad Company by reason and by virtue of the assignment, instead of Congress recognizing the legality and the validity of the assignment as the basis of the title, this act proposes to ignore that assignment and directly to confirm a title in the New Orleans Pacific Railroad Company from the date of the passage of this act.

Mr. MITCHELL, of Oregon. Then the object of this bill is to make a new grant, or rather confirm a grant, to a company that in the judgment of the Senator never was entitled to a grant at all. Is that it?

Mr. EUSTIS. Yes, sir. And, therefore, Mr. President, holding the views which I entertained at first—that the original grantee never acquired from the Government of the United States any interest in the land, by failing to comply with any of the conditions of the grant—I am opposed to making a new grant at this date to the New Orleans Railroad Company because that railroad company has completed this road.

Mr. MITCHELL, of Oregon. Now, let there be no misunderstanding between us. I wish to understand this bill in connection with some other bills that are pending and that we have already had up. If it should turn out that the Senator is wrong in his opinion as to the power of the one company to make an assignment to the other company that would be good, then the case would stand thus: that this is a proposition in that event to declare forfeited certain lands adjacent to completed road at this date. If the assignment was good, then the proposition is to declare forfeited lands adjacent to completed road by a company that had the power and right to complete it.

Mr. EUSTIS. I do not base my vote upon any assumption whatever that the assignment was legal at all.

Mr. MITCHELL, of Oregon. I understand that. I understand the Senator from Louisiana holds to the view that the grantee company had no power under the law to make an assignment at all.

Mr. EUSTIS. Yes, sir.

Mr. MITCHELL, of Oregon. And, therefore, this bill in that view of the case would be to confirm title in a company that never had any right to it at all. But what I wish to get at is this: If the Senator should happen to be wrong in his view of the law and his view as to the right of this grantee company to make the assignment, then it would simply be a proposition to declare forfeited land adjacent to completed road that had been completed by a company authorized to complete it before the declaration of forfeiture.

Mr. EUSTIS. Of course that is the object of this act. This act proposes to confirm the title in the New Orleans Pacific Railroad Company. That is equivalent to a new grant, in my judgment. That is to say, the theory of this bill is that the original grantee, the Backbone Railroad Company, did not acquire any title whatever to these lands, but Congress in consideration of the fact that the railroad has been completed by another company, under this bill proposes to transfer that grant from the original grantee to the assignee, the New Orleans Pacific Railroad Company.

I shall propose several amendments to this bill. The first amendment that I propose is to declare a forfeiture of the whole grant. If the Senate should vote that down, I shall then propose some amendments to protect the rights of the settlers.

Mr. EDMUNDS. What section is that in?

Mr. EUSTIS. I offer an amendment to strike out all after the enacting clause and insert:

That the lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company by an act entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes," approved March 3, 1871, be, and they are hereby, declared forfeited, and the lands covered thereby shall be considered and treated in all respects the same as if said grant had never been made: *Provided*, That any title to said lands acquired by purchase from any railroad company by any bona fide settler is hereby confirmed to said purchaser.

The PRESIDENT *pro tempore*. The question is on the adoption of the amendment of the Senator from Louisiana [Mr. EUSTIS].

Mr. EUSTIS. I will state that the New Orleans Pacific Railroad Company, at the time when they were trying to get this grant by direct act of Congress, telegraphed that they could build this road without this grant; and in my opinion, to confirm this grant is simply an act of donation to a company, between which and the Government of the United States there never has been any privity whatsoever.

Mr. TELLER. Mr. President, the question of the right of the Backbone Railroad Company and of the present owners of this property has been fully discussed in the Senate, as well as in another body. There probably is no case where a railroad company has claimed and obtained patents to land that has had so thorough and complete an examination of all the features involved as this particular case. Senators will remember that at the very beginning of this Congress, on a resolution introduced by the Senator from Nebraska [Mr. VAN DYCK], there was a very thorough and general discussion of this question. It had been a matter of discussion in the other branch of Congress, and it had been a matter of discussion before the Department of the Interior for five or six years.

In 1881 a company then claiming to be entitled to the land grant named in this bill transferred to the present corporation its claim to that grant. The present corporation proceeded first to purchase 68 miles of road in the general direction of the grant and then to complete the road. Early in 1881, as I will show by the record, while Mr. Kirkwood was Secretary of the Interior, the assignee filed the transfer of this claim from the original company, and thereupon the Department asserted to this company that it had a valid, legal transfer—a transfer that would be recognized by the Department thereafter in dealing with that corporation.

The Commissioner of the General Land Office, in reply to a question put to him by letter by the president of the so-called Backbone Railroad Company, Mr. Barnum, then declared that all had been done that was necessary and proper to be done to lodge and vest in the New Orleans Pacific Railroad Company the right to complete this road and receive the land therefor. That was before the company had done any part of the work that was to be done.

I will call the attention of the Senate, although I have already done that on a former occasion, to some of these documents. I do not intend, myself, to go fully into this discussion. The matter has been so thoroughly discussed before the Senate and has been a matter of so much examination that it does not seem to be necessary to do so.

In 1883 a Mr. Steever, who was an attorney-at-law and represented this corporation, addressed the then Secretary of the Interior on this subject, and here is the first letter of that Secretary on the subject, being the first dealing he had with it officially:

DEPARTMENT OF THE INTERIOR,
Washington, May 24, 1883.

SIR: I have yours concerning the mortgage of New Orleans and Pacific Railroad Company. The Interior Department has nothing to do with that matter.

That was a question whether they were allowed to mortgage their road.

My predecessor submitted the question, as to the right of the company to receive the lands from the Government, to the Attorney-General who decided the question in favor of the company. The Interior Department was compelled to accept this as the law governing the case, and then it became the duty of the Department to carry out the law. I do not understand the Department has anything to do with the question of what disposition the company shall make of the lands.

Very respectfully,

H. M. TELLER,
Secretary.

Mr. WEST STEEVER,
Attorney-at-Law, Washington, D. C.

The basis upon which the Interior Department then acted can be seen from a brief statement. In December, 1880, this transfer was made. It was filed in the Interior Department early in January, 1881. The first letter that I find from the Department on this subject is the following:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., February 17, 1881.

SIR: In compliance with the verbal request of Hon. J. H. Ketcham, I make the following statement:

This is a letter from the Commissioner of the General Land Office.

By the twenty-second section of an act of Congress, entitled "An act to incorporate the Texas Pacific Railroad Company," &c., approved March 3, 1871, a grant of land was made to the New Orleans, Baton Rouge and Vicksburg Railroad Company for the purpose of aiding in the construction of its road.

At a special meeting of the directors of said New Orleans, Baton Rouge and Vicksburg Railroad Company, held December 29, 1880, a resolution was adopted authorizing the president and secretary of the company to transfer all the right, title, and interest of said company in and to said grant to the New Orleans

Pacific Railway Company, and to make and execute such instruments as should be necessary for that purpose.

On the 5th day of January, 1881, the president and secretary, pursuant to said authority, executed a deed in the name of the New Orleans, Baton Rouge and Vicksburg Company, conveying all the right, title, and interest of said company in and to said grant to the New Orleans Pacific Railway Company.

On the 3d day of February, 1881, the directors of the last-named company adopted a resolution authorizing the president of the company to accept said conveyance, and to execute any documents necessary to evidence the acceptance.

There can be no doubt that when the president of the New Orleans Pacific Railway Company accepts said transfer the company will be fully vested with all the right, title, and interest which the New Orleans, Baton Rouge and Vicksburg Company has in and to said grant.

Very respectfully,

J. A. WILLIAMSON, *Commissioner.*

W. H. BARNUM, *Esq.,*

President New Orleans, Baton Rouge and Vicksburg Railroad Company.

To this letter, on February 19, Mr. Barnum transmitted the following:

NEW YORK, February 19, 1881.

SIR: I transmit herewith telegram from E. B. Wheelock, president, &c., advising me of the acceptance by the New Orleans Pacific Railroad Company of the deed and transfer executed by the New Orleans, Baton Rouge and Vicksburg Railroad Company of all its right, title, and interest in and to the land grant made by section 22 of the act of Congress approved March 3, 1871. Letter of acceptance, in same terms, to be filed in your office, will follow in due course of mail.

Please advise me if this action completes the assignment and transfer of this land grant and oblige.

Very respectfully, your obedient servant,

W. H. BARNUM,

President New Orleans, Baton Rouge and Vicksburg Railroad Company.

Hon. J. A. WILLIAMSON,

Commissioner, &c.

On the 21st the Commissioner of the General Land Office addressed the following letter to Mr. Barnum:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., February 21, 1881.

SIR: The president of the New Orleans Pacific Railway Company has duly accepted, in behalf of said company, the deed referred to in my letter addressed to you, dated February 17, 1881, being the deed to the said New Orleans Pacific Railway Company by the New Orleans, Baton Rouge and Vicksburg Railroad Company of all its right, title, and interest in and to the grant to said last-named company by the twenty-second section of an act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company," &c., approved March 3, 1871.

The transfer by the said New Orleans, Baton Rouge and Vicksburg Railroad Company of all its right, title, and interest in and to said grant to the said New Orleans Pacific Railway Company is now complete.

Very respectfully,

J. A. WILLIAMSON,
Commissioner.

W. H. BARNUM,

President New Orleans, Baton Rouge and Vicksburg Railroad Company.

There seems to have been no question made from that time or in the Department that the transfer had been properly made. On the 26th of February this letter also was written, to which I will call attention:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., February 26, 1881.

SIR: On the 17th instant you filed with me certain papers, showing the transfer by the New Orleans, Baton Rouge and Vicksburg Railroad Company to the New Orleans Pacific Railway Company, of the land grant to the former company. You verbally asked me for an expression of opinion as to the effect and sufficiency of the transfer.

On the same day (17th instant) I addressed a letter to Hon. W. H. Barnum, president of the first-named company, expressing the opinion that the transfer would fully vest in the last-named company, upon a formal acceptance thereof by it, all the right, title, and interest of the first-named.

On the 21st instant you filed a letter from Mr. Barnum, dated 19th instant, addressed to me, covering a telegram from E. B. Wheelock, president of the New Orleans Pacific Railway Company, dated New Orleans, 19th instant, being the required acceptance of the transfer.

By letter to Mr. Barnum, dated 21st instant, I acknowledged receipt of his letter and inclosure, and stated that the transfer was not complete.

On the 24th instant you referred a letter dated New York, 23d instant, addressed to you from William M. Barnum, secretary of the New Orleans, Baton Rouge and Vicksburg Railroad Company, covering the original of the telegram of acceptance, above referred to.

Yesterday you telegraphed me asking if the papers last described had been received; to which I at once responded by telegraph in the affirmative.

All the papers in the case have been filed.

Very respectfully, &c.,

J. A. WILLIAMSON, *Commissioner.*

Hon. J. H. KETCHAM,

House of Representatives.

On the 15th of the following December the following letter was lodged with the Commissioner of the General Land Office:

WASHINGTON, December 15, 1881.

SIR: I respectfully but most earnestly urge that there be no further delay in the transfer of the land grant originally granted by act of March 3, 1871, to the New Orleans, Baton Rouge and Vicksburg Railroad, and by that corporation transferred to the New Orleans Pacific Railway Company by act on file in your office, to the latter company.

As I understand the case, the transfer is legal, and recognized as such by this Department; and the lands have been earned by construction, and a favorable report for 130 miles of constructed road is on file.

Delay is asked that the rights of "squatters" or settlers may be protected. In reply, I beg to state that the laws now in force protect those "bona fide" settlers who went on the lands prior to the grant by Congress. As to settlers who "squatted" on the lands after they were withdrawn, by reason of the grant, they have no rights, for they were in bad faith.

Surely Congress nor the Department can legislate or decide as to rights on lands donated by the Government.

The act of donation by Congress and of acceptance by earning on the part of the grantee parts with the jurisdiction of the Government over the lands donated and earned.

I beg to state that the affairs and operations of the New Orleans Pacific Railway Company have been, and are, most seriously embarrassed by the unexpected delay they have met with in obtaining title to their grant; and I respectfully submit that this should not be, merely to attempt the hopeless task by legislation or otherwise of looking after the rights of a few persons who have gone on the lands in bad faith.

I am satisfied that the company will deal justly with settlers. I have had this assurance from its president.

I will gladly co-operate to get favorable terms for them, but this is a matter simply and purely of equity and accommodation between the settlers and the company.

I beg, therefore, to urge that there be as little delay as possible in perfecting the title of the New Orleans Pacific Railway to the grant.

I have the honor to be, most respectfully, your obedient servant,

E. JNO. ELLIS, *M. C., Louisiana.*

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

P. S.—I am authorized to state that Senators Jones and Kellogg concur in these views.

E. JNO. ELLIS.

The name here printed "Jones" of course should be "Jonas." On the same day the following also was addressed to the Secretary of the Interior:

HOUSE OF REPRESENTATIVES,
Washington, D. C., December 15, 1881.

SIR: We respectfully urge that there be as little delay as possible in consummating the transfer of the lands granted to the New Orleans, Vicksburg, and Savannah Railroad Company by act of March 3, 1871, and by that company transferred to the New Orleans Pacific Railway Company, by an act of sale now on file in your office, to the latter company.

As we understand, the New Orleans Pacific Railway Company has earned by construction its title to the grant, and that all the preliminaries have been completed with, and there remains now but the certification of the lands and the issue of the patents.

The affairs of the New Orleans Pacific Railroad Company have been much damaged and embarrassed by the protracted delays that have already occurred, and we therefore urge that the matter be expedited as rapidly as possible.

With great respect, we are your obedient servants,

E. JNO. ELLIS,
Second Louisiana District.
B. F. JONAS, *U. S. S.*
J. FLOYD KING,
W. P. KELLOGG.

Hon. S. J. KIRKWOOD,
Secretary of the Interior.

J. Floyd King was a member of Congress, and Kellogg a member of the Senate. A protest was filed by two members of the House of Representatives from the State of Louisiana, Mr. ROBERTSON and Mr. BLANCHARD, because they thought that the long delay from the time that the grant had been made to the time of the construction of the road had induced settlers to go on these lands who would be injured by the delay. This protest I will not stop to read; but later, on the 4th of January, 1882, while Mr. Kirkwood was Secretary of the Interior, these two members of Congress withdrew their protest, in the following terms:

WASHINGTON, January 4, 1882.

SIR: We hereby withdraw the opposition and protest filed by us to the recognition of the New Orleans Pacific Railroad Company as the grantees and transferees of the land in Louisiana granted by the act of Congress of 1871 to the New Orleans, Baton Rouge and Vicksburg Railroad Company, and claimed by said New Orleans Pacific Company as transferees of the New Orleans, Baton Rouge and Vicksburg Company.

The object we had in filing said protest was the protection of the rights of settlers on the land covered by said grant, and as that has been obtained by agreement with the company, we do not wish to throw any further obstacle in the way of the recognition by the Department of the Interior of the rights claimed by the company.

The New Orleans Pacific Company have constructed the road running through the grant—that is to say, from New Orleans to Shreveport—and having obtained the funds with which to do so upon the faith of its right to the land grant, we think that justice demands the recognition of their claims to the land.

We are, sir, with great respect, your obedient servants,

E. W. ROBERTSON,
Member of Congress, Sixth District of Louisiana.
N. C. BLANCHARD,
Member of Congress, Fourth District of Louisiana.

THE SECRETARY OF THE INTERIOR.

The Senator from Connecticut [Mr. PLATT] asks me what the agreement was. The agreement was that the railroad company would dispose of the land at \$2 per acre to the settlers, such as had already made settlement at that time. That of course rested entirely on the good faith of the company. There was no way in which the Department could enforce the agreement. This bill confirms whatever interest they may have there, dependent on their acceptance of the provisions, and I will say, and I do not think the Senator from Louisiana will dispute it, that I understand the company have carried it out to the present day in good faith, giving to all these settlers the land at 50 cents an acre less than they could buy Government land by the side of this road.

In 1882 there was introduced in the Senate a bill to confirm to this company this land grant. It went to the Committee on Railroads, of which at that time Mr. Jonas, a member of the Senate from the State of Louisiana, was a member. Mr. Jonas made a report in behalf of the Committee on Railroads in these words:

[Senate Report No. 711, Forty-seventh Congress, first session.]

IN THE SENATE OF THE UNITED STATES.

JUNE 7, 1882.—Ordered to be printed.

Mr. Jonas, from the Committee on Railroads, submitted the following report: The Committee on Railroads, to whom the subject was referred, submit the following report:

A petition has been referred to the Committee on Railroads of certain citizens

of Louisiana, asking for the forfeiture of the land grant made to the New Orleans, Vicksburg and Baton Rouge Railroad Company by the ninth section of the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3, 1871, on the ground that the company to whom the grant was made has failed to build the road within the time prescribed by the act.

The grant was made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and assigns. That company was incorporated by an act of the Legislature of Louisiana, approved December 30, 1869. The object of Congress in making the grant was to aid in the construction of the proposed road, via Baton Rouge, Alexandria, and Shreveport, to connect with the eastern terminus of the Texas Pacific Railroad, and thus connect that road with the Mississippi River and the Gulf of Mexico.

The committee find that this connecting road, on almost the same line, and between the same points (if not built by the original grantees), has been built by the New Orleans Pacific Railway Company, which was organized under a charter confirmed by an act of the Legislature of Louisiana, approved February 19, 1876. This road is now completed and running between New Orleans and the eastern terminus of the Texas Pacific Railroad, at or near Marshall, Tex., its route being via Baton Rouge, Alexandria, and Shreveport.

The New Orleans, Baton Rouge and Vicksburg Railroad Company (which still has corporate existence) by deed dated the 5th day of January, 1881, granted and transferred to the New Orleans Pacific Railway Company all its right, title, and interest in and to the lands granted to it by the before-mentioned act of Congress incorporating the Texas Pacific Railroad Company. This transfer was approved, ratified, and confirmed at a meeting of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company by a vote of two-thirds of its entire capital stock. The transfer was formally accepted by the board of directors of the New Orleans Pacific Railway Company.

The deed of transfer, a certified copy of the resolution of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company ratifying the transfer, and a certified copy of the resolution of the board of directors of the New Orleans Pacific Railway Company accepting the transfer, have been filed in the Department of the Interior.

A commissioner to inspect a portion of the railroad built by the New Orleans Pacific Railway Company was, upon the application of that company, appointed by the President of the United States, and the report of the said commissioner, approving the construction of the portion of the railroad inspected by him, was duly filed in the Department of the Interior.

Application is now made for the issuance of patents to the New Orleans Pacific Railway Company for the lands granted by Congress to the New Orleans, Baton Rouge, and Vicksburg Railroad Company, and by the last-named company assigned to the New Orleans Pacific Railway Company as heretofore stated.

The grant was originally made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and assigns, for the purposes above stated.

The road has been built by the assignee of the grantee, and the objects of the grant have been fully attained.

No forfeiture of the grant was made before the completion of the road, on the grounds alleged, and we think it would be unjust and inequitable to make such forfeiture now when the work has been completed by the assignee company, which has built the road in good faith and in full expectation of receiving the benefit of the grant which remained unforfeited and assignable in the control of their grantor.

Your committee think no consideration of public policy requires the forfeiture of the grant, and they recommend that the committee be discharged from further consideration of the memorial.

The position of the committee can be seen in the last few lines. The committee decided that the transfer was ample to carry the title to the new company and that it did not need any legislation.

Mr. EUSTIS. Will the Senator allow me to ask him a question on this point?

Mr. TELLER. Certainly.

Mr. EUSTIS. Was there not a protest filed by these same gentlemen against the issue of patents before March, 1884?

Mr. TELLER. If the Senator will wait until I reach that stage he may put that question. The Senator knows about it; he was one of the signers.

Mr. EUSTIS. I was not one of the signers.

Mr. TELLER. Perhaps not. It was very close on to the time the Senator came into the Senate. I will give all the history. If I do not the Senator will be at liberty to give it.

Mr. EUSTIS. I will explain why I ask the question at this particular time. As the Senator has been urging the point that the members of the Louisiana delegation were against the forfeiture and in favor of the issuing of patents, I thought it an opportune time to put the question.

Mr. TELLER. I shall come to that before I get through. The Senator need not be in a hurry about it. There is plenty of time.

In the latter part of 1881, or the early part of 1882, the then Secretary of the Interior, Mr. Kirkwood, received a protest made by some parties here in Washington having no connection with this land whatever, having no connection with the people of the State of Louisiana whatever, appearing, as they stated, for the purpose simply of seeing that the Government was not swindled. Senators can form their own opinion why they appeared. They raised the question whether there had been a valid grant. Mr. Kirkwood, the then Secretary of the Interior, submitted to the then Attorney-General, Mr. Brewster, the question whether or not there had been a legal transfer made.

This involved not only the question, first, as to the legality of the proceedings of these railroad companies in making the transfer, but also the question whether the law authorized such a transfer to be made. Upon the latter point there was no necessity for having that opinion, because it had already been settled by the opinions of five Attorneys-General of the United States that there could be a valid assignment of a grant of this character. Mr. Brewster, the then Attorney-General, on the 13th day of June, 1882, submitted to the Interior Department his opinion, in which he held that the transfer was legal

and proper and that these parties were entitled to the land. This is his opinion:

DEPARTMENT OF JUSTICE, Washington, D. C., June 13, 1882.

SIR: By a letter dated the 5th of January last, your predecessors submitted to me a number of questions arising upon an application of the New Orleans Pacific Railway Company for certain lands claimed under the land grant made to the New Orleans, Baton Rouge and Vicksburg Railroad Company by the act of Congress of March 3, 1871, chapter 122.

The land grant mentioned is contained in the twenty-second section of that act, which provides:

"That the New Orleans, Baton Rouge and Vicksburg Railroad Company, chartered by the State of Louisiana, shall have the right to connect, by the most eligible route to be selected by said company, with the said Texas Pacific Railroad at its eastern terminus, and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with the said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns, the same number of alternate sections of public lands per mile, in the State of Louisiana, as are by this act granted in the State of California to said Texas Pacific Railroad Company; and said lands shall be withdrawn from market, selected, and patents issued therefor, and opened for settlement and pre-emption, upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company, within said State of California: *Provided*, That said company shall complete the whole of said road within five years from the passage of this act."

The eastern terminus of the Texas Pacific Railroad, as fixed by the same act, was a point at or near Marshall, Tex.

The New Orleans, Baton Rouge and Vicksburg Railroad Company was incorporated by an act of the Legislature of Louisiana passed December 30, 1869, which authorized it to construct and operate a railroad "from any point on the line of the New Orleans, Jackson and Great Northern Railroad, within the parish of Livingston, running from thence to any point on the boundary line dividing the States of Louisiana and Mississippi," the route here indicated lying east of the Mississippi River. It was also authorized to construct and operate a branch railroad from its main line (above described) to the city of Baton Rouge; and for the purpose of connecting its railroad with the railroads of other companies, &c. it was furthermore authorized "to construct, maintain, and use, by running thereon its engines and cars, such branch railroads and tracks as it may find necessary and expedient to own and use;" and such branch railroads were, for all the purposes of the act, to be deemed and taken to constitute a part of the main line of its railroads within the State of Louisiana.

On November 11, 1871, that company filed in the General Land Office a map designating the general route of a road projected thereby from Shreveport, by way of Alexandria, to Baton Rouge, and thereupon a withdrawal of the public lands along the same was ordered, which became effective in December following.

Subsequently, by an act of the Legislature of Louisiana passed December 11, 1872, the same company was given "full power and authority to commence the construction of their road in the city of New Orleans or Shreveport, or at any intermediate point on their line of road, as may best suit the convenience of said company and facilitate the speedy construction of a continuous line from the city of New Orleans to the city of Shreveport, or perfect railroad communication with the Texas Pacific Railroad or any other railroad in Northwestern Louisiana, at or near the Louisiana State line: *Provided, however*, That the said company shall construct the line of its road between the city of New Orleans and the city of Baton Rouge, on the east side of the Mississippi River, to the corporate limits of the said city of Baton Rouge, or adjacent thereto."

In the mean time, by the act of Congress of May 2, 1872, chapter 132, the Texas and Pacific Railway Company (formerly styled the Texas Pacific Railroad Company) was "authorized and required to construct, maintain, control, and operate a road between Marshall, Tex., and Shreveport, La., or control and operate any existing road between said points, of the same gauge as the Texas and Pacific Railroad." The same act further provided that "all roads terminating at Shreveport shall have the right to make the same running connections, and shall be entitled to the same privileges, for the transaction of business in connection with the said Texas and Pacific Railway, as are granted to roads intersecting therewith."

On February 13, 1873, a second map was filed in the General Land Office by the New Orleans, Baton Rouge and Vicksburg Railroad Company, designating the general route of a road projected thereby from New Orleans to Baton Rouge, and a withdrawal of the public lands along the same was ordered, which took effect in April, 1873. The route between those places, those designated, lies on the east side of the Mississippi River. That company has not constructed any part of its road, either on the route between New Orleans and Baton Rouge or on the route between the latter place and Shreveport; nor, indeed, has there been a definite location of its road anywhere between the points mentioned. Nothing beyond the designation of the general route thereof appears.

Pursuant to a resolution of its board of directors, adopted December 29, 1880, all the right, title, and interest of that company in and to the aforesaid grant of public lands made by the act of March 3, 1871, were decided by it to the New Orleans Pacific Railway Company. This action of the board of directors and officers of the former company was afterwards approved and ratified by the stockholders thereof at a meeting held in December, 1881.

The New Orleans Pacific Railway Company was originally incorporated under the general laws of the State of Louisiana in June, 1875. Its charter was subsequently amended by acts of the Louisiana Legislature passed February 19, 1876, and February 5, 1878. It is thereby authorized to construct a railroad "beginning at a point on the Mississippi River at New Orleans or between New Orleans and the parish of Iberville, on the right bank of the Mississippi, and Baton Rouge, on the left bank, &c., or from any point within the limits of this State, and running thence toward and to the city of Shreveport," which is made its northwestern terminus.

The route of this company as projected is understood to extend from New Orleans to Baton Rouge, and thence, by way of Alexandria, to Shreveport. Between New Orleans and Baton Rouge it lies on the west side of the Mississippi River; while the designated route of the New Orleans, Baton Rouge and Vicksburg Railroad Company, between the same points, lies on the east side of that river. Between Baton Rouge and Shreveport its general course and direction corresponds, in the main, with the route designated by the last-named company. It is throughout its entire length from New Orleans to Shreveport within the limits of the before-mentioned withdrawals of public lands.

In October, 1881, the president of the New Orleans Pacific Railway Company made affidavit that three sections of its road were then completed and ready for examination by the Government; whereupon a commissioner was appointed to examine the same, the result of whose examination appears in a report made by him to the Secretary of the Interior, under date of the 26th of that month. One of the sections embraces 68 miles of road, beginning on the west bank of the Mississippi River, opposite New Orleans, and ending near the town of Donaldsonville; another embraces 20 miles of road near Alexandria; and the third embraces 50 miles of road terminating at Shreveport. For each of these sections lands are claimed by that company under the aforesaid land grant, as assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company.

No map of definite location of any portion of its road has been filed, other than those of constructed portions.

It appears that in February, 1881, the New Orleans Pacific Railway Company purchased from Morgan's Louisiana and Texas Railroad and Steamship Company the road constructed on the west bank of the Mississippi River by the New Orleans, Mobile and Texas Railroad Company, from Westwego to White Castle, a distance of 68 miles, and that the same has become a part of the main line of the road of the New Orleans Pacific Railway Company.

The following are the questions submitted:

"1. Was the grant to the New Orleans, Baton Rouge and Vicksburg Railroad Company a grant *in presenti*?"

"2. Had the New Orleans, Baton Rouge and Vicksburg Railroad Company, at the date of its alleged transfer of lands to the New Orleans Pacific Railway Company, such an interest in the lands, under said act, as was assignable?"

"3. Is the New Orleans Pacific Railway Company such a successor to or assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company as is contemplated by said act?"

"4. Should it appear that the 68 miles of the New Orleans, Mobile and Texas Railroad was constructed prior to the act of March 3, 1871, granting lands to aid in the construction of the New Orleans, Baton Rouge and Vicksburg Railroad, can the New Orleans Pacific Company (its assignee) claim any benefit from the grant? Or, in case of such prior construction, and the non-construction of any portion of the New Orleans, Baton Rouge and Vicksburg road, has the purpose for which the grant was made failed and the grant consequently lapsed?"

"5. If the New Orleans, Mobile and Texas road was constructed subsequently to the date of said act, is so much of its road as is now owned by the New Orleans Pacific Company such a road as is contemplated for acceptance by the President within the meaning of said act, and may patents issue to the latter for lands opposite to and coterminous with such constructed portion of road?"

These questions are accompanied by a request for an opinion upon such other questions of law as may suggest themselves touching the transfer of said land grant, to which reference is above made.

Of the above-stated questions the first three may be considered together, in connection with the following inquiry, which presents itself at the outset, whether the assent of Congress to the transfer made by the New Orleans, Baton Rouge and Vicksburg Railroad Company of all its interest in said land grant to the New Orleans Pacific Railway Company is necessary (by reason of anything in the provisions of the grant itself) to entitle the latter company to the benefit of said grant in aid of the construction of the road projected by it.

The act of March 3, 1871, passed to the New Orleans, Baton Rouge and Vicksburg Railroad Company a present interest in a certain number of alternate sections of public lands per mile within the limits there prescribed. Its language is "there is hereby granted to said company" the number of alternate sections mentioned; words which import a grant *in presenti*, and not one *in futuro*, or the promise of a grant. (97 U. S. Rep., 496.) But the grant thus made is in the nature of a float. It is of sections to be afterward located, their location depending upon the establishment of the line of the road. Until this is definitely fixed the grant does not attach to any specific tracts of land. Upon the line of the road being definitely located the grant then first acquires precision, and the company becomes invested with an inchoate title to the particular lands covered thereby, which can ripen into a perfect title only as the construction of each section of 20 miles of road is completed and approved, when the right to patents for the lands opposite to and coterminous with such constructed section accrues.

The proviso in the grant that the company shall complete the whole of its road within five years from the date of the act is a condition-subsequent, the failure to perform which does not, *ipso facto*, work a forfeiture of the grant, but only gives rise to a right in the Government to enforce a forfeiture thereof. Yet in order to enforce a forfeiture such right must be asserted by a judicial proceeding, authorized by law, or by some legislative action amounting to a resumption of the grant. (Schulenberg vs. Harriman, 21 Wall., 44.) Hence, until advantage is taken of the non-performance of the condition, under legislative authority, the interest of the grantee in the grant remains unimpaired thereby.

Such being the nature and effect of the grant and its accompanying condition, and no action having been taken either by legislation or judicial proceedings to enforce a forfeiture thereof, it follows that at the period of said transfer by the New Orleans, Baton Rouge and Vicksburg Railroad Company this company was invested with a present interest in the number of alternate sections of public lands per mile granted by the act of 1871, notwithstanding it was already in default in the performance of the condition referred to, and that it still retained a right to proceed with the construction of the road in aid of which the grant was made until advantage should be taken of the default. But as it had not then definitely fixed the line of its road, although a map designating the general route thereof was duly filed, that interest did not attach to any specific tracts of land, but remained afloat, as it were, needing a definite location of the road before it could become thus attached. Was the interest here described assignable to another company, so as to entitle the latter to the benefit of the grant in aid of the construction of its road between the places named therein, without the assent of Congress?

Doubt has perhaps arisen on this point in view of the fact that in one or two instances it has been thought expedient to obtain legislation by Congress confirming or authorizing a similar assignment (see section 2 of the act of March 3, 1855, chapter 88, and section 1 of the act of March 3, 1869, chapter 127), and also in view of the adverse ruling of this Department in the case of the Oregon Central Railroad Company. (13 Opin., 382.) However a similar assignment made in 1866 by the Hannibal and Saint Joseph Railroad Company to the Pike's Peak Railroad Company, afterward known as the Central Branch Company, was held to be valid by Attorney-General Stanberry in an opinion given to the Secretary of the Treasury under date of July 25, 1866.

In the latter case the Hannibal and Saint Joseph Company, which was incorporated by the State of Missouri, with authority to construct a railroad between Hannibal and Saint Joseph, within that State, was, by the Pacific Railroad act of July 1, 1862 (section 13), authorized to "extend its road from Saint Joseph, via Atchison, to connect and unite with the road through Kansas, * * * and may for this purpose use any railroad charter which has been or may be granted by the Legislature of Kansas," &c. And by the fifteenth section of the same act it was provided that "wherever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto." Subsequently, in 1863, an assignment was made by that company of all its rights under said act (which included an interest in both a land and a bond subsidy) to the Atchison and Pike's Peak Railroad Company, a company previously organized under a charter granted by the Legislature of Kansas. The latter company having constructed a section of 20 miles of the proposed road west from Atchison claimed the benefit of the grant made to the Hannibal and Saint Joseph Company, as its assignee, and this claim was recognized and allowed, in accordance with the opinion of the Attorney-General. It will be observed, however, that the Hannibal and Saint Joseph Company was authorized to "use any railroad charter which has been or may be granted by the Legislature of Kansas," and this, together with the provision in the fifteenth section, quoted above, may have been regarded as sufficient to sustain the assignment.

In the case of the Oregon Central Railroad Company, mentioned above, a grant of a right of way through the public lands, and also of alternate sections thereof, was made to that company, "and to their successors and assigns," by

the act of May 4, 1870, chapter 69, for the purpose of aiding in the construction of a railroad and telegraph line between certain places in Oregon. In August following an instrument was executed by the company assigning all its interest in the grant to the Willamette Valley Railroad Company, and thereupon the question arose whether the grant was susceptible of being thus transferred. The Attorney-General (Mr. Akerman), to whom the question was submitted, after reviewing the various provisions of the act, some of which (see section 5) imposed certain duties and required certain important acts to be performed by the company, decided in the negative, holding that, upon consideration of those provisions, the Oregon Central Company was alone within the contemplation of Congress in respect of the donation made and duties imposed by that act. The words "their successors and assigns," as used in the act, were regarded as words of limitation merely.

But the grounds upon which that decision appears to have been based are not found to exist in the case now under consideration. Here a grant of a certain number of alternate sections of public lands per mile is made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and assigns, in aid of the construction of a road from New Orleans, by the route indicated, to connect with the eastern terminus of the Texas and Pacific Railroad, which lands are required to be "withdrawn from the market, selected, and patents issued therefor, and opened for settlement and pre-emption upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company." The grant is coupled with no special duties or trusts, for the performance of which there is reason to believe the particular company named therein was more acceptable to Congress than any other. Its purpose is to secure the construction of a railroad between the points designated, and whether this purpose be fulfilled by that company or by another company must be deemed unimportant in the absence of any provision indicative of the contrary. The interest derived by the grantee, though it remain only afloat, is a vested interest, and it is held under the same limitations which apply after it develops into an estate in particular lands until extinguished by forfeiture for non-performance of the condition annexed to the grant. I perceive no legal obstacle arising out of the grant itself to a transfer of such interest by the grantee to another company, and should the latter construct the road contemplated agreeably to the requirements of the grant, and thus accomplish the end which Congress had in view, I submit that it would clearly be entitled to the benefits thereof.

The question of the assignability of the interest of the grantee would be more difficult if, after definitely locating the line of its road, and thus attaching the grant to particular lands along the same, it was proposed to transfer that interest to another company for the benefit of a road to be constructed by the latter on a different line, though following the general course of the other road. But in the present case the facts give rise to no such difficulty. The grant had not previous to the transfer become thus identified with a particular line of road, and was thereafter susceptible of location upon the line of the road projected by the assignee (the New Orleans Pacific Company), provided this road met the requirements of the grant in other respects, as to which no doubt is suggested.

My conclusion is that the assent of Congress to the assignment made by the New Orleans, Baton Rouge and Vicksburg Railroad Company, as above, is not necessary in order to entitle the assignee to the benefit of the land grant in question.

The remaining questions relate to the 68 miles of railroad formerly belonging to the New Orleans, Mobile and Texas Railroad Company, but now owned by the New Orleans Pacific Company, and made a part of its main line between New Orleans and Baton Rouge.

The land grant in question was, as its language imports, made in aid of the construction of a railroad between certain termini, contemplating a road to be constructed, not one already constructed. It has not been the policy of Congress thus to aid constructed roads. Had a constructed road existed at the date of the grant, which extended from one terminus to the other, and afterward the New Orleans, Baton Rouge and Vicksburg Railroad Company, instead of entering upon and completing the construction of a road, had purchased the road already constructed, this, it seems to me, would not have satisfied the purposes of the grant so as to entitle the company to the benefit thereof. The same objection would apply were the constructed road extended over only a part of the route contemplated by the grant. So far as I am advised the action of the Government hitherto has accorded with this view. On the other hand, if such road was constructed subsequently to the date of the grant, and is owned by the grantee or the assignee of the latter, I see no ground for excluding it from the benefit of the grant should it otherwise fulfill the requirements thereof.

Agreeably to the foregoing views, and in direct response to the several questions submitted, I have the honor to reply as follows: The first, second, and third questions I answer in the affirmative. The fourth question (including the alternative added thereto) I answer in the negative. The fifth question I answer in the affirmative—assuming, as I do, the company named therein to be an assignee of the grantee in the act referred to.

I have the honor to be, very respectfully,

HON. H. M. TELLER, Secretary of the Interior.
BENJAMIN HARRIS BREWSTER, Attorney-General.

When this came to the Interior Department, what was the duty of that Department? If the Interior Department is to be charged with any misconduct or with any dereliction of duty whatever it is that upon that opinion it did not at once issue to this company the patent to these lands. It had been decided as early as the days of the attorney-generalship of Mr. Wirt, it had been re-recognized by the great lawyer, Reverdy Johnson, of the State of Maryland, as a duty that was incumbent on a Department when it had submitted a question of this kind to the Attorney-General to be bound by his decision. I called attention to the authorities on that subject on a former occasion and they never have been questioned, and I do not propose now to spend time to go over them. Reverdy Johnson says it is a quasi-judicial proceeding, and the Department was bound to recognize the title of these parties because the Attorney-General had so declared, the question having been submitted to him under the provisions of law for his determination thereon.

After this decision of the Attorney-General there were some steps taken in the House of Representatives, perhaps in both Houses of Congress, looking to the forfeiture of this grant. A member of Congress then, of the State of Illinois, entered with the Secretary of the Interior a protest against issuing the patents, and arraigning the decision of the Attorney-General. The subject had been referred to the Committee on the Judiciary. Subsequently this same member of Congress, by letter of December 15, 1882, withdrew his protest and declared that an examination of the case had satisfied him that this company was

entitled to these lands. On the same day he also notified the Department that he had withdrawn the resolution then pending before the Judiciary Committee looking to the forfeiture of the land grant. This is his letter:

HOUSE OF REPRESENTATIVES,
Washington, D. C., December 15, 1882.

DEAR SIR: In October last I had the honor to address you (as well as the President) a note on the subject of the land grant made in aid of the construction of the Memphis, Baton Rouge and Vicksburg Railroad Company, now claimed by the New Orleans Pacific Railway Company, in which letters I requested a suspension of Department action until I could, as a member of the Judiciary Committee of the House, be heard upon the matter—as it was pending before that committee on a resolution offered by myself, declaring a forfeiture of the grant—and that the legal question, as I understood it, was identical with that involved in the Texas Pacific grant, now claimed by the Southern Pacific Railroad Company, and that also the rights of many settlers in good faith were involved, so that in my judgment action might properly and should be delayed until further investigation should be had, as well as to the status of the grant as to the protection of parties in possession, as settlers on the public domain, claiming adversely to the railroad company.

At the date of my writing, the matter had not been examined in committee, and all that was known to me was what appeared in the opinion of the Attorney-General of date June 13, 1882, and the public statutes.

You kindly held the matter, as I desired, until my arrival here, and until I could examine the matter to my satisfaction, and as I have concluded that under the law, as well as the equities of the case, the New Orleans Pacific Railway Company is entitled to the grant (except as to 68 miles of road referred to below, as purchased, instead of constructed), it is only proper that I should state to you the additional facts I have gleaned since my return here bearing on the case.

I find that the New Orleans, Baton Rouge and Vicksburg Railroad Company had been struggling for years to obtain credit with which to build the road, but was unsuccessful; that the New Orleans Pacific Railway Company having the same terminal points, namely, New Orleans and Shreveport, and its line of route practically coincident throughout its entire length with that of the New Orleans, Baton Rouge and Vicksburg Railroad Company, and all its line so within and near the middle of the grant (an important fact not so stated to me last session nor so understood), purchased of the New Orleans, Baton Rouge and Vicksburg Railroad Company the grant for the purpose of utilizing it in the building of the railroad, to connect the two cities, and making connection between San Francisco and New Orleans, as contemplated by the granting act.

I find that on December 9, 1880, the New Orleans, Baton Rouge and Vicksburg Railroad Company resolved to convey this grant to the New Orleans Pacific Railway Company.

That on January 15, 1881, the same company made a conveyance to the last-named company of the grant. That on February 3, 1881, this deed and conveyance was accepted by the New Orleans Pacific Railway Company.

That before the New Orleans Pacific proceeded with the building of its road, or obtaining money therefor, the opinion of the Interior Department was sought as to the validity of the transfer; and on that date the Commissioner of the General Land Office wrote the president of the company that "when the president of the New Orleans Pacific Railway Company accepts the transfer made by the resolution and deed of the New Orleans, Baton Rouge and Vicksburg Railroad Company, it, the New Orleans Pacific Railway Company, will be fully vested with the right to the grant."

On February 21, 1881, after the Department was notified that the grant had been conveyed to and accepted by the New Orleans Pacific Railway Company, the Commissioner of the General Land Office wrote the president of the company, after reciting the facts as to the conveyance, "that the transfer by the New Orleans, Baton Rouge and Vicksburg Railroad Company of all its right, title, and interest in and to the said grant to the said New Orleans Pacific Railway Company is now complete."

Upon this recognition the New Orleans Pacific Railway Company proceeded to build and complete its road, basing its expenditures for that purpose upon faith in the validity of the transfer and the opinions of the Commissioner.

In the construction of its line, however, it utilized 68 miles of road purchased of Morgan's Louisiana and Texas Railroad and Steamship Company, extending from Westmego to White Castle, which piece of road had been built before the granting act was passed. I find, also, that the road was recognized as a land-grant road, after the conveyance and during its construction, by Secretary Kirkwood, in his annual report for 1881 (Executive Document I, part 5, p. 16); that "130 miles of the New Orleans Pacific have recently been examined, but not accepted, and that 123 additional miles are now ready for examination," and in later Department documents the same recognition.

Besides the opinion of the Attorney-General, that the New Orleans Pacific is legally entitled to the grant, I see the Senate Committee on Railroads has unanimously reported in favor of the New Orleans Pacific Railway Company's right to the grant, and that there are no considerations of public policy requiring any interference with it.

I have ascertained by conference with them that both the Senators and the delegation in the House from Louisiana do not favor forfeiture, interposing no objections to immediate action.

On the question of the rights of settlers, I am advised by several of the members of the House from Louisiana—some of whom, representing the districts in which the major part of this grant lies, participated in the drawing of the agreement—that the claimant company has contracted and bound itself that all settlers on the sections allotted to the railroad company shall be protected, and have their lands at a price not exceeding \$2 per acre, on deferred payments at low interest.

That contract is now before me, having been submitted by one of the Louisiana delegation most interested, and in my judgment fully protects the settlers.

The difference between the Texas Pacific case and this to me is that this road was constructed on the faith of the grant and before adverse opposition or action; the Southern Pacific was built by a company asserting that it neither needed nor wanted Government aid and without reference to a grant.

These considerations dispose of my objections entertained at the last session (and indicated in my letters to you and the President) to proceeding under the act, and I withdraw the request I made relative to suspension of action until I could investigate and be heard.

I owe you an apology for the length of this communication; but, as you know, I have always taken a decided stand as to all land grants wherein there was either a failure of performance or not strong grounds for equitable considerations as to declaring forfeitures.

In this case I am satisfied from the facts, and for the reasons stated, that it would be improper for me further to interfere and that it would be unjust and inequitable to do so; that the rights of the settlers are fully protected, and I shall at the earliest opportunity in committee withdraw the resolution I have offered for the forfeiture of this grant.

Thanking you for the consideration shown me,

I remain yours, truly,
Hon. H. M. TELLER,
Secretary, &c.

L. E. PAYSON.

(Indorsements:) Hon. L. E. PAYSON, House of Representatives, December 15,

1882. Concerning the land grant claimed by the New Orleans Pacific Railroad Company.

Referred to the Assistant Attorney-General.

H. M. TELLER.

HOUSE OF REPRESENTATIVES,
Washington, D. C., December 15, 1882.

DEAR SIR: Referring to my letter of this date, I have the honor to state that, at the meeting of the Judiciary Committee this day, I formally withdraw the resolution pending, which I offered last session.

Yours, truly,

L. E. PAYSON.

Hon. H. M. TELLER,
Secretary, &c.

Before that time, Mr. Kirkwood had appointed commissioners to examine this road. The commissioners had examined the road and reported to Mr. Kirkwood, as Secretary of the Interior, or to the President, as the case may have been. There had been no transmittal of this to the President until March, 1883, when the Secretary of the Interior transmitted by letter to the President a statement of the case in this form:

DEPARTMENT OF THE INTERIOR,
Washington, March 13, 1883.

SIR: The New Orleans Pacific Railway Company applied to this Department more than a year ago for a transfer to itself of the lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company by the twenty-second section of the act of Congress approved March 3, 1871, presenting, at the same time, satisfactory proofs of said transfer as between the two companies. I have delayed action thereon for many months, against the persistent pressure of parties in interest, in the expectation that Congress might legislate upon the subject-matter thereof; but that body having adjourned without action thereon, and knowing of no reason for further delay, I have now the honor to submit the same for your consideration.

In reply to my predecessor's request of January 5, 1882, the Attorney-General, under date of June 12 ultimo, submitted to him an opinion (copy herewith) that the grant to the New Orleans, Baton Rouge and Vicksburg Railroad Company was a grant *in presentis*; that that company had an assignable interest in the lands granted to it; that the New Orleans Pacific Railway Company is such a successor to or assignee of the New Orleans, Baton Rouge and Vicksburg Company as is contemplated by the act of March 3, 1871; that even if the New Orleans, Mobile and Texas road was constructed subsequently to the date of said act, so much of its road as is now owned by the New Orleans Pacific Company is such a road as is contemplated for acceptance by the President within the meaning of said act, and that patents may issue to the latter company for lands opposite to, and coterminous with, such constructed portion of road.

I also submit herewith a copy of the report of the Senate Committee on Railroads (under date of June 7, 1882), declaring that, in its judgment, no considerations of public policy require a forfeiture of the grant to the New Orleans, Baton Rouge and Vicksburg Railroad Company; and also two letters (herewith) under date of December 15 last, from Hon. L. E. Payson, of the House Judiciary Committee, in one of which he notifies this Department that upon that day, at a meeting of the committee, he had formally withdrawn the pending resolution offered by him at the previous session of Congress for a forfeiture of said grant. In the other, after stating his request in October last for a suspension of Department action, until he could be heard before the House Judiciary Committee upon the matter, he elaborately discusses the questions involved, and announcing that, after conference with them, the Senators and House delegation from Louisiana interpose no opposition to immediate action by this Department, and that his own objections are disposed of and withdrawn, states his conclusions that the New Orleans Pacific Company is entitled to the grant, both under the law and the equities of the case, and that the rights of settlers are fully protected.

I have also the honor to submit herewith two reports on the New Orleans Pacific Railway by Mr. Thomas Hassard, whom you appointed commissioner to examine completed portions of said railway.

The first report bears date 26th of October, 1881, and has not been submitted to you at an earlier date on account of the controversies heretofore in question.

The portions of said railway examined and at that time reported on extend from the west bank of the Mississippi River, opposite Thalia street, New Orleans, La., in a northwesterly direction, near said river, 60 miles; to near the town of Donaldsonville, in township 11 south, range 15 east; also from Bayou Lamourie, in township 2 north, range 1 east, to a point in township 4 north, range 2 west, a distance of 20 miles; also from the junction of said railway with the Texas and Pacific Railway, in Shreveport, La., southwardly to township 10 north, range 12 west, a distance of 50 miles.

The second report bears date 15th November, 1882, and relates to such portions of said railway as were not examined and reported on in October, 1881, amounting to 198 miles, lying between New Orleans and Shreveport.

The commissioner reports said portions of road, 323 miles in all, as constructed in substantial compliance with law and the instructions of this Department.

In view of the facts and the law of the case, I regard the New Orleans Pacific Railway Company as the lawful assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company, and entitled to the lands granted by the twenty-second section of the act of March 3, 1871, to said latter named company, and to patents therefor in so far as it has earned or hereafter may earn the same under that act, with the exception below named, and recommend that you accept said 323 miles of said road, less and exclusive of 68 miles of the line of said New Orleans, Baton Rouge and Vicksburg Road, extending from New Orleans to White Castle, between New Orleans and Shreveport (to which 68 miles the New Orleans Pacific road has withdrawn its claim and right to receive lands under the twenty-second section of said act) and that patents for such lands as may have been earned by the construction be issued to the New Orleans Pacific Railway Company (exclusive, nevertheless, of lands along said 68 miles) on their compliance with the law and regulations in such case made and provided.

These patents will, of course, be subject to rights acquired by any person or corporation prior to the act of March 3, 1871.

Requesting that the inclosures herewith be returned to this Department when no longer needed for the purposes hereof,

I am, very respectfully,

H. M. TELLER, Secretary.

The PRESIDENT.

This came to the President, and was indorsed as follows:

Department of the Interior, March 13, 1883. H. M. Teller, Secretary, submits to the President report of commissioner on 323 miles of the New Orleans Pacific Railroad, with recommendations.

EXECUTIVE MANSION, March 16, 1883.

The within recommendations are approved.

CHESTER A. ARTHUR.

The recommendations were, of course, that the company should be

entitled to their lands. The Secretary of the Interior submitted to the Land Office the following:

DEPARTMENT OF THE INTERIOR,
Washington, March 19, 1883.

SIR: I transmit herewith, for appropriate action, copy of my letter of the 13th instant to the President, with recommendation, enclosing two reports of Mr. Thomas Hassard, commissioner, on 328 miles of the New Orleans Pacific Railroad in Louisiana, with the President's endorsement thereon, approving the recommendations. A copy of the Attorney-General's opinion, of 13th June last, on questions relating to said road, and various maps, profiles, and papers, accompanying said reports, or filed in the case, will also be found herewith.

Very respectfully,

H. M. TELLER, Secretary.

The Commissioner of the General Land Office.

Mr. President, these are substantially the proceedings in the Department relative to this road until the fall of 1883, at which time a protest was filed, not by people in the State of Louisiana but by people outside, protesting against the issue of the patent. There was nothing done in the Department during the fall of 1883 or the winter of 1884, or, in fact, until the spring of 1885. There were during that time pending in Congress bills either in one branch or in both for the forfeiture of these lands. These bills came before the House on a report from the Committee on Public Lands, and were, on a ye-and-nay vote, defeated by a majority of 43 on the final vote, the House deciding that the company were entitled to their lands.

At or about that time Mr. E. John Ellis, of the State of Louisiana, submitted some resolutions to the House, and had them referred to the Committee on the Judiciary, for the purpose of determining this simple question, Is this assignee railroad company entitled, under existing law, as it now stands, to a patent for these lands? I have read to the Senate before, and can do it now, if it is necessary, the opinion of that committee.

The committee took into consideration this question of law submitted to them by the House, and reported to the House—thirteen out of fifteen members—that there was no power on the part of the General Government to forfeit this grant, that the Government had allowed the time to elapse in which it might have forfeited it, and that the title was vested in the New Orleans Pacific Railroad Company.

Mr. MITCHELL, of Oregon. In that case the road was completed after the time fixed for the completion of the whole road, was it not?

Mr. TELLER. It was. I will not assume to go into the details of that report. It is enough to say that the Committee on the Judiciary of the House of Representatives fully sustained the former action of the House in declining to forfeit this grant.

In a former discussion I took occasion to mention the members of the Judiciary Committee by name, and to call the attention of the Senate to the character of the men who composed that committee. At the head of the committee was then, as now, Mr. TUCKER, of Virginia, and other men of equal national reputation and fame were also members of the committee. I have before me the report of the House Judiciary Committee of the Forty-eighth Congress, which I may as well submit to the Senate in this connection.

[House Report No. 1556, Forty-eighth Congress, first session.]

EDWARD B. WHELOCK, PRESIDENT OF THE NEW ORLEANS PACIFIC RAILROAD COMPANY.

May 17, 1884, referred to the House Calendar and ordered to be printed.

Mr. TUCKER, from the Committee on the Judiciary, submitted the following report (to accompany Miscellaneous Document 64):

The Committee on the Judiciary, to which has been referred House resolution No. 232, and the memorial of Edward B. Wheelock in respect to the same matter, beg leave to report upon said memorial as follows:

By act of the Legislature of Louisiana approved December 30, 1869, the New Orleans, Baton Rouge and Vicksburg Railroad Company was chartered, with a provision that the said company "shall possess and enjoy the rights and franchises granted to said company by the State of Louisiana in this act and heretofore; and such grants and the engagements herein made and entered into on the part of the State of Louisiana shall be deemed to be, and shall be, binding contracts between the State of Louisiana and the said company, not to be impaired, disturbed, or modified by subsequent legislation, except with the consent and on the petition of said company."

In article 447, Code of Louisiana, the general law provides that—

"A corporation legally established may be dissolved—

"First. By an act of the Legislature, if they deem it necessary or convenient to the public interest; provided that when the act of incorporation imports a contract, on the faith of which individuals have advanced money or engaged their property, it cannot be repealed without providing for the reimbursement of the advances made or making full indemnity to such individuals.

"Second. By the forfeiture of their charter, when the corporation abuses its privileges or refuses to accomplish the conditions on which such privileges were granted, in which case the corporation becomes extinct by the effect of the violation of the conditions of the act of incorporation."

This railroad was known as the Backbone Railroad. It was authorized to construct a road from New Orleans to Shreveport and to Baton Rouge, an intermediate point, upon the east side of the Mississippi River.

By act approved April 30, 1877, the Legislature repealed the said charter Senate Executive Document No. 31, pages 12, 13, Forty-eighth Congress).

The first question presented for consideration is as to the effect of this repealing act. The committee hold it of no effect, because—

First. It was in violation of the terms of the charter, being without the consent and not upon the petition of the company.

Second. Bonds had been issued by the company upon money loaned to it; and in the repealing act no provision was made for reimbursement of money, or for indemnity, as required by article 447 of the code.

On both grounds the repealing act was void and of no effect. And the circuit court of the fifth circuit of Louisiana so decided in the case of Counselor vs. New Orleans, Baton Rouge and Vicksburg Railroad Company, the record of which may be found in Senate Executive Document No. 31, pages 12-15.

The necessity of settling this as a preliminary question will hereafter appear,

as it affects the capacity of the said company to make the deed under which the New Orleans Pacific Company claims.

Congress with a view, as appears by the legislation of the period, to securing a continuous line of railway communication along the thirty-second parallel, from San Diego, in California, to the Mississippi River, at New Orleans, incorporated the Texas Pacific (afterward the Texas and Pacific) Railroad Company by several acts, one approved March 3, 1871, and the other May 2, 1872.

The first of these acts made Marshall, in Texas, and San Diego, in California, the termini of the road (section 1). The ninth section of the act made land grants by alternate sections, twenty thereof in Texas, ten in California, on each side of the railroad, to aid in its construction, &c. The twelfth and eighteenth sections provided for issue of patents to said company upon completion of each section of the road, on the order of the President of the United States to the Secretary of the Interior, upon a report made to the President by a commissioner to be appointed by him, of the full completion thereof as in the act provided.

By the fifth section of the last of these acts the Texas and Pacific Railroad Company was authorized and required to construct, maintain, control, and operate, or to control and operate any existing road between Marshall, in Texas, and Shreveport, in Louisiana, with privilege to all roads terminating at Shreveport to make and have running connections for business with the Texas and Pacific Company.

Comparing this section with the twenty-second section of the first act above mentioned, by which Congress granted lands to the Backbone Company to aid in its construction to unite with the Texas and Pacific Railway, it is very obvious that Congress contemplated making a continuous chain of railways from New Orleans to San Diego, of which the Backbone Company would furnish one link from New Orleans to Shreveport, the Texas and Pacific another from San Diego to Marshall on its own proper line, and another and final link from Marshall to Shreveport, provided for by the fifth section of the above act of May 2, 1872. This was the ruling idea of Congress—to use its own charter and that of the States of Texas and Louisiana to achieve the great result of a continuous communication from the Mississippi to the Pacific. And in order to make the line available for San Francisco, by the twenty-third section of the above act of March 3, 1871, the Southern Pacific Railroad, chartered by the State of California, was authorized to be connected with the Texas and Pacific Railway, at or near the Colorado River, in order to make the through connection from the Mississippi to the Golden Gate of the Pacific.

Bearing in mind this general purpose, and the means by which it was proposed to attain it, attention will now be directed to the seventeenth and twenty-second sections of the act of Congress, March 3, 1871, upon the construction of which the answers to the questions submitted to the committee depend.

Before proceeding to the interpretation of these sections, it will be well to state certain conceded facts:

1. The Backbone Company never constructed their road at all, nor earned the land grant made by the twenty-second section, and allowed the whole five years fixed for its completion from the date of said act to elapse without doing any work on its line.

2. The Backbone Company, at a special meeting of its board of directors held December 29, 1881, ordered a deed to be made of all the land granted to it by the act of March 3, 1871, to the New Orleans Pacific Railroad Company. The deed was made January 5, 1881 (date in deed erroneously recited as January 5, 1880), in accordance with said order, and the act was confirmed by the meeting of its stockholders December 9, 1881. All these facts appear in Senate Executive Document No. 31, pages 21, 22, 23-39, 40, 41, 42. And while some criticism has been made upon these proceedings and their good faith, nothing appears to your committee to impeach their legality. The said deed was duly accepted by the grantees.

3. The New Orleans Pacific Railroad Company was chartered by the State of Louisiana June 29, 1875, and under act of its Legislature, approved February 19, 1876 (Senate Executive Document No. 31, pages 17-20). By its third article it had power to construct a road from Shreveport to New Orleans, or a point on the right bank of the Mississippi, or from any other points; to obtain and receive by purchase grant from the United States, real and personal property; to purchase from any railroad company its charter, franchises, or property, &c.

4. The New Orleans Pacific Railroad Company, after obtaining said deed from the Backbone Company, applied to the General Land Office and Interior Department for information as to the recognition of the validity of the transfer of land to it on the part of the authorities of the United States. The events which led to this may be noted in order.

February 3, 1881. Resolution of the New Orleans Pacific Railroad Company authorizing its president to accept the grant. On the 17th of February a letter of Commissioner Williamson to Mr. Barnum, president of the Backbone Company, which closes as follows (Senate Executive Document No. 31, pages 23-24):

"There can be no doubt that when the president of the New Orleans Pacific Railroad Company accepts said transfer the company will be fully vested with all the right, title, and interest which the New Orleans, Baton Rouge and Vicksburg Railroad Company has in and to said grant."

On the 19th of February, 1881, the New Orleans Pacific Company accepted the grant, and on the 21st of February Commissioner Williamson wrote to Mr. Barnum, president of the Backbone Company, in these words:

"The transfer by the New Orleans, Baton Rouge and Vicksburg Railroad Company of all its right, title, and interests in and to said grant to the said New Orleans Pacific Railroad Company is now complete." (Senate Executive Document No. 31, pages 24, 25.)

These events in their order show that before its acceptance of the grant of lands the New Orleans Pacific Company was careful to be satisfied that their titles would be effectual, and for the reason, which fully appears from the affidavits of G. M. Dodge and E. G. Wheelock, that they did not intend to undertake to build the road along the general line of the Backbone Company without the Congressional land grant to that company as a basis of credit upon which to proceed securely.

Much contention seems to have arisen over the whole matter, as appears in Executive Document No. 13, which ended in the opinion of Attorney-General Brewster, dated June 13, 1882, upon the validity of the assignment. (See pages 52-55.) That opinion held that the Congressional grant to the Backbone Company was legally assigned to the New Orleans Pacific Company, and was a grant in present.

The Attorney-General, however, indicated a distinction of great importance in this connection. Where a grant of land is assigned to a company to aid it in the construction of the road contemplated by the grant, it will avail the assignee as it would have availed the original grantee. But where a grant of land in aid of construction has not been used for the purpose by the grantee, and another company has constructed the line of road, and afterward takes an assignment of the land grant, such assignment will be invalid.

The reason is obvious. The benefit of the grant to the original company is coupled with the duty of using the lands for construction of the road. Any other company which takes the assignment of the lands must take them with the same burden and for the same purpose. They are granted to aid in constructing—not to pay for construction already done. Construction is a condition-subsequent annexed to the grant, and it operates upon every assignee of the grant—and his performance of the condition involves construction as incident to his title as assignee; and no construction of the road prior to his title as assignee of the grant can be imputed as a performance of a condition annexed to the grant with which at the time of construction the assignee had no privity.

His construction of the road in such case is independent of the grant—has no relation to it—and can in no way be held to be a performance of the condition which will save the grant from forfeiture; for the grantee has not fulfilled it, while holding the grant, and the supposed fulfillment by the other party was before any title by assignment.

In this case the Backbone Company, at the date of its deed of assignment of this land grant to the New Orleans Pacific Company, had fulfilled no part of the condition of its grant. The assignee company stepped into its shoes for the land grant and to use it in aid of performing the condition with which it was connected. It took the land *cum onere*. It would not have borne the burden, except for its buying the benefit. It cautiously inquired whether in construction of this line it would secure as assignee the granted aid from Congress. Supposing it had done so, it claims the aid, and the question remains, is its claim valid, and has it been or can it be forfeited?"

To the interpretation of the twenty-second section of the act of March 3, 1871, it is now necessary to proceed. It reads as follows:

"Sec. 22. That the New Orleans, Baton Rouge and Vicksburg Railroad Company, chartered by the State of Louisiana, shall have the right to connect by the most eligible route to be selected by said company with the said Texas Pacific Railroad at its eastern terminus, and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with the said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns, the same number of alternate sections of public lands, per mile, in the State of Louisiana, as are by this act granted in the State of California, to said Texas Pacific Railroad Company; and said lands shall be withdrawn from the market, selected, and patents issued therefor, and opened for settlement and pre-emption, upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company, within said State of California: *Provided*, That said company shall complete the whole of said road within five years from the passage of this act."

The first question in regard to this section is, what does it convey? Its language is clear—that "in aid of its construction * * * there is hereby granted to said company, its successors and assigns," so much land.

The case of *Schulenberg vs. Harriman* (21 Wallace, 44) is complete authority to the point, that these words import a grant in *presenti* (see also *Railroad Company vs. Baldwin*, 103 United States Supreme Court, 426; *Grinnell vs. Railroad Company*, *ibid.*, 742-3).

Nor can there be any doubt of the right of the grantee company to assign the land grant. The *jus disponendi* is incident to the title granted, even if the word "assigns" did not imply such right, as it clearly does (*Lewis vs. Lewis*, 9 Mees. & W., 664; *Bailey vs. De Crespigny*, L. R. 4 Q. B., 186; *Watson vs. Donnelly*, 28 Barbour, 658; *Furney vs. Ford*, 22 Wisc., 173; *Ball vs. Chadwick*, 46 Ill., 32).

Whether the grant was absolute, or was upon condition-subsequent, or was coupled with a trust enforceable by the grantor, depends upon other words in the section.

It was clearly not an absolute and indefeasible title and free from trust or condition.

The last clause of the section is in these words: "*Provided*, That said company shall complete the whole of said road within five years from the passage of this act."

These words are appropriate to the creation of a condition-subsequent, on the non-fulfillment of which the estate granted would determine upon the re-entry of the grantor for its breach. And there is no doubt in this view that, as there was a breach of the condition by the grantee company, the right of the United States to enter is unquestionable.

Before proceeding to discuss the relative rights of the Government and of the assignee company under this view it is proper to consider the alternative views insisted on for the assignee.

And first, it is claimed for the assignee that the seventeenth section of the act of March 3, 1871, is to be read and construed as affecting and modifying the provisions of the twenty-second section of the act.

That section is as follows:

"SEC. 17. That the said Texas Pacific Railroad Company shall commence the construction of its road simultaneously at San Diego, in the State of California, and from a point at or near Marshall, Tex., as hereinbefore described, and so prosecute the same as to have at least fifty consecutive miles of railroad from each of said points complete and in running order within two years after the passage of this act; and to so continue to construct each year thereafter a sufficient number of miles to secure the completion of the whole line from the aforesaid point on the eastern boundary of the State of Texas to the bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of this act; and upon failure to so complete it Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion."

This section applies expressly and only to the Texas and Pacific Railroad Company. That company was chartered by Congress. Whether it was a grant in *presenti*, upon a condition-subsequent, to be void upon the non-completion of its road within ten years, or was a retention by Congress of a power to take such steps in the use of the lands granted "as it may deem necessary and proper to secure its speedy completion," is a question which your committee do not think it necessary to decide. It is sufficient to say that there is nothing in the language of the twenty-second section which refers in any such manner to the seventeenth section as to demand its incorporation into the twenty-second section, and that the condition-subsequent found at the close of the twenty-second section should be qualified by the words of the last clause of the seventeenth section.

The grant by the twenty-second section was to a corporation chartered by Louisiana; that by the seventeenth section, to one chartered by Congress. Congress had no power, or certainly claimed none, to build the road in Louisiana, provided for by that State's charter. This accounts for the diverse language used in the act at the close of the two sections. Congress could construct the Texas Pacific road, if its chartered company failed to do so. It could not construct the Backbone road if the Backbone Company failed. It could use its own lands to construct the former, it could not do so to construct the latter. Its remedy, in the contingency of the failure of the Texas Pacific Company, was to use the lands granted to do what that company failed to do. Its only remedy as to the Backbone Company was to enter for a breach of the condition, and reinvest its title to the lands granted by the twenty-second section.

The only words in the twenty-second section which place the Backbone Company on the same basis as the Texas Pacific are contained in the clause which gives to the former the same quantity of land as is given to the latter in California, and the clause which provides for the withdrawal, selection, and issue of patents and opening for settlement and pre-emption "upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company within said State of California." These terms, manner, and time are provided for in sections 9, 12, and 13 of the act, and do not relate at all to the contingency of a failure to construct by either company, or to the right of the Government in case of such failure.

There does not seem to be any reason why, if Congress intended to modify the proviso of the twenty-second section by the last words of the seventeenth section, the act should not have so expressly declared, or inserted the terms of the seventeenth at the close of the proviso of the twenty-second section. Not having done so, it does not seem to the committee that any canon of interpretation of statutes either requires or justifies it.

But there is a clause in the twenty-second section which may modify the construction given to the proviso at its close. That clause is as follows: "And in aid of its construction from New Orleans, &c., * * * there is hereby granted to said company, &c."

And then comes the proviso—"That said company shall complete the whole of said road within five years from the passage of this act."

Construing these clauses together, the question may be raised, does this create a technical common-law condition, or does it create a trust coupled with the grant?

In former times this question would not have been permitted. But the disfavor to forfeitures upon breach of conditions-subsequent, in modern times, has given rise to the construction that the grant is charged with a trust rather than affected by a condition.

In the case of *Wright vs. Wilken*, in the Queen's Bench, and affirmed in the Exchequer Chamber (110 E. C. L. R., 232; *Cam. Scacc.*, 259), it was held that in a will the words "upon express condition" should be construed to import a trust, and not a condition, upon a view of the whole will, as to the real intention of the testator. And the language of Lord St. Leonards in his great work on powers (*Sugden on Powers*, 122) is cited as high authority for the decision. His lordship's words are these:

"And in regard to its being an estate upon condition, we may observe that what by the old law was deemed a devise upon condition would now perhaps in almost every case be construed a devise in fee upon trust, and by this construction, instead of the heir taking advantage of the condition broken, the *cestui que trust* can compel an observance of the trust by a suit in equity."

If this modification of the common-law doctrine is now sanctioned in cases of devise, in order to effectuate the intention of the deviser, it might well be contended that a like rule should be applied to grants by the Government for great public purposes, and they be held to be enforceable as trusts binding on the grantee and not as conditions upon breach of which forfeitures will result, without securing the public benefit contemplated in the grant.

But conceding that neither of the alternative interpretations suggested are tenable, they are not without their weight in deciding the questions submitted to the committee, if the proviso in the twenty-second section of the act is construed as a strict condition-subsequent.

It is undeniable that the condition follows the estate into whatever hands it comes. The assignee takes it *cum onere*. He is bound by and may perform the condition, in like manner as his assignor.

Any one who is interested in a condition, or the estate to which it is attached, may perform it, and when it has once been performed it is thenceforth gone forever. (2 Washburn on Real Property, second edition, page 10; 2 Crabbe, Real Property, 815.)

If the condition be performed in substance it is sufficient. So if it be performed as near the intent of the condition as can be. (*Comyn's Dig.*, Condition, L. 1.)

And conditions are not favored, nor are forfeitures for their breach. (4 Kent's Comm., 128, 129.)

An entry after a breach of the condition avoids the original title conveyed, and reverts the title in the grantor, avoiding all intermediate alienations, for the assignees of the original grantee taken subject to the condition. And it was a principle of the common law that no performance of the condition after the day fixed for it could save the forfeiture from the power of the grantor to re-enter. (2 Cruise Dig., title 13, chapter 2, section 10.)

This rule was prevalent three centuries ago, in respect to bonds in a penalty, defeasible on condition-subsequent whether to pay money or perform a collateral act, to mortgages, and to conditions for re-entry for non-payment of rent by lessees and the like. But that rule is now obsolete in a great degree, and the victims of its rigor are now happily unknown, owing to the beneficent intervention of courts of equity and the action of courts of law in accordance with the just rules of those tribunals.

As early as *Langford vs. Barnard* (Tothill, 134), decided in 37 Elizabeth, the equity of redemption was secured by the chancery court to the mortgagor, whose estate was forfeited at law for non-performance of the condition at the day.

In 1598, about two years after this decision convulsed the kingdom by the fierce conflict between the rude common law and the public conscience, a poet companion of Lord Bacon and the lawyers of that day gave to the world a picture of the controversy in the immortal drama of the Merchant of Venice. The hard, unrelenting, and cruel Shylock, the impersonation of the common law, demanded the pound of flesh as his right by forfeiture for the failure to fulfill the condition-subsequent within the fixed period of performance. In vain his victim tendered performance. It was too late. The day of grace was ended. No after performance could save the forfeited life. Such was the law maintained by judgment of a common-law court.

Portia, the impersonation of the court of equity, which had just asserted redemption as the right of the victim of forfeiture, put in the plea of mercy to temper the rigorous justice of the law. And ever since that day our jurisprudence has, with the poetic justice so wonderfully dramatized by the great master of the human heart, fixed it as a canon of right, that no forfeiture shall be enforced where the performance of the duty secured by a penalty is tendered in full by the victim of the rigid construction of his contract under the rules of the common law.

This principle has been extended to cases of penalties and conditions to do some collateral act other than payment of money; and where such can be compensated in money, when not specifically performed, forfeitures have been relieved against. (See *Peachy vs. Somerset*, 1 Strange 477; *Sloman vs. Walter*, 1 Bro. C. C., 413; the leading cases commented on in 3 Wh. and T. L. C. Eq., 862, 885.)

Nor are these mere creatures of equity; for so far has the equity of redemption been upheld that it is now regarded as an estate in land subject to descent, devise, entail, custody, &c. (*Casborne vs. Scarpe*, 1 Atk., 603.)

But this is not all. Courts of law, taking the lesson which equity and poetry in the Elizabethan period taught it, administers the same relief from penalties and forfeitures for condition broken in many cases, as courts of chancery do.

As early as eighth William III, without statutory aid, the law court, in *Downes vs. Turner*, cited in *Gregg's case* (2 Salkeld, 597), staid proceedings in ejectment by a lessor, who entered for breach of condition to pay rent, upon payment into court of what was due by the lessee, thus relieving at law from a forfeiture arising from failure to perform the condition at the day. (See also *Doe vs. Roe*, 4 Taunt., 883.)

Mr. Justice Wilde, in speaking for the court in the cases of *Atkins vs. Chilm* (11 Metcalf, 112), and *Sanborn vs. Woodman* (5 Cush., 36), reviews the English cases on this point, and confirms the doctrine, that a court of law will stay the hand of the grantor who seeks to enforce a forfeiture upon one who tenders in court the performance of an already broken condition.

The legal right, therefore, of one who has incurred a forfeiture by breach of condition-subsequent to relief against an unwilling adversary, upon a substantial performance after the day, at law and in equity, and undoubtedly in the latter forum, can not be denied.

But one other point remains to be considered. After breach of the condition-subsequent, the estate does not determine *ipso facto*, but only at the election of the grantor by re-entry. And, therefore, if the grantor after such breach accepts performance of the condition tendered by the grantee, he waives the forfeiture, the condition is gone forever, and the estate becomes absolute.

In *Dumpon's case* (2 Coke, 119; 1 Smith L. C., 15) we find the basis of this prin-

eiple. In *Goodright vs. Davies* (Cowper, 803) Lord Mansfield says: "Cases of forfeiture were not favored at law; and where the forfeiture was once waived, the court would not assist it." (See also *Ward vs. Day*, 116 E. C. & R., 537; *Doe vs. Birch*, 1 M. & W., 402; *Croft vs. Lumley*, 35 E. C. & R., 648; *S. C. Camm. Sec., ibid.*, 682; *Jackson vs. Barman*, 7 Johnson, 227, and other cases cited in note by American editor.)

Ludlow vs. R. R. Co. (12 Barbour, 440) is a case where a railroad company failed to construct road within time prescribed by the plaintiff in a grant of land to it. It proceeded to do so afterward, under the eye and without dissent by grantor. It was held to be a waiver of the forfeiture.

The facts already set forth with sufficient fullness satisfy your committee that the substantial fulfillment of the condition has been met by the assignee company; that it was done under the eye of, and was accepted by the executive department under the provisions of the law of Congress; that all which Congress contemplated in making the grant has been realized, and that it was done by the company on the belief of having secured the grant, a belief based upon the assurance of the Department of the Interior, and upon the official action of the President of the United States in the examination of the work as it progressed, in his sanction of its sufficiency under the law, and in his order for the issue of patents for the land.

After all, this question is, can—and if it can, ought—Congress to forfeit the land grant to this assignee company? Your committee think both branches of the question must be answered in the negative.

But, more specifically, your committee answer the first question propounded by the memorial in the affirmative; the second under the case stated in this report in the negative; and the third in the negative; though under the view taken in this report that question is immaterial.

All of which is respectfully submitted, with the resolution of the House hereto annexed, and with the said memorial herewith returned:

[H. Res. 232, Forty-eighth Congress, first session.]

IN THE HOUSE OF REPRESENTATIVES, April 21, 1874.

Read twice, referred to the Committee on the Judiciary, and ordered to be printed.

Mr. Ellis introduced the following joint resolution:

Joint resolution directing the Judiciary Committees of both Houses to inquire into and report upon certain legal questions involved in the proposed forfeiture of the land grant of the New Orleans, Baton Rouge and Vicksburg Railroad Company, assigned.

Whereas the Government, by the twenty-second section of the act of March 3, 1871, gave to the New Orleans, Baton Rouge and Vicksburg Railroad Company of Louisiana a land grant in the following terms, to wit: "And in aid of its construction from New Orleans to Baton Rouge, thence, by the way of Alexandria, in said State, to connect with the Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns," &c., the land grant mentioned therein: "Provided, That said company shall complete the whole of said road within five years from the passage of this act;" and

Whereas said grantee did not build said road or any part thereof; and Whereas said grantee did bargain, sell, convey, and assign all of its right, title, and interest in and to said grant, on the 5th of January, 1881, to the New Orleans Pacific Railway Company, which company did build and complete said line of railroad "from New Orleans to Baton Rouge, and thence, by way of Alexandria, to the eastern terminus of the Texas Pacific Railroad," at Shreveport, in November, 1882, and said road has been surveyed and accepted by the railroad commissioners appointed by the President as built in accordance with the design of Congress, and patents for said land grant were ordered to issue by the President; and

Whereas bills providing for the forfeiture of said grant have been introduced in both Houses of Congress and referred to the Committees on Public Lands; and

Whereas the Public Lands Committee of the House were and are substantially and equally divided on the question of said forfeiture; and

Whereas there are involved in said question grave and serious principles of law, which should be investigated and settled by the law committees of both Houses, in order to enable Congress to arrive at a just and legal settlement of said principles: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Judiciary Committee of each House be required to consider the legal questions involved in the proposed forfeiture of the grant to the New Orleans, Baton Rouge and Vicksburg Railroad Company, assigned to the New Orleans Pacific Railway Company, and especially to report within ten days their opinion—

First. If under the language of the grant as cited above from the twenty-second section of the act of March 3, 1871 (sixteenth Statutes, page 579), the said grant was a grant *in present* with the condition-subsequent, and did it convey a present estate which was susceptible of being alienated, subject to the condition, either before or after breach of condition, but before forfeiture or re-entry by the Government.

Second. Whether if said grant was earned by construction after the breach of condition, but before forfeiture or re-entry by the grantor, any legal right to forfeit remains to the grantor.

Third. Whether the language of the seventeenth section of the act of March 3, 1871 (sixteenth Statutes, page 578), applies to the grant to the New Orleans, Baton Rouge and Vicksburg Railroad, and does said language, or any part of it, import a waiver of the right to forfeit on the part of the grantor.

I will venture to call the attention of the Senate to the committee that made this report. The gentlemen who concurred in the report were J. Randolph Tucker, of Virginia; David B. Culberson, of Texas; Samuel W. Moulton, of Illinois; James O. Broadhead, of Missouri; William Dorsheimer, of New York; Patrick A. Collins, of Massachusetts; George E. Seney, of Ohio; William C. Maybury, of Michigan; Moses A. McCoid, of Iowa; Luke P. Poland, of Vermont; Horatio Bisbee, Jr., of Florida; Abraham X. Parker, of New York, and Edward K. Valentine, of Nebraska. There was a dissenting opinion by two of the members of the committee, Mr. Nathaniel J. Hammond, of Georgia, and Mr. Ezra B. Taylor, of Ohio.

The Secretary of the Interior, as shown by the reports I have read, had in March, 1883, decided that the company were entitled to a patent.

As is customary at the close of an Administration, in its last days all the work is settled that has been investigated and decided. This question having been thoroughly considered by the Department, having been thoroughly considered by the House of Representatives, having been considered by the Senate, having been considered by the Attorney-General, there was nothing further to do, and the Depart-

ment issued in the first part of March, I think perhaps on the second day of the month, a patent for over 600,000 acres of this land to the company, or to so much thereof, claimed by the company, as was not in dispute between it and either the State of Louisiana or some settler thereon. It was the intention and the purpose of the Department to give this company then, as they ought to have had at least two years before, or nearly two years before, all the land that was not in controversy, reserving for the consideration of the Administration to follow all that was so in dispute.

It is not unknown to the Senate, that there are men in the city of Washington who have been attempting to blackmail this company, who had no interest in the subject, who had no interest in the land, no interest in the stock, no interest in the matter whatever—officials intermeddlers. Everybody understands that such things are done largely in this city for the purpose of compelling parties to pay them something to cease their opposition, and, as a member of the other House publicly declared in a card while a member, they had approached him and offered to cease their objections provided he would advise the company to pay them for the expense and trouble they had been put to. These parties came to the Senate and procured one member of the Senate, and perhaps two from the State of Louisiana, to sign a request to the Secretary of the Interior that he should not issue the patents; that, having waited two whole Congresses, he should wait another Congress and see whether another Congress might not forfeit the title which the House of Representatives and the Senate had both declared they would not forfeit, and which the Judiciary Committee of the House had declared they could not forfeit, and which the Attorney-General had declared they could not forfeit, and which the Supreme Court had in more than half-a-dozen cases declared they could not forfeit.

This protest came to the Interior Department on the very last day of the session. The Interior Department declined to further withhold its action, and I say here now that the Interior Department never had the right to withhold an hour. No department of the Government has a right to refuse to execute the laws because some member of the legislative department shall so request. Neither has it the right to refuse to execute the laws because one branch of the legislative department shall so request. If that was the rule of law any member of Congress might nullify the statutes in existence. If that was the rule of law one House might nullify the statutes then existing. Mr. E. Rockwood Hoar, when Attorney-General of the United States, declared that the Departments had not the right to refuse to execute a law, even upon a resolution passed by the Senate; declared that it was the duty of the Executive Departments of the Government to administer the laws as they find them, and not as they may be made hereafter.

The Department refused to withhold action and gave to this company a patent. Then came in another Administration, hostile politically to the one going out. It came in with promises of reform; it came in with a blaze and a blare of trumpets as to what was to be done in the way of righting the wrongs that had existed under the late Administration; and the first thing that it did was to go with this question to the Secretary of the Interior, for whom I have the greatest respect and the kindest feelings, even amounting to affection, and against whom I would not say a word, and against whom I lay nothing in this matter. A request was made to him to withhold, and he did just what I would have done if I had been in his place; I would have withheld until I could look into the case and see how it stood. That is what he did, and that is all he did.

Subsequently the opponents of this bill, including the Senator who has addressed you, appeared before the Secretary of the Interior, as I understand, and argued the question whether this company was entitled to receive this grant or not. The Secretary of the Interior then, assisted by his able assistant, Mr. Jencks, sat and heard the arguments made, both pro and con. After listening to the debate, Secretary Lamar said, in his report of 1885—

Mr. EUSTIS. In connection with the statement of my appearance before the Secretary of the Interior to argue this question, I desire to state that it was at the invitation of the Secretary of the Interior that I appeared.

Mr. TELLER. I beg the Senator's pardon. I did not mean to have him understand, or anybody understand, that I thought there was any impropriety in his behavior; not the slightest in the world. It was perfectly proper for the Senator, holding his views, to have so appeared. I only mentioned the fact that the Senate might know that all that could be brought out in this case against the claim was certainly brought out if the Senator was there. I did not refer to it by way of criticism. The Secretary said in his report for 1885:

SUSPENSION OF PATENTS TO THE NEW ORLEANS AND PACIFIC RAILROAD.

Prior to the 3d of March, 1885, selections of land had been made by the New Orleans Pacific Railroad along the line of its route, between New Orleans and Shreveport, to the amount of 1,015,993.76 acres: in pursuance of which, on the 3d of March, in obedience to the direction of the Secretary of the Interior and the Commissioner of the General Land Office, patents were issued to the company for 679,287.64 acres.

Unusual assiduity was manifested, apparently having for its purpose the patenting of the whole amount of the selections of the company before the Department should pass under the control of the then incoming Administration. Protests had been filed against the issuing of the patents. The time allowed by law for the construction of the New Orleans, Baton Rouge and Vicksburg

Railroad (under which the New Orleans Pacific claimed as assignee) had expired before any alleged assignment was made to the claimant.

No beginning had been made by the New Orleans, Baton Rouge and Vicksburg Railroad Company to build or attempt to build any road in pursuance of the grant by Congress to it.

The Legislature of Louisiana had passed an act forfeiting the charter of the New Orleans, Baton Rouge and Vicksburg Railroad before the alleged assignment of the grant to the claimant, which act had been declared unconstitutional.

The right of the New Orleans, Baton Rouge and Vicksburg Railroad Company to assign its whole grant, which was made by the Government to aid in the construction of a railroad, to another for a cash consideration, with not even the security of a covenant on file on the part of the assignee to use the grant for the purposes for which it had been made, was a question of grave doubt.

The lands selected by the claimant company were alleged to include lands previously granted to the State of Louisiana under the swamp-land act, as well as many homestead and pre-emption claims of actual settlers.

These, with other considerations, impressed it upon me as a duty, on the 10th of March, to issue an order to the officers of the Land Office to suspend the further issue of patents to the New Orleans Pacific Railroad. That order yet stands unrevoked.

While the considerations suggested were regarded as sufficient to warrant the suspension of the issue of patents till time was afforded for examination, on application on the part of the attorneys for the road to revoke the order, hearing was had, and from the presentation of the case it would seem that the railroad purchased a portion of a line of a railroad already built from New Orleans to White Castle, a distance of 68 miles.

Allow me to say that it has been held in the Department, both by Mr. Kirkwood and by myself, that for that portion of the road the company was not entitled to any land, and the company subsequently filed, I believe, a release, or if it did not actually it did so at least orally:

As to this portion of the road the company waived claim to the land granted. The residue of the road, from White Castle to Shreveport, was built by the company upon the belief of the full validity of their right to the land granted, and without this benefit of the grant the road would not have been built. The Government railroad examiner reports the road substantially built and equipped, and it would not appear to comport with good faith to those who invested their money on the basis of the grant to take advantage of any technical defect, if such exists, in the transfer to the company.

I would, therefore, respectfully suggest for the consideration of Congress the propriety of passing an act, curative of defect, if any exists, in the transfer to the New Orleans Pacific Company, and vesting the title, originally granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company from White Castle to Shreveport, in the New Orleans Pacific road.

Mr. PLATT. With the permission of the Senator from Colorado, in this connection I wish to get his understanding of the second section of this bill, which reads:

That the title of the United States and of the original grantee to the lands granted by said act of Congress, of March 3, 1871, to said grantee, the New Orleans, Baton Rouge and Vicksburg Railroad Company, not herein declared forfeited, is relinquished, granted, conveyed, and confirmed to the New Orleans Pacific Railroad Company, as the assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company, &c.

That section proceeds upon the idea that the United States may have some title to these lands. I wish to know what the Senator's understanding of it is, whether the doubt or the cloud upon the title exists in consequence of some technical defect in the transfer, or whether it is an assertion of a doubt that the United States may have a title where the road has been completed though not within the time limited in the original grant, but before any act of forfeiture was declared. Why is the second section necessary?

Mr. TELLER. I am not responsible for the act. It is not mine. It is not before the Senate on any suggestion of mine. I have no further interest in it than anybody else, but I understand it is a legislative recognition of the validity of that patent.

Mr. MITCHELL, of Oregon. I wish to ask the Senator from Colorado whether in all the discussions that have taken place in reference to this grant there has been any question raised by anybody to the effect that there was any technical fault or defect in the transfer?

Mr. TELLER. Not that I am aware of.

Mr. MITCHELL, of Oregon. The only question that has been raised, then, is as to the power of the grantee company to make a transfer that would be good in the hands of the transferee.

Mr. TELLER. There was a question raised at that time, and that is what the Department submitted to the Attorney-General, and that is what the Attorney-General decided by his letter of June 13, 1882.

Mr. MITCHELL, of Oregon. I inquire, further, whether it is not the fact that this section, as intimated by the Senator from Connecticut, does not suggest some defect somewhere in the title of the grantee company, although the transfer was all regular so far as the grantee company had power to make the transfer, and although the transferee had completed the road prior to any steps for forfeiture.

Mr. PLATT. To make myself plain, I do not wish, by the passage of this bill and its second section, to be in any way committed to the doctrine that the United States has any title to land which has been granted to a railroad company when the road has been completed, though not within the time of the original grant, if completed before an act of forfeiture. That is the reason I asked the question.

Mr. MITCHELL, of Oregon. That is exactly what I supposed.

Mr. TELLER. That is the fact, and that is the theory on which the bill goes; but I did not draught the bill, and, of course, I can not say what the draughtsman of the bill might have intended or what the purpose of it is. It came here to the Senate, went to the Committee on Public Lands, and now comes before us with the approval of that committee. I do not myself think that it is necessary that any bill should pass at

all, and if I was administering the affairs of the Interior Department I should not wait for any bill to pass. I understand the rule to be too well settled to admit of controversy, both by the decisions of the courts and by the repeated decisions of the Senate, that when a company has completed its road, whether completed within the time provided for or out of the time, it has a vested right that can not be disturbed either by Congress or by the courts before a re-entry, or what is equivalent to a re-entry, at the common law. I do not understand that to be a question at all, and the only benefit or advantage that I can see to anybody in the world by the passage of this act is that the settlers there will have something authoritative in dealing with the railroad company to compel the company to carry out its contract, which, as I said before, I think it has been willing at all times to carry out, but which, of course, a subsequent directorship or a subsequent control might see fit not to do.

Now, Mr. President, I call attention to the action of the Department of the Interior under the present Administration. I desire to call attention to the last report of the Secretary of the Interior on this subject. The Secretary of the Interior in his last report again alludes to this question:

SUSPENSION OF PATENTS TO THE NEW ORLEANS PACIFIC RAILROAD COMPANY.

In my last report I remarked at length on the matter of the assignment of its land grant by the New Orleans, Baton Rouge and Vicksburg Railroad Company to the New Orleans Pacific Railroad Company, and alluded to the fact that the right to make the transfer was a question of grave doubt.

Prior to my incumbency patents had been issued to the New Orleans Pacific Railroad Company for 679,287.64 acres. In consideration of protests that had been filed against the issue of these patents, of the allegations that the selections by the company had been granted to the State of Louisiana under the swamp grant, of the homestead and pre-emption claims of actual settlers, and of the doubt relative to the transfer, I issued an order March 10, 1885, still in force, suspending the further issue of patents to the New Orleans Pacific Railroad Company.

In giving the reasons in my former report for this action I used the following language:

"Prior to the 3d of March, 1885, selections of land had been made by the New Orleans Pacific Railroad along the line of its route, between New Orleans and Shreveport, to the amount of 1,015,993.76 acres; in pursuance of which, on the 3d of March, in obedience to the direction of the Secretary of the Interior and the Commissioner of the General Land Office, patents were issued to the company for 679,287.64 acres.

"Unusual assiduity was manifested, apparently having for its purpose the patenting of the whole amount of the selections of the company before the Department should pass under the control of the then incoming administration."

As this remark has been construed into unfavorable criticism of the action of my predecessor in this matter, I desire here to state that I have seen in that action nothing inconsistent with the strictest good faith and honest administration.

A hearing was subsequently had on a motion for the revocation of the order. On full consideration of the subject I had the honor to suggest the propriety of legislative action that would cure any defect that might exist in the transfer alluded to, and that would vest the title granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, from White Castle to Shreveport, in the New Orleans Pacific Railroad Company.

A bill is pending in Congress, having passed one branch thereof, with the above object in view.

The present Administration have asserted twice, at least, that this company is entitled to this land. The only question between this Administration and the former one is whether or not there is a necessity for further legislation. There is, as I have said, a precedent in this country where years ago an assignment made by the Hannibal and Saint Joe road was held by the Attorney-General to be a proper assignment without legislative approval, and the company assignee received the lands under that assignment. There is one other of the same kind. If a company holding any one of these grants can mortgage its grant and be sold out under its mortgage and the purchaser under the mortgage can take the grant, why can it not voluntarily make the assignment as well as transfer it in the other way? The great Northern Pacific Railroad Company to-day holds its title by virtue of the kind of assignment that I first mentioned by mortgage and purchase under the mortgage sale.

Mr. President, I wish to call the attention of the Senate further to the fact that this bill comes here with the approval of the Secretary of the Interior, who, as I say, has given careful and, as I know, personal attention to this matter, with which he is entirely familiar. It comes here with his approval. The claim of this company to this land has had the approval of more examining bodies than the claim of any company that ever received from the Government its title to land, and I do not understand why this company is not entitled to it. If the Department think they can not issue the patent without an act of this kind, then I am in favor of giving it to them, because it is a denial of justice to these parties, if they are entitled to the land, to withhold it. It is not in the interest of the settlers that these titles shall be controverted and questioned. It is to their interest as much as to that of the railroad company that there should be a settlement of this question, that they may know whether they are to have the title or whether they are not.

The PRESIDING OFFICER (Mr. HAWLEY in the chair). The Senator will suspend. The hour has arrived for the unfinished business, which is the bill (S. 372) to establish agricultural experiment-stations in connection with the colleges established in the several States, under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto.

Mr. EUSTIS. I ask that the unfinished business be informally laid

aside, so that we may proceed with the bill which has been under consideration, and dispose of it.

Mr. GEORGE. The Senator from Alabama [Mr. MORGAN] has the floor on the unfinished business.

Mr. HAWLEY. I feel unwilling to assent to that. The other bill is a bill of very great importance, of more general importance than the pending measure. I have no right perhaps to make any personal matter of it, but I must leave town to-night, and I feel a great interest in the experiment-station bill. If I felt sure the Senate would proceed and finish the consideration of the railroad bill, I would not object, but I am afraid this bill will take the afternoon. I know the habit of such bills.

Mr. EUSTIS. I do not think it will take much time.

Mr. GEORGE. I am willing to yield until the Senator from Colorado [Mr. TELLER] closes his speech.

The PRESIDING OFFICER [Mr. JONES, of Arkansas, in the chair]. The Senator from Louisiana [Mr. EUSTIS] asks unanimous consent that the unfinished business be laid aside informally, but the Senator from Connecticut [Mr. HAWLEY] objects, and that ends the matter.

Mr. PLUMB. I think the bill we have under consideration can be disposed of now in much less time than the time that will be necessary to dispose of it if it shall go over. I am under the impression that both these bills can be disposed of this afternoon. I will say that for the benefit of the Senator from Connecticut.

Mr. EUSTIS. I do not know of any intended discussion.

Mr. HAWLEY. I reserve the right to call for the regular order.

The PRESIDING OFFICER. Objection to the consideration of the bill (H. R. 3186) is withdrawn, and that bill continues before the Senate as in Committee of the Whole.

Mr. TELLER. I only want to say in conclusion that as to the right of a railroad company grantee to convey its title to an assignee company, the matter was settled by the opinion of Henry Stanberry, who was Attorney-General of the United States some years ago, and whom everybody will recognize as one of the ablest lawyers that was ever in public life, and a very distinguished Democrat. He was the first Attorney-General who made that decision. It was followed subsequently by Mr. Ackerman. Mr. Stanberry, in a very elaborate and carefully-prepared opinion, which I thought I could put my hand on, which was introduced and read here on a former occasion, decided that the grant carried with it the right of assignment. Upon that there has never been any contrariety of opinion; there has never been any question that I know of in public life. It does carry the grant; and therefore this company stands exactly as does any other company to which we have given a patent to land which had completed its road in time.

Mr. GIBSON. I offer amendments to the pending bill.

The PRESIDING OFFICER [Mr. HAWLEY in the chair]. The proposed amendments will be read for information, though there is an amendment already pending.

The SECRETARY. It is proposed to strike out all after the word "New Orleans" in line 9 of section 2, and to insert:

Pacific Railway Company in the Department of the Interior, October 27, 1881, and November 17, 1882, which indicate the definite location of said road: *Provided*, That all said lands occupied by actual settlers at the date of the definite location of said road and still remaining in their possession or in possession of their heirs or assigns, shall be held and deemed excepted from said grant, and shall be subject to entry under the public-land laws of the United States.

In section 3 it is proposed to strike out in line 7 the words "fully discharged," and insert in lieu of them the words "agree to discharge." And in section 6, line 5, between the words "of the" and "fourth" to insert "second, third." In section 6, line 8, it is proposed to strike out the words "Blanchard-Robinson agreement," and insert in lieu thereof "section — of this act."

The PRESIDING OFFICER. The pending question is on the amendment offered by the Senator from Louisiana [Mr. EUSTIS]. The amendment just read was only read for information.

Mr. EUSTIS. I give notice that in case the amendment—

The PRESIDING OFFICER. The attention of the Chair is called to the fact that the amendment of the Senator from Louisiana [Mr. EUSTIS] is a substitute for the whole bill. The amendment last offered is one to amend the text of the original bill. Does the Senator farthest from the Chair desire to press it now?

Mr. GIBSON. Yes, sir; I offered it as an amendment to perfect the bill, to be voted on before the substitute is acted on.

The PRESIDING OFFICER. Then the Chair is obliged to hold that it is first in order.

Mr. GIBSON. The vote on this amendment should be taken before the vote on the substitute.

The PRESIDING OFFICER. The Senator is quite right. The proposition to amend the original bill is first in order.

Mr. EUSTIS. I desire to state that my colleague has merely anticipated an amendment of which I gave notice. I intended, if my amendment to forfeit the lands had been rejected, then to have offered amendments in order further to protect the rights of settlers under the provisions of this bill.

Mr. GIBSON. Mr. President, this subject has been before Congress for many years, and every aspect of it has been fully presented to the consideration of either House of Congress. I do not propose to detain

the Senate at this time by making any elaborate argument, but I desire to call the attention of the Senate to some of the facts. I do not propose to discuss abstract questions of law that might possibly affect this case as if this was a court of law and we were bound by the law only, but I address myself to Senators who will be influenced not by the law merely, the *lex scripta*, or by technical phases of the transaction which is before us, but by a sense of justice and by those considerations of public policy that properly address themselves to the sovereign power of the Government.

It will be admitted that a grant was made by the Government of the United States on the 3d of March, 1871, to the New Orleans, Baton Rouge and Vicksburg Railway Company, and as the act recites, for the purpose of aiding in the construction of a railway from New Orleans to the eastern terminus of the Pacific Railroad Company, which was located in Texas.

That the grant was actually made by competent authority to make the grant, and that it was received by a party with the capacity to receive the grant is beyond dispute. That land grant has never been forfeited by the Government of the United States. It is an existing grant to-day so far as the Government of the United States is concerned, for it is a well-established principle that the power making the grant is the only power capable of forfeiting a grant, and so far no act of forfeiture has ever passed the Congress of the United States.

The question arises, then, ought we to forfeit this grant? Assuming for the purposes of argument that we have the capacity to forfeit it, a higher question than that arises. Ought we in good conscience to forfeit this grant? Ought we, listening to the dictates of public policy, to forfeit this grant?

Mr. President, the railroad has been built from New Orleans to the eastern terminus of the Texas Pacific Railroad. Three hundred and thirty-three miles of track have been laid, and the cars are running on that railway to-day. The high public purpose has been accomplished. It was the aspiration of the statesmanship of this country for many long years to establish a railroad to the Pacific Ocean on the thirty-second line of latitude. I do not enter at this time into those considerations that gave birth to that aspiration, but it has been realized, a high public policy has been accomplished, and we have to-day, I repeat, a railway extending from the city of New Orleans to the Pacific Ocean.

We are told that we ought to forfeit this grant notwithstanding these facts; that at this very day, after the road has been completed, after it has been accepted by the Executive Department of the Government, after the conditions of land-grant railroads have been imposed upon it, after the people have received all the benefits that would arise from the completion of this public policy by this railroad, we ought now to declare it forfeited.

I have before me an address of high Democratic authority upon this subject. It is from the lips of Allen G. Thurman. He says:

I defy anybody to point out one single case in which Congress has forfeited a land grant after the improvement in aid of which that grant was made has been constructed. There is no such case in all the history of this land whatsoever, and there ought not to be.

Why should we forfeit the whole of this grant. It is said, in the first place, that the New Orleans, Baton Rouge and Vicksburg Railway Company was a fraudulent concern. That may be, sir. I am not here to defend it. That corporation did exist at one time under the authority of law, and at the time that they received this grant it was a legal, existing corporation in the State of Louisiana. The Government of the United States was to determine that question for itself, and it adjudged it to possess the capacity to receive this railroad grant at the time that it made it to it. We are concluded, therefore, so far as the existence of this corporation is concerned, by the act of the Government itself.

It is said that it did not build a foot of this railway within the time prescribed in the granting act. I admit that. The five years elapsed without a single mile of the railroad being built; without any one of the terms or conditions of the grant being fulfilled by the grantee. When I discovered that that was the case I introduced a bill, in the year 1877, in the House of Representatives which I hold before me, declaring that there should be a forfeiture of this land grant as to this delinquent corporation. That bill was reported favorably, at that time, by the Committee on Railways of the House of Representatives.

But what was the object of that forfeiture? The object of that forfeiture was not only to declare that the Backbone Railroad had no right to this grant, but that it should be transferred to another railroad corporation which had been created by the Legislature of Louisiana for the very purpose of building a railroad from New Orleans to Texas.

In introducing that bill I responded to the universal sentiment which prevailed throughout the entire State of Louisiana. The citizens of New Orleans felt that a railway connection with Texas was essential to the restoration of their former prosperity; that they were suffering from a want of connection with the great and prosperous State of Texas; and that if they could secure a railroad through the State of Louisiana to Texas it would be the most efficient means to help them along in the restoration of their commerce and trade.

The Legislature of Louisiana passed an act authorizing the corporation of the city of New Orleans to tax itself \$2,000,000 to aid this rail-

way company. Every parish and every municipality through which it should pass was authorized to tax themselves to aid along in this work. The Legislature itself voted the sum of \$2,000,000 to aid the corporation in completing the railroad from New Orleans to Texas. One of the parishes on that route, I believe, subscribed \$100,000 to accomplish this design, for it was felt at that time to be the most beneficial that could be conceived of.

Nay, sir, petition after petition poured in at that time in favor of the transfer of this land grant to the New Orleans and Pacific Railway. These petitions were signed by the leading citizens of the State, by every commercial body in the city of New Orleans, every insurance company, every bank, every railroad company, all the commercial exchanges. All that there was of intelligence and character and patriotism seemed to be aroused not only in the city of New Orleans but throughout the State of Louisiana, in the supreme effort to require connection with the prosperous country lying to the west of that State.

In order to meet the views of the people, I introduced a bill to forfeit this land grant as to the Backbone Railway Company, and to transfer it to the New Orleans and Pacific. I was sustained by every member of the delegation at that time in this effort in the House of Representatives, but we failed, although the committee on that subject in the House reported in favor of forfeiture and to transfer the land grant to the New Orleans Pacific. We all know how difficult it is in that body to procure action on bills that are reported, and the bill failed for want of consideration, though energetically pressed by Judge Elam, Representative from the fourth district.

The New Orleans Pacific Company, under this state of facts, then applied to the Backbone Railroad Company for a transfer of this land grant, and succeeded finally in securing the land grant. It may be that this transfer may have been irregular. If it was, sir, for one I am willing to make it regular, because I have the power to do so. It was a transfer received by the New Orleans and Pacific Company in good faith. This company stood for the people of the State at that time. It stood in a corporate form representing the true interests and the aspirations of the people, and this land grant was used by that company as the means by which it was enabled to build the road.

Sir, that can not be successfully denied. We have before us the affidavit of the president of the New Orleans and Pacific Railroad Company, a gentleman who stands as well in the city of New Orleans as any other person in its limits, a merchant of respectability who quit his own avocation in order that he might give his time and services to the people of that city for the purpose of aiding them in recovering their lost trade and commerce by dedicating himself to the building of a railroad from New Orleans to Texas. We have his affidavit to this effect. If it stood alone it would be sufficient for me, in the light of the facts that antedate it and that surround it. The affidavit of a single respectable man standing as E. B. Wheelock does in the city of New Orleans and as the representative of this corporation organized under these circumstances is sufficient of itself, if there were no other facts in the case, to lead me to the conviction that this land grant was used, as he declared it was used, for the purpose of building this railroad from New Orleans to Texas.

How otherwise could the road have been built? Where could these citizens of New Orleans have procured the enormous sum of six or seven million dollars with which to build this highway except from the land grant? We have no large capitalists in that city; we have no men who have large means to invest in such a venture as this, and every one of the offerings of the State government and of the city governments and of the parish governments of that State was made imperative, large as they were, on questions that were brought before the courts of the State, and they fell back powerless to be of any assistance in this work of regeneration.

This land grant supplied the deficiency and saved to the people an enterprise that they had stood ready to assist from their own meager resources, but which fortunately escaped the self-imposed burden.

But there is other testimony here to the same effect. I do not know the gentleman, whose name I think is Dodge, who assisted, with Mr. Wheelock, in building this railway, he himself, I believe, the president of a construction company and making a contract with the Central Pacific Company to build this road. He also files his affidavit to that effect. We have before us the whole correspondence with the Executive Department of the Government, showing the caution which this railroad company exhibited, asking what would be the effect of the transfer in the event that it were made from the Backbone Railroad Company to the New Orleans and Pacific, and informed by the executive officers of the Government that it would be valid and binding, and carry the land grant. Here are the letters before me. I shall not tax the patience of the Senate to read them. They are from your own officials of high character in the executive departments of the Government giving to the gentlemen prepared to make this transaction the guarantee and assurance, as far as they could, that if the transfer was made it would be valid and binding.

Sir, I am not here to say whether it was valid and binding or not. That is not essential to any fair view that might be taken of this case. It is wholly extraneous. Nor is it appropriate to ask whether these officers were clothed by law with the power to make this declaration

and give this guarantee. It is enough for me to know that these men came up here and received such assurances from the executive departments of the Government, and that on the faith of their assurances thus given publicly, officially, they went to work to build this railroad out of the proceeds of this land grant which had been made to the Backbone Railroad Company.

The road has been built, I repeat, under the good faith of this transaction, and the people of the State of Louisiana and of the whole country have received the benefit of that connection with Texas.

But it is said again that the road is built on the wrong side of the river; that under the charter granted by the State to the Backbone Railroad Company it should have built its road on the eastern side of the river and not on the western side of the river. I admit that a small stem of this road from New Orleans to Baton Rouge under the terms of the grant was required to have been built on the eastern side of the Mississippi River—some 80 miles. All the rest of the road, as every one knows who is acquainted with the country, could not have been built on the east side of the river, but must necessarily have been built on the west side of the Mississippi River.

I admit, Senators, that this would be a cause of forfeiture, but it is not a forfeiture in itself any more than the other cause of forfeiture to which I have referred, because we are not a court declaring what the law is, as applicable to this state of facts, but we are a Senate, representing in part the sovereign power of the Government; and we are able to come in and say whether we think in justice, under these circumstances, we will forfeit or not. That is not, in my judgment, a sufficient cause for forfeiture.

It is said that inasmuch as the railroad was built by the assignee company outside of the limits of time, therefore this grant should be forfeited. I admit that that also is a cause of forfeiture. The law imposed on this grant a proviso which can not be obliterated, that the whole road should be built within five years. That condition, no matter what you may call it, a condition-suspensive or a condition precedent or subsequent, never has been complied with, for the road was built long years after the five years had elapsed.

Therefore, it is a cause of forfeiture; but would it be right under these circumstances to declare the forfeiture of that grant? Did we not sit on this Capitol Hill after the five years had expired, my colleague and myself and nearly every Senator in this room long years after the five years had elapsed, and never raised a voice in favor of a forfeiture? Where was my colleague then that he could not be heard, when he represented the State of Louisiana in this Chamber while I was in the House of Representatives? Why did he not bring in a bill then declaring this forfeiture at that time? It could have been done. No assignment had been made; no one had attempted to build any railroad; and this corrupt Backbone Railroad Company was lying supinely upon its back, incompetent, inadequate to any good purpose.

Mr. EUSTIS. Does the Senator desire an answer to his question?

Mr. GIBSON. Certainly, if the Senator desires to give one.

Mr. EUSTIS. The reason probably why I did not bring in a bill to declare the forfeiture was that the Legislature of Louisiana had passed a law repealing the charter of the Backbone Railroad Company, and as a lawyer I considered that as a valid repeal.

Mr. GIBSON. I am very glad to give the Senator an opportunity to state the reasons why he did not bring in a bill of forfeiture. But if the action of the State of Louisiana repealing the charter of the Backbone Railroad Company was in itself sufficient to carry the land grant down, to work a forfeiture of that land grant, why is there any necessity to-day to declare a forfeiture by the Government of the United States?

But could the State Legislature, even by repealing the charter of a railway company, take away from it a grant of land or other property which had been granted to it by the Government of the United States? Sir, that is carrying the doctrine of States rights further than I ever heard it carried before. For one, speaking as a Senator, I do not believe that any power was competent to work a forfeiture of a land grant, except the Government of the United States, by which it had been made.

Mr. President, we sat here, as I said, many long years after this delinquent railway company had failed to build the railroad. We are presumed to extend our solicitude over every subject which concerns the welfare of the people, not only of our States but of the United States. We witnessed this transfer from one corporation to another. We saw the assignee begin the work of building the road, we saw it expending its millions on millions to build this railway from the city of New Orleans to the State of Texas, bringing us nearer to the wealth and population of that vast empire. We saw the executive officers of this Government receive the railroad in accordance with the terms of the grant. We saw imposed upon this railroad the obligations that the Government imposes upon a land-grant railway company under the terms of the statute. We saw all this, and not a voice was raised against it, not a warning note, while this transaction of such vast importance, not only to the men engaged in it but to the whole people of the State of Louisiana and to the people of the United States, was proceeding day by day, week by week, and month by month, year by year.

I know that the doctrine of estoppel does not apply to a Government,

but it is because a Government is supposed to be actuated by a moral sense which lifts it out of the trammels of courts. For one, I do not believe that it would be right in me, after all these facts which I have related, to attempt now, long years after this whole thing has been completed, to rip it up and to declare a forfeiture.

Mr. GEORGE. Will the Senator allow me to ask him as to the date of the facts stated by him? Did the repeal of the Backbone charter by the Louisiana Legislature occur before the assignment by the Backbone company to this new company?

Mr. GIBSON. Certainly, it took place before.

Mr. EUSTIS. If the Senator will allow me, I will give the dates.

Mr. GIBSON. I can give the dates. It took place before any assignment.

Mr. GEORGE. Do you admit that it was a valid repeal of the charter of the Backbone Company, so far as the State was concerned?

Mr. GIBSON. I do not believe, as a matter of law, that it was, but I did not think it necessary to go into that matter, because I am not dealing with that corporation, I am dealing with its assignee and the grant of land subject to the control of the Government of the United States within certain limitations.

Mr. GEORGE. If the charter of the Backbone Railroad Company was validly repealed before it made any assignment of this land to another company, then the grant made by Congress to it necessarily fell from the want of a grantee to hold it, and from the utter incapacity produced by the repeal of the charter of that company to comply with the conditions of the grant.

Mr. EUSTIS. Or to assign the grant.

Mr. GIBSON. But the point I make is that the United States Government regarded that company as competent to receive this grant, and that it is incompetent for anybody else to declare a forfeiture of the grant except the granting power. The effect of this bill is to invoke the assent of the Government to the assignment and to confine the title to the grant in the Pacific Railway Company.

Mr. GEORGE. Suppose the grantee dies; suppose it is extinguished.

Mr. GIBSON. That is a question for the Government of the United States to determine, in that case what shall be done with the grant.

Mr. GEORGE. What prevents us from determining it now?

Mr. GIBSON. If you desire an answer to that question I say it did not die at that time. I do not believe that under the jurisprudence of Louisiana that repeal was effectual.

Mr. GEORGE. It was not effectual, of course. All I suggested was the ground, but I make the suggestion on the supposition—

Mr. TELLER. Will the Senator allow me a moment?

Mr. GIBSON. That repeal was tested in the circuit court of the United States, and it was not recognized as valid and legal; it was determined to be null and void—in conflict with the Constitution.

Mr. GEORGE. I understand the Senator to say that he does not recognize the validity of that repeal.

Mr. GIBSON. I do not. Even if I did, I would not draw the deduction from it that the Senator from Mississippi does. Even if the act had been repealed, this property of the corporation would have remained among its assets, and could have been disposed of and confirmed by the Government of the United States, subject to the terms and conditions of the grant. I was arguing the point whether at this time it was proper and right for us to declare a forfeiture of the grant. I am willing to declare a forfeiture of the grant so far as the road was not built, the 80 or 90 miles from New Orleans to White Castle. I understand that the company does not claim the grant coterminous with that portion of the road. My amendment goes to the effect of bringing down the title to these lands to the time when the road was actually built. While the Backbone Railroad Company was delinquent certain people saw very plainly that no road was being built and went on those lands in good faith and settled upon them, and built their homes upon them.

Mr. GEORGE. Do they claim under the railroad company?

Mr. GIBSON. No, sir; they claim, according to my amendment, under the United States.

Mr. GEORGE. Did they go into settlement under a contract with the railroad company?

Mr. GIBSON. No, sir; but before any railway was built, during the time that the railway companies were doing nothing, and had done nothing, and until the road was actually built. I have a letter addressed to me by a gentleman who was in the House of Representatives—the most active and energetic opponent of this corporation. He would like to have the whole grant forfeited. I refer to the Hon. E. T. Lewis. But he says in his letter to me, speaking in the interest of the settlers:

The amendment is simply to except from the confirmation contained in section 2 the lands occupied by the settlers up to October 27, 1881, the date of the definite location of the line of the railroad, and to include these lands in the forfeiture contained in section 1. In addition to this another section should be added authorizing the Secretary of the Interior to restore such lands to the public domain, and directing that preference shall be given such settlers to make entry of such lands under the homestead law.

That is the effect of my amendment. It is to except from this grant or to forfeit against the railroad company all the lands that were in the actual occupancy of settlers up to the time of definite location, and after that time the Robertson and Blanchard agreement will prevail.

I understand that the Robertson and Blanchard agreement is satisfactory to all parties concerned in this transaction, satisfactory to the settlers, and satisfactory to the railway company. Mr. BLANCHARD has represented his district many long years in the House of Representatives acceptably to the people of his district, and honorable E. W. Robertson, who co-operated with him in making this agreement, has been returned to the next Congress. The people of their district in which these lands are located indorse their conduct.

Sir, the amendment that I offer, therefore, is acceptable, so far as I know, to the people who have gone upon these lands in good faith and made their homesteads upon them. I sympathize with these homesteaders as much as anybody. They are my fellow-citizens. I do not know this railroad corporation as it stands to-day. I have no relations with any railroad company in the United States. I know perhaps less about railroads, I was going to say, and their officials than any gentleman in the Senate Chamber. I have as many reasons for extending my hearty sympathy to the homesteaders upon the lands embraced within this land grant as any man possibly could have. There are ties of every kind between me and them, and so far as my conscience will permit me I am always ready to stretch out my hand in their behalf and to offer any amendments which are consistent with an honest, fair, and upright administration of the Government.

Mr. President, I am addressing myself, I wish to say again, to the Senate. I am for practical results. I take no pride in airing a little law learning before the Senate; I desire to reach practical results. This whole matter has been before the Secretary of the Interior, for whose ability as a lawyer and whose uprightness as a man I have the profoundest respect. He has given a long and patient investigation to the questions involved, and he concludes a review of the whole transaction in these words, addressed to the Congress of the United States:

The Government railroad examiner reports the road substantially built and equipped, and it would not appear to comport with good faith to those who invested their money on the basis of the grant to take advantage of any technical defect, if such exists, in the transfer to the company.

I would, therefore, respectfully suggest for the consideration of Congress the propriety of passing an act curative of defect, if any exists, in the transfer to the New Orleans Pacific Company, and vesting the title, originally granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company from White Castle to Shreveport, in the New Orleans Pacific road.

Mr. GEORGE. Whose language is that?

Mr. GIBSON. That is the language of Secretary Lamar in his report for the fiscal year ending June 30, 1885. Secretary Lamar had examined this whole business from beginning to end, the facts and the law, had given due weight to the argument that the charter of the corporation called the Backbone Railroad Company had been repealed, had given weight to the allegation that the road should have been built on the eastern side of the river, to the allegation that the road as actually built was out of time—to every possible objection to the confirmation of this railroad grant, and in this formal report to Congress he urges us to pass a bill curative of defects, if any exist.

Sir, I admit that they are defects, but I think that good faith, as Secretary Lamar says, and the public policy require that we shall pass a bill curative of the defects which have been pointed out by those who would have the granting act repealed.

I understand that the provisions of this bill are acquiesced in by all the parties to this transaction. Patents have been issued, it is true, for a great many of these lands, some 700,000 acres, and only 300,000 acres yet remain unpatented. I do not know the number of settlers who claim to have their rights on the lands covered by this grant. I understand that they are very few, but if there was but one honest citizen of my State who had acquired a homestead upon this grant while the Backbone Railroad Company was in default, or before the road was built, I should feel that he was entitled to his homestead; and for that reason I have offered my amendment.

Mr. EUSTIS. Mr. President, I did not intend to speak upon this question, but I desire to notice several statements which have been made by my colleague.

There is one fact that appears very prominently whenever a question is discussed in this body with regard to the forfeiture of a land grant; and that is that Senators are divided into two classes of lawyers, one of them who believe that the Government of the United States and the people of the United States have some rights with reference to property which belonged to them, and others who find that all the law and all the equities of the case are on the side of railroad corporations. For instance, by the votes of this body with reference to land grants there have been evolved what I consider the most extraordinary legal propositions which have ever been countenanced or indorsed by any legislative or legal or judicial body; as, for example, when the Government of the United States makes a grant of land for a specific and defined purpose, coupled with express and explicit conditions, some lawyers argue the question as though no conditions attached to the grant and they were to be considered as not written.

It has been decided by a vote of this body that the question of time, which the grantor certainly had a right to impose, as he was parting with his property upon condition, was a non-essential and a non-existing condition. That has been decided. Another decision has been made that a grant and a condition are divisible; that is to say, if a tes-

tator were to make a bequest upon a condition in the testament, the legatee, by partially complying with that condition, can acquire a partial estate under the testament. Another decision has been rendered that when the United States makes a grant to a railroad company in order to construct a railroad between two given points, the railroad company can construct what portion of the road it chooses and leave unconstructed what portion it chooses, and that it acquires the grant under those circumstances.

Mr. President, if I have not been able to subscribe heretofore to these very extraordinary propositions of law, and if I do not propose at the present time or in the future to subscribe to any such, what I consider, legally speaking, monstrous propositions, it is not because I desire to make any display of legal lore, but it is, perhaps, because I have a constitutional defect, that I respect the law as I have studied it, as it has been, is to-day, and ever shall be, and that whenever I am called upon as a United States Senator to adjudicate a contention between the Government of the United States and a railroad corporation, I do not intend to resolve all the doubts against the Government and the people in favor of railroad corporations.

I do not deny that there may be equities with reference to some cases, but the principle I have contended for is the assertion of the power of Congress to defend and to vindicate the rights of the Government and of the people under these railroad grants. It is to subject the arrogance, the overshadowing power, the insolent demands of these railroad corporations to the jurisdictional authority of the Congress of the United States that I maintain the principles which I advocate in this body, and by which I propose to justify the votes that I cast.

I have no fear myself but that the time will come, and it will come shortly, when the grave apprehensions which now disquiet and harass the public mind and disturb the quietude of the people of this country as to the overshadowing influence and authority and power of corporate bodies over the legislation of this country, will be checked, will be diminished, will be subjugated, and will be destroyed, because I have confidence in the integrity, the manhood, and the intelligence of the American people. But I protest that when a proposition is submitted such as I have submitted with reference to this bill, it should be more seriously discussed than it has been, and the real facts of the case should be more clearly presented for the appreciation of this body.

What are the facts? There was in 1869 a corporation created in the State of Louisiana known as the Backbone Railroad Company. The beneficiaries under that act of incorporation were a class of men whom I shall not designate in this body. They were wholly irresponsible adventurers, men whose chief pursuit was to speculate upon the legislation of this country. They never contemplated for an instant of time, never intended, never dreamt of building a single mile of any railroad in the State of Louisiana.

With this act of State incorporation they came to the United States Congress and by an amendment to the Texas Pacific act, a section that was inserted there, and I may say was smuggled into that law, there was conferred upon that corporation a grant of land belonging to the Government and to the people amounting to 1,200,000 acres. Not a day did that corporation seriously live; not a corporate act did it ever perform; it was nothing but a myth, the ghost of a corporation that only appeared for the purpose of exerting the capacity of holding that land grant from the Government of the United States in order to speculate upon it and to sell it in the markets as a land grant.

Was that an honest proceeding? Is such a corporation as that, created as it was, living as it did, entitled to the slightest equitable consideration to-day at the hands of Congress? The Legislature in 1877 repealed that charter, because it was known from one end to the other of the State of Louisiana that it was a sham and a mockery, a disgrace and a stigma upon the legislation of the State of Louisiana. And yet five years after the repeal of that charter that corporation, not giving the remotest symptom of the slightest corporate existence, at a secret meeting in the city of New York, made an assignment of this grant of lands to the New Orleans Pacific Railroad Company. Then, to the astonishment of the people of Louisiana, to their dismay, this revived and resurrected dead corporation was brought again to the surface.

Now, I appreciate the force and the logic of the position of the Senator from Colorado [Mr. TELLER], who was Secretary of the Interior. He believed, under the former rulings of the Department and under the opinions given by the several Attorneys-General, that that assignment was a legal assignment, that that assignment did transfer the title of this grant from the Backbone Railroad Company to the New Orleans Pacific Railroad Company, and, so believing, he ordered an issue of these patents. While I differ with him upon the question of law entirely, while I dissent wholly from the views which he entertains upon these several questions, yet I admit that from his standpoint that was a consistent and a logical position for him to take. But that is not the theory of this bill, and I was gratified to hear the Senator express himself that there really was no necessity for this bill. That is his position. But this bill proposes to ignore that assignment, and to do what? To make an original grant or donation to the New Orleans Pacific Railroad Company of these lands.

Mr. President, that was not the original purpose of the grant. The original purpose of the grant was that within five years from 1871 the Backbone Railroad Company or its assigns should build a railroad between the two stated points, and I can scarcely with patience listen to the equities which are urged in favor of conferring an original grant upon the New Orleans Pacific Railroad Company in the face of the express declaration made by that railroad company that they did not require that grant in order to construct the road. Here is the dispatch of the president of that road:

No arrangement looking to any recognition of the pretended claims of the Backbone Company will be entertained by my company. * * * We now have ability to complete our road without Government assistance, and if our friends can not secure land grant we must get along without it.

Is the Congress of the United States, simply because a company builds a road, going to donate for that reason lands to a railroad company? Why discriminate in favor of this railroad company? Is that the object, simply because they have built a railroad, therefore a land grant ought to be given to this railroad company? I, for one, am opposed to that proposition. I do not believe that it is right, that it is just, that it accords with our present views of discharging our duties with reference to these land grants, that we should to-day make a donation and a grant to the New Orleans Pacific Railroad Company, which was never before a grantee under any law of the United States Government, when that railroad company especially declared that it did not require the land grant in order to complete the road which it proposed to build.

Mr. VEST. May I ask a question?

Mr. EUSTIS. Certainly.

Mr. VEST. Does the constitution of Louisiana authorize the Legislature to repeal a charter, or is there a question as to the effect or the extent of the repealing act? How did the company get rid of the repeal of the charter by the Legislature?

Mr. EUSTIS. They ignored it. The only dispute in court was with reference to the constitutionality of that act.

Mr. GEORGE. The act of repeal?

Mr. EUSTIS. Yes, sir. The circuit court of the United States held that it was unconstitutional; but this New Orleans Pacific Railroad Company stated in an authentic document that that was a fictitious case and a fictitious issue, that both parties to the suit had a common interest.

Mr. GEORGE. Interested in having the ruling made that was made?

Mr. EUSTIS. Yes, sir.

Mr. GEORGE. Is there any provision in the constitution of Louisiana reserving the power to the Legislature to repeal charters?

Mr. EUSTIS. The general law of Louisiana is that the Legislature has the power to repeal any charter, but where property or money has been invested on the faith of that charter the State has to reimburse it so that the parties shall not suffer. There was a provision in this law declaring that the act of incorporation of the Backbone Railroad was a contract with the State of Louisiana. Of course that amounts to nothing, as all acts of incorporation are contracts. It was not shown in this case that any one had invested any money in this corporation.

Now, Mr. President, I desire to call attention to a statement which has been made. There seems to be some doubt (and I am not criticizing the Committee on Public Lands) as to why this act is proposed. It has been stated that it may be—and that is a conjectural statement only—that the Secretary of the Interior believes that there is some defect in the assignment itself made by the Backbone Railroad Company to the New Orleans Pacific Company. The Government of the United States has nothing to do with any defects it finds existing in that assignment. If the Backbone Railroad Company has acquired any property at all, it has acquired it from the Government of the United States, and the acquisition of that property by the Backbone Railroad means a divestiture of the title of the Government of the United States in that land grant; and what has the Government of the United States to do with any defect in any ulterior title, or in any subsequent assignment? If the Government of the United States has parted with its title, it cannot be affected in any way by any defect in the issuing of any subsequent title. The Government of the United States is not a warrantor when it makes a land grant. Therefore, I am myself at a loss to understand why this act is proposed, unless it be that there is more than a serious doubt existing in the mind of the executive department of the Government as to the true condition of this land grant, whether it is to-day in the Government of the United States or not, and it is in order to have that question determined that this act is proposed.

The former Secretary of the Interior issued patents to the land for six hundred and seventy-nine thousand acres. The present Secretary of the Interior has not issued a single patent ever since the 4th of March, 1885.

I think that the title exists to-day in the Government of the United States. I believe that that land to-day belongs to the Government of the United States and to the people of the United States, and neither to the Backbone Railroad Company nor to the New Orleans Pacific Railroad Company; and so believing, I will not under any condition of circumstances vote to make a land grant to a railroad company to-

day when that grant has not been earned and when that company informed Congress and the public that it did not require that land in order to construct that road.

Mr. GIBSON. Mr. President, as some question has been asked as to the status of the Backbone Railroad Company under the repealing act of the Legislature of Louisiana, I should like to read what may be pertinent to that question that which I find in the report of the House Judiciary Committee of May 15, 1884, which report was drawn and submitted by the honorable JOHN RANDOLPH TUCKER, a member of the House of Representatives, and chairman of the Committee on the Judiciary of that body:

By act of the Legislature of Louisiana approved December 30, 1869, the New Orleans, Baton Rouge and Vicksburg Railroad Company was chartered, with a provision that the said company—

"Shall possess and enjoy the rights and franchises granted to said company by the State of Louisiana in this act and heretofore; and such grants and the engagements herein made and entered into on the part of the State of Louisiana shall be deemed to be, and shall be, binding contracts between the State of Louisiana and the said company, not to be impaired, disturbed, or modified by subsequent legislation, except with the consent and on the petition of said company."

In article 447, Code of Louisiana, the general law provides that—

"A corporation legally established may be dissolved:

"1st. By an act of the Legislature, if they deem it necessary or convenient to the public interest; provided that when the act of incorporation imports a contract, on the faith of which individuals have advanced money or engaged their property, it can not be repealed without providing for the reimbursement of the advances made or making full indemnity to such individuals;

"2d. By the forfeiture of their charter, when the corporation abuses its privileges or refuses to accomplish the conditions on which such privileges were granted, in which case the corporation becomes extinct by the effect of the violation of the conditions of the act of incorporation."

Now, says Mr. TUCKER in his report:

This railroad was known as the Backbone Railroad. It was authorized to construct a road, from New Orleans to Shreveport and to Baton Rouge, and intermediate point, upon the east side of the Mississippi River.

By act approved April 30, 1877, the Legislature repealed the said charter (Senate Executive Document No. 31, pages 12, 13, Forty-eighth Congress).

The first question presented for consideration is as to the effect of this repealing act. The committee hold it of no effect, because—

1. It was in violation of the terms of the charter, being without the consent and not upon the petition of the company.

2. Bonds had been issued by the company upon money loaned to it; and in the repealing act no provision was made for reimbursement of money, or for indemnity, as required by article 447 of the Code.

On both grounds the repealing act was void and of no effect. And the circuit court of the fifth circuit of Louisiana so decided in the case of *Counsellor vs. New Orleans, Baton Rouge and Vicksburg Railroad Company*, the record of which may be found in Senate Executive Document No. 31, pages 13-16.

No one will accuse the distinguished representative from Virginia, Mr. RANDOLPH TUCKER, with being in sympathy with corporations in this country and against the rights of the people. Certainly if he by his long public life, and the expressions of his sentiments from time to time in the House of Representatives has not given convincing testimony of the profoundest sympathy for popular rights and popular government, I know of no individual in either body who has.

For myself I have no sympathy with corporate power, but I have a sympathy with doing what is right under all circumstances, whether I am dealing with a corporation or an individual; and I believe that inasmuch as the president of this railroad company and his associates all declare under oath that this railroad was built on the faith of this land grant—and all the attendant circumstances and facts show this to be true—it would be wrong for me to vote to forfeit it as to that railroad company.

I have offered an amendment which will protect every homesteader, which is perfectly satisfactory to the gentleman who represents them most earnestly in the House of Representatives, an amendment drawn in compliance with his request. There is not a man in the State of Louisiana who has earned a right on these lands who will have it invaded or touched under the provisions of this bill.

Mr. GEORGE. I desire to ask the Senator a question. Is there any grant beyond that line to Baton Rouge?

Mr. GIBSON. It is all beyond it. It is all west of the Mississippi River.

Mr. GEORGE. Was the first grant from New Orleans to Baton Rouge?

Mr. GIBSON. From New Orleans to Texas, and all that part coterminous with the road between New Orleans and Baton Rouge is forfeited by the terms of this bill. All that part of the grant coterminous with the road west of the Mississippi River is confined to the railway company, except the lands in the actual occupancy of settlers of the date of the definite location of the road.

This bill has the sanction of the Executive Department of the Government, has been recommended by the Secretary of the Interior, Mr. Lamar, has passed the House of Representatives without a single vote against it, preserves every right of the settler, is satisfactory, so far as I know, to the railway company, and merits every consideration of public policy and public justice.

Mr. CALL. Mr. President, I regard this as a very important question, and one which ought not to be determined without very grave consideration.

If the Senate can afford to pass this bill as it came from the other House, it may as well declare that the people of this country have no rights in the public domain, but that it shall be granted hereafter

to a few privileged persons upon false pretenses, without any consideration, and simply that they may extort from the people who shall occupy it such price as the condition of its occupancy as may be agreeable to them.

Beyond all doubt there can be no good reason given for passing this bill. The propositions of law upon which it is claimed that this bill can be defended, when presented by the honorable Secretary of the Interior now, or by his predecessor, are without foundation and have no application to this case.

Where will you find an authority for the statement that a corporation living only by the law of a State and declared by that State no longer to be alive, no longer to have the capacity to grant, to contract, or to be contracted with and own property, an artificial being living by the law alone, and the law declaring its life to have been taken away from it, may continue in the performance of its function?

Let us suppose, Mr. President, the extremist construction to be given, that a charter is a contract between the State and the body corporate and unrepeatable and sovereign over the people; shall we carry that to this extent, that although the corporate body has not performed its agreed function, the sovereign shall have no control over it whatever; that the only obligation is on the people and none on the corporation? If it be a contract is it not absurd to say that the consideration of performing its corporate franchises according to law shall not be required of it in order that it shall have any existence? Who shall be the judge? Shall the Legislature of Louisiana have no right to institute proceedings for the determination of a franchise given by that State and failed to be used, or improperly used? Is that the law of the Senate? If the Senate holds that to be wise and good law in respect to railroad land grants made by Congress where the people's rights only are taken away, I am sure they will not hold it to be law for any other subject.

We have a grant made by the Congress of the United States on condition that certain parties shall honestly construct a highway in a certain and fixed time. If that grant shall have been given without any obligation on their part to pay any money, to do any labor or anything else, but if it was a mere grant for the purpose of sale it was one that was subject to be avoided, and it is in evidence here that this corporate body never performed a single function during this long time, that it never built any road, that it never possessed any means. Was it still a living body? Had it power? We find that after the solemn inquest of the legislative power of Louisiana it was declared that this body should have no longer corporate life or corporate power, that with full notice of that fact certain parties undertook to obtain from it an assignment of what?

Of an obligation they had assumed to the people of the United States to construct a railroad within a certain period of time and which they had never performed; and after the expiration of its time and after the failure to perform this obligation, and without any pretense whatever that they either intended or had in any way or to any extent performed or sought to perform the condition imposed in the grant from the United States to them, certain parties dealing with this dead corporation in violation of the law of Louisiana, claim to have obtained from it an expired grant, with the privilege of doing what? Of saying to every citizen of the United States, "if you go upon this land you shall do it upon the condition that you, your wife and children, shall have no part of the proceeds of your labor until you have paid to these grantees such consideration and such sum of money for the occupation of this public land of the United States, for which they have given nothing, as they see fit to ask of you." Now we have had many arguments to show that this is all right, that the Supreme Court has declared this to be good law and a wise public policy, but to me they appear utterly unreasonable.

But that is not all. Here is this dead corporate body, here is this expired grant, and here are the assignees in violation of the law of the State of Louisiana and of the solemn declaration of her highest legislative body declaring to the Congress of the United States that they do not recognize this as a valid grant, that they have not proceeded upon the basis of this grant, that they do not claim it, and yet years afterwards, after the construction of this road these parties are here and we have a disposition in the Senate of the United States and in the Congress of the United States to give to men who have built a road without asking any grant from Congress, who have not claimed that they had obtained credit upon it, but who have notified Congress that they did not recognize the right of these assignors nor claim anything from this New Orleans, Baton Rouge and Vicksburg Railroad Company—we have the Congress of the United States saying now we will recognize and make valid this grant.

I prefer, if this shall be considered and established as a wise public policy, to vote money out of the Treasury of the United States to a railroad company for the honest construction of a railroad, but I am not willing to disguise it by these pretenses. Let us be fair and equitable. Let us not say to the men who shall occupy the lands adjacent to this highway, "You shall build the railroad with your labor as the condition of your occupation and ownership of it; you shall build it out of the labor of your wives and your children, and when you have built it with your hard labor you shall give it to a few individuals with the privilege of taxing you for your productions whatever they

may see fit." This is what you propose to do by this bill. You are making a law which shall force the people of the State of Louisiana to pay for a railroad and give it away to a few persons, to be owned by them, with the power of taxing at will the people whom you force to pay for it.

Mr. President, that practice has been followed long enough. This bill and all other bills like this are not intended for the benefit of the people. They are intended to amass great fortunes by taxing the labor of the people of the country, their wives and children, for nothing in the hands of a few individuals; they are intended to build great highways of transportation with the privilege of taxing the whole production of the country at will, and then giving them away after building them with the labor and the money of the people.

It seems to me that there is not one single ground of reason or of law upon which this proposition can be defended. Talk about an assignment from a dead corporation, an assignment of an expired grant with notice that the time had expired, and build up these rights upon fanciful constructions which will meet the decision of the Supreme Court of the United States in the case of *Schulenburg vs. Harriman*. The idea of valid grant from a corporation whose franchises have been repealed, with this notice to the future assignee and an assignment of a grant expired by its own terms; and then to claim, after having refused to recognize its validity, that it shall not be forfeited, that it shall not be declared to be the public domain of the United States—five years after the Congress of the United States by the original law had declared this grant should cease to exist with notice to the parties—talk about building a railroad or a highway after the grant had expired in its terms and with notice of the fact!

But, Mr. President, I am led somewhat to take part in this discussion because to-morrow morning I propose to present to the Senate of the United States a resolution asking the Interior Department to take action upon a grant made under somewhat similar circumstances to the State of Florida. I wish to say that I have in my hand here a letter from a citizen of the United States, which I shall then exhibit, with some more extended remarks to the Senate, which illustrates how the people of this country are wronged by the former action of the Interior Department; how they are trampled upon, and how they have failed to have any protection or any recognition of rights under this Government. I have in my hand a letter from a citizen of Florida, a Mr. Stullenfuss, who incloses me a letter from the agent of the Florida Railway and Navigation Company in Florida demanding of him, a settler upon the public land of the United States, antedating through himself and his predecessor the construction of this road, who has built, by the hard labor of himself and his wife and his children, a house, an orange-grove, and a lemon-grove upon his little forty acres of land which he has made valuable by his labor.

Now in his old age that company demands of him \$75 an acre for poor, worthless land which he has made valuable only by his labor. I venture to say that I will show to-morrow that although the Interior Department has made a reservation of this land there was never any grant from the State of Florida to this railroad company or its predecessor to build this road, but on the contrary that the Legislature of the State, the governor of the State, and all its public authorities refused to allow them the right to build it, denied their right, and gave it to another corporate body. And yet for years past settlers upon this public land of the United States, invited by the decision of Secretary Chandler and authorized to enter upon it, have been deprived of their homes and the results of their years of labor and their lands sold, or now advertised to be sold, by the agents of this corporation.

Mr. President, the Interior Department has not always examined into the facts of the case and has often erred in its decisions; but that we should, in the light of day, here, now, undertake to declare that a dead corporation, without any sanction of the courts declaring that its act was lawful or how far this corporation should be permitted to exercise rights—that a corporation declared by the legislative power to have no existence, a corporation never having performed any of the acts which it was obligated to do in its charter, never having exercised any of its functions—that a body of this kind could assign, after the expiration of a land grant the term of which had been fixed by the Congress of the United States, a valid right to a new body, and that new body should declare that they did not desire, that they did not recognize, that they did not claim this grant, and then after the road is built that we should turn over the settlers on the public land, the citizens of the United States, to the tender mercies of these people, to demand what they please of them; is to me a most extraordinary proposition, and one which I must condemn, so far as I am concerned, in the strongest terms. If this be law let us have no more of it.

Mr. PLUMB. Mr. President, if this bill shall become a law it will end a controversy which has engaged the attention of both branches of Congress and of the Executive for many years, and which has disturbed the politics and other belongings of the section of country through which this railroad passes for the last five or six years, at least.

I escape the animadversions which the Senator from Louisiana who last spoke [Mr. EUSTIS] casts upon this body by the declaration that I am not a lawyer, and consequently I am not to be classed, although favoring this bill, with those who always find some excuse for favor-

ing the railroad companies as against the United States. I come to the consideration of this question as a layman, caring only that justice shall be done it, and that a full and final settlement may be made as speedily as possible; and there are certain facts, not controverted, which constrain me to accept this bill as the best thing attainable and as a measure which appears to conform to the principles of justice.

I find, in the first place, that the law of this case has been settled with a certain degree of authority, at least, by the Judiciary Committee of the House of Representatives, by the Attorney-General of the United States, by the Supreme Court of the United States, by the judgment of a former Secretary of the Interior, and by the equally convincing judgment of the present Secretary of the Interior, to which is added the concurrence of all the parties in interest as to the wisdom, the justice, the propriety of this, and this only, settlement of this controversy.

Mr. EUSTIS. Will the Senator allow me?

Mr. PLUMB. Certainly.

Mr. EUSTIS. Does the Senator say that this bill is recommended by the present Secretary of the Interior?

Mr. PLUMB. I so understand it. A letter to that effect was written by the Secretary of the Interior to the House Committee on Public Lands. I have had a copy of it, and its existence and terms were referred to in debate in the House. The two annual official reports of the present Secretary of the Interior contain substantially a recommendation of the passage of the bill, and its terms and conditions have been recognized by the Department as a fair settlement, by the settlers as a fair settlement, by the railroad company as something it was willing to accept, and therefore the Department has asked that there be put into shape of law that which meets with all these conditions of favor.

Mr. EDMUNDS. My friend from Kansas allows me to interrupt him long enough to say that I wish to give notice that early to-morrow I shall move that the Senate proceed to the consideration of executive business for the consideration of several topics of wide public interest that the Senators all understand.

Mr. EUSTIS. Allow me to ask the Senator from Kansas, if it be correct that this grant was acquired by the Backbone Railroad Company, and the Backbone Railroad Company had the power to assign, and did assign, the grant, and that assignment was legal, why is not the title complete in the assignee?

Mr. PLUMB. That is the effect of the decisions which I have cited that the title is complete.

Mr. EUSTIS. Then why pass this act?

Mr. PLUMB. By reason of the complication which has grown up about this matter the Interior Department has expressed an unwillingness to go ahead on the view of the law which it has itself expressed, desiring to use, as it has used, its persuasive powers to procure concessions, which, having secured, it wants put into the shape of law.

The law has been declared, as I have stated, so far as the right of the railroad company is concerned, if the Secretary of the Interior and the Attorney-General are to be believed, and if the Judiciary Committee of the House of Representatives is to be believed; but for the purpose of Congress making legal that which was before only equitable at least, this bill is considered desirable.

I am not going to enter into a discussion of what is the duty of the Secretary of the Interior, but, going on with the consideration of these facts which have been conclusive so far as my action is concerned, I come to the fact that the House of Representatives, two years ago, declined to declare a forfeiture of this land grant, following thereby the decision of its Judiciary Committee—that such forfeiture could not legally be made; that at the last session of the present Congress it unanimously passed this bill, a bill which came from the Public Lands Committee of that House with a unanimous recommendation, and which on a thorough and exhaustive discussion in the House did not have cast against it—one single negative vote. Now we are confronted with the bill in this position and thus fortified.

I am not permitted to doubt the wisdom of the House of Representatives, much less its devotion to public interests; and, judging by this action of the House of Representatives, on the occasions referred to, at first refusing to forfeit, and on the next unanimously passing this bill, I am persuaded to believe that the bill is substantially right and it is this bill or nothing, and that unless the Senate passes this bill the controversy heretofore and now existing will go on, the titles in the section of country through which the road is built will remain unsettled, the improvement of the country will be retarded, and it will drift along in that chaotic condition which has been the characteristic of other matters of a similar character, notably the Des Moines River grant, until, getting worse by lapse of time, it will become harder and harder of settlement.

For the reason, therefore, that this question ought to be settled, for the reason that the House has tendered us that alone which it is willing to agree to as a settlement, for the reason that the settlement which it has tendered to us is recommended most earnestly by the Secretary of the Interior having charge of the administrative portion of this question, both in his annual message and by special letter written the House Committee on the Public Lands earnestly urging the passage of this very bill, I have given my consent to its being reported and shall vote for it. I have been advised also, on what I believe to be good authority,

that all that class of people known as settlers living within the limits of the grant are themselves entirely satisfied with this bill and desire that it be passed. I have been told also that it was made the issue in the election of the member of Congress within whose district nineteen-twentieths of all these lands lie, and upon the issue so made Mr. BLANCHARD has been re-elected three successive times with substantial unanimity to the lower House of Congress. I also note that every member of the House from Louisiana favors the passage of this bill.

Mr. EUSTIS. Will the Senator allow me to make a statement?

Mr. PLUMB. I will.

Mr. EUSTIS. I desire to state that from the parish of Saint Landry I have received a large number of protests of settlers against the passage of this bill.

Mr. GIBSON. I wish to say that I have a letter from the parish of Saint Landry from a gentleman who was a Representative in the last Congress from the district in which that parish is located, saying that the amendment which I have offered, and which I think is entirely satisfactory to the Senator from Kansas, is entirely satisfactory to the settlers in that parish.

Mr. PLUMB. I have spoken of the information which has come to me. It may or may not be correct, but it has, so far, not been impeached in substance. That there may be objections to the passage of this bill on the part of persons who have no interest in the subject-matter in controversy, I have no doubt, but I have been advised and believe that those persons who settled within the limits of this grant prior to the definite location of the road and subsequent to that period also are entirely satisfied with the settlement by which they obtain title from the railroad company—a title which this bill confirms.

I favor this bill also because it forfeits and restores to the public domain several hundred thousand acres of public land which but for the passage of this act must continue withdrawn from settlement, thus retarding the growth and development of the country and depriving many people of opportunity for obtaining homes.

If this bill be defeated it will help no settler to a home. The legal status of the land will not be affected thereby. Nor will it better things to declare a forfeiture of lands beyond our power to legally reach. It is of no advantage to the settler to tender to him something which can not lawfully be made permanent to him in the shape of title. It is no advantage to him to be invited to go upon and improve lands for a home upon the idea that they are public lands, if the courts will ultimately decide that they are not public lands and he is to be thereby dispossessed. I am in favor of giving to every man who, with proper, lawful purpose, goes upon the public lands of the United States complete and ample protection, and I would not extend upon any principle or suggestion of equity in this particular case, or in any similar one, the right of the railroad company to one single inch of this soil which it is not legally entitled to upon a strict construction of the granting statute and upon a thorough consideration of all its subsequent acts. But if it is entitled to it under the law I do not believe that it is true friendship to the settlers or to anybody else to attempt to set aside that which the courts will not permit to be done, and invite people to go upon these lands and spend their time and labor there only at some subsequent period to lose all that they have invested and be put out of possession.

Mr. President, it is worth something to have matters of this kind disposed of—to have them finally settled. These lands grow in value each day. It is of great importance to the communities in which these lands lie that they may go upon the tax-rolls and bear their proportion of the burdens of government, be the means of maintaining schools, become the subject of bargain and sale, and that they may be entered upon and improved in security; and where there is no security of title there never will be any improvement.

This controversy has extended over a number of years. It is now in a condition where it can be settled promptly. The House of Representatives has passed this bill with a unanimity which discloses, to my mind, the fact that it will accept nothing else, and I therefore believe that this is the only measure it is possible to pass which will ever settle this much-vexed question.

The Senator from Louisiana [Mr. GIBSON] has proposed an amendment which I think expresses exactly what the law is to-day. As I understand the law, the railroad company can acquire no right as against the man who has settled upon the land at the date of the definite location of the line. The only exception I should take to the amendment is that it assumes and fixes the date of location, which may or may not be correct. Leaving that out, and saying that whenever the location did take place and was actually made all persons actually living upon the land at that time and who continued in possession, either by themselves or by their heirs or assigns, should be entitled to the land, is a declaration of exactly what I believe the law to be to-day, and there can be no objection to inserting it. It is justice at all events. The bill is better for having it inserted.

Mr. GIBSON. I think it important to make that amendment, because the bill recites that said lands were "located in accordance with the map filed by said New Orleans, Baton Rouge and Vicksburg Railroad Company in the Department of the Interior." There is a letter from the Interior Department asking that that amendment be made be-

cause the line of actual construction does not accord with the map filed by the New Orleans, Baton Rouge and Vicksburg Railroad Company, and therefore it is important for the parties that the amendment should be made to the bill. But, if the Senator will permit me, the railroad itself has accepted the line of definite location as the line on which the railroad was built. That very question was submitted to the Interior Department, and I have in my hand the reply of Acting Commissioner, Harrison, dated May 22, 1883, in which the whole matter is discussed at length:

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., May 22, 1883.

SIR: On the 19th March last, the honorable Secretary of the Interior transmitted to this office a copy of his letter of the 13th March to the President, inclosing two reports of Mr. Thomas Hassard, commissioner, on 328 miles of the New Orleans Pacific Railroad in Louisiana, and recommending that said 328 miles of road be accepted, less and inclusive of 68 miles thereof extending from New Orleans to White Castle, and that patents for such lands as may have been earned by the construction be issued to the New Orleans Pacific Railroad Company, with the President's indorsement thereon approving the recommendations.

The honorable Secretary also transmitted two maps showing the line of route of said road as constructed from New Orleans to Shreveport.

One of said maps shows three sections, comprising 130 miles of road, as follows: Sixty miles, extending from a point on the Mississippi River, opposite New Orleans, to a point near Donaldsonville; 20 miles, extending from a point in township 2 north, range 1 east, to a point in township 4 north, range 2 west, and 50 miles extending from the junction with the Texas and Pacific Railway, in Shreveport, La., to a point in township 10 north, range 12 west. This map was filed in the Department October 17, 1881.

The second map, which was filed in the Department November 7, 1882, covers such portions of said road as are not shown upon the first map.

The said maps bear the affidavits of the chief engineer and acting chief engineer, respectively (sworn to October 17, 1881, and November 11, 1882, respectively), to the effect that the sections of road shown thereon have been completed and equipped as required by law, and that the line of route shows the direct location of the road. They also bear your certificate as president of the company, to the effect that the location of the road as represented thereon is correct and has been approved by the company (date or dates of such approval not given), and that the road has been completed and equipped as required by law.

The act of March 3, 1871, twenty-second section, grants to the New Orleans, Baton Rouge and Vicksburg Railroad Company (of which the New Orleans Pacific Railway Company is the assignee), its successors and assigns, the same number of alternate sections of public lands per mile in the State of Louisiana as are by said act granted in the State of California to the Texas Pacific Railroad Company. The lands granted by said act in the State of California to the Texas Pacific Railroad Company are ten alternate sections of public land per mile, not mineral, designated by odd numbers, on each side of such line as the company may adopt, where the same shall not have been sold, reserved, or otherwise disposed of, or to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed.

You will readily observe from the terms of the grant that the date of the definite location of the road is the governing date in the adjustment thereof.

As regards definite location, the usual course is for the railroad company to file, in advance of construction, a map showing the line of route of its road in connection with the lines of the public surveys, with certificates showing that such line has been adopted by the company as the definite location of the line of its road, and the date of such adoption.

The filing in and acceptance of such a map by the Department is generally held to constitute definite location. In the present case no map of definite location was filed in advance of construction.

On the 18th instant, however, the honorable Secretary of the Interior referred to this office, for consideration, your letter of the 8th instant, transmitting a map purporting to show the line of said road as definitely fixed. This map bears the affidavit of the chief engineer of the company, sworn to April 24, 1883, to the effect that the survey and actual location of the line of route of said road from White Castle to Shreveport was made between August, 1875, and December, 1880, and from New Orleans to Westwego during the month of May, 1881. It also bears your sworn certificate, dated May 7, 1883, to the effect that the line of route of said road was located by the chief engineer of the company in conformity with a resolution of the board of directors adopted on the 12th day of August, 1875, as the definite location of the road from White Castle to Shreveport, and from New Orleans to Westwego, and that the dates of the actual location are correctly shown on the map.

You ask that the dates shown on said map be recognized as the dates on which the line of the road was definitely fixed.

In the case of Van Wyck vs. Knevals, decided by the Supreme Court at its October term, 1882, the line of the Saint Joseph and Denver City Railroad (act July 21, 1866, 14 Stat., 110) was held to have been definitely fixed when, through the filing with and the acceptance of a map thereof by the Secretary of the Interior, it had ceased to be the subject of change at the will of the company. The Department has generally held that a road is definitely located when the line is so fixed that it can not thereafter be changed in any material particular without the consent of the granting power. (See Copp's L. O., vol. 1, p. 164.)

That portion of the road between New Orleans and Westwego was expressly excluded from the President's acceptance, and, therefore, the date of the definite location of such portion is of no consequence to this office. The portion between White Castle and Shreveport was surveyed and located between August, 1875, and December, 1880.

The assignment of the grant to the New Orleans Pacific Railway Company was executed January 5, 1881, and the deed of such assignment was filed in this office February 17, 1881.

It can hardly be claimed that the line of the New Orleans Pacific road was at any time between 1875 and 1880 so fixed that it could not have been changed without the consent of the granting power. The company had then no claim to the grant, nor standing before this Department, and could have changed its line at its pleasure.

The first maps showing the location of the road which were filed in the Department were the maps of constructed road, and, as actual construction is the best possible definite location, I am of the opinion that the filing of said maps should be held to be the definite location of the respective sections of road shown thereon.

This office will, therefore, in the adjustment of the grant treat the dates of the filing of said maps (October 27, 1881, and November 17, 1882) as the dates of the definite location of the road.

You will be allowed sixty days from the receipt of this letter within which to appeal to the Secretary of the Interior, should you so desire.

Very respectfully,

L. HARRISON,
Acting Commissioner.

E. B. WHELOCK, Esq.,
President New Orleans Pacific Railway Company, New York City.

My amendment is in entire accord with the letter of the Commissioner and the action of the railroad company itself.

Mr. PLUMB. I was not going to make any objection to that, except, as I thought, by way of suggestion. I am entirely willing that this bill shall be amended, anxious that it shall be amended in every way which gives any suspicion even of actual permanent benefit to any person who can be called a settler; but, as I said before, I do not regard it as a kindness to hold out to men the expectation that they can get what it is beyond our power to obtain.

Mr. MITCHELL, of Oregon. May I ask the Senator from Kansas a question?

Mr. PLUMB. Yes, sir.

Mr. MITCHELL, of Oregon. I should like to know whether the Senator from Kansas, the chairman of the Committee on Public Lands, thinks that section 2 of this bill is necessary, in his view of the case, in order to vest the title of these lands adjacent to the road that has been completed in the New Orleans, Baton Rouge and Vicksburg Railway Company.

Mr. PLUMB. Upon that question of law I have simply followed the authority of the Attorney-General and of the Judiciary Committee of the House. My modesty as to my legal attainments does not permit me to dispute such authority. I would therefore say, following that authority, that the second section was not necessary for the purpose of vesting title in anybody, because the title had already vested, but the present Secretary of the Interior in his first annual report recommended the passage of a measure of this kind to cover the question of assignment merely. It has been, as I understand, in deference to his request that that section was adopted; that is to say, that portion which provides for the recognition of the assignment or of the title in the assignee railroad company.

Mr. MITCHELL, of Oregon. Is that a special recommendation in relation to this case in view of the peculiar facts in this case?

Mr. PLUMB. That was all, and because the question of assignment had been the most troublesome of all the matters in controversy about this grant.

Mr. President, the Senator from Florida [Mr. CALL] has had much to say about Florida railroad lands in connection with this case. I do not care to go into that, as I know he is able to take care of both sides of it. I only hope that when he gets time he will give some of his good advice to the people of his own State, and that the Legislature which has elected him, and I hope may continue to elect him to the end of time, will be admonished by him of some of the duties which they owe to the people of Florida, and that he will discharge his ammunition at a little closer range if he desires to accomplish results.

Mr. CALL. Mr. President, the Florida Legislature and the people of Florida are very well able to take care of themselves without my assistance or that of my friend from Kansas. The trouble, however, in this matter and in the matter of the Florida railroad grant is that the Interior Department undertakes to act for the Legislature of Florida and the Legislature of Louisiana. It makes grants where they have made none. It recognizes grantees where they have refused to give them power to receive grants. That is the trouble in this case. It is the trouble in the Senate of the United States. No matter what Attorney-General or what committee or what authority have otherwise declared, the Senate of the United States, charged with the protection of the people of this country, and with power to judge for themselves and arrive at correct conclusions, undertake in this case, when the Legislature of Louisiana have declared that a grantee had no authority in law, that it had no equity, that it had no right, to give away the public lands.

The Senate still pursues the lavish and wasteful and oppressive policy which has accumulated vast fortunes in individuals and imposed great poverty on the people. In defiance of the authority of these States, sovereign in that respect at least, we propose by this bill to create these grantees for the purpose of receiving these vast donations. And what are these donations of the public land, whether in Florida or in Louisiana? They are donations of the labor of the men, women, and children. They are donations of their food and clothing. They are attaching a condition to the occupancy of the public lands of the United States in defiance and derogation of its long-established policy of giving these lands to the people.

They established a condition that the right of occupation and cultivation of the soil by the people shall be subject to the authority and the permission of a few individuals at such exactions and prices as they see fit to demand, not for the purpose of constructing a highway, that can not be insisted here; not for any public policy, good or bad—that can not be pretended here; but because the road has been built, by the acknowledgment in advance of the parties to whom this bill gives it, without the faith and credit of these lands, if the facts are as stated by the Senator from Louisiana—

Mr. EUSTIS. I read a dispatch from the president of the company. I know nothing about the facts myself.

Mr. CALL. If that be so, certainly we have the authority of the president of the road in the inception of the life of this corporate body that they did not recognize the pretended rights of the New Orleans, Baton Rouge and Vicksburg Railroad corporation, and that they had

the means to build the road without it. Therefore you can not say that the confirmation of this grant is for that purpose.

How idle it is for Senators to talk so much about the completion of a railroad. What right to lands grows up because of the completion of a railroad? What right under the grant grows up? What connection is there in these ideas? There is none whatever; there can be none. The completion of a road to give a right must be in pursuance of a grant, of a public policy, according to the conditions of the grant. It must be within its terms or its purposes in good faith and according to its conditions. Then it confers a right; but to say that the mere fact of the completion of a road without these antecedent circumstances and conditions required by the act of Congress confers any right or alters the proposition is only blinding and confusing the question. It is like all these arguments on the land-grant question—mere assertion without any foundation in reason. It is a revolutionary doctrine, and is rapidly overturning our Government and changing it into an aristocratic form of government.

By this grant and all such grants, Congress declared that a grant of land should be made through an unoccupied country when there was no population and no production. The object was to encourage production and population; Congress fixed the time in which that should be done in order that the railroad might develop that new country. The grantee, therefore, must comply with that condition, which is to build a road, not in the next century, nor in fifty years, but in ten years, in the time fixed by the law, in order that they might develop the new country and carry population there and increase production. The objection to this grant is that they failed to do it; that they waited until other roads, and other capital, and other instrumentalities had developed the country, and then they came in to derive a vastly increased price for this land which had been made valuable by the labor of these people.

Therefore, Mr. President, for one, while if the Senators from Louisiana want to vote a reasonable part of the public domain to the construction of necessary railways in proper localities I am not unwilling to do it, though I think in general such grants had much better not be made; yet I am not willing to continue these enormous grants of a continent which have been made under false pretenses and false constructions of law, which have been supported and made simply to enrich in marvelous and gigantic proportions a few individuals with the hard earnings of the people who, with continuous labor and in want and discomfort, extract from the soil a scanty support.

If Senators think proper to use their office here to impose these burdens on the people as the condition of occupying the land which the Government has given to them, I shall not be one of them.

The PRESIDENT *pro tempore*. The question is on the amendment of the Senator from Louisiana [Mr. GIBSON], which will be read.

The CHIEF CLERK. It is proposed to strike out in section 2, after the words "New Orleans," in line 9, down to and including the word "railroad," in line 12, as follows:

Baton Rouge and Vicksburg Railroad Company in the Department of the Interior, which indicates the established line of said railroad.

And to insert:

Pacific Railway Company in the Department of the Interior, October 27, 1881, and November 17, 1882, which indicate the definite location of said road: *Provided*, That all said lands occupied by actual settlers at the date of the definite location of said road and still remaining in their possession, or in the possession of their heirs or assigns, shall be held and deemed excepted from said grant, and shall be subject to entry under the public land laws of the United States.

The question being put, there were on a division—ayes 11, noes 7; not a quorum voting.

The PRESIDENT *pro tempore*. No quorum voting, the Secretary will call the roll.

Mr. McMILLAN. Will it be in order to ask that the amendment be printed? I could not hear it, and I think members of the Senate generally have not understood it distinctly; and pending the printing of the amendment, I move that the Senate proceed to the consideration of executive business.

Mr. GIBSON. I ask for the yeas and nays on the amendment.

Mr. McMILLAN. I submitted my motion before the Senator's call for the yeas and nays.

The PRESIDENT *pro tempore*. What is the motion of the Senator from Minnesota?

Mr. McMILLAN. That the amendment be printed.

The PRESIDENT *pro tempore*. No order can be taken, except to adjourn, until a quorum is ascertained to be present.

Mr. BROWN. Let the amendment be read again.

The PRESIDENT *pro tempore*. It appearing that there is no quorum present, it is the duty of the Chair, under the rule, to direct that the roll of the Senate be called. The roll will be called. The amendment will be again read for information.

Mr. McMILLAN. Let the roll be called.

Mr. HARRIS. By unanimous consent we might take the yeas and nays on agreeing to the amendment and test the presence of a quorum in that way.

The PRESIDENT *pro tempore*. Does the Senator from Tennessee call for the yeas and nays on agreeing to the amendment?

Mr. GEORGE. They have been called for.

Mr. HARRIS. The Senator from Louisiana [Mr. GIBSON] asked for the yeas and nays.

The PRESIDENT *pro tempore*. The Chair did not hear him. Is the demand for the yeas and nays seconded?

The yeas and nays were ordered.

Mr. CONGER. It has been requested that this amendment, which I understand transfers from one road to another all the provisions of the bill simply by an amendment, be printed, to be before the body for consideration to-morrow. I do not like to vote for or against a proposition which by mere amendment transfers one subject-matter to another.

The PRESIDENT *pro tempore*. If there be no objection, the Chair will direct the order for printing to be entered, a quorum not being present.

Mr. EUSTIS. What is the effect of an order to print if we go on and vote upon the amendment?

The PRESIDENT *pro tempore*. The Chair supposes it will not prevent the Senate from passing on the amendment, notwithstanding the order to print.

Mr. EUSTIS. What is the object of printing the amendment if we are to adopt it now?

Mr. McMILLAN. If the amendment is to be printed, I shall then ask that the Senate proceed to the consideration of executive business. That is the object of my request.

Mr. EUSTIS. I was expecting that; but I suggest to the Senator that it would be better to dispose of this bill to-day. I think it will take but a few minutes to pass the bill now; whereas if it goes over to come up again it may consume another day.

The PRESIDENT *pro tempore*. The Chair is of opinion that no business can proceed until it is ascertained that a quorum is present. That can be ascertained by a yeas-and-nays vote on the amendment.

Mr. TELLER. Perhaps there is no desire to take a yeas-and-nays vote on the bill.

The PRESIDENT *pro tempore*. The fact that there is not a quorum present is disclosed.

Mr. TELLER. Let the roll of the Senate be called, then.

The PRESIDENT *pro tempore*. There will be a call of the Senate.

Mr. BUTLER. We had better adjourn, I think.

The PRESIDENT *pro tempore*. The Secretary will call the roll of the Senate.

The Secretary called the roll; and the following Senators answered to their names:

Berry,	Eustis,	Mahone,	Sawyer,
Blackburn,	Everts,	Manderson,	Sherman,
Brown,	Frye,	Mitchell of Oregon,	Spooner,
Butler,	George,	Mitchell of Pa.,	Stanford,
Call,	Gibson,	Morgan,	Teller,
Chace,	Gorman,	Morrill,	Voorhees,
Cheney,	Hampton,	Palmer,	Walthall,
Colquitt,	Harris,	Payne,	Whitthorne,
Conger,	Hawley,	Platt,	Williams,
Cullom,	Hoar,	Plumb,	Wilson of Iowa.
Dawes,	Ingalls,	Pugh,	
Dolph,	McMillan,	Sabin,	

The PRESIDENT *pro tempore*. Forty-six Senators having answered to their names, a quorum is present.

Mr. McMILLAN. I move that the pending amendment be printed.

The PRESIDENT *pro tempore*. The Senator from Minnesota moves that the amendment pending be printed. If there be no objection, that order will be made.

Mr. McMILLAN. I now move that the Senate proceed to the consideration of executive business.

Mr. CULLOM. I understand that the Senators who are managing this bill are agreed that the pending amendment is all right, and if so, why not dispose of the bill at once?

Mr. GIBSON. There is no objection to the amendment at all.

Mr. CULLOM. Then let us get rid of the bill so as to get at something else.

Mr. McMILLAN. I do not know that the managers of the bill can bind the other members of the Senate. I do not propose to submit to any arrangement of that kind.

The PRESIDENT *pro tempore*. The Senator from Minnesota moves that the Senate proceed to the consideration of executive business.

Mr. PLUMB. I trust that motion will be voted down.

The PRESIDENT *pro tempore*. The motion is not debatable. The question is on agreeing to the motion of the Senator from Minnesota. The motion was not agreed to.

The PRESIDENT *pro tempore*. The question recurs on the amendment proposed by the Senator from Louisiana [Mr. GIBSON], on which the yeas and nays have been ordered.

Mr. PLUMB. I will state that, so far as I have had any chance to confer with the members of the Committee on Public Lands, there is no objection whatever to the amendment of the Senator from Louisiana.

Mr. EDMUNDS. Is that the first amendment proposed?

Mr. PLUMB. It is the amendment proposed by the Senator from Louisiana [Mr. GIBSON].

Mr. EDMUNDS. I should like to hear the amendment read.

The PRESIDENT *pro tempore*. The amendment of the Senator from Louisiana will be again read.

Mr. CONGER. I call for the reading of the bill and the amendment.

The PRESIDENT *pro tempore*. The amendment will be again read.

The CHIEF CLERK. After the words "New Orleans," in line 9 of section 2, it is proposed to strike out all down to and including the word "railroad," in line 12, as follows:

Baton Rouge and Vicksburg Railroad Company in the Department of the Interior, which indicates the established line of said railroad.

And to insert:

Pacific Railway Company in the Department of the Interior, October 27, 1881, and November 17, 1882, which indicate the definite location of said road: *Provided*, That all said lands occupied by actual settlers at the date of the definite location of said road and still remaining in their possession, or in the possession of their heirs or assigns, shall be held and deemed excepted from said grant, and shall be subject to entry under the public land laws of the United States.

Mr. PLATT. Now read the section as it will stand if amended.

The CHIEF CLERK. So as to read:

That the title of the United States and of the original grantees to the lands granted by said act of Congress of March 3, 1871, to said grantees, the New Orleans, Baton Rouge and Vicksburg Railroad Company, not herein declared forfeited, is relinquished, granted, conveyed, and confirmed to the New Orleans Pacific Railroad Company, as the assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company, said lands to be located in accordance with the map filed by said New Orleans Pacific Railway Company in the Department of the Interior October 27, 1881, and November 17, 1882, which indicate the definite location of said road: *Provided*, That all said lands occupied by actual settlers at the date of the definite location of said road, and still remaining in their possession or in the possession of their heirs or assigns, shall be held and deemed excepted from said grant, and shall be subject to entry under the public land laws of the United States.

Mr. EDMUNDS. This amendment is a land grant, and nothing else, to the alleged successor of the old grantee, of all that part of the lands which have not been described as being declared forfeited—a land grant that, according to my present information (subject to change when I am convinced), the company never earned within the just interpretation of the law. It is, besides that, the whole thing being illegal so far as I believe now, a limitation upon all the rights of settlers to the date when some ancient location, not dated but described, was filed, and all of the settlers, acting upon their legal rights since, supposing them to have been illegal before the grant, are to be left out in the cold. Therefore, I am against it.

Mr. TELLER. The Senator from Vermont is neither familiar with the bill nor with the facts. The trouble with him is that he does not know what the facts connected with this case are, neither does he understand the pending amendment.

The company claimed originally that the definite location was long anterior to the time fixed by the Department. The amendment of the Senator from Louisiana fixes the definite location just exactly as the Department fixed it, contrary to what the railroad company said. If it is in the interest of anybody it is in the interest of the settlers and not of the railroad company. The railroad company ultimately accepted the decision of the Department as finally fixing the line of definite location, with the dates fixed in the amendment.

Mr. EDMUNDS. Supposing that to be so, first, that I do not understand the bill or the subject; and, second, supposing what my friend from Colorado has said as to the time when the amendment proposes to fix the definite location, and from that time forward to cut off the rights of the settlers—supposing that all to be true, the time at which this amendment proposes to cut off the rights of the settlers is a time long since past. If this whole thing, without this proposed act of Congress, is absolutely void, as I believe it is, with great respect to my friend from Colorado, then every settler who, since the date fixed by the amendment has, according to his legal right, gone upon that public land, is to be cut out. So I say again, I am not for it.

Mr. TELLER. As to the time fixed for the definite location, it was unlike any other railroad in this country when the railroad was built. The Senator has voted here again and again against the forfeiting of land grants to railroad companies when they had built their road out of time, when the settlers' rights were determined years before they built their road. Under this provision in this case no settler's rights are touched until after the road was completed. That is the time when the Department said the line was definitely located. "The defects in your map," they said, "are of such a character that you can not go back anterior to the time when you built the road."

The Senator says he has not any doubt but what this is an illegal transaction. He has not looked at it. It is on all fours with every case that has gone to the Supreme Court. It is on all fours with innumerable cases in which the Department have without a question from anybody in the world granted patents year after year for a great many years, ever since the decision in the case of *Schulenberges*. Harriman, fifteen years ago at least.

I do not know upon what ground the Senator bases his statement that this is an illegal transaction. It has had the approval of the Supreme Court, not *eo nomine*, but in principle. It has had the approval of the House of Representatives, of the Judiciary Committee of the House, and of the Attorney-General of the United States. It has had the approval of this body on at least two occasions, and their title was good.

I said when I made some remarks this afternoon that in my judgment no law was necessary to give them full and complete title. They have it without this measure; but it does give to the settler something that is not given to him under the ordinary law. It will settle the question whether the settler can take, under the Robinson agreement, or whether he can not, if the railroad should see fit to fly from its contract. In that view of the case the settler may get something. It gives to the railroad company nothing in the world but what the law would give them without this legislation.

If the Senator will point out any single feature of this case that differs from the other cases for which he has voted and addressed the Senate on from time to time in favor of sustaining the decision of the Supreme Court, I shall be ready to answer him; I am ready to discuss it with him; but the Senator rises here and says, when he knows nothing about this case at all, that in his judgment it is an illegal transaction; and this act is a confirmation, he says, of land not belonging to this railroad company. It is not a confirmation at all; it is but a declaration that under the law they have the title.

It is not necessary, I repeat, in my judgment, that they should have any declaration of this kind. The unbroken line of decision gives it to them. The Senator can not make any distinction between this case and the Northern Pacific case, where they had not completed their road, save and except that this company completed it before the Northern Pacific did. If there are any equities at all, they are in favor of this company and not of the other. I recollect very well that when that question was here, as a lawyer the Senator took his position that the company having built before there was a re-entry by the Government, by all the canons of the law, by the Supreme Court decision, they could not be interfered with or disturbed. He will not say differently now as a lawyer. He will admit that that is the fact now; and he can not point to a single thing that has ever been done in this case that has not been done in the case of the Northern Pacific and other cases of the same kind which have met his approval on this floor.

Mr. EDMUNDS. If I am to take the opinion of my friend from Colorado, that I do not know anything about this business, then, of course, I should be silent; but, with great respect to him, I can not take it. I think I do know something about this business. I believe I have read the elaborate and exhaustive, and I can not say conclusive, opinion of the Department of the Interior at a time heretofore. Whether my friend was then Secretary of the Interior I do not remember, but somebody was; and I will state to him, and to everybody else, that the difference to my mind (not knowing about it, as he says) between the North Pacific instance and this is a very wide and obvious one. In the matter of the North Pacific Railroad it was a mere question of the lapse of the time which Congress had provided within which they should complete certain sections or all the sections of their line. It was the same corporation, the same enterprise, and over precisely the same line of ground.

Mr. TELLER. I beg the Senator's pardon; it was not over the same line of ground. There was a very material variation in their line of ground, more than there is in this case.

Mr. EDMUNDS. If that were so, being as ignorant then as I am now, and perhaps more so, I did not know it, and I will state at present that I do not believe it—not that I doubt my friend's opinion, but that I do not think he is right in his views, in substance.

As I remember this Backbone business (which has backbone enough to get through the House of Representatives and possibly here), it was the case of a grant to a corporation over a certain defined section of country that for years and years beyond the time limited for the building and completion of that road they never did anything about it at all of any substantial value, if they pretended to do anything. I do not remember the details.

Mr. EUSTIS. They never did anything at all.

Mr. EDMUNDS. They never did anything at all. I thought I was right about that; but under such sharp critics I want to be a little careful and tender-footed in my statements.

By and by and after this dead and buried and almost forgotten grant had gone by, and people had come in and settled one way and another, or had not, no matter what for this purpose, there came another enterprise that wanted to build a railroad in another place with other objects in view, parallel—

Mr. EUSTIS. On the other side of the river.

Mr. EDMUNDS. On the other side of the Mississippi River. I do not go into detail because I should be picked up undoubtedly as to definite information, as to whether in one section or another section, in the course of this performance. A totally different contrivance, a totally different concern, for in most respects totally different objects, proceeded to get a charter from somebody in some State or somewhere to build a railroad; and then hunting around, as hungry people do sometimes, to see what kind of bones they can pick up, which are good if they can make them boil and do not cost anything if they can not, they bought up this dead and long since defunct and forgotten franchise, grant, charter, right, whatever you call it. Then they proceeded to build their road over their line, and then by an assignment under this purchase they chose to claim that they had got the land of the United

States, the land on which settlers had settled, and so on, and that they were entitled to expel these settlers and have this grant recognized by the administrative department of the Government as one lawful and which entitled them to have it.

I think, speaking with great respect, that it was the most audacious steal that I ever heard of in the United States, and that is saying a good deal. But they got a certain advantage in the Departments, or a certain recognition. However, it was found or suspected (and this bill is the consequence of it) that the Department law would not hold against the statutes of the United States and against a judicial investigation, and hence this bill.

Now, as to the amendment of the Senator from Louisiana, which helps it somewhat, the effect of that amendment is to grant, confirm to these people all of a certain part of these lands—I do not care if it is only an acre, I am not for giving them that acre—something that is valuable, something that is worth fighting for, something that is worth lobbying for; and this bill has reached a stage where under that state of things it has got through one House and is now asked to go through another. I am opposed to it.

To come back to the settler again, I respectfully submit that if you are to do it at all under this state of things, as I understand it, imperfectly as I do, and wrongly as I do I will assume, but as I understand it, which is enough for my vote—you are going to squeeze out every settler who has come in, having a right to come in under the law as it now stands, until this bill passes, since the date that is named in the amendment. Is that right? It is right if the law has given to the present railroad corporation what it claims; it is not right if the law has not given it to it; because the railroad company, I admit, like everybody else is entitled to its legal rights, and if it has got a legal right to the disadvantage of the settler that is the misfortune of the settler. We must take care of him in some other way if we are to do anything at all about it. But if the railroad has not got a legal right, and therefore is compelled, as it now is, to ask Congress to fortify it and confirm it, then I say it is a gross outrage upon the settler and upon all other public interests to turn him out down to this day, and put in the grant to this railroad corporation.

Mr. MORGAN obtained the floor.

Mr. TELLER. The Senator from Vermont has had his opportunity now to draw a distinction—

The PRESIDENT *pro tempore*. The Senator from Alabama has been recognized. Does the Senator from Alabama yield?

Mr. MORGAN. I shall not yield for the present. I do not think the Senator from Colorado is in good humor now. I am; and I believe I will go on.

The PRESIDENT *pro tempore*. The Senator from Alabama.

Mr. MORGAN. Mr. President, the railroad company to which this grant was first made took its grant under the same terms that were applied in the case of *Schulenberg vs. Harriman* and the various cases which have succeeded that. They therefore took a vested right in the property which the United States had the right to divest by a declaration of forfeiture. That was the situation of the Baton Rouge and Vicksburg Railroad Company. That was the status of that railroad company.

That road was chartered from New Orleans to Baton Rouge, and then on up to Vicksburg on the east side of the Mississippi River. About the same time another road was chartered on the other side of the Mississippi River, also touching at Baton Rouge. The road I first mentioned that was to go up on the east side had also the right to cross the river at Baton Rouge, and to go on to Shreveport. Whether you call it a branch road or not it makes no difference, but there was a bifurcation in the route there according to its charter privileges, so that it might take one or both sides of the river at a pretty sharp angle in going out to Shreveport. That company did not do any work. It had an organization, it issued its stock and received some subscriptions and probably some payments of money into the treasury, or possibly not, but it did not do any work.

Then came along the Louisiana Pacific Railroad, I call it—that which runs up on the west side of the Mississippi River by White Castle to Baton Rouge, and from thence to Shreveport. That road was built. It was built before any proceeding of forfeiture was commenced in this case. Before the United States claimed a forfeiture at all that road was entirely completed from Shreveport to Baton Rouge. That road was alleged to have been built, and I have no doubt it was built, largely upon the consideration of a transfer of the grant made by the road that ran up on the east side of the river of its right in the public domain.

The question arose right there in my mind—this thing has been before the Committee on Public Lands for years—whether or not one of these railroad corporations could bodily transfer its grant into the hands of another railroad corporation. My opinion has been all the time that it could not do that thing, but that where the legitimate object of the original grant was accomplished by a different railroad company it rested in Congress to consent to the transfer if it chose to do so, and that no harm could be done to the country by Congress giving that consent, for the reason that the road which was in the contemplation of Con-

gress at the time the original grant was made had been built by a railroad company and upon the very same line.

I made that point and I suppose I defeated an arrangement that was proposed for the accommodation of this whole question upon that point. Following that the delegation from Louisiana in both Houses—I think it was the Forty-seventh Congress; I am sure it was—got together and after various speeches had been made, and after Mr. TUCKER's opinion had been delivered in the House of Representatives upon the question of the right to forfeit a railroad grant after the road had been completed, the delegation from Louisiana, then in the Senate and House, came to an agreement about the matter, and the House bill to forfeit the grant was voted down under the influence of the opinion of the Judiciary Committee.

Then, when the matter came at the next session of Congress before the Committee on Public Lands, it was referred to me for consideration. I draughted the bill upon which this bill has evidently been modeled. I reported it back to the Senate, the members of the Senate at that time and also the members of the House from Louisiana having agreed among themselves that that was after all the very best disposition that could be made of the subject.

In order to get that disposition into shape, what did we have to do? Declare a forfeiture of all the land between Baton Rouge and New Orleans on the east side of the river, a forfeiture of all the land hitherto granted by the United States, if there were any granted, from White Castle to New Orleans, and ratify and confirm the grant that had been made to the New Orleans, Baton Rouge and Vicksburg Railroad Company in favor of the new corporation, the Louisiana Pacific Railroad Company, which, as I have stated, upon the assignment that had been made to it, built the road upon the very line that it was originally designed to pass upon.

That being the state of facts, here was the opinion of the Attorney-General, here was the opinion also of the Interior Department, and not barely its opinion, but action taken from time to time in the issue of patents to this railroad company, that branch of the Government, the executive branch with full judicial power, had made a decision of this question and had proceeded to execute it by the issue of patents. What then remained for Congress to do? Nothing but to execute the agreement, the consent which had been entered into between the members of the different Houses on either side. Of course, that bound nobody, but it was a rational settlement, a reasonable arrangement. Hence it is that this bill has its peculiar features.

In order to remove the objection that I made first against the power of one corporation bodily to transfer its grant into the hands of another, Congress makes the grant operate in favor of the present road, the Louisiana Pacific road, just precisely as if it had been the original party mentioned in the act. I further took the ground that that could not be done without the consent of the company and without its consenting to those obligations which these land-grant roads must put themselves under as a part of the terms of the grant. Hence that feature in the bill which requires that before this law shall take effect the New Orleans Pacific Railroad Company shall file its consent in the Department of the Interior accepting these terms with all the engagements and obligations that were imposed in the original grant upon the company from New Orleans by Baton Rouge to Vicksburg, and from New Orleans by Baton Rouge also to Shreveport. That company, therefore, is required to file its consent and its acceptance of all the duties and obligations imposed in that charter.

The next consideration was for the settlers—what were their rights as determined by the Interior Department, as determined in the case I have just quoted of *Schulenberg vs. Harriman*? What were their rights? They had not any rights at all to the odd-numbered sections of land within the railroad grant. The lands had not been exposed to market; they could not be entered; they could not be bought from the Government of the United States. Nevertheless this railroad company had entered into an agreement, which is found in the records of Congress and to which this bill relates by terms, called the Blanchard-Robinson agreement. They had entered into an agreement in favor of the settlers, that they were to buy the land from the railroad company at the price of two and a half dollars an acre, as I remember, that being the price fixed by the Government of the United States on the sale of land within the limits of a railroad grant, and recognizing the rights of these persons to buy the land upon which they had settled at that price. So it says in this bill that the object of the bill is to carry into effect, ratify, and confirm the Blanchard agreement; but the bill superadds to that the provision that these settlers shall have the right of homestead settlement upon these lands down to the point of time, not when the map of final location was made, but down to the point of time when this railroad was actually completed. That enlarges the rights of the settlers very much, and that was one of the terms, I have no doubt, that brought the Representatives in the other House and the Senators from Louisiana to an agreement about this matter, for, after all, the great debate on the question was, of course, as to what should be done with the settlers. The Senator from Louisiana [Mr. GIBSON] proposes, as I understand, still further to enlarge by his amendment the rights of the settlers. He thinks, perhaps, we had cut them a lit-

tle too close in the form of this bill, and I have no objection to his amendment, nor do I hear of any other member of the Committee on Public Lands who objects to it.

That is the case. I shall not debate it or argue it further than just to say this: We can refuse to pass any bill and invite in another class of lawyers not mentioned by my honorable friend on my right [Mr. EUSTIS], that is, those lawyers who are all the time hunting up cases to fill the dockets of the courts with litigation, and you will have a batch of them, you will have a great harvest of litigation in Louisiana. Refuse to pass this bill, to compose this difficulty according to the agreement, the honorable agreement of members of both Houses as reported to us, and by which our action was largely shaped, and you turn loose bedlam in Louisiana for the lawyers. They will make a good deal out of it. I am one of them myself, and like them, but I do not like them to speculate on the misfortunes of the people, and above all things I do not like them to have an opportunity to speculate on the negligence or the indifference of Congress to its public duty.

Mr. EUSTIS. Allow me to suggest that under my amendment the title of every settler who has purchased from this corporation is confirmed, so that there can be no litigation so far as those settlers are concerned.

Mr. MORGAN. I do not see how the Senator from Louisiana can consent for a moment to offer an amendment to a bill which he thinks is founded in fraud, based upon iniquity, which cures nothing in the world of the corruption that he insists existed in this transaction from the beginning, and which, as I understood his argument, ought to be overturned entirely for the mere corruptness of the thing. There may be a great deal of corruption about the bill. I am inclined to look at things in that light from certain quarters of this country that there may be corrupt interference with general public national laws and State laws, too; but when you come to the power of this tribunal to compose difficulties and stop litigation and to settle the people in their rights of homestead, we have got to take a broader view of the matter and look at it in the light of the decisions of our Supreme Court and the policy advocated by the different Departments of this Government.

Here are two Secretaries, following each other, the honorable Senator who had the floor a few moments ago [Mr. TELLER], and Mr. Lamar, both recommending the adoption of this as a settlement of the question. I consider that that ought to have a good deal of weight with the Senate. The House of Representatives, as has been remarked by my friend, the chairman of the committee, has passed the bill unanimously. It was reported in the Senate from this committee long before the other House took it up; a year ago it was reported here. The House took the bill, modeled it upon the very plan that we suggested, and that was the result of this universal understanding; and the House passed the bill unanimously and sends it to us. I can not conceive that this bill gives rise at all to any fair opportunity of criticising gentlemen who have been connected with its passage or its recommendation upon the ground that they belong to a class of lawyers who favor railroad grants. I have not seen any lawyers of that kind in this body, except those lawyers who are influenced by a sincere respect for the law and for justice, and those lawyers who have got the manhood and the courage, for it requires a little of both nowadays, to give to a railroad company its exact rights under the Constitution and laws of this land.

I had the honor to submit a report to this body in which I wholly dissented from the idea of this having been a valid transfer from one corporation to another, and I insisted then that if the bill forfeiting the land, which the House of Representatives voted down as I have already stated, should pass this body it should be accompanied with a requirement on the part of the Attorney-General of the United States that he should go into court and file a bill to compose all of these difficulties, and let one suit decide the whole question.

That has been always my insistence in regard to this matter and will be as long as I have an opportunity, because in doing so I think I can keep down an enormous growth of litigation in regard to these matters. I believe the best thing the Senate can do is to pass this bill and compose these difficulties, and we overcome in this bill the only legal difficulty there ever was in it, which Congress has a perfect right to overcome, by consenting now that that grant shall operate in favor of this railroad company just as it operated in favor of the original railroad company before the transfer was made. I have been informed that gentlemen have put up their money upon this transfer, and it has cost some individuals \$150,000 in money to get the arrangement made.

I do not know whether that is so or not, but that information has come to me. If, however, there was not a dollar of consideration paid for it, the purpose of the law in making the original grant has been accomplished in the building of that railroad, and the people have got the benefit of it; and whether it has been executed in literal compliance with the terms of the statute or not, the grand, equitable project which Congress intended to execute in the granting of this charter in the first instance has been accomplished, and I am satisfied.

Mr. TELLER. Mr. President, the Senator from Vermont [Mr. EDMUNDS], who could draw a very wide distinction between this case and that of the Northern Pacific, drew the very great distinction that there was a longer time between the period this company received its charter

and the time the Northern Pacific Company received its charter. There he is in error on a question of fact. If a longer time had elapsed, will any lawyer say it makes any difference whether the time is two years or one year, provided there has been no re-entry? The fact is that this case is on all fours with all other cases which have been sustained by the Senate and by the courts. There is no difference.

Any intimation that there has been anything improper in the Department in connection with it is a gratuity on the part of the Senator from Vermont. The Secretary of the Interior found himself with an opinion of an Attorney-General that under the law and under his oath he was bound to accept as an adjudication between that company and the Government of the United States. Such was the unbroken line of decisions as to the character of an Attorney-General's opinion, unless the Executive himself should override it. The Executive, however, approved the finding of the Attorney-General instead of disproving of it.

The honorable Senator from Alabama [Mr. MORGAN], says he does not think a legal transfer could be made. The Secretary of the Interior not only had the decision of the Attorney-General, who was his associate in the Cabinet, but he had the opinion, as I stated before, of Mr. Stanberry, of Ohio, and I do not believe there is a man in public life to-day who will not admit that Mr. Stanberry seldom had his peer in the history of lawyers in this country.

Every acre of the great grant given to the Hannibal and Saint Joe Railroad is held to-day under a title derived exactly as this was derived; every acre of the 47,000,000 acres now claimed by the Northern Pacific is held by virtue of an assignment that does not differ in law from this assignment, an assignment through a mortgage. This is an assignment direct.

Will any lawyer stand here and tell me and tell the country and stultify himself by saying that he who can assign by a mortgage may not assign by direct proceeding, that he who can put the title out of himself by mortgage can not put it out by a direct sale? As a question of law nobody will dispute it. When the Senator from Vermont says there is any difference between this case and the case of the Northern Pacific Company I repeat it here on the floor of the Senate, with a knowledge of this case and a knowledge of the Northern Pacific history, and I will not yield to him or any other man, that the facts will not support him in the assertion.

The PRESIDENT *pro tempore*. The question is on the adoption of the amendment proposed by the Senator from Louisiana [Mr. GIBSON], upon which the yeas and nays have been ordered.

Mr. TELLER. I think that call might as well be withdrawn.

Mr. GIBSON. I withdraw the call now.

Mr. TELLER. There seems to be no opposition to it.

The PRESIDENT *pro tempore*. If there be unanimous consent the call may be withdrawn. The Chair hears no objection. The question is on the amendment.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The next amendment of the Senator from Louisiana [Mr. GIBSON] will be reported.

The CHIEF CLERK. It is proposed in section 3, line 7, after the word "and," to strike out the words "fully discharged" and to insert in lieu thereof the words "agreed to discharge;" so as to read:

Sec. 3. That the relinquishment of the lands and the confirmation of the grant provided for in the second section of this act are made and shall take effect whenever the Secretary of the Interior is notified that said New Orleans Pacific Railroad Company, through the action of a majority of its stockholders, has accepted the provisions of this act, and is satisfied that said company has accepted and agreed to discharge all the duties and obligations imposed upon the New Orleans, Baton Rouge and Vicksburg Railroad Company by the act of March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes."

The amendment was agreed to.

The PRESIDENT *pro tempore*. The next amendment of the Senator from Louisiana [Mr. GIBSON] will be reported.

The CHIEF CLERK. In section 6, line 5, after the word "the" and before the word "fourth" it is proposed to insert the words "second, third;" so as to make the section read:

Sec. 6. That the patents for the lands conveyed herein that have already been issued to said company be, and the same are hereby, confirmed; but the Secretary of the Interior is hereby fully authorized and instructed to apply the provisions of the second, third, fourth, and fifth sections of this act to any of said lands that have been so patented, and to protect any and all settlers on said lands in all their rights under the said Blanchard-Robinson agreement.

The amendment was agreed to.

The PRESIDENT *pro tempore*. The next amendment of the Senator from Louisiana [Mr. GIBSON] will be reported.

The CHIEF CLERK. It is proposed in line 8 of the same section to strike out the words "Blanchard-Robinson agreement," and to insert in lieu thereof the words "sections of this act;" so as to read:

And to protect any and all settlers on said lands in all their rights under the said sections of this act.

The amendment was agreed to.

The PRESIDENT *pro tempore*. Now the question recurs on the amendment proposed by the Senator from Louisiana [Mr. EUSTIS] as a substitute for the bill.

Mr. EUSTIS. I call for the yeas and nays on that.

The yeas and nays were ordered.

Mr. TELLER. Let the amendment be read.

The CHIEF CLERK. It is proposed to strike out all after the enacting clause, and to insert:

That the lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company by the act entitled, "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," approved March 3, 1871, be, and they are hereby, declared forfeited, and the lands covered thereby shall be considered and treated in all respects the same as if such grant had never been made: *Provided*, That any title to said lands acquired by purchase from any railroad company by any *bona fide* settler is hereby confirmed to said purchaser.

The Secretary proceeded to call the roll.

Mr. CHACE (when Mr. ALDRICH's name was called). My colleague [Mr. ALDRICH] is paired with the Senator from Delaware [Mr. GRAY].

Mr. BERRY (when his name was called). On this question I am paired with the Senator from Colorado [Mr. BOWEN]. If he were present I should vote "yea."

Mr. DAWES (when his name was called). I am paired with the Senator from Texas [Mr. MAXEY]. I do not see his colleague in the Chamber, and I do not know how he would vote. I withhold my vote.

Mr. GRAY (when his name was called). I am paired with the Senator from Rhode Island [Mr. ALDRICH].

Mr. FRYE (when Mr. HALE's name was called). My colleague [Mr. HALE] is busy in the Committee on Appropriations and is paired with the Senator from Kentucky [Mr. BECK].

Mr. BERRY (when the name of Mr. JONES, of Arkansas, was called). My colleague [Mr. JONES] is paired with the Senator from Indiana [Mr. HARRISON].

Mr. TELLER (when his name was called). On this vote I am paired with the Senator from Vermont [Mr. EDMUNDS]. If he were present he would vote "yea," and I should vote "nay."

The roll-call was concluded.

Mr. TELLER. I will exchange, with the consent of the Senator from Arkansas [Mr. BERRY], the pair of the Senator from Vermont [Mr. EDMUNDS] with the Senator from Colorado [Mr. BOWEN], and the Senator from Arkansas can then vote and so can I.

Mr. BERRY. I vote "yea."

Mr. BECK. I desire to announce that I am paired with the Senator from Maine [Mr. HALE].

The result was announced—yeas 11, nays 35; as follows:

YEAS—11.			
Berry,	Cockrell,	George,	Voorhees,
Blackburn,	Coke,	Vance,	Whithorne,
Call,	Eustis,	Vest,	
NAYS—35.			
Allison,	Frye,	Manderson,	Sabin,
Blair,	Gibson,	Mitchell of Oreg.,	Sawyer,
Brown,	Gorman,	Morgan,	Sherman,
Chace,	Hampton,	Morrill,	Spooner,
Cheney,	Harris,	Palmer,	Teller,
Colquitt,	Hawley,	Payne,	Walthall,
Conger,	Hoar,	Platt,	Williams,
Cullum,	Ingalls,	Plumb,	Wilson of Iowa,
Dolph,	Mahone,	Pugh,	
ABSENT—29.			
Aldrich,	Evarts,	Kenna,	Saulsbury,
Beck,	Fair,	McMillan,	Sewell,
Bowen,	Gray,	McPherson,	Stanford,
Butler,	Hale,	Maxey,	Van Wyck,
Camden,	Harrison,	Miller,	Wilson of Md.
Cameron,	Jones of Arkansas,	Mitchell of Pa.,	
Dawes,	Jones of Florida,	Ransom,	
Edmunds,	Jones of Nevada,	Riddleberger,	

So the amendment was rejected.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. PLUMB. I move that the Senate insist on its amendments to this bill and ask a conference with the House of Representatives thereon.

The motion was agreed to.

CONSTITUTIONAL CENTENNIAL CELEBRATION.

The PRESIDENT *pro tempore* laid before the Senate the following message from the President of the United States; which was read, and, with the accompanying papers, referred to the Select Committee on the Centennial of the Constitution and Discovery of America, and ordered to be printed.

To the Senate and House of Representatives:

As a matter of national interest, and one solely within the discretion and control of Congress, I transmit the accompanying memorial of the executive committee of the subconstitutional centennial commission, proposing to celebrate on the 17th of September, in the city of Philadelphia, as the day upon which, and the place where, the convention that framed the Federal Constitution concluded their labors, and submitted the results for ratification to the thirteen States then composing the United States.

The epoch was one of the deepest interest, and the events well worthy of commemoration.

I am aware that as each State acted independently in giving its adhesion to the new Constitution, the dates and anniversaries of their several ratifications are

not coincident. Some action looking to a national expression in relation to the celebration of the close of the first century of popular government under a written Constitution has already been suggested, and while stating the great interest I share in the renewed examination by the American people of the historical foundations of their Government, I do not feel warranted in discriminating in favor of or against the propositions to select one day or place in preference to all others, and therefore content myself with conveying to Congress these expressions of popular feeling and interest upon the subject, hoping that in a spirit of patriotic co-operation, rather than of local competition, fitting measures may be enacted by Congress which will give the amplest opportunity all over these United States for the manifestation of the affection and confidence of a free and mighty nation in the institutions of a Government of which they are the fortunate inheritors, and under which unexampled prosperity has been enjoyed by all classes and conditions in our social system.

GROVER CLEVELAND.

EXECUTIVE MANSION,
Washington, January, 18, 1887.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives by Mr. CLARK, its Clerk, announced that the House had passed a joint resolution (H. Res. 170) authorizing an investigation of the books, accounts, and methods of Pacific railroads which have received aid from the United States; in which it requested the concurrence of the Senate.

ENROLLED BILL SIGNED.

The message also announced that the Speaker of the House had signed the enrolled bill (H. R. 807), granting pensions to soldiers and sailors of the Mexican war; and it was thereupon signed by the President *pro tempore*.

PETITIONS AND MEMORIALS.

Mr. CULLOM. I ask leave, out of order, to present a large number of petitions of soldiers now in the Army which were forwarded to my late colleague [Mr. LOGAN] just before his death, praying for the passage of the bill to amend the act of February 25, 1885, to authorize a retired-list for privates and non-commissioned officers of the Army. I move that the petitions be referred to the Committee on Military Affairs.

The motion was agreed to.

Mr. EVARTS. I present a petition numerously signed by my constituents in New York city, merchants and other business men, praying for the repeal of the internal taxes. I move its reference to the Committee on Finance.

The motion was agreed to.

REPORT OF A COMMITTEE.

Mr. SAWYER, from the Committee on Pensions, to whom was referred the bill (S. 3106) granting a pension to Milton Teeter, reported it without amendment, and submitted a report thereon.

PUBLIC BUILDING AT WILMINGTON, N. C.

Mr. MAHONE. I am directed by the Committee on Public Buildings and Grounds, to whom was referred the bill (S. 229) to provide for the erection of a public building at Wilmington, N. C., and the amendments of the House of Representatives thereto, to report a disagreement to the amendments of the other House, and ask for a committee of conference.

The PRESIDENT *pro tempore*. The Senator from Virginia moves that the Senate disagree to the amendments of the House of Representatives, and ask for a conference on the disagreeing votes of the two Houses.

The motion was agreed to.

By unanimous consent, the President *pro tempore* was authorized to appoint the conferees on the part of the Senate; and Mr. MAHONE, Mr. VEST, and Mr. RANSOM were appointed.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles, and referred as indicated below:

The bill (H. R. 1261) for the relief of Henry A. Paus, to the Committee on Military Affairs;

The bill (H. R. 9868) for the relief of O. F. Adams, to the Committee on Claims; and

The bill (H. R. 10457) for the relief of dependent parents and honorably discharged soldiers and sailors who are now disabled and dependent upon their own labor for support, to the Committee on Pensions.

The joint resolution (H. Res. 170) authorizing an investigation of the books, accounts, and methods of Pacific railroads which have received aid from the United States—to the Committee on the Judiciary.

W. D. HAVELY.

Mr. SAWYER. I ask unanimous consent to take up the bill (H. R. 7616) for the relief of W. D. Havelly, which was inadvertently passed over yesterday in the consideration of pension bills.

By unanimous consent the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes to place on the pension-roll the name of W. D. Havelly, father of Robert M. Havelly, late of Company C, Fifteenth Regiment of West Virginia Volunteer Infantry.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

BILLS INTRODUCED.

Mr. CULLOM introduced a bill (S. 3169) granting a pension to Anna Mertz, as widow of Charles A. Mertz, late a private in Company K, Sixty-second Illinois Volunteers; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. MAHONE introduced a bill (S. 3170) to authorize the Secretary of War to exchange guns with the R. E. Lee Volunteer Battery, of Petersburg, Va.; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. WHITTHORNE introduced a bill (S. 3171) to authorize the Quartermaster-General to settle the claims of the trustees, directors, or other representatives of religious, charitable, and educational institutions for the use or occupancy by the Army of the United States of property belonging to them, upon the justice of said claims; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 3172) for the relief of the estate of Andrew I. Duncan, deceased; which was read twice by its title, and referred to the Committee on Claims.

Mr. CULLOM introduced a joint resolution (S. R. 95) relating to the title of the United States in the "lake front," at Chicago, Ill.; which was read twice by its title, and referred to the Committee on the Judiciary.

AMENDMENT TO A BILL.

Mr. COCKRELL substituted an amendment intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

PUBLIC BUILDING BILLS.

Mr. MAHONE. If there be no objection I shall ask the Senate in the morning, after we get through with the morning business, to take up certain public building bills and dispose of them. Most of them are House bills, and it is necessary that they should be disposed of in order that the Committee on Appropriations may make suitable provision on their account.

AGRICULTURAL EXPERIMENT-STATIONS.

The PRESIDENT *pro tempore*. The Chair lays before the Senate the unfinished business of yesterday, which is the bill (S. 372) to establish agricultural experiment-stations in connection with the colleges established in the several States under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto.

Mr. MORRILL. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 20 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, January 19, at 12 o'clock m.

HOUSE OF REPRESENTATIVES.

TUESDAY, January 18, 1887.

The House met at 12 o'clock m. Prayer by the Chaplain, Rev. W. H. MILBURN, D. D.

On motion of Mr. CRISP, by unanimous consent, the reading of so much of the Journal of the proceedings of yesterday as related to the introduction of bills and resolutions was dispensed with. The remainder of the Journal was read and approved.

Mr. KING appeared, and took his seat.

LIGHT-HOUSE, CRAB TREE LEDGE, MAINE.

The SPEAKER laid before the House a letter from the Secretary of the Treasury, transmitting a letter from the Light-House Board, relative to an appropriation for a light-house at Crab Tree Ledge, Maine; which was referred to the Committee on Appropriations.

INDIAN DEPREDACTIONS.

The SPEAKER also laid before the House a letter from the Acting Secretary of the Interior, transmitting the papers in the Indian depredation claim of Cyrenus Beers, William Robinson, and Solomon Vail; which was referred to the Committee on Indian Affairs.

LEAVE OF ABSENCE.

Mr. JACKSON, by unanimous consent, obtained leave of absence for one week on account of sickness.

LEAVE TO PRINT.

Mr. HEMPHILL, by unanimous consent, obtained leave to have printed in document form the petition of the Guardian League, of the city of Washington, D. C.

ARMY APPROPRIATION BILL.

The SPEAKER also laid before the House the bill (H. R. 10242) making appropriations for the support of the Army for the fiscal year ending June 30, 1888, and for other purposes, with the Senate amendments thereto. The amendments were ordered to be printed, and the bill and amendments were referred to the Committee on Military Affairs.

PENSION APPROPRIATION BILL.

The SPEAKER also laid before the House the bill (H. R. 10397) making appropriations for the payment of invalid and other pensions of the

United States for the fiscal year ending June 30, 1888, and for other purposes, with the amendments of the Senate thereto; which was referred to the Committee on Appropriations.

PUBLIC BUILDING, INDIANAPOLIS.

Mr. BYNUM. Mr. Speaker, I ask unanimous consent that the Committee of the Whole be discharged from the further consideration of the bill (H. R. 569) appropriating \$45,000 for the improvement of the post-office building in the city of Indianapolis, and that the bill be now put upon its passage.

The SPEAKER. The bill will be read, after which the Chair will ask for objections.

The bill was read.

The SPEAKER. Is there objection?

Mr. LIBBEY. Regular order.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had passed, without amendment, bills of the following titles:

A bill (H. R. 356) granting a pension to Lucinda Barrett;
A bill (H. R. 429) granting a pension to Harry McElhinny;
A bill (H. R. 927) granting a pension to Cudbert Stone;
A bill (H. R. 929) granting a pension to G. W. Fraley;
A bill (H. R. 1860) granting a pension to Frederick Robertson;
A bill (H. R. 4103) granting a pension to M. S. Clay;
A bill (H. R. 4265) granting a pension to Josiah Mahoney;
A bill (H. R. 5599) granting a pension to Joshua L. Morris;
A bill (H. R. 5894) for the relief of Elon A. Marsh and Minard Lafever;

A bill (H. R. 6132) granting a pension to William Lynch;
A bill (H. R. 6314) to increase the pension of James Carlin;
A bill (H. R. 6443) granting a pension to Alexander Falconer;
A bill (H. R. 6817) granting a pension to Thomas Brown;
A bill (H. R. 6819) granting a pension to William Conner;
A bill (H. R. 6825) granting a pension to James R. Baylor;
A bill (H. R. 6832) granting a pension to Mrs. Catharine Sattler;
A bill (H. R. 7540) to increase the pension of Franklin Sweet;
A bill (H. R. 7696) for the relief of George W. Robaugh;
A bill (H. R. 7698) granting a pension to Robert K. Bennett;
A bill (H. R. 7796) granting a pension to James Long;
A bill (H. R. 8159) granting a pension to Jesse Campbell;
A bill (H. R. 8180) to increase the pension of Charles Hahneman;
A bill (H. R. 8280) granting a pension to John Patton;
A bill (H. R. 8310) granting a pension to Cyra L. Weston;
A bill (H. R. 8474) granting a pension to James McGlen;
A bill (H. R. 8623) granting a pension to Mary E. Hedrick;
A bill (H. R. 8827) granting a pension to John Buchanan;
A bill (H. R. 8830) granting a pension to Aaron Garis;
A bill (H. R. 8834) granting a pension to Abraham P. Griggs;
A bill (H. R. 8835) granting a pension to Jacob Case;
A bill (H. R. 8836) granting a pension to John Miller;
A bill (H. R. 9129) granting a pension to Rebecca Wiswell; and
A bill (H. R. 9167) granting a pension to Joseph F. Kirkhart.

The message also announced that the Senate had passed bills of the following titles; in which the concurrence of the House was requested:

A bill (S. 2216) for the relief of Mrs. Elizabeth Rice;
A bill (S. 2252) granting a pension to Susan A. Duncan;
A bill (S. 2293) granting a pension to Hannah C. De Witt;
A bill (S. 2486) granting a pension to John Spruce;
A bill (S. 2532) for the relief of Mary H. Casler;
A bill (S. 2687) granting a pension to William B. Barnes;
A bill (S. 2884) granting a pension to Mrs. Anna Etheridge Hooks;
and
A bill (S. 2997) granting a pension to Mrs. M. E. Woods.

LEAVE OF ABSENCE.

Mr. ST. MARTIN, by unanimous consent, obtained indefinite leave of absence on account of severe illness.

LANDS IN SEVERALTY TO INDIANS.

Mr. SKINNER submitted the report of the committee of conference on the bill (S. 54) to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.

The report was read.

Mr. HOLMAN addressed the Chair.

The SPEAKER. The rules require that the managers on the part of the House should submit with the report a statement showing the effect of the amendments agreed upon by the conferees.

Mr. SKINNER. I shall be glad to make any explanation that the gentleman from Indiana [Mr. HOLMAN] may desire.

Mr. HOLMAN. This is one of the most important measures upon which this House can undertake to act; and I trust that my friend from North Carolina will not object to having the report published in the

RECORD, and action on the question postponed until to-morrow morning.

Mr. SKINNER. I do not object to that.

The SPEAKER. If there be no objection, the conference report will lie over for the present, and, together with the statement of the House conferees, will be published in the RECORD.

There was no objection. The documents referred to are as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 54) "to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 2, 4, 5, 6, 8, 10, 12, 13, 14, 15, 16, 17, 18, and agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 1, and agree to the same with an amendment as follows: Strike out the said amendment of the House, and insert in lieu thereof the following, namely:

"That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon, in quantities as follows:

"To each head of a family, one-quarter of a section;
"To each single person over eighteen years of age, one-eighth of a section;
"To each orphan child under eighteen years of age, one-eighth section; and
"To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes, an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual."

And that the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 3, and agree to the same with an amendment as follows, namely: Strike out the word "two" in said amendment and insert in lieu thereof the word "four"; and that the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 7, and agree to the same with an amendment as follows, namely: Insert after the word "may" and before the word "in" in said amendment, the words "in any case;" and that the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 9, and agree to the same with an amendment as follows, namely: Add to said amendment the following words:

"*And provided further*, That no patents shall issue therefor except to the person so taking the same as and for a homestead, or his heirs, and after the expiration of five years' occupancy thereof as such homestead; and any conveyance of said lands so taken as a homestead, or any contract touching the same, or lien thereon, created prior to the date of such patent, shall be null and void."

And that the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 10, and agree to the same with an amendment as follows, namely: Insert in place of the words to be stricken out by said amendment, the following words:

"And the sums agreed to be paid by the United States as purchase-money for any portion of any such reservation shall be held in the Treasury of the United States for the sole use of the tribe or tribes of Indians to whom such reservations belonged, and the same, with interest thereon at 3 per cent. per annum, shall be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof."

And that the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 19, and agree to the same with an amendment as follows, namely: Strike out the words proposed to be inserted by said amendment, and insert instead thereof the following:

"Sec. 11. That nothing in this act shall be so construed as to prevent the removal of the Southern Ute Indians from their present reservations in Southwestern Colorado to a new reservation by and with the consent of a majority of the adult male members of said tribe."

And that the House agree to the same.

T. G. SKINNER,

S. W. PEEL,

B. W. PERKINS,

Managers on the part of the House.

H. L. DAWES,

THOS. M. BOWEN,

J. K. JONES,

Managers on the part of the Senate.

The House conferees on the disagreeing votes between the two Houses on the bill of the Senate (S. 54) to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes, make the following detailed statement of the changes made by the committee of conference:

The changes from the bill as it passed the House, made by the conference report, are to House amendments numbered 1, 3, 7, 9, 10, and 19.

Amendment 1 authorized the Secretary of the Interior to have lands allotted to Indians in severalty "upon their application."

The conference report authorizes the allotments to be made by the President of the United States, without any application, whenever in his opinion any reservation or any part thereof is advantageous for agricultural or grazing purposes.

Amendment 3 provided that if any one entitled to allotment shall fail to make selection within two years after the President shall direct that allotment may be made on a particular reservation, that then a selection shall be made for said Indians.

The conference report extends this time to four years.

Amendment 7 allowed the President of the United States, in his discretion, to extend the period in which the lands allotted to individual Indians should be held in trust by the United States. The conference report only inserts the words "in any case," so as to require the President to extend this period only in special cases.

Amendment 9 provides that lands sold or released to the United States under this bill shall be held for the sole purpose of securing homes for actual settlers. The conference report only makes this purpose more explicit by requiring an actual residence upon the homestead by the settler or his heirs for five years before a patent shall issue.

As to amendment 10 the conference report requires that the sums agreed to be paid by the United States as purchase-money for lands acquired under the provisions of this bill to be held by the Treasury of the United States for the sole use of the tribe or tribes to whom such reservations belonged; and that the sum shall, with interest at 3 per cent. per annum, be at all times subject to appropriation by Congress for the education and civilization of such tribe or tribes of Indians or the members thereof.

This last change the managers on the part of the House did not deem important; but amendment 19 was as follows:

"SEC. 11. That nothing in this act shall be construed as authorizing the Secretary of the Interior to abolish any reservation until the consent of a majority of the male members twenty-one years of age shall be first had and obtained."

The conference report strikes this amendment out, and in place of it enacts that this act shall not prevent the removal of the Southern Ute Indians from their present reservation in Southern Colorado with the consent of a majority of the adult male members of said tribe.

POST-OFFICE AT INDIANAPOLIS, IND.

Mr. LIBBEY. I withdraw the demand for the regular order which I made a few moments ago when the request of the gentleman from Indiana [Mr. BYNUM] was pending.

The SPEAKER. The call for the regular order is withdrawn. The gentleman from Indiana [Mr. BYNUM] asks unanimous consent that the Committee of the Whole on the state of the Union be discharged from the further consideration of the bill which will be read, and that it be now put on its passage.

The Clerk read the bill (H. R. 569) appropriating \$45,000 for the improvement of the post-office building in the city of Indianapolis, Ind.

The SPEAKER. Is there objection to the present consideration of this bill?

Mr. COWLES. I object, and call for the regular order.

The SPEAKER. The regular order is the call of committees for reports.

BRIDGE ACROSS RED RIVER OF THE NORTH.

Mr. CRISP, from the Committee on Commerce, reported back with amendments the bill (H. R. 10295) authorizing the construction of a bridge across the Red River of the North; which was referred to the House Calendar, and the accompanying report ordered to be printed.

LIGHT-HOUSES.

Mr. CLARDY, from the Committee on Commerce, reported back with amendment the bill (H. R. 10151) providing for the establishment of certain light-houses, and for other purposes; which was referred to the Committee of the Whole House on the state of the Union, and the accompanying report ordered to be printed.

AIDS TO NAVIGATION OF THE MISSISSIPPI.

Mr. IRION, from the Committee on Commerce, reported back, with a recommendation that the amendments of the Senate be concurred in, the bill (H. R. 7633) establishing additional aids to navigation at the mouth of the Mississippi River; which was referred to the Committee of the Whole House on the state of the Union, and the accompanying report ordered to be printed.

ORGANIZATION OF POST-OFFICE DEPARTMENT.

Mr. WARNER, of Ohio, from the Committee on the Post-Office and Post-Roads, reported back favorably the bill (H. R. 10326) to authorize certain changes in the organization of the Post-Office Department; which was referred to the House Calendar, and the accompanying report ordered to be printed.

GOVERNMENT OF INDIANS.

Mr. HAILEY, from the Committee on Indian Affairs, reported back favorably the bill (S. 1100) to amend the ninth section of an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30, 1886, and for other purposes," approved March 30, 1885; which was referred to the Committee of the Whole House on the state of the Union, and the accompanying report ordered to be printed.

JAMESTOWN AND NORTHERN RAILROAD COMPANY.

Mr. HAILEY, from the Committee on Indian Affairs, also reported back favorably the bill (S. 1057) granting the right of way to the Jamestown and Northern Railroad Company through the Devil's Lake Indian reservation, in the Territory of Dakota; which was referred to the Committee of the Whole House on the Private Calendar, and the accompanying report ordered to be printed.

JOHN FLETCHER.

Mr. STORM, from the Committee on Indian Affairs, reported back favorably the bill (S. 130) for the relief of John Fletcher; which was referred to the Committee of the Whole House on the Private Calendar, and the accompanying report ordered to be printed.

The bill (H. R. 565) for the relief of John Fletcher was, by unanimous consent, laid on the table.

PUBLIC BUILDING, FREMONT, NEBRASKA.

Mr. OWEN, from the Committee on Public Buildings and Grounds, reported back a bill (H. R. 3123) for the erection of a Government building at Fremont, Nebr.; which was referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

BUILDING FOR CHIEF SIGNAL OFFICER OF THE ARMY.

Mr. WILKINS, from the Committee on Public Buildings and Grounds, also reported back a bill (H. R. 10600) for the purchase of a site, including the building thereon, also for the erection of the necessary store-house, for the use of the office of the Chief Signal Officer of the Army, at the city of Washington, D. C.; which was referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

INCREASED PENSION FOR LOSS OF BOTH ARMS.

Mr. LOVERING, from the Committee on Invalid Pensions, reported back with amendments a bill (H. R. 10132) to allow soldiers and sailors in the United States service who have lost both arms an increased pension; which was referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

REMOVAL OF DISABILITY.

Mr. MATSON, from the Committee on Invalid Pensions, reported back the bill (H. R. 10789) to amend an act entitled "An act amending the pension law so as to remove the disability of those who, having participated in the rebellion, have since its termination enlisted in the Army of the United States and become disabled," approved March 3, 1877; which was read a first and second time, referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

ISAIAH G. MAYO.

Mr. HAYNES, from the Committee on Invalid Pensions, reported back with amendment a bill (H. R. 10512) granting a pension to Isaiah G. Mayo; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

R. L. MUNSON.

Mr. HAYNES, from the Committee on Invalid Pensions, also reported back with amendment a bill (H. R. 8891) granting a pension to R. L. Munson; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

ADVERSE REPORTS.

Mr. HAYNES, from the Committee on Invalid Pensions, also reported back adversely bills of the following titles; which were severally laid upon the table, and the accompanying reports ordered to be printed:

A bill (H. R. 6467) granting a pension to Fred O. Graffam;
A bill (H. R. 9199) granting a pension to George Henderson;
A bill (H. R. 3448) for the relief of Joseph E. Purington;
A bill (H. R. 6468) granting a pension to Josiah C. Baker;
A bill (H. R. 9016) granting a pension to Augustus Bradbury;
A bill (H. R. 8410) granting a pension to William G. Martin;
A bill (H. R. 9015) granting a pension to William O. McDonald;
and
A bill (H. R. 8409) granting a pension to Mrs. Aldana B. Monroe.

CHANGE OF REFERENCE.

On motion of Mr. PINDAR the Committee on Invalid Pensions was discharged from the further consideration of a bill (H. R. 8929) granting a pension to Caroline A. Groshon, and the same was referred to the Committee on Pensions.

LAWRENCE O'CONNER

Mr. CONGER, from the Committee on Invalid Pensions, reported back a bill (H. R. 10262) granting a pension to Lawrence O'Conner; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

PENSIONS GRANTED BY SPECIAL ACT.

Mr. MORRILL, from the Committee on Invalid Pensions, reported back a bill (H. R. 10483) relating to pensions granted by special act of Congress; which was referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

FREDERICK DIERKING.

Mr. MORRILL, from the Committee on Invalid Pensions, also reported back a bill (H. R. 8818) granting a pension to Frederick Dierking; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

CAROLINE L. SHEDD.

Mr. MORRILL, from the Committee on Invalid Pensions, also reported back a bill (H. R. 10104) granting a pension to Caroline L.

Shedd; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

MOSES PARROTT.

Mr. SCOTT, from the Committee on Pensions, reported back a bill (H. R. 4672) granting a pension to Moses Parrott; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

CHEROKEE CLAIM.

Mr. LANHAM, from the Committee on Claims, reported back a bill (S. 2292) to provide for the settlement of a certain Cherokee claim under the treaty of February 14, 1883; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

ERSKINE S. ALLIN.

Mr. GALLINGER, from the Committee on Claims, reported back a bill (S. 1359) for the relief of the heirs of Erskine S. Allin; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

STATE WAR CLAIMS.

Mr. GEDDES, from the Committee on War Claims, reported back a bill (S. 309) to settle and adjust the claims of any State for expenses incurred by it in defense of the United States; which was referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

T. J. EDWARDS.

Mr. GEDDES, from the Committee on War Claims, also reported back a bill (H. R. 5060) for the relief of T. J. Edwards, administrator of David Edwards, deceased; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

ORDER OF BUSINESS.

The SPEAKER. This completes the call of committees. If there be no objection, the Chair will recognize gentlemen who were not in their seats when their committees were called.

There was no objection.

NORTH AMERICAN FISHERIES.

Mr. BELMONT, from the Committee on Foreign Affairs, reported back favorably the bill (H. R. 10241) for the appointment of a commission to investigate concerning losses and injuries inflicted since December 31, 1885, on United States citizens engaged in the North American fisheries; which was referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

REPORT OF VISITORS TO MILITARY ACADEMY.

Mr. VIELE, from the Committee on Military Affairs, reported back the report of the Board of Visitors to the Military Academy, with recommendation that 5,000 copies be printed and bound; that the Committee on Military Affairs be discharged from its further consideration, and that the same be referred to the Committee on Printing.

There was no objection, and it was so ordered.

JUDICIAL TITLES TO LAND.

Mr. CULBERSON, from the Committee on the Judiciary, reported back favorably the bill (H. R. 10409) to annul certain titles to land acquired by judicial proceedings in the courts of the United States in Texas, and for other purposes; which was referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

GENERAL TWIGGS'S SWORDS.

Mr. CUTCHEON, from the Committee on Military Affairs, reported, as a substitute for House joint resolution 134, a joint resolution (H. Res. 241) authorizing the President to return the Twiggs swords; which was read a first and second time, and, with the accompanying report, referred to the Committee of the Whole House on the Private Calendar, and ordered to be printed.

The joint resolution No. 134 was ordered to be laid upon the table.

MRS. CARRIE E. HOPKINS.

Mr. NEAL, from the Committee on Claims, reported back favorably the bill (H. R. 10552) for the relief of Mrs. Carrie E. Hopkins, widow of Rev. Moses Hopkins; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

AARON FRIEDHEIM.

Mr. SPRINGER, from the Committee on Claims, reported back favorably the bill (H. R. 10653) to pay Aaron Friedheim the rebate due him under the act of March 3, 1883; which was referred to the Committee of the Whole House on the Private Calendar, and, with the accompanying report, ordered to be printed.

BENJAMIN WILKES.

Mr. TUCKER, by unanimous consent, introduced a bill (H. R. 10791)

providing for the adjudication of the claim of Benjamin Wilkes; which was read a first and second time, referred to the Committee on War Claims, and ordered to be printed.

WILLIAM STAHLER.

Mr. LE FEVRE, by unanimous consent, introduced a bill (H. R. 10792) granting a pension to William Stahler; which was read a first and second time, referred to the Committee on Invalid Pensions, and ordered to be printed.

PACIFIC RAILROADS INVESTIGATION.

The SPEAKER. The hour for consideration begins at fifteen minutes before 1 o'clock. The call rests with the Committee on Pacific Railroads.

Mr. RICHARDSON. Mr. Speaker, I ask unanimous consent to discharge the Committee of the Whole House on the state of the Union from the further consideration of the joint resolution (H. Res. 170), and complete the consideration of the same in the House.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

Mr. ANDERSON, of Kansas. Will the gentleman allow an amendment?

Mr. HOLMAN. If it is open to amendment I shall have no objection. I wish to submit one.

Mr. RICHARDSON. I have no objection to gentlemen submitting amendments. Are there others than those proposed by the gentleman from Kansas and the gentleman from Indiana?

Mr. HENLEY. I shall ask to submit an amendment at the proper time.

Mr. RICHARDSON. The only objection I could urge against agreeing to permit so many amendments is the length of time that will probably be required to discuss them.

Mr. SPRINGER. I do not think it will take very long.

Mr. HENLEY. I want to offer an amendment.

Mr. RICHARDSON. I shall not object.

Mr. REED. What is the proposition pending?

The SPEAKER. It is the consideration of the resolution proposing an investigation into the subsidized railroad companies, which was under consideration on Saturday in the House. Is there objection to the request of the gentleman from Tennessee?

Mr. REED. What is the proposition?

The SPEAKER. To discharge the Committee of the Whole from the further consideration of the resolution in the hour under the call, and consider it in the House.

Mr. REED. Then we do not have any consideration of it. That will be the result.

Mr. ANDERSON, of Kansas. They agree to give an opportunity to offer amendments.

The SPEAKER. Without objection that order will be made.

There was no objection, and it was so ordered.

The SPEAKER. The gentleman from Tennessee has occupied twenty-nine minutes of his time.

Mr. RICHARDSON. I yield three minutes to the gentleman from Kansas [Mr. ANDERSON].

Mr. ANDERSON, of Kansas. I desire to offer the amendment which I send to the Clerk's desk.

The Clerk read as follows:

Insert after line 28:

"And also whether any dividends have been unlawfully paid on the capital stock of any of said companies; whether any new stock has been issued or any guarantees or pledges made without authority of law, and to investigate and report all the facts relating to a pretended consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company, and Denver Pacific Railway Company into an alleged corporation known as the Union Pacific Railway Company."

The SPEAKER. This seems to be an amendment to the amendment proposed by the gentleman from Georgia [Mr. CRISP]. That also is a proposition to insert certain words after the twenty-eighth line.

Mr. ANDERSON, of Kansas. But has the amendment of the gentleman from Georgia yet been really offered? Notice, I understood, only was given of it.

The SPEAKER. The Chair understood that the amendment of the gentleman from Georgia was offered in Committee of the Whole.

Mr. SPRINGER. I understand those amendments are not necessarily parts of each other.

The SPEAKER. They are not, but if the amendment of the gentleman from Kansas is not an amendment to that of the gentleman from Georgia it is not in order at this time.

Mr. SPRINGER. It will be in order after the question is put on the amendment of the gentleman from Georgia.

The SPEAKER. The amendment of the gentleman from Kansas would then be in order; or it is in order now as an amendment to the amendment of the gentleman from Georgia. The Clerk will read the amendment of the gentleman from Georgia.

The Clerk read as follows:

Amend in line 28, after the word "use," by inserting "and also to inquire and report as to the kind, character, and amount of the assets of such of said companies as received aid from the Government in bonds; and what assets of

each company are now subject to the lien of the Government, and the value thereof."

The SPEAKER. The amendment of the gentleman from Kansas provides for a still further inquiry, and would be in order as an amendment to this.

Mr. ANDERSON, of Kansas. I so offer it, and I desire simply to say this, that I think there will be no objection to this amendment for the reason that what it proposes is that the facts shall be ascertained and reported respecting a consolidation of the Union Pacific and these other companies mentioned, and the legal aspect of that it is proposed to submit to the Attorney-General. This amendment proposes that the facts as to the issue of stock and all that be ascertained.

I desire to say further that the State of Kansas by *quo warranto* proceedings some time ago proposed to test the matter of this consolidation, and this amendment is looking to an interest which the State I in part represent has in this whole question. As all parties seem agreed that this investigation shall be had, I hope the amendment will be agreed to.

Mr. RICHARDSON. I yield now two minutes to the gentleman from Georgia [Mr. CRISP].

Mr. CRISP. Mr. Speaker, in May last the Committee on Pacific Railroads reported favorably the joint resolution which is now before us. I have submitted an amendment, which has just been reported by the Clerk, enlarging somewhat the scope of the commission to be appointed under the joint resolution. It is very important to know, and this commission can easily ascertain, the exact amount of property that is now owned by the subsidized Pacific railroads that is subject to the lien of the Government, and the value of it. That is the purpose of the amendment which I have offered.

As to the amendment of the gentleman from Kansas [Mr. ANDERSON], I have only this suggestion to make. I have no choice about the matter except this, and I make this suggestion for the consideration of the House. The duties of the commission to be appointed by the Secretary of the Interior under this resolution and under the amendment submitted by myself are purely of a business and mathematical character—to ascertain the amount of the property and the value of the property. The duties of the commission under the amendment offered by the gentleman from Kansas would be to ascertain a legal question.

Mr. ANDERSON, of Kansas. Oh, no.

Mr. CRISP. I so understand it.

Mr. ANDERSON, of Kansas. Their duty under my amendment would be to ascertain all the facts in regard to the consolidation and as to the amount of stock.

Mr. CRISP. The objection I have to the gentleman's amendment, and the only objection I see to it, is that we want this commission of experts to ascertain facts and figures; and as I understand the amendment of the gentleman from Kansas it proposes to obtain from the same commission a legal opinion as to what is the status of a particular company.

Mr. ANDERSON, of Kansas. I think the gentleman is mistaken in that impression. The amendment reads:

Whether any new stock has been issued or any guarantees or pledges made without authority of law—

Mr. CRISP. That is right.

Mr. ANDERSON, of Kansas—

and to investigate and report all the facts relating to a pretended consolidation—

of the companies named.

The SPEAKER. The time of the gentleman from Georgia has expired.

Mr. RICHARDSON. I yield him another minute.

Mr. CRISP. What I was referring to was what I read in the RECORD.

Mr. ANDERSON, of Kansas. That is another resolution.

Mr. CRISP. I may have misapprehended the gentleman's amendment. I was referring to what was introduced the other day and printed in the RECORD.

Mr. ANDERSON, of Kansas. There was an amendment and there was a resolution of inquiry. It is the latter to which the gentleman refers.

Mr. CRISP. And that is not now pending?

Mr. ANDERSON, of Kansas. No, sir.

Mr. CRISP. Then I have nothing further to say.

Mr. RICHARDSON. I now yield five minutes to the gentleman from Indiana [Mr. HOLMAN].

Mr. SPRINGER. Had not we better vote on these two amendments?

The SPEAKER. The gentleman from Tennessee [Mr. RICHARDSON] still occupies the floor.

Mr. HOLMAN. I suggest that the amendments submitted may be regarded as pending.

The SPEAKER. They are. They are in order; but while they are pending no further amendments will be in order.

Mr. HOLMAN. I ask unanimous consent that the amendments may be sent up and be considered as pending.

Mr. RICHARDSON. I have no objection to that.

The SPEAKER. The amendments may be sent up, but they will

not be read for the present, because this hour is devoted to debate, and the gentleman from Tennessee [Mr. RICHARDSON] has the floor. Gentlemen can send their amendments to the Clerk to be read at the proper time.

Mr. RICHARDSON. I agree to that, Mr. Speaker, only as to certain amendments, the amendments of the gentleman from California [Mr. HENLEY], the gentleman from Indiana [Mr. HOLMAN], and the gentleman from Iowa [Mr. WEAVER].

The SPEAKER. Then those amendments may be sent up.

Mr. HOLMAN. I offer an amendment, which I send to the desk.

The amendment was read, as follows:

After the word "use" in the 28th line insert "and whether any of the Pacific railroad corporations which obtained bonds of the United States to aid in the construction of their railroads have expended any of their money or other assets in the construction, or to aid in the construction, of other railroads, or invested any of their money or other assets in the stocks or bonds of other railroad corporations. If any such expenditure or investments have been made, the extent and character thereof made by each of said corporations shall be inquired into, and also the present interest of any of said corporations in the railroads auxiliary to their respective railroads."

Mr. HOLMAN withholds his remarks for revision. [See Appendix.]

Mr. HENLEY. I send to the desk an amendment which I ask to have read. The time is so limited there is no opportunity to debate this amendment. I will only remark that I think it a very necessary provision, and hope it will be adopted.

The Clerk read the amendment of Mr. HENLEY, as follows:

Amend section 1 by inserting after the word "much," in line 52: "And whether any dividends have been illegally declared by the directors of said companies, and if so, to what extent; and whether the amount of such illegal dividends may not be recovered from the directors unlawfully declaring the same."

Mr. HEPBURN. I wish to ask the gentleman from Tennessee [Mr. RICHARDSON] whether this resolution will confer any power not already possessed by the Commissioner of Railroads under the third section of the act of 1878. Cannot that commissioner, under the authority he now has, secure any and all information called for by this resolution?

Mr. RICHARDSON. I now yield five minutes to the gentleman from Massachusetts [Mr. HAYDEN].

A MEMBER (to Mr. RICHARDSON). You have not answered the gentleman from Iowa [Mr. HEPBURN].

Mr. HAYDEN. I will partially answer the gentleman from Iowa by saying that I think under the statute he has mentioned an investigation could be had by the Interior Department without the passage of this resolution. But, representing in some measure the Union Pacific Railroad and Mr. Adams in this matter, I desire to say to the Committee on Pacific Railroads and to members of the House that Mr. Adams has expressed a desire to have an investigation of all these matters embraced in the bill and amendments—an investigation of everything in relation to the Pacific railroads. I desire, in evidence of this statement, to call attention to a letter which Mr. Adams has addressed to the gentleman from Texas [Mr. THROCKMORTON], the chairman of the Committee on Pacific Railroads. That letter, which appears in the Washington Post of this morning, I will not, owing to my scanty time, read now, but will take the liberty of printing in the RECORD.

I see by the papers that the House of Representatives is now considering the expediency of an investigation into the past history and money transactions of the Pacific railroads, as a preliminary to any final adjustment of the financial relations between those companies and the Government. It has also been asserted that the companies will strive to avoid such an investigation.

I do not want the position of the Union Pacific upon this point to be misunderstood. While as a matter of business expediency the company is most anxious to reach a final settlement with the Government, it does not fear any investigation of its affairs which may be ordered. It will do nothing to prevent or avoid one.

During the last fifteen years the Union Pacific Railway Company has been more frequently and thoroughly investigated than any other business corporation on earth. Committees of Congress have reported on it; Secretaries of the Interior and railroad commissioners have investigated its accounts; successive boards of Government directors have taken part in its management and scrutinized its every act; its books and records have been analyzed by the Department of Justice and Court of Claims. So far as I have been able to discover, there is nothing connected with its affairs or its history which Congress and the country do not know, or can not learn from the printed record.

If, under these circumstances, further investigation is deemed necessary, the present management will facilitate that investigation by all means in its power. Those connected with it only ask that any investigation had may be entrusted to men of character, standing, and intelligence, to the end that it may put a stop forever to those vague and scandalous assertions which are now made the pretext for further delays, affording infinite possibilities for stock manipulation. The interests of thousands of persons and whole regions of country thus become the football of any schemer or gambler who has access to the columns of some journal willing to increase its circulation by setting forth forgotten scandals of ancient history as new and startling discoveries.

What the Union Pacific, as a business corporation, does object to is, that delay which will keep it and its securities in position to be banded to and fro between Wall Street and Washington, the prey of intriguers and speculators.

The Government of the United States is by far the largest creditor of the Union Pacific, which, as a debtor at once willing and able to pay in full if dealt with on recognized principles, thinks it not unfair to ask its principal creditor not to let itself be used by competitors and stock jobbers as an instrument with which to injure the business resources and impair the credit of the debtor from whom payment of the last penny is still to be exacted.

I respectfully, but confidently, submit that to allow itself to be so used is neither justice, nor business, nor fair play.

In regard to this investigation of the Pacific railroads I wish to give

a little of the history of this resolution originally introduced by the gentleman from California [Mr. HENLEY]. The resolution was introduced for the purpose of obstructing any legislation on the extension bill then before the House or likely to come before the House. I will read for information—

Mr. HENLEY. Mr. Speaker—

Mr. HAYDEN. The gentleman will please not interrupt me at present.

Mr. HENLEY. The gentleman makes a statement which is incorrect; that is all.

Mr. HAYDEN. I desire to state a little history in relation to this investigation.

A man by the name of Reddington, who was a clerk in the railroad commissioner's office and who is now a resident of Washington, appeared at the offices of the Union Pacific Railroad Company in Boston on the 18th of January, 1886. But I will read:

On the 18th of January following, Mr. Reddington, the newly appointed chief expert in railroad accounts in the office of the commissioner, appeared at the offices of the company in Boston, and presented a letter of instructions, which he subsequently stated—with an emphasis which seemed to indicate that he deemed the fact of importance, and wished it clearly understood—he had himself drawn up. The letter of instructions was as follows:

WASHINGTON, D. C., January 14, 1886.

I desire to have this letter printed.

Mr. HENLEY. Mr. Speaker, can that be done except by unanimous consent?

The SPEAKER. It can not.

Mr. HENLEY. Then I object, unless I am permitted by the House to reply to the observations of the gentlemen from Massachusetts after he is through.

Mr. BAYNE. I hope the gentleman will not object. I do not think it was dishonorable at all for the gentleman to seek to defeat that funding bill.

Mr. HENLEY. But the gentleman does not understand—

Mr. HAYDEN. I claim my time.

The SPEAKER. The gentleman from Massachusetts declines to yield.

Mr. HAYDEN. I will read, at any rate, the last paragraph of this letter:

You are strictly enjoined to preserve in absolute secrecy all information obtained and report in writing upon your return. You will be assisted in this service by Mr. Thomas J. Walker, who will accompany you.

I remain, very truly yours,

J. E. JOHNSTON, Commissioner.

The report goes on:

At a meeting held on the following day the executive committee of the board of directors appointed a subcommittee to aid Mr. Reddington in the investigations referred to. Every facility was afforded him. The examination was finished on the 26th of January, and Mr. Reddington left the office of the company professing himself much gratified at the way he had been received, and entirely satisfied with the results of his visit. He further announced that as soon as he reached Washington, which would be in the course of a few days, orders would be received from the Interior Department forbidding any further payments on the part of the Union Pacific Railway Company to the Pacific Mail Steamship Company under existing contracts. Mr. Reddington also confidently predicted a rapid fall in the market value of the stock of the Pacific Mail Steamship Company.

Now what I wish to state is, that everything that has been done in relation to the obstruction of the consideration of the extension bill has been done through and inspired by this man. It has been a stock-jobbing operation from the beginning to the end. He examined the accounts of the Union Pacific Railroad. When he went there, he said he did not believe they had the securities which they said they had. He went to Boston, and stated there that he never had any idea he should see the bonds and stocks of this company. But, as he called them off from the return as made by the railroad company, they were produced, and he examined them, and every item was correct. This is a partial reply to something which has been said this morning in relation to an amendment which has been introduced here.

Now, on the 8th of March—

[Here the hammer fell.]

The SPEAKER. The gentleman's time has expired.

Mr. RICHARDSON. I now demand the previous question.

Mr. LONG. O, no; let my colleague go on.

Mr. HAYDEN. Only two minutes longer.

Mr. RICHARDSON. I have but a few minutes left.

Mr. HAYDEN. I beg the gentleman not to forget he told me he would give me ten minutes.

Mr. RICHARDSON. How much more time does the gentleman desire?

Mr. HAYDEN. You promised me an additional five minutes.

Mr. OUTHWAITE. I move that the gentleman from Massachusetts be granted an additional three minutes.

Mr. RICHARDSON. How much time have I left?

The SPEAKER. The gentleman has six minutes.

Mr. HENLEY. If the gentleman from Massachusetts is allowed to proceed for five minutes longer, and I am allowed five minutes in which to reply, I shall have no objection. The gentleman from Massachusetts has stated in plain words members of the House on the Pacific

Railroad extension bill are inspired on this floor by some lobbyist. He saw fit to arraign myself.

Mr. STEELE. I object.

The SPEAKER. Does the gentleman from California object?

Mr. HENLEY. I object unless I have three minutes to reply.

Mr. HAYDEN. We will give you five minutes?

Mr. HENLEY. That is satisfactory.

Mr. HAYDEN. I am very sorry I can not go into this matter in detail. But let me go on.

The SPEAKER. Gentlemen object. [Cries of "Oh, no!"] The Chair so understood.

Mr. RICHARDSON. I am willing to yield for two minutes longer to the gentleman from Massachusetts.

The SPEAKER. The gentleman from Massachusetts will proceed.

Mr. HAYDEN. I pass from this Readington episode and come to the present time. When it appeared that this extension bill was likely to be considered by this Congress there appeared in the public prints, and have appeared in the public prints since last April, charges against the gentleman from Georgia and other members of the committee. At one time the gentleman from Georgia [Mr. CRISP], who has been active in this committee, has been charged in the public prints of New York with being Mr. Huntington's man. Every man on this committee has been charged with doing what is wicked and corrupt. Now, then, we ask, in consideration of the charges, that this extension bill and the amendment of the gentleman from Illinois [Mr. SPRINGER] as presented shall be considered by the House, and that we shall not be branded as having been corrupt in the Pacific Railroad Committee.

[Here the hammer fell.]

Mr. RICHARDSON. I hope the questions involved in the extension will not be brought up on this matter. I demand the previous question. We have but little time left, and I hope we will vote as rapidly as we can on the amendments as they come up.

Mr. HENLEY. I ask, by unanimous consent, for two minutes.

Mr. ANDERSON, of Kansas. Take it after we pass the bill.

The SPEAKER. The gentleman from California asks to speak for two minutes.

Mr. SPRINGER. I hope, by unanimous consent, the time will be allowed to the gentleman, not to be taken out of this hour.

Mr. HENLEY. I think I am entitled to be heard after what has been said on this floor this morning.

The SPEAKER. The gentleman asks for two minutes. Is there objection?

Mr. SPRINGER. Not to be taken out of the hour.

Mr. ANDERSON, of Kansas. That is only fair.

There was no objection.

Mr. HENLEY. Mr. Speaker, the gentleman from Massachusetts [Mr. HAYDEN] has made an allegation here that I think, on cooler reflection, he will not be disposed to stand to, and that is that every person on this floor, including the distinguished gentleman from Indiana [Mr. HOLMAN] and the gentleman from Illinois [Mr. SPRINGER] and all others who, in the discharge of their duty, see fit to antagonize this Pacific extension bill, were inspired to do so—that was the language of the gentleman from Massachusetts—by stock jobbers.

Mr. HAYDEN. And I stick to it.

Mr. HENLEY. He says he sticks to it. The man who says, so far as I am concerned, I was inspired by any stock jobbers, I can not reply to on this floor, because if I did my words would have to be taken down, and I prefer to keep myself within the limits of parliamentary decorum. I might make retort on the gentleman from Massachusetts, who seems, in the estimation of some of the newspapers, to have signalized himself on this floor as a defender and upholder of the outrages and wrongs charged against the Union Pacific Railroad management.

I do not make that charge myself; but I do say that it has been alleged in the newspapers of the country.

So far, Mr. Speaker, as the gentleman seeks to introduce charges or allegations, culled from newspapers, against the gentleman from Georgia, I wish to say that I have never seen anything of that sort myself, and it would not have given me any concern if I had. I say further, that by every means on the face of the earth, honorable and parliamentary, we upon the other side intend to defeat, if we can, this Pacific extension funding bill, to whose interest the gentleman seems so much devoted.

[Here the hammer fell.]

Mr. HANBACK. I desire to ask the gentleman a question.

The SPEAKER. The time of the gentleman from California has expired.

Mr. HANBACK. I merely wish to ask, in the line of the gentleman's remarks, how he expects to secure the indebtedness of these roads to the Government?

Mr. HENLEY. Not by giving them additional millions and millions of dollars, as I think that bill does.

Mr. SPRINGER. We want the railroads to pay their debts, not the Government. The extension bill appears to me to permit the roads to get rid of their debts without paying them.

Mr. HENLEY. That is it.

Mr. HAYDEN. Mr. Speaker, I stated a few minutes ago, and stick to it, that the inspiration of this resolution came from people who were interested in stock-jobbing. If the gentleman who has just spoken is innocent in taking it up and carrying it on I have no charge against him. I gave the sources of my information; but when the gentleman says that I accuse the honorable gentleman from Indiana with being engaged in stock-jobbing, I can only reply that the gentleman from California knows better than to attribute such a thing to me.

Mr. HENLEY. Your explanation puts a very different face upon it now.

Mr. HAYDEN. I decline to be interrupted. I wish to say to the gentleman from California that the sole object of the opposition is for the purpose of defeating the consideration of a bill which will put money into the Treasury of the United States. I do not know what grievances he has. I know nothing of the matter in that light; but I do know that it has been a constant thing for him, in season and out of season, to make charges against Mr. Charles Francis Adams, which, I say without hesitation, are entirely without foundation; and that is the position I take here now; for I am glad, Mr. Speaker, to be able to stand up on this floor in defense of an honorable gentleman who is not able to defend himself from such charges.

I am in favor of an extension bill such as that proposed because I believe it is good business judgment to do so. Some sort of settlement should be made with these companies, and I am glad to stand here to protect the interests of the United States against these stock-jobbers in railroad corporations. That is my position.

[Here the hammer fell.]

The SPEAKER. The question is upon the demand of the gentleman from Tennessee for the previous question.

The House divided, and there were—ayes 95, noes, 10.

So the previous question was ordered.

The SPEAKER. The first question is on agreeing to the amendment proposed by the gentleman from Kansas [Mr. ANDERSON] to the amendment of the gentleman from Georgia [Mr. CRISP.]

Mr. SPRINGER. I believe there is no opposition to any of these amendments?

Mr. RICHARDSON. No, sir.

The SPEAKER. Is a separate vote demanded upon any of the amendments?

Mr. RICHARDSON. I hope the vote will be taken upon all of them together.

Mr. PETTIBONE. I demand a separate vote upon each amendment.

Mr. LONG. Can we not have the first amendment read on which a vote is to be taken?

The SPEAKER. The first amendment is the amendment proposed by the gentleman from Kansas to the amendment of the gentleman from Georgia.

Mr. GROSVENOR. I do not think the question is clearly understood, and ask that the amendment be again reported.

The amendment proposed by Mr. ANDERSON, of Kansas, was again read.

The amendment was agreed to.

The amendment of Mr. CRISP as amended was read and agreed to.

Mr. RICHARDSON. I believe objection is withdrawn to taking a vote on the remaining amendments.

Mr. LONG. I ask for the reading of the amendments.

The SPEAKER. The amendments will be read.

The amendment proposed by Mr. HENLEY was again read, and agreed to.

The amendment proposed by Mr. WEAVER, of Iowa, was again read, and agreed to.

The amendment proposed by Mr. HOLMAN was again read, and agreed to.

The joint resolution, as amended, was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. RICHARDSON moved to reconsider the vote by which the joint resolution was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

ORDER OF BUSINESS.

The Committee on Levees and Improvements of the Mississippi River and the Committee on Education were called.

The Committee on Labor was called.

CONSIDERATION OF THE EDUCATION BILL.

Mr. DANIEL. I am authorized and instructed by the Committee on Labor to call up the House resolution fixing the 19th of January for the consideration of the education bill.

The Clerk read the original resolution, as follows:

Resolved, That Thursday, the 10th day of June, 1886, be set apart for the consideration of House bill 7266, entitled "A bill to aid in the establishment and temporary support of common schools," which was referred to the Committee on Labor and reported with amendments; and that its consideration be continued from day to day until finally disposed of; and that said bill be considered in the House as in the Committee of the Whole.

If the consideration of said bill be displaced, then the next day not previously

set apart shall be devoted to its consideration, and so on, until the same shall be disposed of.

The Clerk read the substitute proposed by the Committee on Labor, as follows:

Resolved, That Wednesday, January 19, 1887, be set apart for the consideration of House bill 7266, entitled "A bill to aid in the establishment and temporary support of common schools," which was referred to the Committee on Labor and reported with amendments; and that its consideration be continued from day to day until finally disposed of; and that said bill be considered in the House as in the Committee of the Whole.

If the consideration of said bill be displaced, then the next day not previously set apart shall be devoted to its consideration, and so on, until the same shall be disposed of.

Mr. HOLMAN. I make the point of order that as this resolution involves a change of rules it must lie over for one day.

The SPEAKER. The resolution was reported from the committee some time ago.

Mr. HOLMAN. Has that ever been held to be notice under the rule?

The SPEAKER. The Chair does not recollect where notice has been given otherwise than by the introduction and reference of a resolution.

Mr. SPRINGER. I desire to make this point of order: This bill must have its first consideration in the Committee of the Whole House on the state of the Union, and that requirement can not be changed except in the ordinary mode of changing the rules.

This is not a proposition to postpone the consideration of a bill to a day certain, but it is a proposition to take it out of the Committee of the Whole House on the state of the Union, where it goes under the rules and can be considered under the rules, and to bring it to the House for consideration there, to the exclusion of all other business.

I have never known a special order coming from a committee which proposed to change the rules so as to permit the consideration in the House of a measure of this importance. This is a departure from all the precedents, and as the resolution involves a change of the rules it should go first to the Committee on Rules, and be there considered and reported. The time to report it is in the morning hour of Monday, when amendments to the rules are in order for reference to the Committee on Rules.

Under the rules this bill can be called up for consideration at this time; and then the gentleman who represents the committee can move to postpone it to a day certain when it would have the same status as it has now. At present we are under the operation of an order which allows one hour for the consideration of bills reported from a committee; but this resolution gives it not only the hour, but gives all the rest of the session to complete this bill, not in Committee of the Whole House on the state of the Union, but in the House, where the previous question can be ordered, and all debate and amendments cut off.

Mr. DANIEL. I move to amend the resolution—

The SPEAKER. But the gentleman from Illinois makes the point of order, and that must first be decided. It is a very common practice in the House to set apart a day for the consideration of a particular bill; and even if the resolution for that purpose did not by its terms take the bill out of the Committee of the Whole House on the state of the Union and bring it into the House, it has always been decided that the effect of making a bill a special order was to take it out of the Committee of the Whole and bring it into the House for consideration under the rules of the House. This resolution, however, modifies that and provides the bill shall be considered in the House as in Committee of the Whole, which enlarges the liberty of debate and amendment. The Chair thinks the gentleman from Virginia is in order in calling up the resolution in this hour.

Mr. DANIEL. I move to amend by striking out "Wednesday, January 19," and inserting "Saturday, January 29;" and upon the resolution and amendment I demand the previous question.

Mr. DINGLEY. Will the gentleman permit me to ask him to modify the resolution so as to make the assignment after the hour for the consideration of bills? Many members would vote for the resolution who can not vote for it unless the morning hour is given to the consideration of bills.

Mr. PETTIBONE. That is right.

Mr. DANIEL. I am willing to accept that suggestion, and to make the resolution read "after the morning hour."

Mr. WEAVER, of Iowa. Does that require unanimous consent, the previous question having been demanded?

The SPEAKER. The previous question has not been ordered, and no action has been taken by the House upon the resolution.

Mr. DANIEL. I now ask the previous question.

Mr. McMILLIN. We have a right to know what the amendment is. It has not yet been reported from the Clerk's desk.

The Clerk read as follows:

Strike out "Wednesday, January 19," and insert "Saturday, January 29;" and after "1887" insert the words "after the morning hour for the consideration of bills."

The SPEAKER. The gentleman from Virginia demands the previous question.

Mr. SPRINGER. Pending that, I move to lay the resolution on the table; and upon that motion I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 76, nays 166, not voting 76; as follows:

YEAS—76.			
Adams, J. J.	Geddes,	Matson,	Stewart, Charles
Anderson, C. M.	Gibson, C. H.	McAdoo,	Stone, W. J., Ky.
Belmont,	Hale,	McMillan,	Stone, W. J., Mo.
Bland,	Hall,	Merriman,	Storm,
Blount,	Halseell,	Miller,	Swope,
Bragg,	Hatch,	Mills,	Tilman,
Brynum,	Heard,	Murphy,	Townshend,
Campbell, T. J.	Hiestand,	Oates,	Turner,
Carleton,	Hill,	Outhwaite,	Van Eaton,
Clardy,	Howard,	Randall,	Viele,
Crain,	Hudd,	Richardson,	Ward, J. H.
Dargan,	Hutton,	Riggs,	Ward, T. B.
Dawson,	Jones, J. H.	Robertson,	Warner, A. J.
Dockery,	Kleiner,	Sayres,	Weaver, J. B.
Eden,	Laffoon,	Scott,	Wellborn,
Eldredge,	Landes,	Seney,	White, Milo
Ellsberry,	Lanham,	Seymour,	Wilkins,
Ford,	Le Fevre,	Sowden,	Winans,
Frederick,	Lowry,	Springer,	Worthington.

NAYS—166.			
Adams, G. E.	Davenport,	Jones, J. T.	Reed,
Allen, C. H.	Davidson, R. H. M.	Ketcham,	Rockwell,
Allen, J. M.	Davis,	La Follette,	Rogers,
Anderson, J. A.	Dibble,	Lawler,	Romeis,
Atkinson,	Dingley,	Lehibach,	Rowell,
Baker,	Dorsey,	Libbey,	Rusk,
Ballentine,	Dougherty,	Lindsley,	Ryan,
Barbour,	Dunham,	Little,	Sadler,
Barksdale,	Dunn,	Long,	Sawyer,
Barnes,	Ely,	Loutitt,	Scranton,
Bayne,	Evans,	Lovering,	Sessions,
Bennett,	Everhart,	Lyman,	Shaw,
Blanchard,	Farquhar,	Markham,	Singleton,
Bond,	Findlay,	Martin,	Skinner,
Boutelle,	Fleeger,	McCreary,	Spooner,
Breckinridge, C. R.	Fuller,	McKenna,	Steele,
Breckinridge, W. C. P.	Funston,	McKinley,	Stone, E. F.
Brown, C. E.	Gallinger,	McRae,	Struble,
Brown, W. W.	Gay,	Millard,	Tarsney,
Brumma,	Glass,	Milliken,	Taulbee,
Buck,	Goff,	Moffat,	Taylor, E. B.
Bunnell,	Green,	Morrill,	Taylor, I. H.
Burnes,	Grosvonor,	Morrison,	Taylor, J. M.
Burrows,	Groat,	Morrow,	Taylor, Zach.
Butterworth,	Guenther,	Muller,	Thomas, J. R.
Cabell,	Hammond,	Neal,	Thomas, O. B.
Caldwell,	Harris,	Negley,	Thompson,
Campbell, J. E.	Hayden,	Nelson,	Van Shaick,
Campbell, J. M.	Haynes,	Norwood,	Wade,
Cannon,	Hemphill,	O'Donnell,	Wait,
Caswell,	Henderson, D. B.	O'Ferrall,	Wakefield,
Catchings,	Henderson, J. S.	O'Neil, Charles	Wallace,
Clements,	Henley,	O'Neil, J. J.	Warner, William
Conger,	Hepburn,	Osborne,	Weber,
Cooper,	Herbert,	Parker,	Wheeler,
Cowles,	Hermann,	Peel,	White, A. C.
Cox, W. R.	Holmes,	Perkins,	Willis,
Crisp,	Hopkins,	Perry,	Wise,
Croxton,	Iron,	Peters,	Wolford,
Culberson,	Johnson, F. A.	Pettibone,	Woodburn.
Cutcheon,	Johnston, J. T.	Pirce,	
Daniel,	Johnston, T. D.	Plumb,	

NOT VOTING—76.			
Aiken,	Ermentrout,	King,	Rice,
Bacon,	Felton,	Laird,	Smalls,
Barry,	Fisher,	Lore,	Snyder,
Bingham,	Foran,	Mahoney,	Spriggs,
Bliss,	Forney,	Maybury,	Stahlnecker,
Boyle,	Gibson, Eustace	McComas,	Stephenson,
Brady,	Gillilan,	Mitchell,	Stewart, J. W.
Browne, T. M.	Glover,	Morgan,	St. Martin,
Buchanan,	Hauback,	Neece,	Strait,
Burleigh,	Harmer,	O'Hara,	Swinburne,
Campbell, Felix	Henderson, T. J.	Owens,	Symes,
Candler,	Hires,	Payne,	Throckmorton,
Cobb,	Hiscock,	Payson,	Trigg,
Collins,	Hitt,	Phelps,	Tucker,
Compton,	Holman,	Pidcock,	Wadsworth,
Comstock,	Houk,	Pindar,	Weaver, A. J.
Cox, S. S.	Jackson,	Ranney,	West,
Curtin,	James,	Reagan,	Whiting,
Davidson, A. C.	Kelley,	Reese,	Wilson.

So the motion to lay on the table was not agreed to.

Mr. HATCH (at 1.45 p. m.). Mr. Speaker, I raise the point of order that the hour has expired.

The SPEAKER. The hour has not expired, but even if it had, the universal practice has been to complete a roll-call which is in progress. Under the rules, the hour will expire at the end of this roll-call.

The following-named members were announced as paired until further notice:

Mr. GIBSON, of West Virginia, with Mr. BURLEIGH.
 Mr. DAVIDSON, of Alabama, with Mr. SWINBURNE.
 Mr. FORNEY with Mr. PAYNE.
 Mr. SPRIGGS with Mr. HOUK.
 Mr. CANDLER with Mr. WEST.
 Mr. COX, of New York, with Mr. PAYSON.
 Mr. REESE with Mr. WEAVER, of Nebraska.
 Mr. MITCHELL with Mr. WHITING.
 Mr. MORGAN with Mr. ZACH. TAYLOR.
 Mr. KING with Mr. BROWNE, of Indiana.
 Mr. PIDCOCK with Mr. GILFILLAN.

Mr. REAGAN with Mr. HISCOCK.
 Mr. SNYDER with Mr. BUCHANAN.

The following-named members were announced as paired for this day:

Mr. COLLINS with Mr. LAIRD.
 Mr. FELIX CAMPBELL with Mr. HANBACK.
 Mr. NEECE with Mr. HARMER.
 Mr. ERMENROUT with Mr. MCCOMAS.
 Mr. BARBY with Mr. JACKSON.
 Mr. BOYLE with Mr. BRADY.
 Mr. STAHLNECKER and Mr. BINGHAM were announced as paired on this vote.

Mr. HOLMAN. Mr. Speaker, I wish to state that I was not on the floor of the House when my name was called, but was in the room of the Committee on Appropriations. If I had been present I would have voted "yea."

Mr. TUCKER. I wish to make a similar announcement, Mr. Speaker. I was necessarily absent from the floor of the House, but if I had been present I should have voted "yea."

Mr. RANNEY. Mr. Speaker, I happened to be absent at the moment my name was called. Had I been present I should have voted "yea."

The result of the vote was then announced as above recorded.

Mr. SPRINGER. Has the morning hour expired?

The SPEAKER. The morning hour has expired.

INTERSTATE-COMMERCE BILL.

Mr. CRISP. Mr. Speaker, I rise to a privileged motion.

Mr. MORRISON. Mr. Speaker, I desire to enter a motion to reconsider.

The SPEAKER. That will be in order to-morrow. The subject is not now before the House. The gentleman from Georgia [Mr. CRISP] will state his motion.

Mr. CRISP. I call up for present consideration the conference report on the bill commonly known as the interstate-commerce bill.

Mr. HATCH. Upon that I raise the question of consideration. I desire to move that the House go into Committee of the Whole for the further consideration of the bill known as the pleuro-pneumonia bill.

The SPEAKER. The gentleman from Missouri [Mr. HATCH] raises the question of consideration against the conference report on the interstate-commerce bill.

The question is, will the House now proceed to consider the report of the committee of conference?

The question was taken; and there were—ayes 109, noes 45.

Mr. LA FOLLETTE. I call for the yeas and nays.

Mr. HATCH. I hope the gentleman from Wisconsin will not press his demand. It is evident that the disposition of the House is to proceed now to the consideration of this conference report, and the demand for the yeas and nays would simply consume time, and postpone still longer the consideration of the pleuro-pneumonia bill. I desire to reach the consideration of that bill at the earliest possible moment, but I do not wish to take up unnecessarily the time of the House.

Mr. LA FOLLETTE. I do not press the demand.

PAGE VERSUS PIRCE.

Mr. ROWELL, by unanimous consent, presented the views of the minority in the contested-election case of Page vs. Pirce, which were ordered to be printed.

MESSAGE FROM THE PRESIDENT.

A message, in writing, from the President of the United States was communicated to the House by Mr. PRUDEN, one of his secretaries, who also announced that the President had approved and signed bills of the following titles:

An act (H. R. 1034) for the relief of Bangs, Brownell & Co.;
 An act (H. R. 1877) for the relief of John McNaughton;
 An act (H. R. 1085) for the relief of Albion S. Keith;
 An act (H. R. 7879) to amend the law relating to the bonds of executors in the District of Columbia; and
 An act (H. R. 9736) to grant the Maricopa and Phoenix Railway Company of Arizona the right of way through the Gila River Indian reservation.

INTERSTATE COMMERCE.

Mr. CRISP. I ask unanimous consent that the reading of the report of the conference committee be dispensed with. It has been printed in the RECORD by order of the Senate, and again printed in the RECORD by order of the House. I have no doubt it is familiar to members; and any gentleman desiring to do so can send for a copy in document form, and have it before him as we go on with the consideration of the bill. In the interest merely of economy of time I ask unanimous consent to dispense with the reading of that report.

Mr. O'NEILL, of Pennsylvania. The gentleman from Georgia will permit me to say I do not desire to have any time consumed simply for the purpose of consuming time, but I think it best that this report should be read. It will not take more than fifteen minutes to read it.

The SPEAKER. The gentleman from Georgia asks unanimous consent to dispense with the reading of the report of the conference com-

mittee, it having already been printed in the RECORD. Is there objection?

Mr. DUNHAM. I do not care to have the bill read, but I think the report ought to be read. The report of the conferees is all that I desire to have read.

Mr. CRISP. I do not ask to dispense with reading the explanatory statement of the conferees, but only the formal report of the committee.

Mr. DUNHAM. It is the detailed statement of the conferees that I desire to have read.

Mr. CRISP. I have not asked to dispense with the reading of that.

The SPEAKER. In the absence of objection, the reading of the conference report will be dispensed with, and the explanatory statement of the conferees will be read.

The Clerk read as follows:

STATEMENT OF CONFEREES ON THE PART OF THE HOUSE.

[Required by Rule XXIX.]

The House conferees on the disagreeing votes between the two Houses on the bill of the Senate "to regulate commerce," and the bill of the House "to regulate commerce among the States, and prevent unjust discrimination by common carriers," make the following detailed statement of the changes between the House bill and the substitute herewith appended:

The action of the House being to adopt a single amendment, your committee, without attempting to call attention to the precise changes made in each section of the bill, report to the House the substance and effect of the changes made, as follows:

The bill of the House applied only to the transportation of freight, and the bill as adopted embraces the transportation of passengers as well as freight.

The bill of the House was limited to the regulation of such transportation on railroads. The bill as reported provides for the regulation of the transportation of property partly by railroad and partly by water, when both are used under a common control, management, or arrangement, for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia.

The bill which we report defines the term "railroad" as used in it, to include all bridges, ferries used or operated with any railroad, which is in addition to the provisions of the House bill.

The second section of the substitute bill adopts substantially the provisions of the House bill against discrimination by special rates, rebates, drawbacks, and other devices, and declares that any one making such discrimination shall be guilty of unjust discrimination, which is hereby prohibited and declared unlawful.

The third section of the substitute embraces substantially the provisions of the bill of the House, in requiring equal facilities and advantages for all shippers, without exception, and has a provision requiring equal facilities for the interchange of traffic with all other railroads for the carriage of property and passengers, and forbids any discrimination by one railroad in the facilities furnished against any other railroad. It contains a clause declaring that this act shall not be construed as requiring such common carrier to give the use of its tracks or terminal facilities to any common carrier engaged in like business.

The fourth section adopts substantially the provisions of the House bill on the long and short haul, with the following proviso: That upon application to the commission appointed under the provisions of this act such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for a longer than for a shorter distance for the transportation of passengers and property, and that the commission may, from time to time, prescribe the extent to which such common carrier may be relieved from the operation of this section.

The fifth section of the substitute bill is a copy of the clause in the House bill prohibiting pooling, with an amendment striking out the words of the House bill "by dividing," and inserting in lieu thereof the words "or to divide," and with the addition of the words in line 3, after the word "combination," "with any other common carrier or carriers."

The sixth section is a substitute for the provisions of the House and Senate bills in relation to the publication of schedules showing the rates, fares, and charges for the transportation of passengers and property. Instead of requiring the rates to be posted up, as was provided in the House bill, it requires that, after ninety days from the passage of the act, every common carrier subject to its provision shall have printed and keep for public inspection schedules showing such rates, fares, and charges, and, in addition to requiring the railroads to give publicity at all of the depots on their several lines, it gives authority to the commission, where it is proper and necessary to require them to give publicity to their rates to other places beyond the lines of their several railroads.

It also provides that the rates, fares, and charges shall not be raised except after ten days of public notice, but that they may be reduced without previous public notice; the notice, however, shall be simultaneous with the reduction itself, and it requires that all common carriers subject to the provisions of this act shall file with the commission provided for in the bill copies of the schedules which have been established, and shall promptly notify said commission of all changes made in the same; and that they shall file with the commission copies of all contracts, arrangements, or agreements with other common carriers in relation to traffic affected by the provisions of this bill; and in cases where passengers and freights pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges of such continuous lines or routes, copies of such joint tariffs shall also be filed with the commission, and made public, if so directed by the commission.

The section also provides that where a common carrier subject to its provisions shall neglect or refuse to file or publish its schedules of tariff or rates and fares, or any part of the same, such common carrier shall, in addition to the penalties herein prescribed, be subject to a writ of mandamus, to be issued by any circuit court of the United States, in any judicial district wherein the principal office of the common carrier is situated, or wherein such offense may be committed, requiring a compliance with the provisions of the act.

The seventh section of the substitute bill contains substantially the provisions of the first part of the second section of the House bill, in relation to the continuous carriage of property and persons from the place of shipment to the place of destination.

The eighth section of the substitute bill contains the substance of the seventh section of the House bill, in regard to damages and counsel fees, but expressed in somewhat different language.

The ninth section of the substitute bill is a new section, which provides that persons claiming to have been damaged by the action of common carriers may proceed for recovery of their damages either in the courts of the United States or before the commission herein provided for, as they may elect, but not before both tribunals. This section, which gives jurisdiction to courts of the United States, does not give jurisdiction in civil suits to the State courts, as was provided for in the House bill.

This section of the substitute bill also provides that the courts shall have power to compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit, to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; and it provides further that the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but that such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The tenth section of the substitute bill makes it a penal offense to violate any of the provisions of this act, and is substantially the eighth section of the House bill, except that it puts the maximum of the fine which may be imposed at the sum of \$5,000 instead of \$2,000, as was provided for by the House bill.

The eleventh and subsequent sections to the twenty-first, inclusive of the substitute bill, contain the substance of the Senate's bill providing for a commission, except as modified by the provisions of the substitute bill herein recited.

It provides for a commission to consist of five persons whose term of office shall be for six years, except for the first appointments, which are to be for two, three, four, five, and six years. The members of this commission are to be appointed by the President by and with the advice of the Senate. Their principal office shall be in Washington, but they may hold sessions at other places than Washington, and a single member of the commission may take testimony anywhere, as may be directed by the commission.

These commissioners have salaries of \$7,500 each. The commission has the power to appoint a secretary, with an annual salary of \$3,500, and has authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The nineteenth section of the Senate's bill, providing for a reference of the question of pooling to the commission, is not embraced in this substitute.

Section 22 of the substitute bill, among other things, provides that nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but that the provisions of this act are in addition to such remedies, with a proviso that no pending litigation shall in any way be affected by this act.

Section 24 of the substitute bill provides that the act shall go into effect sixty days after its passage, as in the opinion of your committee it was deemed best to give the railroads sufficient time to prepare their schedules and to modify their management in accordance with the provisions of this bill. The appointment of the commission, however, is to be made at once, as it has to be organized, and as said schedules of rates and charges have to be filed with said commission.

J. H. REAGAN,
CHARLES F. CRISP,
A. J. WEAVER,

Managers on the part of the House.

Mr. CRISP. Mr. Speaker, I propose now to explain, somewhat, the provisions of this bill, and the action of the managers who represented the House in the conference. I am not informed as to the disposition of the House with regard to debating this report. If it were possible to have now any understanding looking to the fixing of such early time for a vote on this question as may be consistent with a proper discussion of so important a measure, I should be very glad indeed.

Mr. WEAVER, of Iowa. I think it best the debate should be permitted to run on a while, before attempting at all to limit it.

Mr. DUNHAM. After the debate has proceeded for a time, we can then better see what limit should be fixed. Two hours hence we can tell better than we can now when we desire the debate to stop.

Mr. O'NEILL, of Pennsylvania. The Senate occupied nearly two weeks in the discussion of this report.

Mr. CRISP. Mr. Speaker, in view of the suggestions of gentlemen, I shall not at this time undertake to secure any limitation of the debate on this question.

For many years attention has been directed to the practices of common carriers, transporters of commerce from State to State—practices which have been generally understood and believed to be unjust to the public. Year after year the agitation of the question of regulating such commerce has been brought to the attention of the Representatives of the people. At the last session of Congress, this House, by a very large majority, passed a bill known as "the Reagan bill," the purpose and intent of which was to protect the people from unjust charges by common carriers engaged in interstate commerce.

At the last session, also, the Senate of the United States passed a bill known as "the Cullom bill," having for its object the regulation of the carriage of commerce between the States. These bills were dissimilar; they brought about a disagreement between the two Houses upon a question which, as the votes of the two Houses clearly indicated, each House was anxious to adjust satisfactorily. In that state of the case a conference committee, consisting of three members of each House, was appointed; and those conferees, before the assembling of Congress, met in the Capitol and made an earnest effort to agree upon a plan which would afford some relief to the people of the United States. I need not say that, representing views so different as those which had been expressed by the two Houses, the conferees on the one part and on the other had to yield something of their convictions as to what ought to be done. The result of those labors is presented in the pending report.

I feel, as one of the conferees on the part of the House, the only one of them now present, that an explanation should be made of this bill. I feel you ought to be told what we understand to be the meaning of any part of this bill any gentleman wants to inquire about, and I feel you ought to be informed that the bill as presented is the result of a compromise made between Representatives who earnestly desire to afford some relief to the people of the United States.

I shall not, Mr. Speaker, at this late day, in the discussion of this great question, undertake to present to this House all the reasons that exist why legislation should be had on this subject. I take it for granted

that every man in the House who regards railroading as a business in which the public has an interest understands and concedes that some regulation, some provision, some law is necessary to protect the people against the practices on the part of railroads, which have so unjustly burdened the great body of shippers, and occasioned a demand for legislation from every State in the Union.

In the arguments made by the representatives of these corporations as a reason why legislation should not be had, in my judgment, Mr. Speaker, the error lies in the fact that they fail to recognize the character of the corporation which they represent. They come before the committees of the House, they go before the country making an argument in vindication of their practices, which might be, in many cases, forcible if they were talking about a private business, if they were talking about a business in which the public had not an interest, if they were talking about a business which could exist without the consent of the Government. If we will bring our minds to a recognition of the fact—because there we must at last come—that a railroad company is a corporation created by the public, for the benefit of the public, that while the corporators and owners of the franchise have a right to charge reasonable tolls, they take that right burdened with obligations to the public which are of paramount importance and which can not be disregarded, we can, without difficulty, arrive at just conclusions.

A railroad can not be built in any State of this Union except by the exercise, on the part of such State, of the right of eminent domain. The State can exercise that right in no case except for the public good—for the public use. No State and no power can take from an individual property which he owns and give it to another. It can be taken by the State for only one purpose—for public use—and then only on just compensation.

Railroad companies are chartered by the States, or by the United States. The power that grants a charter grants it, although it may not be so nominated in the charter, for the public good.

Therefore it is, Mr. Speaker, the people have rights in regard to these corporations and great transportation agencies which they would not have if it were a business conducted by private individuals.

The error, therefore, I say, in the arguments presented to sustain the present practices arises from a misconception of the character of these corporations. And I mention that now so the House and each member may bear in mind in what we propose to do we are dealing with a corporation or corporations in which the public interest is paramount. And while we do not seek, and should not seek, to deprive investors of reasonable returns for their investments, if the public interest demands it private interest must give way.

Now, Mr. Speaker, having called the attention of the House to that fundamental principle, which I believe is not now disputed, I propose to invite attention to the provisions of the bill, or some of them, which we suggest for consideration. In many of the provisions of this bill, I understand, we all agree. Those provisions which seek to enforce equality between the shippers, I understand nobody objects to. The bill provides that no preference shall be given to one shipper over another, that no drawback, or rebate, or device shall be authorized or permitted which allows discrimination in favor of one shipper against another; that no practice shall be tolerated which permits discrimination for or against a particular locality, that no practice shall be allowed which permits a railroad company to discriminate for or against a connecting railroad or other railroad company which may receive or want to receive freight from the railroad company so carrying. The act also provides that all rates charged by a common carrier engaged in interstate commerce shall be reasonable and just.

Those provisions, Mr. Speaker, I understand meet the approbation of all. Those, like some other provisions in this bill, to which I shall refer, are the provisions, as I understand it, of the common law of the land where we live. I understand that each one of these provisions is maintained by the common law; and therefore there should be and can be no reason, I submit, why any member should object to this portion of the bill.

The next point to which I shall refer, and which has excited some controversy, one perhaps that has received more attention in the public discussions and in the public press than any other section, is the fourth, that referring to what is commonly called the long and short haul. I will ask the Clerk to read the fourth section of the bill, as amended.

The Clerk read as follows:

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

Mr. CRISP. That section, Mr. Speaker, as I have said, has given rise to a great deal of controversy, and I feel it incumbent upon me to

present to the House in the utmost candor my view of its meaning. Of course, I do not presume to say that my view of it is the absolutely correct one, but I can state what I believe it to mean. I can state what I intended it to mean when I gave my assent to the placing of it in this bill.

The great object the committee had in view was to say that a transportation company should not charge unreasonable rates, and should not discriminate against individuals or places. We believe, or I believe, that the principle upon which the rates should be fixed in the transportation business is the cost to the company of transporting the goods, the cost of their plant, the value of their line, the cost or terminal facilities, &c., with allowance for a reasonable profit on the investment.

I do not believe, sir, that extraneous circumstances ought to affect the question of charges. I do not believe, Mr. Speaker, that it is any business of the transportation company where goods come from that are to be shipped over their line, any more than I believe it is their business to know where the goods go after passing from their line. I believe that their legitimate business is the transportation, for reasonable rates, of such freights as may be given to them by any individual or by other corporations for transportation.

Believing such to be the case, my understanding of this section is that the purpose is to bring about reasonable rates without discrimination; and under this section the amount charged by a railroad engaged in interstate commerce for transporting freight over its entire line is the maximum rate that may be charged for transporting freight over a part of it only, the freight and the circumstances being substantially similar. I do not mean to say, nor does the bill say that it would be reasonable and just to charge as much for the short as for the long haul, but it does say that more shall not be charged. I do not understand that the word "line" as used in that section means anything different from road as defined in the bill:

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease.

Mr. BUTTERWORTH. I do not want to anticipate the argument of my friend, but I trust that he will at this point explain what is meant by the words "substantially similar circumstances and conditions," and give an illustration of what he understands by similar conditions and circumstances and those which are dissimilar, and which will authorize a change in rates. Of course he knows that we can learn more readily by illustration than by precept.

Mr. CRISP. The gentleman has not given me a very easy task. The provision we make is that where the circumstances are substantially similar the shorter haul shall not be charged more than the greater. I can not undertake in a debate like this to determine for the gentleman exactly what would constitute "substantially similar circumstances." That would be a matter into which I could not now enter; and I submit it is hardly fair to ask me to define "substantially similar circumstances" as used in the bill.

Mr. LONG. But is it not necessarily what a judge would have to do in instructing a jury?

Mr. BUTTERWORTH. That is the point; for if my friend were a commissioner he would have to define it.

Mr. CRISP. If complaint is made to the commission of the violation of the rule prescribed in the fourth section of this bill, the commission, after hearing both sides, would determine in the particular case made whether or not the complaint was well founded. Necessarily in deciding that question they would determine whether or not the circumstances were substantially similar in the case of the long haul and in the case of the short haul presented in the complaint. That is the object and purpose of the commission in that regard. If the individual did not go to the commission, but went to the courts, then, Mr. Speaker, the courts, the judge, and the jury would determine that question. I am not prepared, sir, to say, in answer to the suggestion of my friend from Massachusetts, Governor LONG, that the court would tell the jury what "substantially similar circumstances" meant.

Mr. LONG. No; but the judge would have to tell the jury what the legal effect of the words is.

Mr. CRISP. I think the judge would say to the jury, after hearing all the evidence, that if they believed more had been charged for the short than for the long haul of like kind of property under substantially similar circumstances and conditions, then they should find for the complainants, leaving the jury to determine in each case whether the property was of like kind and whether the circumstances and conditions were substantially similar.

Mr. SCOTT. Will my friend from Georgia permit me to ask him a question?

Mr. CRISP. With pleasure.

Mr. SCOTT. There is a line of railroad known as the New York Central Railroad extending from Buffalo to the city of New York entirely within the jurisdiction of the State of New York, and all rates made from Buffalo to the city of New York would not come under this bill. This bill can not affect the rates of that railroad. Then there is what is known as the great chain of lakes extending from Buffalo to

Chicago entirely open to the competition of every vessel and every vessel-owner competing for the great trade of the Northwest. When that trade is brought from Duluth and from Chicago and delivered at the port of Buffalo, it immediately becomes State commerce and is not then within the jurisdiction of your bill.

There is another line of railroad inland extending from the city of Chicago, and known as the Pennsylvania railroad system, being the Pennsylvania Railroad from the city of Philadelphia to the city of Pittsburgh, and there connecting with a line controlled by and known as the Pittsburgh, Fort Wayne and Chicago Railroad, extending to the city of Chicago. And all the trans-continental commerce consequently carried by that system of road has to be carried inland. How can you, therefore, possibly, under the provisions of your bill, treat equitably and fairly these two great systems of trans-continental roads when the competitive traffic is delivered by lake at Buffalo coming in under the jurisdiction of New York State, and the inland line running from Chicago to the city of New York, which comes in under your bill becomes subject to the prohibitory provisions that they shall not do so and so?

Mr. CRISP. The Congress of the United States have no authority under the Constitution to regulate the transportation of commerce wholly within a State. The States of the American Union under the Constitution have no right to regulate the transportation of commerce between the States. The line is clearly marked.

The question of my friend from Pennsylvania [Mr. SCOTT] involves the idea that because we can not regulate the transportation of commerce within the State of New York we shall not therefore regulate the transportation of commerce between the States. See, Mr. Speaker, the position in which that would leave and I might say has left the American people for many years. Until quite recently, sir, there were many believers in the policy of railway regulation who insisted that the true method was to leave to each State the regulation of transportation through and over its territory, and you found men who recognized the necessity for legislation, but felt that it was a dangerous step for Congress to take and insisted that the States should legislate for the regulation of each line within its borders.

The Supreme Court of the United States before whose decisions we all must bow, have decided that commerce, interstate commerce, commerce passing from one State into or through another could not be regulated, nor could the carriage of it be regulated by the State law. If, therefore, we are to wait before we discharge our duty under the Constitution to the people until the State of New York, or the State of Massachusetts, or any other State discharges its duty, in the meantime I ask you who is to protect the great body of the people from the aggression of these vast monopolies? All that we can do in this case or in any other is to discharge our duty under the law; to take no step that will impair the right of the States, but to leave undone nothing that we can constitutionally do that will aid the people to just and reasonable rates of transportation of person or property between the States.

If the evil suggested by the gentleman from Pennsylvania exists, then when we discharge our duty I think we can confidently rely upon the people of that great State to discharge theirs.

Mr. NELSON. Will the gentleman permit me to make a suggestion?

Mr. CRISP. Yes, sir.

Mr. NELSON. I desire to suggest to the gentleman from Georgia this: Whether or no the question propounded by the gentleman from Pennsylvania was not rather in the nature of a suggestion how it was possible to evade the provisions of this bill, than anything else?

Mr. CRISP. I was answering the suggestion of my friend from Pennsylvania because I understood him to mean by the case that he cited, that because perhaps the railroad wholly within the State of New York could not be required by this act to do or leave undone anything, its passage would be unjust to other railroads competing for the same business who would be controlled by our legislation. Therefore, it is that I am making the suggestion I do.

Mr. BUTTERWORTH. Will the gentleman from Georgia permit me to ask a question in furtherance of an understanding about this?

Mr. CRISP. It will be remembered my time is limited; still I will gladly yield to any gentleman who desires to ask a question.

Mr. BUTTERWORTH. It is only to complete the construction of a sentence in the question which I wished to ask a moment ago. Does the fact that there is water competition along a part of the line and not along the whole line change the condition within the terms of this act? In other words, suppose from A to C there is water competition, and in order to obtain the freight, a certain rate, about that which should be charged for transportation by water, were charged suppose from A to B, B being between A and C, but nearer C, there being no water competition between B and C—would you say the circumstances and conditions touching the shipments to the two points B and C were substantially the same, and hence that the carrier would not be authorized to charge an increased rate to C?

Mr. BRUMM. Is not that rather a question of construction?

Mr. CRISP. I will say, because I do not wish to conceal any opinion I entertain on any provision of the bill, that in my judgment the fact that there is competition there does not affect the question.

Mr. BUTTERWORTH. Then my friend will agree that the long haul is practically abolished as between A and C?

Mr. ANDERSON, of Kansas. Oh, no.

Mr. CRISP. Mr. Speaker, while I agree with the gentleman from Ohio [Mr. BUTTERWORTH] as to the meaning of that provision, I can not agree in his suggestion that the long haul is abolished. Why, sir, within the margin fixed by the bill, see the advantage that the long haul has. It must be remembered that there is no attempt in this bill to require any transportation company to make a pro rata or so much per mile charge.

So far as the restriction in the fourth section of the bill is concerned, they may charge as much for the short as for the long haul. Now let me answer the gentleman's question upon the idea that these railroads are common carriers established for the benefit of the public. Here is a line of railroad from New York to New Orleans, made up of connecting lines. At New Orleans there is water transportation, as there is at New York. That line of railroads will haul freight from New York to New Orleans for 76 cents a hundred, while to Atlanta, which is about half way or a little more, the charge is \$1 a hundred. Goods that go from New York to New Orleans by rail go through Atlanta and nearly as far again as they went in reaching Atlanta, and when they get to New Orleans they pay 76 cents a hundred; whereas, if they had stopped at Atlanta and saved nearly half the haul they would have had to pay \$1 a hundred.

Mr. BUTTERWORTH. Now, if the gentleman will indulge me right there, I will not interrupt him again. He will concede that the charge to New Orleans is based upon the competition with water—that, because of that competition, the railroad companies can not charge and receive a higher rate. Now, since they must charge that low rate which they do charge to New Orleans in order to secure the business, I ask the gentleman to explain to the House how it will benefit Atlanta to cut off that long-haul rate from New York to New Orleans? He will bear in mind that it is impossible for them to get the freight for New Orleans at all unless they charge such a rate as will enable them to compete with water transportation. If that business is lost to the railroad companies because they are not allowed to charge the lower rate to New Orleans for the reason that they can not reduce the rate to Atlanta, will the gentleman explain how Atlanta will be benefited?

Mr. ANDERSON, of Kansas. But your assumptions are not correct.

Mr. BUTTERWORTH. They are correct.

Mr. CRISP. Atlanta, I take it for granted, is entitled in the case suggested to reasonable rates. What is or what is not a reasonable rate is a question of fact, which must be settled by what?

Mr. BUTTERWORTH. By all the circumstances.

Mr. CRISP. By the question of competition, or by the question of cost?

Mr. BUTTERWORTH. Competition is one of the circumstances, of course. When a road is built the probability of competition is one of the circumstances to be considered, because it will get no freight unless it can carry as cheaply as its competitors.

Mr. CRISP. I suggest to my friend that right there, in my humble judgment, is one great error which is made by the transportation companies. They lose sight of the business for which they were organized. The gentleman says that if the railroads do not haul at such a price from New York to New Orleans they can not get any business. They ought not to have any business unless they can make a reasonable profit upon it, and if the rate of 76 cents between New York and New Orleans pays a reasonable profit, what kind of a profit, I ask you, does the dollar rate from Atlanta to New York pay, the distance being only about half as great?

Mr. ANDERSON, of Kansas. Why, it amounts to larceny! [Laughter.]

Mr. CRISP. But if they make no money by doing business at the rate between New York and New Orleans, then there is a double burden upon the intermediate points along the line, because they are taxed to make up what has been lost upon the through transportation. So at last, my friend from Ohio, it is a question of the reasonableness of the rate.

Mr. BUTTERWORTH. Certainly, all things considered.

Mr. CRISP. Under the fourth section of this bill discrimination can be made to this extent, that the railroad company may charge as much for the short haul as for the long haul. Let the question be addressed to any man of ordinary understanding: Is it reasonable and just that a corporation which owes its existence to the public, and is bound to exercise its franchises for the benefit of the public, shall take an article of freight in the city of New York, and if it delivers that article at a distance of 500 miles from New York shall receive a dollar for carrying it, but if it carries it 500 miles farther shall receive but 75 cents? What must be the answer? Does that strike any gentleman as a reasonable and fair business proposition?

Mr. BUTTERWORTH. My friend knows very well that to get the freight at all to a given point the railroads must compete with their competitors. That is true, is it not?

Mr. CRISP. Undoubtedly.

Mr. BUTTERWORTH. Now, if competing rates do not pay any profit, but barely the cost of the transportation, must the railroads turn that business away? If not, if they are allowed to carry it, it certainly helps to pay expenses, and thereby, to some extent, takes the burden off the short haul. Just how the public is injured by that is what I ask the gentleman to explain.

Here is a little town, if you please, twenty miles from this city where the people have been accustomed to pay 6 cents a bushel for hauling all their coal. A railroad company builds a line passing that town and extending to some point beyond, where there is water competition. The railroad company says to the people at this intermediate point, "What has it been your custom to pay for hauling your coal?" The answer is "6 cents a bushel." The company says, "We will haul it for 3 cents a bushel; but to the point beyond at which there is competition we must haul it for 2 cents a bushel, because our competitor will haul it for that price." Now, does it injure the people who previously have paid 6 cents a bushel to get their coal hauled at 3 cents? If it does, how does it injure them?

Mr. CRISP. That, Mr. Speaker, is a plausible statement. It is, however, based upon the inquiry, which I think an erroneous test, "What is the work worth to the shipper?" I maintain the question should be, "What does it cost the transporter?" That is the difference between the proposition made by the gentlemen and that insisted upon by this committee. You ask "what are certain services worth to the shippers?" What is it worth to the man halting along the highway to meet a conveyance which will carry him out of the storm and the darkness to a place of shelter? If you ask what it is worth to him, it may be worth all that he has. But is that the reasonable rule to apply in fixing the compensation of a corporation established for the public good and not solely for the private benefit of the corporators who have it in charge?

Mr. BUTTERWORTH. That is not the case I put by any means.

Mr. CRISP. I understood the case put by the gentleman to be that of a railroad company, who say to the people in a certain locality, "You have been paying 6 cents a bushel for hauling; will you not agree to give us 3?" Does not that question look to what it is worth to the people who receive the service, and not to the cost to the transporter?

Mr. BUTTERWORTH. No; for the company that builds the road takes into consideration when building it what competition there will be, what the local traffic will be, what the through traffic will be—it takes into consideration all the circumstances which go to fix the price. And I say, instead of the man at the intermediate point being injured, he saves 3 cents a bushel; and ultimately, according to the experience we have had in this country, he may save still more. He is not injured by reason of the fact that the company run their cars 10 miles beyond, to a point where, in order to compete, they must make a lower charge.

Mr. SCOTT. The gentleman from Georgia [Mr. CRISP] before he resumes will allow me to make one suggestion. He referred in the case he put to the rate between New York and Atlanta as compared with the rate between New York and New Orleans. He said that the railroad companies were charging 75 cents a hundred from New Orleans to New York, and a dollar a hundred to Atlanta, which was not half the distance.

Mr. CRISP. A little more than half.

Mr. SCOTT. A little more than half. Now the gentleman must remember that the competitor with the railroad from New Orleans to New York is the Atlantic Ocean. Steamships plying between New York and New Orleans fix, to a certain extent, the rates between those two cities. By the competition of the railroads from New Orleans to New York, these ocean rates are kept down. Your bill proposes to drive these railroads out of that competitive business; and such a policy must result in placing the entire control of the business between New Orleans and New York in the hands of the steamships, while the only satisfaction the people of Atlanta get is that possibly the people of New Orleans are compelled to pay eventually a dollar a hundred for transportation from New Orleans to New York, whereas if they were allowed the competition of the railroads that business might be done for 75 cents a hundred. "Misery loves company."

Mr. CRISP. Mr. Speaker, I confess I can not see, as suggested by my friend from Pennsylvania [Mr. SCOTT] and my friend from Ohio [Mr. BUTTERWORTH], that the effect of this proposition will be to increase the through rates unless the present through-rate system is based upon a rule which requires the local shippers to sustain the loss incurred on the through rates. If the charge from New York to New Orleans of 75 cents pays a small profit to the railroad company, I ask again, what kind of a profit must be paid for a haul which is half the distance, when the charge is 33½ per cent. more? We do not seek, as I was going on to say, to establish any pro rata arrangement of so much a mile. We agree by this bill that the companies may charge, if it is reasonable to do so, as much for the short haul as for the long haul, and no more.

Mr. ZACH. TAYLOR. Is not the proposition of the bill designed to meet a case of this kind: Between Covington and Memphis, a distance of 37 miles, the charge for transportation of cotton is \$1.15 a bale,

but from Memphis to New York the charge is only 90 cents, and it passes over the same line?

Mr. CRISP. Mr. Speaker, if it were not going over a subject already exhausted, I could occupy an hour in bringing to the attention of the House actual cases which have arisen in the transaction of business by interstate carriers which would shock the sense of justice of any man who feels that the public has a right to demand absolute equality in transportation rates.

Mr. BUTTERWORTH. But do not the other sections of the bill correct that, leaving no necessity for an arbitrary law fixing a rate without reference to circumstances?

Mr. CRISP. If my friend will pardon me, I must go on. I will say to him, however, that the other sections of the bill are designed to do that, but in view of the fact that some court, some jury, somebody charged with the execution of this law might think it the intention or design that more should be charged for the shorter than the longer haul, we, by a provision inserted in the bill, give the decision of the legislative branch of the Government, that in no case, except it be a special one, can such a rate be reasonable or just. That is the purpose of the provision referred to.

Mr. O'NEILL, of Pennsylvania. I do not wish to interrupt the gentleman; but in reference to this question, whether these charges for freight pay or do not pay the railroad companies for hauling, I want to ask him the simple question, whether the people of this country are complaining that within the last ten or fifteen years freights have been reduced from 2½ cents per ton per mile to less than 1 cent—to seven-eighths of 1 cent?

Mr. CRISP. My good friend from Pennsylvania will pardon me for not replying fully, as I have already occupied so much time. I will say, however, that this is not the first time I have heard the claim set up that the railroad companies are entitled to great credit for having during the last twenty years reduced their rates.

We are told by gentlemen representing the railroads that this reduction of rates is a mere matter of grace to the people, who should rise up in thankfulness therefor; and figures are presented to show how much greater the incomes of the roads would have been if they had maintained the rates of twenty years ago. To be truly grateful we must believe that all the advance and progress made in machinery and cars used for the transportation of freight are for the benefit of the railroads and not for the public. Such a proposition denies to the public the saving derived from the use of the discoveries in steam appliances. It denies to the public the advantage of the reduction in the price of steel. It denies to the public the benefit of the reduction in the price of everything that is necessary to sustain life. It denies to the public and claims for the railroads all the benefits arising from a general reduction in the value of all property and is entirely indefensible.

I do not wish to be understood as underrating these corporations as a means to advance civilization and promote the general welfare; but I do mean to enter a protest against the claim that under any sort of rule they would have a right to maintain charges of twenty years ago when everything else has diminished in value, and to mildly suggest that perhaps they have not been altogether so generous in reductions as their advocates would have us believe. Has the reduction of local rates on any line of railroad in the United States been as great during the past twenty years as the reduction in the price of clothing, as the reduction in the price of sugar, as the reduction in the price of shoes, as the reduction in the price of cotton, as the reduction in the price of almost every article which humanity uses? I grant you at the great competing centers reductions have been made; but I submit that an inspection of the tariffs of corporations will show that there has been no commensurate reduction at intermediate points.

For what purpose do the people of Pennsylvania grant to a company the right to build a railroad on the territory of the State? What is the object of the grant? Is it because somebody not living in Pennsylvania may be benefited by the road? Is not the paramount object the benefit of the people who own the soil? Is not that the primary object? Are people living along the line of this great road—people dependent on that means of transportation—are they to be charged with burdensome rates in order that the railroad may obtain freight at a point some distance from it?

I say the true policy of a railroad is to build up shippers along its line. At last on them it must depend for its life. The contrary policy must result in breaking down those upon whom the road must depend for support. It depreciates the value of property along the line. It diminishes population and defeats, in every way, the object and purpose of the public in authorizing the construction of the road.

Mr. MCKINLEY. I ask the gentleman to yield to me for a single question.

Mr. CRISP. Certainly.

Mr. MCKINLEY. I would be glad if the gentleman from Georgia would give the House an example which would realize an exception to relieve the carrier from the operation of this act—if he can give us an example in practical business which would justify the commission in making the exception that is provided for in the last clause of section four.

Mr. CRISP. Mr. Speaker, I should not like to undertake to do that, but I will say very frankly, speaking my own views, the other House conferees not being present can not speak for themselves, nor can I speak for them. I was of the opinion the general rule ought to be that in no case should a greater charge be made for a shorter distance than was made for the longer one when the shorter is included in the longer. That is my own opinion about it, but in deference to the sentiment which existed in some breasts that there might be a hardship in an iron-bound rule, believing as I do the commission organized under this act would be slow to relax the general rule, believing that in nearly every case, if not every one, it would be found the enforcement of the rule would work no hardship, I agreed to this provision. I had another reason for agreeing to it, one that always has weight with the practical legislator. I had to do it to get an agreement between the conferees of the two Houses.

Mr. MCKINLEY. What particular case?

Mr. CRISP. None were cited. I understand it to be like this: Here is a universal rule which we propose to establish. There may possibly be a case, though I confess I can not see it, when the enforcement of this rule would work a hardship to a transportation company, and out of abundance of caution, to do no injustice, whenever a complainant can establish that in a specific case the operation of the general rule would be unjust in that particular case the commission may relieve him from the operation of the rule.

The SPEAKER. The gentleman's time has expired.

Mr. ANDERSON, of Kansas. I ask unanimous consent that the time of the gentleman from Georgia be extended.

Mr. BYNUM. If I can be recognized, I will yield to the gentleman from Georgia.

Mr. ADAMS, of Illinois. I hope the gentleman's time will be extended.

The SPEAKER. Is there objection to the extension of the time of the gentleman from Georgia?

There was no objection.

Mr. CRISP. I thank the House for its courtesy and indulgence.

Mr. HEPBURN. I would be glad if my friend from Georgia would allow me a question here before he proceeds with his remarks.

Mr. CRISP. Certainly.

Mr. HEPBURN. Does the word "cases," in the fourteenth line of the fourth section, in your judgment, refer to shipments or to roads?

I refer to the use of the word in connection with the proviso:

Provided, however, That upon application to the commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property.

Mr. CRISP. In my judgment it applies to shipments.

Mr. HEPBURN. If I believed that I would not vote for your bill.

Mr. CRISP. I should be sorry to lose the support of my friend from Iowa. I do not want to be misunderstood in the answer I have given. I think that it applies to shipments in this sense, that all like cases on that railroad should be operated under the same rule.

Mr. HEPBURN. Would it divert the gentleman from his argument to permit me to give an illustration of the point I mean, and then ask his opinion in connection with it?

Mr. CRISP. I would be glad if the gentleman would wait a moment, as I prefer to get through as soon as possible with my remarks, and think I may perhaps answer the point to which he refers in the course of the discussion.

There are only one or two other points, Mr. Speaker, to which I wish to call the attention of the House. That exception, or authority to suspend the rule, was granted by the committee and put in upon the idea that there might be conceivable cases where injury or injustice would result, and hence we would give power to the commission to relieve them.

The next section that has excited comment is that which prohibits the pooling of rates. I take it for granted that every member present knows what is meant by the words "pooling rates." The railroad companies, or their representatives, or rather the leading representative of the system of pooling, object to that term as offensive, and say that a very great amount of misconception exists in the public mind on the subject of pooling, largely resulting from the unfortunate use of that term; and suggest in lieu of it that it is a system for the "maintenance of rates and traffic unity." That is what he calls the system which we seek to prohibit in this bill.

Pooling, Mr. Speaker is a device—and of course I do not use that word in any offensive sense—on the part of independent monopolies to build up and maintain one great monopoly. It is a device to defeat competition; and when they talk of the "maintenance of rates and traffic unity," they mean that railroads that were built to give the people the benefit of competition shall be united with each other by this new device, so as to make them practically, for rate purposes, one line.

We have heard much of the importance to the general public of stability of rates, and I agree that it is important. We hear much said in defense of this system, and the allegation is made that it is merely a system to preserve and maintain regularity of rates and prevent rail-

road wars. A significant fact in this connection is that in no case on record, I undertake to say, can you find where two railroad companies have pooled their local rates. Wherever the railroad is omnipotent, so far as the shipments are concerned, wherever they can put upon the shipper any rate suggested by their cupidity or avarice, or suggested, if you please, by the other rule so lauded by these gentlemen what the freight will bear, in every such case you find each road standing by itself and making no pool.

Therefore I aver the object of pooling is to destroy competition. You may present it in any light you choose, call it by any name you please, that is its object and it never was discovered until the competing lines, which had been built for the public interest, were requiring these corporations to transport for the public at such reduced rates that they were not making what they thought they ought to make. I maintain, sir, that the railroad business, or the business of transportation, is no exception in one respect from any other business, and that is that it is to the interest of the public to have competition.

While it is true that under the railway system as it exists to-day it seems that railroads will not quietly submit to competition, yet I suggest that is the fault of the railway companies and not of the public. Here is a line of railway extending from Atlanta, in the State of Georgia, to Macon in the same State. If investors conceive the idea that the business of that line is sufficient to justify another, they go to the Legislature, which represents the people, and ask the right to build the line, they ask that the State exercise and grant to them the right of eminent domain in order that they may acquire a right of way. What is the inducement to the State to grant the charter; is it not that the people may have the benefit of competition and thus perhaps get better and cheaper rates? Unquestionably this is so.

The Legislature that grants to the corporation a charter that enables it to transact its business represents the public and grants the franchise only for the public good, to wit, that the people between the two points shall have the benefit of competition. That is true everywhere where there are competitive lines.

What is the effect of pooling? It is to defeat the object of the Legislature. It is to defeat the interest of the public. It is to place those lines in the same condition that they would be if one great railway magnate or great railway corporation should become the owner of both lines. Gentlemen who sustain this practice say to us that if you prohibit pooling, the result will be a railroad war, that the irresponsible, bankrupt concern will reduce its rates and undercut, that the other will undercut, and one will go under, and it will be a case of the survival of the fittest. If that lamentable state of affairs should exist, it will be the fault of the railway companies themselves, who will not brook that legitimate competition that every other enterprise has to bear; but even if this dire result should occur, then, Mr. Speaker, we would be in no worse condition than we are to-day, where the effect of the pool is practically to make one line.

Mr. HOPKINS. Will the gentleman from Georgia permit me to ask him a question?

Mr. CRISP. Yes, sir.

Mr. HOPKINS. I ask the gentleman if the clause in section 4 will not have a tendency to prohibit these rate wars? If they put down the price of freight at a terminal point they will be compelled to put it down all along the line, and no road can afford to engage in such a war with section 4 in the bill.

Mr. CRISP. There may perhaps be some tendency of that sort; but to me it occurred that there could be no justification looking to the public interest for a practice of this sort. Why, Mr. Speaker, it is not an uncommon thing in a State for the Legislature to provide that such and such a railroad company shall not own or operate another. In my judgment one of the wisest things a State Legislature could do in granting a charter would be to provide that a company should not engage in any other business but the business of transportation, and that it should not acquire the ownership of any other line. Why not? There is nothing in this bill, you understand, that prevents traffic arrangements by which continuous carriages are made. That is not prohibited. The prohibition is against the pooling of freights or the receipts of competitive railroads. You all know what kind of pools have existed and do exist in this country to-day.

Under the pooling system there is no inducement to the railroad company to furnish good transportation; there is no incentive to the enterprise and the energy so typical of the American character. They go into the pool, and, according to the agreement, so you receive, whether you carry a pound of freight or a million pounds of freight. The amount of money that comes in on all the roads is put into a pool. A commissioner is appointed at a great salary, paid by these railroads, and it is his duty to divide the receipts according to the agreement, one receiving five, another ten, another twenty, or whatever may be the per cent. agreed upon.

There are other kinds of pools, pools which agree that a certain railroad company not in the pool shall not have a right to ship its freight over their line. When I say it shall not have the right I mean the rate is prohibitory. They put such a rate on the competing line that the shipper can not ship over it, but must take one of the lines within the

pool. They have an arrangement by which the water transportation of the country can not be used and at the same time give the people the benefit of the railway.

The Central Pacific Railroad Company, the evidence shows, has arrangements of this sort, that they will make special rates to a shipper over their road provided he will agree he will give them all his freight and will not ship a dollar's worth by water. If he will do that he will have a special rate. If he will exercise the freedom and independence and manhood that are supposed to belong to our people, then he has to pay to this creature of the public an increased price for his transportation.

They have had pools by which railways in the city of Chicago agreed to pay to a single live-stock firm in that city \$15 for every car-load they carried for anybody; and in consideration of that the firm was to "even up" according to an understanding they had. He was to "even up;" that is, the firm was to give each railroad the amount of transportation that according to the bargain it was to have, not according to the public demand, not according to the choice of the shipper, but what they in their magnanimity or wisdom thought was satisfactory or sufficient between themselves, and they directed where your cattle would go and where yours would go, and you would be bound to ship them in that way.

That is another kind of pool they have had in this country. Now, Mr. Speaker, I propose to break up that system.

Mr. HAYDEN. I ask the gentleman whether they do not have these pools abroad or some similar arrangement?

Mr. CRISP. I have heard that they do.

Mr. ANDERSON, of Kansas. That is upon the principle of total depravity. [Laughter.]

Mr. CRISP. There are some very remarkable things in connection with that which, if I had the time, I might relate. I would suggest, however, to my good friend from Massachusetts in passing that the system abroad can hardly be compared fairly to the system in this country in view of the difference in the circumstances. But the point we make is that any system or practice which tends to destroy competition is an injury to the people who must use the roads.

Why is it not so? Can any good reason be given? The only reply made by the railroads is: "If you do not allow us to pool we will compete, and our competition will be ruinous; we will ruin ourselves if you do not stop us!" Why can not they compete legitimately as people do in other business? We think that they ought to do so, and therefore we prohibit pooling.

By the terms of this bill we create a railroad commission, and I ask the attention of gentlemen interested for a few moments to that point.

I say with the utmost frankness, that, as an individual, I preferred the bill without the commission, but I say also in the same breath that I am not to be classed with those who will not take anything unless they can get all they want, and that, with all respect I submit, must be the attitude of those gentlemen who oppose this bill because of the commission. What are the powers of that commission? In particular cases, under the fourth section of the bill, they may relax the rule therein set up. As to other matters, they may require the railroads to make returns of their accounts, their stocks and bonds, their running expenses, rates of charge, &c.

Where the complainant invokes their authority they may pass upon a given case between the individual and the railroad company. When they so pass upon the case their finding upon the facts is *prima facie* true. They have no power to give vital force and effect to their judgment, but it is *prima facie* true in the courts of the country. Is there anything in this power that is alarming or dangerous to the public? Is there anything in this bill that should lead representative men, men who have had large experience in public affairs, to say that nowhere in this country are to be found men of power enough, men good enough, men honest enough to administer the law?

I should be ashamed, sir, of my people if I believed in any such theory as that. I should be ashamed to come before the country and state that I did not believe it was in the power of the President of the United States, with the concurrence of the Senate, to select men wise and upright and honest enough to carry out this law. I am not one of those who believe that human nature is so utterly depraved that we can find nobody left who is honest and upright. What other powers are there than those I have enumerated?

Mr. Speaker, we do not drive the complainant to the Railroad Commission. If he chooses to go there he has the right to go and invoke this power which is created by the Government for his protection; but if he prefers, for any reason, to go to the courts of the country, they are open to him. The same judge who passes upon his rights of property, his rights of life and liberty, will there pass upon his rights in his dealings with the railroads.

Objection is made by some gentlemen who are, in the main, friendly to this bill, because we have not conferred jurisdiction upon the State courts to hear and determine these questions. Waiving for the present the question of our power, by an act of Congress, to give to the courts of a State jurisdiction to try a matter of this character—a statutory

case—waiving that, I say to those gentlemen that if we had insisted upon putting that provision in this bill, we would have had no agreement. Under the bill as it stands no great injustice or hardship can arise to the citizen.

He can go to the commission, but if he is one of those who, either from suspicion or for any other reason, believe that this commission will not do right, then he can go into court and file his suit and have it tried as every other case is tried, the only difference being that it is proposed by this bill to allow to such an individual in every case of recovery a reasonable attorney fee, to be taxed by the court. That provision is, I admit, an exceptional one, and some complaint has been made of it as a hardship.

The answer I make to that complaint is, that, on the one hand, is the humble individual, the small shipper; while, on the other, is the great corporation with its wealth, its employes, and its power. To put them upon something like an equal footing we say to the poorest man in the land, who feels that he has suffered a wrong at the hands of one of these corporations, that he shall be enabled to test the question before the courts; we say to him, if you prove to have been correct in your judgment as to the wrong inflicted upon you, then we will enable you to enforce your rights by paying the counsel that you employ for that purpose. Is not that fair enough? Are we to be told that because we do not provide that these matters may be tried and determined in the State courts we leave the railroads free to discriminate, and that they are still permitted to go on in their oppression of the people?

I commend this idea to those gentlemen who base their opposition upon that ground.

Now, Mr. Speaker, the other provisions of this bill relate to the powers—

Mr. CALDWELL. Will it interrupt my friend if I ask him a question?

Mr. CRISP. Not at all.

Mr. CALDWELL. In the proviso of the fourth section power is granted to this commission to make exceptions under the long-and-short-haul clause. That was my great objection to the original Cullom bill, because I believed such a grant of power ought never, under any circumstances, to be given to the commission or anybody else—a power to make some and break others. Now, will my friend tell me the difference between the clause as contained in the bill agreed upon by the conference committee and the original grant of power to the commission under the Cullom bill?

Mr. CRISP. From the Cullom bill, Mr. Speaker, as the gentleman will find by turning to it, these words are stricken out, "and from the same original point of departure or to the same point of arrival." Those words were stricken out because, in our judgment, they put a limitation upon what we understand to be the rule that in no case should a greater amount be charged for a shorter than a longer haul. With that language in the Cullom bill implied that there might be cases where a greater charge might be made for a shorter than a longer haul. By striking out those words we made the rule general that in no case could such a charge be made, no matter what the point of departure or the point of arrival might be.

As the gentleman understands, a practice exists among the railroad companies by virtue of which, at competitive points, freight received over one line goes cheaper than if received over another. Now, with those words in, there would always be a question in regard to the point of departure or the point of arrival. With those words stricken out, the law is general; and that was the sole object in making the change.

The Senate bill provided that the commission might make general regulations exempting common carriers from the operation of that rule. We restricted that by requiring it to be done only in special cases after examination. That is the only difference between the two sections, as I understand.

Now, the only power of the commission after that is to require publicity of the rates of the railroads, to require them to make return of the amount of their stocks and bonds. Gentlemen all recognize the importance of a provision of this kind. One of the great troubles in the way of ascertaining to-day what is a reasonable charge by a common carrier is the fact that stocks are watered, and it is hard to find out what is the actual cost of a railroad.

Watered stocks, bonds issued for speculative purposes, all these enter into the present computation of the railroad companies in fixing the sum upon which they must earn a reasonable interest. The object of the publicity required in this bill is that when resort is had to the courts, when you appeal to the enlightened conscience of an intelligent jury, they may understand exactly the cost of the plant and the cost of transportation, so as to determine what is or is not a reasonable charge. The bill provides that you can search at law the conscience of every officer of a railroad. You can force him to disclose any fact connected with transportation. If the fact is such that it would expose him to criminal indictment, then we provide it shall not be so used against him. If it is a mere question affecting damages, then of course it may be used; and it enables the suitor to get his case fairly and fully before a jury.

There is one other provision to which I call attention, and then I

shall close. As I said at the outset, nearly all the provisions of this bill are to be found in the common law. One of the great purposes we have in view is to aid the common law by providing a penalty for its violation other than the penalty of damages. At common law a trespass or a wrong gives the party aggrieved the right to sue and recover damages. We propose to say that, in addition to the common law liability, any transportation company violating this law shall be liable to have its officers indicted, and if found guilty they shall be punished by a fine not exceeding \$5,000.

If gentlemen will examine the bill they will observe that it is framed in such a way as to declare certain practices unlawful. Turning to the penal section of the bill, you will find that if a common carrier shall be found guilty of doing anything in this act forbidden, or failing to do anything in this act required to be done, the officers of the company may be indicted in the district courts of the United States, and if found guilty may be punished by a fine not exceeding \$5,000. This provision was intended to aid the common law. It was designed for the protection of every individual, no matter how humble, who may be wronged by the act of these corporations.

This, Mr. Speaker, is the bill. It is not, as I have already said, exactly as I would like it. It contains one or two propositions which I would be glad to have out; and there have been omitted from it one or two propositions which I would like to have in. But taken as a whole, I commend this bill to those Representatives of the people who believe that wrong is being done by these corporations, who believe that the murmurs of the people all over this country do not come to us except as the expression of some injury perpetrated upon them by transportation companies.

To those gentlemen who desire to make the assertion of the power of the Government to control these corporations I commend this bill, and ask them to sustain it. The practices which it condemns are unjust to the people. An honest investigation of the rights of the railroad companies and the people would forbid them; and in my judgment such practices, and the arguments by which they have been sustained, amount to an absolute assault upon public justice.

I believe in the paramount right of the people. I would not harm the railroads. I would allow them to pursue their legitimate calling, but I would bear in mind always the rights of the people. In my judgment the bill I now commend to you protects and preserves all the rights of the railroads, while at the same time it gives some modicum of relief to a long-suffering and oppressed people. [Loud applause.]

ENROLLED BILLS SIGNED.

Mr. McRAE, from the Committee on Enrolled Bills, reported that that committee had examined and found truly enrolled a bill of the House of the following title; when the Speaker signed the same:

A bill (H. R. 807) granting pensions to soldiers and sailors of the Mexican war.

FEDERAL CONSTITUTION CENTENNIAL.

The SPEAKER laid before the House a message from the President of the United States.

The Clerk read as follows:

To the Senate and House of Representatives:

As a matter of national interest, and one solely within the discretion and control of Congress, I transmit the accompanying memorial of the executive committee of the subconstitutional centennial commission, proposing to celebrate on the 17th of September, in the city of Philadelphia, as the day upon which, and the place where, the convention that framed the Federal Constitution concluded their labors, and submitted the results for ratification to the thirteen States then composing the United States.

The epoch was one of the deepest interest, and the events well worthy of commemoration.

I am aware that as each State acted independently in giving its adhesion to the new Constitution the dates and anniversaries of their several ratifications are not coincident. Some action looking to a national expression in relation to the celebration of the close of the first century of popular government under a written Constitution has already been suggested, and whilst stating the great interest I share in the renewed examination by the American people of the historical foundations of their Government, I do not feel warranted in discriminating in favor of or against the propositions to select one day or place in preference to all others, and therefore content myself with conveying to Congress these expressions of popular feeling and interest upon the subject, hoping that in a spirit of patriotic co-operation, rather than of local competition, fitting measures may be enacted by Congress which will give the amplest opportunity all over the United States for the manifestation of the affection and confidence of a free and mighty nation in the institutions of government of which they are the fortunate inheritors and under which unexampled prosperity has been enjoyed by all classes and conditions in our social system.

GROVER CLEVELAND.

EXECUTIVE MANSION,

Washington, January 18, 1887.

The SPEAKER. The message and accompanying documents will be referred to the Committee on the Judiciary, and ordered to be printed.

Mr. TOWNSHEND. I would suggest, as that contemplates the invitation of the South American Republics, whether it would not be more properly referred to the Committee on Foreign Affairs.

The SPEAKER. By order of the House the whole question heretofore has been referred to the Committee on the Judiciary.

Mr. TOWNSHEND. All right, then.

The message and accompanying documents were referred to the Committee on the Judiciary.

POST-OFFICE APPROPRIATION BILL.

Mr. BLOUNT, from the Committee on the Post-Office and Post-Roads, reported a bill (H. R. 10793) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1888, and for other purposes; which was read a first and second time, referred to the Committee of the Whole House on the state of the Union, and, with the accompanying report, ordered to be printed.

Mr. McMILLIN. All points of order are reserved.

INTERSTATE-COMMERCE BILL.

Mr. O'NEILL, of Pennsylvania. Mr. Speaker, I hardly think it is necessary for me to say that I feel just as much interest in conserving the rights of the people of this country as the gentleman from Georgia [Mr. CRISP] or any other gentleman. I am against wrongs done by railroad companies as I am against wrongs done by individuals, and with the gentleman from Georgia I am ready at all times to act in the direction of protecting one against the other.

I wish to say, Mr. Speaker, there has been a series of misfortunes attending legislation on interstate commerce from the date of the introduction of the first bill down almost to the present time, or down, at least, to the close of the first session of this Congress. I am extremely sorry that the chairman of the Committee on Commerce [Mr. REAGAN] is not present to-day, because I must state this fact that from the time of the introduction of the first bill from the Committee on Commerce down to the period of the taking up of this bill in the House last July things have been done which I would not have done. This bill was taken up then against a promise made that it should not be touched until the beginning of this session of Congress.

And last of all, when the committee of conference was appointed on the disagreement of the two Houses no member of the minority on this question of that Committee on Commerce, no member of this House who was in the minority on this question, was placed on that committee of conference among the conferees of the House. The gentleman from Massachusetts [Mr. DAVIS], the gentleman from New York [Mr. JOHNSON], the gentleman from Illinois [Mr. DUNHAM], not to speak of myself, were members of that committee in that minority which reported on this subject, and voted for the Cullom bill when offered by Mr. Hiscock as a substitute, and all of whom voted against the Reagan bill when it was passed by the House. Yet, sir, not one of that minority was placed upon the committee of conference. So I say this conference report came into this House without the approval of one of the minority of the Committee on Commerce, because not one of them was placed upon the conference committee.

And I say, moreover, that in the report of this conference committee, using the parliamentary language applicable to such reports, that necessarily and logically there has not been that "full and free conference" on the subject as has been stated in the report to the House and Senate on the bill.

Now, why that was done I do not know; I do not stop to inquire. It could not have been defended upon the ground that one of a minority of the political divisions of the House was put upon the conference; but for some reason unknown to me every one who was selected for the conference had favored the Reagan bill, and voted for it—I mean of members of the Committee on Commerce—and the minority was not represented at all. What disadvantage that may have been to the House when the report now before us was being considered in the conference I do not want to say, nor do I undertake to say. It may have been no disadvantage. I say that I regret very much that Mr. REAGAN is not present to-day.

I do not mean to say that it is not legitimate and proper in him to be in Texas to try to obtain what he wants, for I think it well that every man should make known what he wants in that direction; and I only express my regret for his absence; but do not find fault with him on account of it, nor do I reflect upon him for being absent. It was not with that view that I made the remark.

Mr. CRISP. Will the gentleman permit me to ask if he does not know it is customary in appointing conference committees on the part of the House to appoint gentlemen who represent the measure—who are favorable to the bill?

Mr. O'NEILL, of Pennsylvania. No, sir.

Mr. CRISP. And does not the gentleman know that the Senate conferees were all in favor of the Senate bill?

Mr. O'NEILL, of Pennsylvania. No, sir; I do not know. I can not answer that question; but my understanding is, and has always been, that one of the three conferees shall represent the minority view.

Mr. DUNHAM. And especially when there is a minority report from the committee.

Mr. CRISP. I am very sorry that I have never heard of this grievance before.

Mr. CALDWELL. Does the gentleman from Pennsylvania think that he could have taken care of the Cullom bill in conference better than Mr. CULLOM himself.

Mr. O'NEILL, of Pennsylvania. I am glad the gentleman asked the question, and I will answer it directly and pertinently. I believe, sir, that I—and I will mention myself, as the gentleman has referred

to me—I believe that I or any other member of the minority of the Committee on Commerce would have had as good a chance of persuading Senators to adhere to the Cullom bill as the gentleman from Texas or the gentleman from Georgia had of persuading them to incorporate in their report certain clauses of the Reagan bill.

I do not profess to have the obstinacy and great persistency that seems to be the moving power with some gentlemen, and I will name among them my friend from Texas, who is absent, and I say again that I am sorry for his absence to-day, because he has been most persistent in his views on this question. But I have, sir, somewhat of persistency myself in my character, and I never yield until the absolutely inevitable comes. I would not yield upon a question of this kind merely to meet what I call the demands of persons who are asking legislation they do not understand, and the effects and consequences of which they have not taken time to consider. I believe that any one of the four gentlemen who made the minority report on the bill from the Committee on Commerce would have been able to have withstood the power of the chairman of the Committee on Commerce over the wills and senses of the conferees, if I may be allowed to make that statement. I am glad, therefore, the question was asked, because I would not like to have referred to it myself unless the question had been asked.

Mr. CRISP. May I ask the gentleman another question?

Mr. O'NEILL, of Pennsylvania. Certainly.

Mr. CRISP. Was the gentleman from Pennsylvania present when the conferees were appointed on the part of the House?

Mr. O'NEILL, of Pennsylvania. Yes, sir; and I have heard that was given as a reason why I was not put on the conference. It was told me by a member of the House at the time that on account of my not being present when the conference was appointed I was not made a conferee. I was present when the conference was appointed, and voted on a roll-call by yeas and nays ten or fifteen minutes before it was appointed, and on another roll-call ten or fifteen minutes afterwards. I was present when the appointment was made, and went away that afternoon about fifteen minutes after four o'clock—went away knowing that the committee had been appointed.

Mr. CRISP. I had no information except that the gentleman was absent. I did not know myself the facts.

Mr. O'NEILL, of Pennsylvania. That is another thing I did not intend to mention. I was here. I should not have mentioned that if I had not been asked. Are there any other questions? But let me say before leaving this point that not only was I present, but so also were Mr. DAVIS, of Massachusetts, and Mr. JOHNSON, of New York, who had united in the minority report.

However, Mr. Speaker, we have this conference report before us now. It has come down to us now and here as a practical point that this House has got to decide upon one way or the other. In my view we have to vote down or adopt the conference report. I wish there were power in the House to recommit it, for I know the majority of this House desires to pass some legislation to control railroads. I know that and feel it, and I myself would to-day vote for the Cullom bill as I did before, and am only amazed, if I can refer to it under the rules, to find in another body of this legislature sitting at the other end of the Capitol that those sustaining that bill were meager indeed in number, while it had been passed in the same Senate a few months before by a large majority, and in accordance with the wishes of people in many parts of the country as expressed to us by joint resolutions of State Legislatures, by the action of boards of trade, by the action of chambers of commerce, and by the action of other commercial associations known by different names.

I am going to begin perhaps at the wrong end, because it is natural for us to look to our own localities and homes; and I shall incorporate in my remarks and adopt the suggestions as my own and ask the Clerk to read these resolutions of the Board of Trade of Philadelphia, which were passed last night. I speak of that board of trade as an association of gentlemen of the highest integrity and of the greatest commercial importance. It is a board known everywhere, and I believe is the oldest organization of the kind in this country. I ask to have these resolutions read; and as they seem to embrace almost every point on which I ask for a vote against the report of the conference committee, the reading of them will shorten my remarks very much.

The Clerk read as follows:

The memorial of the Board of Trade of the city of Philadelphia respectfully represents:

That your memorialists favor the passage of a bill by Congress under which a supervisory power shall be exercised through a board of commissioners over the interstate commerce of the country, and approve of the general provisions of the bill which has just passed the Senate of the United States, in that it prohibits all drawbacks and preferences, the effect of which shall be to create an unfair or unjust discrimination in favor of any particular person or locality, and also in that it secures the open publication of the rates upon such traffic, and also gives the commission the aid of the proper law officers of the United States, and of the processes of the courts to enforce their decisions upon any questions that may be brought before them.

But your memorialists beg to protest against the fourth section of said bill, known as the "long and short haul clause," under which any carrier is prohibited from charging or receiving "any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance." That this provision of the bill would, in the judgment of your memorialists, largely cripple and embarrass the movement of through traffic between the East and the West, and would result not only in

increasing the cost of the necessities of life to the consumer in the East, but would also reduce the value of grain, provisions, cotton, tobacco, and other staples to the producer in the West and South.

That as the interstate railways are mainly dependent for their revenue upon their local traffic, and as such a provision would compel them to accept for the transportation of such local traffic a sum of money not exceeding the proportion of the gross charge to which they would be entitled on through traffic, they would as a matter of inevitable necessity, be compelled either to reduce the rates on their local traffic to such a point as to bankrupt themselves and make them unable to meet their fixed charges, or to charge on the through business the same rates that they do upon their local traffic. That the effect of this would be to prevent such through traffic from being exchanged between the East and the West for the reason that the rates on through traffic are largely fixed over the entire country by the competition of water routes; and as the railroads, in order to get any portion of the through traffic, are compelled to approximate their rates to those charged by the water routes, they are necessarily obliged to accept on this through traffic a compensation but little in excess of the cost of carrying the same. That in the judgment of your memorialists, no injury results from this course on the part of the railway companies, but, on the contrary, as it not only furnishes cheap flour and other provisions to the laboring classes of our own country, but also enables an enormous volume of provisions, cereals, and other staples to reach the seaboard and thence by ocean transportation the markets of other countries, and there meet on favorable terms the products of other parts of the world, thus placing the balance of trade in favor of the United States and making it a creditor of other nations rather than their debtor. That anything which prevents the free and unrestricted movement of this traffic must work a most serious financial injury to the producer, consumer, and transporter.

They therefore beg of your honorable body to so amend the bill referred to as to remove or modify the objectionable section known as the "long-and-short-haul clause," believing that in making the request they are acting in harmony with the views expressed by a majority of the commercial organizations of the entire country.

Your memorialists also beg to protest against the fifth section of the bill referred to, which prohibits what is known as pooling by the railway companies. Your memorialists believe that the effect of pools has been to secure uniform rates to shippers and prevent discriminations between individuals; but they recommend that all pool agreements between the railway companies should be submitted to the board of interstate-commerce commissioners, and that none should be valid until so submitted and approved by said board. That in this manner only such agreements as are fair and just to all interests, and would secure the public against unjust and unfair discrimination would be sanctioned and approved; and that with the power vested in a board to approve only such as in their judgment are fair and just, the railways would be able to enforce these agreements, and prevent the reckless destruction of property which has been caused in the past by what are known as railroad wars. That in this manner, also, a fair rate would always be secured on the through traffic of the country, and while no charge would be levied upon it which would interfere with its free movement, or in any manner check the development of the West and South or the general prosperity of the United States, such a revenue would be derived from the through traffic as would prevent any imposition by the railways of unjust charges upon their local traffic.

Your memorialists therefore urge upon your honorable body the recommitment of the said bill to a conference committee for the purpose of amending the fourth and fifth sections thereof as already stated.

And your memorialists will ever pray, &c.

[SEAL.]

FRED. FRALEY,
Vice-President.
J. P. TUCKER,
Secretary.

PHILADELPHIA, January 17, 1887.

DEAR SIR: I inclose herewith the memorial of the Board of Trade of the city of Philadelphia to the House of Representatives, protesting against the passage of the interstate-commerce bill in its present shape, and asking your honorable body to recommit the said bill to a conference committee for purpose of amending the fourth and fifth sections thereof.

Yours truly,

Hon. CHAS. O'NEILL,
Washington, D. C.

J. P. TUCKER, Secretary.

Mr. O'NEILL, of Pennsylvania. Mr. Speaker, while on this subject I will state here that the National Board of Trade, composed of representatives from all the boards of trade of the country—I presume from all the boards of trade of the country and the chambers of commerce, &c.—met here during the pendency of the Reagan bill in the course of one winter and were here again last winter; and they advised Congress not to pass the Reagan bill, and especially not to pass some of the very features of this conference committee's bill. This National Board of Trade is meeting here to-day or to-morrow. I do not want to fore-shadow what they may do, but in my opinion they will pass a resolution asking this House to hesitate before it adopts the conference committee's report and the bill, and will advise against at least some provisions of it.

Why, sir, my friend from Georgia [Mr. CRISP] has changed his line very much. He did not vote for the Cullom bill. He might have voted for the Cullom bill, which had in it the provision for the appointment of a commission. He might have voted for that bill, and I never understood why he did not do it, being a gentleman of very conservative views.

Mr. CRISP. Will the gentleman permit me a remark? Am I to understand the gentleman from Pennsylvania as thinking that this bill is the Cullom bill?

Mr. O'NEILL, of Pennsylvania. No, sir; I only wish it were. I am amazed to find it is not the Cullom bill, and I believe it would have been the Cullom bill if there had been a proper representation of the views of the minority of this House on the conference.

Mr. CRISP. Of course, as I was one of the conferees, I can make no reply to that.

Mr. O'NEILL, of Pennsylvania. Of course the gentleman understands that the Cullom bill has the commission clause in it; but I suppose something had to be yielded on the question of the courts. There was the trouble, and the provision now creating this commission makes it almost a court. It does not make a trial by jury exactly, but it

makes the commission almost a court, and makes the proceedings almost similar to proceedings in courts. There will be delay in decisions upon the question of short and long haul, and not the practical general rules as contemplated in the Cullom bill. The proposition in the Cullom bill as passed by the Senate, and as voted for by 102 members of this House against 126 against it, was for a commission, but did not in itself create any of the delays that the bill now reported does. It meant that there should be a speedy settlement of these questions of long and short haul, and that general rules should be made—not a long investigation, as it is supposed will be had under the provisions of this bill.

As I believe in the knowledge and experience of the commercial associations of the country, I want to refer to them again after I have alluded to the concurrent resolution passed by the Legislature of Iowa favoring the passage of the Cullom bill regulating interstate commerce, a resolution passed by both branches of the Iowa Legislature, sent to this House and presented by a member from Iowa, I think Mr. HENDERSON, and copies presented by other members of that State. And so were resolutions of the Chamber of Commerce of Milwaukee, Wis.; so also of the association entitled the Merchants' and Manufacturers' Company, of Cincinnati; so also the resolutions of the Chamber of Commerce of Saint Paul, and so on. They have come here from nearly all the great centers of trade.

I might refer also to the many, many editorials which appeared at the time when the report was made, and the many, many editorials which appear now that could be selected from the papers of the country urging the House to adhere to the Cullom bill and not to vote for the adoption of this conference report and the passage of the bill recommended by the conference committee. I speak for instance now of the Louisville Courier-Journal; I speak of one of the Cincinnati papers; I speak of the North American of the city of Philadelphia, and various other papers well known throughout this country giving this advice to the House now. I presume gentlemen read their local papers at least and learn the feeling expressed by editors; for we are so much dependent upon the information we receive through the channel of newspapers that the views of the press ought to have influence on the House.

I refer more particularly to commercial associations. They are composed of men engaged in business, men who understand all about these questions of transportation, men who have no desire to crush the railroads, who do not wish to disturb the rights of the individual citizen, but who do, on the contrary, wish to see the progress of the railroads continued in the direction of conforming their charges to the demands of the people. Does any gentleman dispute that progress? I have heretofore asserted, and it cannot be denied, that within a comparatively short period the average charges have fallen from 2½ cents per ton per mile to about seven-eighths of a cent per ton per mile. I take it that such legislation as this is calculated to retard railroad progress and to interfere seriously with the movement of freight—especially freight at points far distant from the seaboard. Hence I find myself unable to subscribe to legislation which, in any iron-clad way, interferes with the right to charge less per ton per mile for the long haul than for the short haul. I do not believe that legislation of that character is good legislation.

I think it will inevitably disturb, greatly, the interests of the transportation lines and, of course, disturb, at the same time, the interests of the people, who desire cheap and rapid transportation, and to whom it is as advantageous as it is to the railroads. Any one who looks at the record of the proceedings upon this bill in the body at the other end of this building can see plainly that many a gentleman who voted for it doubted whether he understood what he was voting for. [Laughter.] Many gentlemen who voted for the bill admitted that they did not understand the operations of some of its provisions, and some who voted against it made the same admission. [Renewed laughter.] I was very glad of the compliment paid to my friend from Georgia [Mr. CRISP], a member of the committee of conference. I refer to the fact that there was a correspondence between him and a member of the Senate as to how the gentleman from Georgia understood certain provisions of the bill.

That was a very gratifying compliment, a distinguished Senator asking information from a member of the House! [Laughter.] I thought it a very high compliment to the House and to the understanding which the Senator knew the gentleman from Georgia [Mr. CRISP] to possess and his ability to explain, as well as he could [laughter], the provisions of this bill. I do not think it detracts at all from the ability of the gentleman that he is not able to explain all its provisions. I do not wonder at it. Nobody in the Senate who asked for a satisfactory explanation of the bill received it, and nobody here has received such an explanation. But that is not the question. I fear, and I think I can perceive, that many gentlemen will vote for this bill without understanding what it will result in. They think that the pressure has been so great from the country that there ought to be some bill passed upon this subject. Now, I do not see this day where the great pressure from the people is to be discovered.

I admit that there is occasionally a locality where there is complaint about the railroads and from which there is a pressure for the passage of some bill; but, take the great producers of the country and the

great shippers of the country, is there any pressure here from them for the passage of such a bill as the one which has passed the Senate and is likely to pass the House? Some years ago, I admit, there were complaints and there were reasons for complaints of the railroad corporations, but to-day those reasons have largely disappeared. In the great State of Pennsylvania I do not know where to find a complaint on the part of shippers against the railroads. I recollect when there used to be complaints, but I do not know of any there now, and I believe the same is true of other States to a very great extent.

The fact is that the building of railroads has been of such immense advantage to the country that the people are willing to let the men who understand the railroad business manage it themselves.

Mr. ROWELL. If the gentleman will permit a question, does he not think that the legislation which has been enacted in twenty-six States and Territories, and which has been in operation for several years, has had a good deal to do with reducing the complaints and the grounds for complaint?

Mr. O'NEILL, of Pennsylvania. Yes; I do not doubt that. Several of the States have enacted laws creating railroad commissions, and undoubtedly those have had great effect, and there, perhaps, is where this power had better be left, for there is less danger from this question in State legislation than in National legislation, less danger of injury to the people as well as to those who have their means invested in the transportation lines. Railroad commissions have been created in Massachusetts and in other States, and they have been to a great extent successful in removing the grounds of complaint against the railroads.

The legislation of the State of Pennsylvania, the constitutional provisions adopted by that State, have done good. Pennsylvania is against discrimination; her Legislature is against it, her people are against it, everybody there is opposed to discrimination. My colleagues know that as well as I do. We could not stand up here and favor anything looking like discrimination and be considered representatives of our people.

Mr. WEBER. Have you a railroad commission?

Mr. O'NEILL, of Pennsylvania. We have no such commission in Pennsylvania. I only wish we had. I think we would be in a fair way of getting such a commission but for this legislation.

Mr. Speaker, the railroad companies, so far as I know, appear to be totally unconcerned on this question. I know nothing of them; and I hear nothing from them. I do not know that their representatives are here; I have not seen any of them. Some of these companies may like some of the provisions of this bill, as I do; and some of them may differ with me in my ideas in regard to this bill. But I do not know and do not care how they feel. I have had my convictions upon this subject for years; and I feel to-day more strongly convinced than ever that we should be very careful how we legislate in this general way by passing an almost iron-clad bill. I do not regard the bill as now recommended by the conferees as an improvement upon the Cullom bill. I regard the long-and-short-haul clause in its present form as so very binding that there can be no redress.

I have thought all along that the shipper and the railroad company could agree as to what would be "similar circumstances." So they could. They have agreed in the past, and they could agree now. I do not think legislation upon that question is required. I know that since we passed the "Reagan bill" in the House, the freights charged by the railroad companies have been diminishing in a slight degree, as much as could be expected when you take into account what should be a fair profit to the railroad companies and what accommodations should be extended to the shippers of freight. It is not to be supposed that a railroad company wants to carry freight at a loss.

Those companies are generally looking to the interests of their stockholders; they generally seek a return upon the capital they have invested. I think their great desire is to make their investments yield a profit. But when you come to consult with those who understand the financial affairs of the railroad companies you find that, while the aggregate of reductions for transportation is so great, the trunk lines are generally paying dividends upon their stock, and all of them are paying interest upon their bonds. There must be some profit, even if some man in Minnesota gets his freight carried from Saint Paul to the East for less than is paid by some one a few miles east of Chicago.

This question of profit is a very material one; and the railroad companies desire to make a profit for those whose interests are under their care. It is not necessary to mention the fact—the whole House knows it—that nearly eight billions are invested in railroads. The aggregate is largely more than the aggregate invested in almost any other line of business; and this business employs a larger number of persons than almost any other branch of industry. Why, sir, the progress of railroad building in the State of Pennsylvania has made that State a great empire in itself. It has increased within my recollection from a Commonwealth of a little over 2,000,000 people to a State of nearly 6,000,000 inhabitants. The development of our railroad system has built up our State almost like a continuous city from Philadelphia to Pittsburgh, as well as in other directions where railroad lines have extended.

Our State entered early upon the working out of the railroad idea; earlier almost than any other State. Our Commonwealth was almost the pioneer in railroading. Before any of these other great lines of railroads were completed the State of Pennsylvania had crossed the

Alleghany Mountains with a railroad by means of inclined planes—a wonderfully skillful feat of engineering in those early days—so as to connect the waters of the Delaware with the waters of the Ohio, partly by rail and partly by canal. But the misfortune was that those lines of canal were managed by a canal board, as it was called in Pennsylvania, which became a powerful machine of political corruption. When I reflect upon some of the provisions of this bill and the views of some gentlemen here upon them the idea suggests itself to my mind that eventually the Government may be asked to purchase these roads. They may be pushed upon the Government of the United States for the purpose of bringing value to some bankrupt railroads and for the purpose of centralizing the railroad system and using that system politically. There is danger in that direction; for I believe such is the tendency in the minds of those who have for years been so eager to adopt legislation even more stringent than that proposed in this bill.

Another consideration suggests itself to me. What protection have we in this bill from the railroads in Canada? Can my friend from Georgia explain that? What protection have the trunk lines of this country as against the trunk lines of Canada? The gentleman does not answer. I will give the answer. Of course it is well known that there is a line of railroads running through Canada from Montreal in the direction of Chicago, and beyond to the northwest, competing to a considerable extent with trunk lines running from our seaboard in the same direction. There is nothing in this bill which binds these roads; nothing at all. But an attempt has been made to bring them within the power of this enactment and to require them to stand by some of its provisions. I do not believe that can be done by legislation. The great competitor of the American trunk lines is in Canada, where they can do everything they want to do, where they can adopt one charge for a long haul and another for a short haul, just as they may please to do against our roads. There, of course, another interest comes in.

Then, there are the water-ways of the country. Why are not they legislated for in like manner? Take the steamship lines upon the lakes, take the steamboat lines on our rivers, and they are nearly all combinations of various people, they are nearly all associated lines, and why not by legislative authority in like manner control the rates of their freights as you do in the case of railroad corporations? Yet, while it would seem that should be done in one case as in the other, there is nothing in this bill bringing them within its provisions. All the restrictions are put upon the railroad corporations, and the transportation on our water-ways is allowed to remain as it is, and these steamship and steamboat lines are permitted to make charges for carrying freight as they please, to undercut—to use the customary phrase—as much as they please, the charges of railroad lines. They can pool freights, and do pool them. They can charge as it suits them for a long or a short haul. While railroads are charged with attempts to defeat this interstate-commerce legislation, we must not forget the influence that the water-ways may be exerting for the success of such a measure as we have before us.

As I have said before in this House, our great care should be as to how we are legislating, and upon what assumption, and upon what condition of facts. Some gentlemen say whatever may be wrong here we can remedy hereafter, that we have the power of amendment. We have the admission that this is an experiment. I should think so by the vote at the other end of the Capitol, and by the remarks there. But we are told, let us try it. Well, we may try it to the ruin of the transportation business in the approaching spring of this year, and next fall. We can not legislate in reference to the matter for another year, and so we can not remedy any defect which may be found in this law in less than that time. We are now going into the business of this year—the spring trade is about to open, and the enactment of such a law must lead to embarrassment in the transportation lines of the country at least for months to come. I do not see how it can be otherwise. I know there is a provision in the bill that this law shall not take effect until 60 days after its passage. I believe there is such a provision.

Mr. CRISP. They are to have 60 days.

Mr. O'NEILL, of Pennsylvania. Sixty days in which to make the necessary changes relating to a business which covers the whole country—which, in extent, may be counted not only by the use of thousands of miles of railroads, but by over a hundred thousand of miles. There are one hundred and twenty-five thousand and more miles of railroads now built, and five or six thousand miles of railroad are built every year. They have been built at that rate, and are being built at that rate this year. Yet, in this bill it is proposed to enact a law to throw that whole railroad system into embarrassment. It overturns the system which they have been years in establishing, and which has had the effect of reducing the rate of transportation to the lowest figures, cutting it down at the average rate of reduction in the past in a few years of the future to less than seven-eighths of a cent per ton per mile, the average rate now the country over.

I will say this, that in the years I have been permitted to live and permitted, by the pleasure of the people who sent me to this House, to occupy a legislative capacity, I remember the inception of the great railroad movement in Pennsylvania, and I am proud to say, after looking into the matter carefully, I rejoice that I acted with those in fa-

vor of such legislation as would provide by municipal subscription in Philadelphia millions of dollars to build the great Pennsylvania Railroad in order to connect the Delaware with the Ohio. I know something of its enterprise. I know what it has done for Philadelphia and Pennsylvania, and I think I know that in the opinions I have here expressed upon the provisions of this bill I represent the people who sent me here. They would be satisfied with the Cullom bill. I know I represent them on this subject when I vote against a proposition containing so many iron-clad provisions and so radical when we consider that we are enacting an entirely new national system of railroad management.

I would be glad to vote for the Cullom bill, as we voted for it last summer, in favor of a grand national commission, and the legislation proposed in that bill that would, I believe, cure all evils as commissions have cured evils in many of the States. Let such a bill be put forward, and let such a commission be appointed by the President. Let the commissioners be selected because of their integrity and known ability, and let them look into the matter and see what is necessary to be done to protect the people, what is necessary to restrain the railroads. I believe in a few months' time such a commission would furnish us with such information as might be necessary and upon which we could legislate with safety.

I am going to end what I had to say by repeating, as I began, that I am against discrimination. The people are against discrimination and I am for reasonable freight charges. I am for no man being preferred over another in the transaction of business with the railroads, or in any other character of business; and so I am ready as I ever have been ready to act upon reasonable and desirable legislation on the part of Congress to make any proper and legitimate change in the railroad system. This House is not likely to vote down this report; and yet it seems to me that it is a dangerous experiment, and what its effect will be upon the great transportation movement of the country is what no man can predict. Whether it will be for good or bad the future alone will determine. Whether the railroads will suffer or not—and when I speak of railroads I mean the people who have \$8,000,000,000 invested in them—or whether the business people will be made to suffer is difficult to determine. I want neither the business people nor those whose means are honestly in railroad investments to be the losers by our enactments. I say it is a dangerous experiment and one which should be proceeded with in a cautious manner. The majority must rule and must be responsible for what it does.

I now yield to the gentleman from Illinois [Mr. HOPKINS].

Mr. HOPKINS. Mr. Speaker, disguise it as we may the fact exists that the members of this House must meet and settle the question whether the people of this country are to have any legislation during this Congress on the much-vexed and much-talked interstate-commerce law to regulate and control the transportation of goods over the great railroads which span the land in every direction. The bill which has been reported by the conference committee, after a most elaborate, able, and exhaustive debate in the Senate, has passed that body by a vote which certainly must be gratifying to the distinguished Senator who is chairman of the Senate committee that had the bill in charge. The consideration of the bill here naturally suggests two leading thoughts: First, has Congress the power to regulate interstate commerce in the manner proposed in the bill? And, secondly, does a necessity exist for the exercise of that power if it shall be found to be warranted by the Constitution and the decision of the courts?

The power of Congress to legislate upon this subject and the constitutionality of the bill under consideration were seriously questioned by some of the ablest and most distinguished Senators, and the same objections are again heard in this House in opposition to the passage of the bill.

I confess it seems a little strange to me that after the wealth of learning shown upon this subject by State and Federal judges, including the learned justices of the Supreme Court of the United States, that there should still be found doubting Thomases among the members of this House or in the legal profession wherever found. If there is any question in the whole domain of our jurisprudence which has been fixed and settled by an unbroken line of decisions of the courts from the earliest history of our constitutional Government to the present, it is this of the power of Congress to regulate interstate commerce or the commerce contemplated in this bill.

Chief-Justice Marshall, away back in the case of *Gibbons vs. Ogden*, reported in the 9th of Wheaton, examined this whole subject, and in a most luminous opinion asserted and demonstrated this power of Congress. And in the decision of the Supreme Court of the United States recently given in the case of the *Wabash, Saint Louis and Pacific Railroad Company vs. The People of the State of Illinois*, Mr. Justice Miller, in delivering the opinion of the court, uses this language:

This clause giving to Congress the power to regulate commerce among the States and with foreign nations, as this court has said before, was among the most important of the subjects which prompted the formation of the Constitution. * * * The argument on this subject can never be better stated than it is by Chief-Justice Marshall, in *Gibbons vs. Ogden*. He there demonstrates that commerce among the States, like commerce among foreign nations, is necessarily a commerce which crosses State lines and extends into the States, and the power of Congress to regulate it exists wherever the commerce is found.

To those who, like the distinguished Senator from California [Mr. STANFORD], hold that railroads do not come within the meaning and intent of that clause of the Constitution giving to Congress the right and power to regulate the transportation of goods from one State to another, and that railroad corporations partake more of the nature of private property, and should be treated as private and not public enterprises, I would commend the following language of Mr. Justice Bradley in giving expression to the views of the minority of the court on the questions involved in the Wabash case, already referred to:

The highways in a State are the highways of the State. Convenient ways and means of inter-communication are the first evidence of the civilization of a people. The highways of a country are not of private but of public institution and regulation.

In modern times, it is true, government is in the habit in some countries of letting out the construction of important highways requiring a large expenditure of capital to agents, generally corporate bodies created for the purpose, and giving to them the right of taxing those who travel or transport goods thereon as a means of obtaining compensation for their outlay. But a superintending power over the highways and the charges imposed upon the public for their use always remains in the Government. This is not only its indefeasible right, but is necessary for the protection of the people against extortion and abuse. These positions we deem to be incontrovertible. Indeed, they are adjudged law in the decisions of this court. Railroads and railroad corporations are in this category.

This language is plain and unequivocal. It settles the power of this Congress to act in the premises. In other words, it holds to the axiom that the creature can never be greater or more powerful than the creator. This question of the power of the Government to regulate and control railroads, in one form or another, has been litigated in and decided by the courts of last resort in many, if not all, the States of the Union. Powers once conferred upon these corporations have been tenaciously held and enlarged upon. The Dartmouth College case has been invoked in their aid again and again. But to the honor of the judiciary of our country, both State and Federal, be it said, the judges before whom these questions have been brought for final arbitrament between the people and the railroads have arisen to the demands of the occasion, and by their learning, their integrity, and their patriotism have held and demonstrated that State Legislatures and Congress can not invest corporate bodies with power more imperial than that exercised by the State or with authority which becomes "vested rights," and hence amenable to no subsequent legislation. They have held that the people are sovereign, and that all, of whatever station or condition, corporations and persons alike, must bend to their will when expressed.

So I think, Mr. Speaker, with power and authority so full and ample possessed by Congress this House can not hesitate upon that ground to consider and pass the pending bill.

That there is a necessity for some such legislation I think is apparent to all who have given the subject any thought and study. The railroads of this country, with an aggregated capital almost beyond the computation of man, possess a power over the commerce of the country and all kinds of industry truly regal. That power has not been always exercised to promote the greatest good to the greatest number; but has been used to still further enhance the power of the railroads and increase their wealth and that too to the detriment and even ruin of the individual and sometimes of whole communities.

I cannot stop here and now to illustrate this truth by numerous examples. They are known to all men. The farmer, the merchant, and the manufacturer has each his grievance and story of wrecked fortunes from unjust discriminations in railroad transportation. That this is not idle talk is shown from the fact that the legislatures of twenty-three States of the Union have passed laws prohibiting unjust discrimination and other railroad abuses within the limits of their respective territories. But the State is powerless to meet the evils sought to be remedied by this bill. This is happily illustrated in the Wabash case to which I have already made reference.

There is a statute in the State of Illinois which holds that if any railroad corporation shall charge, collect, or receive for the transportation of any passenger or freight of any description, upon its railroad for any distance within the State, the same or greater amount of toll or compensation than is at the same time charged, collected, or received for the transportation in the same direction of any passenger or like quantity of freight of the same class over a greater distance of the same road, all such discriminating rates, charges, collections, or receipts, whether made directly or by means of rebate, drawback, or other shift or evasion, shall be deemed and taken against any such railroad corporation as *prima facie* evidence of unjust discrimination prohibited by the provisions of the act.

The statute provides a penalty for every offense. That statute was attempted to be enforced against the Wabash, Saint Louis and Pacific Railroad Company by the State authorities on the following state of facts: The railroad company charged Elder & McKinney 15 cents per hundred pounds for carrying a load of freight from Peoria, in the State of Illinois, to New York, 109 miles of the distance being in Illinois, while at the same time it charged Bailey & Swannell 25 cents per hundred pounds for carrying a like load of the same class of freight from Gilman, also in the State of Illinois, to New York, 23 miles of the distance being in Illinois. Both places were on the line of the road, and the freight of Elder & McKinney being carried 86 miles further in the State of Illinois than the like kind of freight of Bailey & Swannell.

The Wabash road defended the action brought against it, and asked the trial court to hold the following to be the law of the case:

The court further holds as matter of law that the transportation in question falls within the proper description of commerce among the States, and as such can only be regulated by the Congress of the United States under the terms of the third clause of section 8 of Article I of the Constitution of the United States.

The court refused to so hold, and found that the facts recited constituted a violation of the statute, and imposed the penalty provided by the law for such unjust discriminations. The company appealed to the supreme court of the State, and there the judgment of the lower court was affirmed. The precise ground upon which the Illinois court held jurisdiction of the case can best be expressed in the language of the learned judge who delivered the opinion of the court. The court say:

We understand and simply hold that in the absence of anything showing to the contrary a single and entire contract to carry for a gross sum from Gilman in this State to the city of New York implies necessarily that that sum is charged proportionately for the carriage on every part of that distance; and that a single and entire contract to carry for a gross sum from Peoria in this State to the city of New York implies the same thing; and that therefore when it is shown that there is charged for carriage upon the same line less from Peoria to New York (the greater distance) than from Gilman to New York (the less distance), and nothing is shown to the effect that such inequality in charge is all for carriage entirely beyond the limits of this State, a *prima facie* case is made out of unjust discrimination under our statute occurring within this State. We hold that the excess in the charge for the less distance presumably affects every part of the line of carriage between Gilman and the State line proportionately with the balance of the line.

If this wise and just interpretation of the Illinois statute had been adopted by the Supreme Court of the United States there would be less necessity for the enactment into law of the pending bill. But the company refused to abide by the decision of the supreme court of Illinois, and brought the case for review before the Supreme Court of the United States, where it was reversed and remanded. Mr. Justice Miller, in giving expression to the opinion of the court, said:

Of the justice or propriety of the principle which lies at the foundation of the Illinois statute, it is not the province of this court to speak. As restricted to a transportation which begins and ends within the limits of the State, it may be very just and equitable, and it certainly is the province of the State Legislature, to determine that question.

But when it is attempted to apply to transportation through an entire series of States a principle of this kind, and each one of the States shall attempt to establish its own rates of transportation, its own methods to prevent discrimination in rates, or to permit it, the deleterious influence upon the freedom of commerce among the States and upon the transit of goods through those States, can not be overestimated. That this species of regulation is one which must be, if established at all, of a general and national character, and can not be safely and wisely remitted to local rules and local regulations, we think this is clear from what has already been said. And if it be a regulation of commerce, as we think we have demonstrated it is, and as the Illinois court concedes it to be, it must be of that national character, and the regulation can only appropriately exist by general rules and principles, which demand that it should be done by the Congress of the United States under the commerce clause of the Constitution.

This opinion renders all the States powerless to check or control the growing sovereignty of railroads. The great bulk of the traffic of the various roads comes within the principle announced by Mr. Justice Miller, and hence Congress, and Congress alone can protect the people from extortion, discrimination, and other railroad corporate abuses. It is contended by some that the railroads should not be hampered by any legislation and that they will see that no injustice or extortion is practiced upon the people. That the officers and managers of some of the great railroads of the country are just and honorable men can not be denied, and that they manage the affairs of their roads in a spirit of fairness to the public must, too, I think, be admitted.

But that is no argument against the right or propriety of passing such a law as is contemplated in this bill. They possess a power which, if they choose to exercise it, will spread ruin upon the person or locality that offends them. They have not the responsibility or interest of a government in the people. Their interest in the welfare and prosperity of different individuals or communities may be only incidental, while the government is always direct; and yet, without any interstate-commerce law to regulate and control them, they are more powerful and exercise a more direct influence upon the people than the State. Their power for evil is well illustrated in the building up of the Standard Oil monopoly. It has been fittingly characterized by one author as "The History of a Commercial Crime."

My time is limited and I can not speak at any length upon a condition of affairs brought about by the combination and discriminations of railroads which would permit a giant monopoly to accumulate \$100,000,000 in a little less than fifteen years. The history of the manner in which that company has been enabled to accumulate so vast a fortune is enough to make the members of this House, who are the representatives of the people, hasten the work of this conference committee into a law. The people look to the members of this House as their agents to honestly, fairly, and fearlessly guard their rights.

The railroads and their managers and agents profess to be friendly to Congressional legislation, and some even go so far as to maintain that it is in the interest of honest railroading to have Congress enact a law regulating the transportation of traffic over interstate roads, and I incline to the opinion that many of the leading railroad managers of the country are honest in the expression of these views; but the bill now before us has been attacked in a manner which, if we were to assume the criticisms to be just, would lead us to believe it the most villainous piece of legislation ever attempted to be forced through Con-

gress. I have studied its provisions with much care, with no prejudice against railroads, and with a desire to fairly and intelligently represent the interests of the people who have honored me with a seat in this House and the interests of our common country. My study and investigation have led me to different conclusions respecting the bill than those of the prophets of ill omen whose forebodings picture the utter destruction of all commerce among the States and gaunt want and despair upon every corner if the bill becomes a law.

I assert what can not successfully be denied, that the sections of the bill which are so fiercely assailed are but the enactment into statutory law of common law principles. The mode of enforcing those sections are different from common law remedies—made so to meet a condition of affairs which was not contemplated at common law. I am not saying that the bill is perfect or that it could not be improved by amendment, but that is denied us. We must take the bill as it comes from the conference committee or reject it. The fourth and fifth sections of the bill seem to be most objectionable, or at least the opposition to the bill is centered upon those sections.

Section 4 makes it unlawful for any common carrier subject to the provisions of the act to charge or receive any greater compensation in the aggregate for the transportation of passengers or like kind of property under substantially similar circumstances and conditions for a shorter than for a longer distance over the same line in the same direction, the shorter being included in the longer distance with a proviso that in special cases the commissioner appointed in the bill might permit a less charge for a longer than for a shorter distance for the transportation of passengers or property, with the saving clause that these provisions should not be construed as authorizing any common carrier within the terms of the act to charge or receive any great compensation for a shorter as for a longer distance. What is there in this section so novel as to cause such a furor of debate over its provisions? The principle is as old as the law of common carriers.

That its application to the regulation and control of railroads and their traffic is not new is apparent from the fact that four States, namely, Arkansas, California, Missouri, and Pennsylvania, have that principle in the constitutions of their States, and Massachusetts and Illinois by statutory law have emphasized its justice and equity. Able and eloquent men like my distinguished friend from Ohio [Mr. BUTTERWORTH], men who can make the worse appear the better reason, may torture the language of that section into something detrimental to the commerce among the States; but, after their brilliant assaults shall have spent their force, plain people will see nothing in this section but the assertion of a just principle of law, made necessary by the unjust discriminations and extortions of railroads.

The SPEAKER *pro tempore* (Mr. OATES in the chair). The time of the gentleman has expired.

Mr. HOPKINS. I think, Mr. Speaker, that I have some time remaining. I have not occupied thirty minutes.

The SPEAKER *pro tempore*. The Chair recognized the gentleman for the fifteen minutes remaining in the time of the gentleman from Pennsylvania.

Mr. CRISP. How much additional time does the gentleman want?

Mr. HOPKINS. I do not intend to occupy more than thirty minutes if I can avoid it.

Mr. CRISP. I ask consent that the gentleman be permitted to proceed with his remarks.

There was no objection.

Mr. HOPKINS. Now, Mr. Speaker, I had intended to supplement these remarks by an examination in detail of the various sections of the bill, and especially of sections 4 and 5, but the lateness of the hour forbids such an extended examination, and I shall content myself by referring briefly to a few of the important points in connection with them.

The construction which has been placed on section 4 by the conference committee of the Senate avoids all of the difficulties raised by gentlemen who oppose the bill on account of its provision relating to the so-called long and short haul.

That construction will secure to the farmers and shippers of Illinois and the West as favorable rates for through freight, otherwise known as the long haul, as they have now; while under the provisions of the bill all shippers at intermediate points on the line of the road or roads forming the line over which the long haul shipments are made will be protected from unjust discriminations or extortion.

The gentleman from Georgia [Mr. CRISP], who presented to the House this afternoon the reasons which actuated the conference committee in agreeing upon the bill in the form we are now considering it, spoke of the disastrous results to the commerce of the country, and shippers, and the people generally from a war of rates between two or more of the great trunk-line railways at competing points, such as Kansas City, Omaha, or Chicago, for through freight to New York city, or some other seaboard city. What the railroads lose by such wars at these terminal points, it is claimed, are imposed upon the people and shippers at intermediate points on the line of the roads between their Eastern and Western termini, so that the people are the ones upon whom finally the great burden falls. Now, by this section of the bill, provision is made that the charge for the shorter haul on such a line shall not be

more than for the longer haul, except in special cases, and whatever the rates at the terminal points of such competing roads may be reduced to all the intermediate points will get the benefit of such reduction. This fact will serve as a most effective check upon the hostilities of competing railroads, and secure fair and uniform rates.

The final construction which will be placed upon the words "under substantially similar circumstances and conditions" must of course be left with the courts and the commission. Any construction given to them by a member in debate can not be authoritative or binding. They are placed in the section to give such flexibility to charges on the long and short haul as will not interfere with the commerce of the country. Railroad managers who were examined before the Commerce Committee of the Senate all agreed, it is said, that as a general proposition, as much should not be charged for the transportation of passengers or freight on any railroad for a short as for a longer distance. This section then is in harmony with the views of expert railroad men. The exceptions mentioned by them before the Commerce Committee of the Senate are provided for by the powers given the commission to authorize a less charge for longer than for shorter distances for the transportation of passengers or property.

Mr. REED. Then you differ with the gentleman from Georgia in that interpretation?

Mr. HOPKINS. I am not the keeper of the conscience or of the judgment of the gentleman from Georgia. I am simply giving my construction to this bill.

Mr. REED. And which differs from that of the gentleman from Georgia.

Mr. HOPKINS. That may be.

Mr. REED. I wish to draw attention to the divergency.

A MEMBER. Why is the commission authorized to sit in Washington?

Mr. HOPKINS. That is a question I can not answer. Washington is the seat of the National Government, and it would seem proper that the meetings of the commission should be here. But the bill provides that the commission shall go to Chicago or Cincinnati, or anywhere else.

Mr. STEELE. At the expense of the Government.

Mr. HOPKINS. But in the interest of the people.

Section 5, which relates to pooling, is but a re-enactment of the common-law principle. It seems to me there is no member of this House who will maintain that it is right or just to permit railroad companies to engage in pooling when it is a violation of the interests of all other industries. It is an offense at common law, and has been so decided in the State of Ohio and in the State of New York, and has been so decided wherever the question has been fairly put to the courts.

I am aware that railroad managers claim it is in the interest of cheap freight rates, but it will be difficult to make any man believe that such combinations benefit anybody other than those who are parties to them. Had I the time I would gladly show the results of the pooling contracts prohibited by this bill. But I am reminded that my time has expired. The bill, Mr. Speaker, may be crude, and experience may teach us that it should be amended and modified. If such be the case no person will more cheerfully correct by further legislation any errors or defects in the bill than myself. The railroads of the country have worked wonders in the settlement of our Western States and Territories and in the development of our interstate commerce, and I would not knowingly strike down any of their legitimate rights or cripple them in carrying on this great commerce. What, for one, I wish to do, and what I think the members of this House wish, is to so regulate them in the transportation of passengers and freight from one State to another that they can work no injustice upon each other or the public, and that reasonable rates shall be secured to all classes of shippers and those engaged in the transportation of goods for a short or long distance over any of their lines. I reserve the remainder of my time.

The SPEAKER. The Chair does not know whether the gentleman from Illinois has any time left or not. The present occupant of the chair understands that the floor was yielded to the gentleman from Illinois by the gentleman from Pennsylvania [Mr. O'NEILL], and that when his time expired, on the request of the gentleman from Georgia [Mr. CRISP], it was extended.

A MEMBER. Until he had finished his remarks.

The SPEAKER. And having done that, the Chair thinks the gentleman has no time remaining.

ARMY APPROPRIATION BILL.

Mr. BRAGG, from the Committee on Military Affairs, reported back the bill (H. R. 10242) making appropriation for the support of the Army for the fiscal year ending June 30, 1888, and for other purposes, with amendments by the Senate, and moved that the House non-concur in the Senate amendments, and ask for a committee of conference.

Mr. HOLMAN. Are there not some amendments which ought to be concurred in?

Mr. BRAGG. There are only two that are of material consequence. The motion was agreed to.

The SPEAKER announced as the managers of the conference on the part of the House, Mr. BRAGG, Mr. VIELE, and Mr. STEELE.

S. D. BARCLAY AND OTHERS.

Mr. MILLS, by unanimous consent, introduced a bill (H. R. 10794) for the relief of S. D. Barclay, G. D. Adams, and William H. Kimbrough; which was read a first and second time, referred to the Committee on the Judiciary, and ordered to be printed.

ENROLLED BILLS SIGNED.

Mr. NEECE, from the Committee on Enrolled Bills, reported that the committee had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

- A bill (S. 2478) granting a pension to John Wines;
- A bill (S. 2459) granting a pension to Eliza Wilkins;
- A bill (S. 2420) granting a pension to Sidney Denton;
- A bill (S. 2388) granting a pension to Alonzo Raymond;
- A bill (S. 2167) granting a pension to Mrs. Margaret Dunlap;
- A bill (S. 1654) granting a pension to Joseph Mays;
- A bill (S. 1642) granting a pension to William F. Harmon;
- A bill (S. 391) for the relief of A. A. Thomas;
- A bill (S. 165) for the relief of William H. Gray, of Kentucky;
- A bill (S. 250) for the relief of the sufferers by the wreck of the United States steamer Ashuelot;
- A bill (S. 2699) granting a pension to Sarah E. Norton;
- A bill (S. 1386) for the completion of a public building at Fort Scott, Kans.;
- A bill (S. 2791) to provide for an American register for the steamer Nuevo Motezuma, of Philadelphia, Pa.;
- A bill (S. 230) for the erection of a public building at Worcester, Mass.; and
- A bill (S. 2730) granting an increase of pension to Elizabeth S. de Kraft.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to Mr. ERMEN-
TROUT, indefinitely, on account of the death of his brother.

Mr. CRISP. I move that the House do now adjourn.

STABLE FOR HOUSE OF REPRESENTATIVES HORSES, ETC.

Mr. OWEN. Before the question is put on the motion to adjourn, I desire to call up a bill, which is of interest to the whole House. I ask unanimous consent that the Committee of the Whole House on the state of the Union be discharged from the further consideration of the bill (H. R. 10091) for the construction of a stable for the use of the horses and wagons for the use of the offices of the House of Representatives, and that the same be now considered.

The bill was read, as follows:

Be it enacted &c., That the sum of \$4,000, or so much thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, to be immediately available, to be expended under Edward Clark, Architect of the Capitol, for the construction of a brick stable and wagon-sheds necessary, and fence inclosing the same, for the post-office and other offices of the House of Representatives, to be erected on the lot on the east side of Third street between Maryland avenue and B street southwest, in the city of Washington, now occupied by and the property of the United States.

Mr. SPRINGER. Before the power of objection is exhausted I want to know where this bill came from.

Mr. OWEN. It was reported by the Committee on Public Buildings and Grounds. Let the report be read.

The report (by Mr. OWEN) was read, as follows:

The Committee on Public Buildings and Grounds, to whom was referred the bill (H. R. 10091) for the construction of a stable for the use of the horses and wagons used by the officers of the House of Representatives, find that the present stable quarters are unsatisfactory and inconvenient, and that \$360 rent per year is paid therefor. The bill asks the construction of a brick stable at a cost of \$4,000 on a site owned by the United States, said site being a part of the south annex to the Botanical Grounds; if it is unoccupied, and this use having been recommended by the superintendent of the grounds, your committee recommend the passage of the bill.

Mr. McMILLIN. Is this for the horses used for carrying mails and the like?

Mr. OWEN. That is the object of the bill. The writ of ejectment from the present premises has already been issued, and it is necessary that this bill should pass at once.

The bill was ordered to be engrossed and read a third time; and being engrossed, it was accordingly read the third time, and passed.

Mr. OWEN moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid on the table.

The latter motion was agreed to.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. SYMPSON, one of its clerks, announced that the Senate had passed without amendment a bill (H. R. 1171) to amend an act entitled "An act to provide for the muster and pay of certain officers and enlisted men of the volunteer forces," approved June 3, 1864.

The message also announced that the Senate had agreed to the amendment of the House of Representatives to the bill of the Senate (S. 2699) granting a pension to Sarah E. Norton.

The message also announced that the President *pro tempore* of the Senate had appointed Mr. WILSON, of Maryland, a member of the committee of conference on the disagreeing votes of the two Houses on the

bill (H. R. 8346) authorizing the employment of mail messengers in the postal service, in place of Mr. MAXEY, excused.

The message further announced that the Senate had disagreed to the amendments of the House of Representatives to the bill (S. 229) to provide for the erection of a public building at Wilmington, N. C., asked a conference with the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. MAHONEY, Mr. VEST, and Mr. RANSOM the conferees on the part of the Senate.

The message also announced that the Senate had passed without amendment the bill (H. R. 7616) for the relief of W. D. Havely.

CHANGE OF REFERENCE.

The SPEAKER. The bill (H. R. 10665) to provide for the investment of certain funds in the Treasury in bonds of the United States was erroneously referred to the Committee on Banking and Currency. Inasmuch as it relates to the bonded debt of the United States, it should go to the Committee on Ways and Means, and it will be so referred if there be no objection.

There was no objection, and it was so ordered.

ADJOURNMENT.

The motion to adjourn was then agreed to; and the House accordingly (at 5 o'clock and 23 minutes p. m.) adjourned.

PETITIONS, ETC.

The following petitions and papers were laid on the Clerk's desk, under the rule, and referred as follows:

By Mr. BOUND: Petition of citizens of the city of Lebanon, Pa., in favor of repealing internal-revenue tax on tobacco and cigars, domestic spirits and alcohol, &c.—to the Committee on Ways and Means.

By Mr. BUNNELL: Petition of soldiers and other citizens of Bradford County, Pennsylvania, asking that widows and dependent relatives shall not be debarred from pensions if death of claimant resulted from other causes than that for which pensioned—to the Committee on Invalid Pensions.

Also, petition of the New York Board of Trade and Transportation, favoring the passage of the interstate-commerce bill—to the Committee on Commerce.

By Mr. DARGAN: Petition of citizens of South Carolina, for an appropriation for the deepening of Winyah Bay bar—to the Committee on Rivers and Harbors.

By Mr. D. B. HENDERSON: Petition from a committee of the Consolidated Cattle-Growers' Association of the United States, urging the passage of the Miller pleuro-pneumonia bill—to the Committee on Agriculture.

Also, paper from the Knights of Labor, favoring the bill (H. R. 7217) for organizing the Territory of Oklahoma—to the Committee on the Territories.

By Mr. J. S. HENDERSON: Petition of J. M. Wharton and 179 others, citizens of Guilford County, North Carolina, for the repeal of the internal-revenue taxes—to the Committee on Ways and Means.

Also, petition of Dillard & Moir and others, manufacturers of tobacco, of Leaksville, N. C., for the repeal of internal-revenue taxes, including especially the tax on tobacco—to the same committee.

By Mr. HERMANN: Memorial of the Board of Trade of Oregon City, Oreg., for the improvement of the Willamette River between Oregon City and Portland—to the Committee on Rivers and Harbors.

By Mr. MORRILL: Petition of McPike & Fox, of Atchison, Kans., for the repeal of internal-revenue tax—to the Committee on Ways and Means.

By Mr. MURPHY: Petition from a committee of the Consolidated Cattle-Growers' Association of the United States, in favor of the Miller bill—to the Committee on Agriculture.

By Mr. NEGLEY: Petition of the Woman's Indian Association of Pittsburgh and Alleghany City, Pa., requesting the passage of the bills (S. 52, 53, and 54)—to the Committee on Indian Affairs.

By Mr. SENEY: Petition of Central Farmers' Institute of Columbus, Ohio, favoring the bill (H. R. 10359)—to the Committee on Agriculture.

By Mr. STORM: Memorial of the New York Board of Trade and Transportation, in favor of the Cullom-Reagan bill—to the Committee on Commerce.

By Mr. ZACH. TAYLOR: Petition of H. L. Thomas and E. M. James, legal representatives of B. R. Thomas, deceased, of R. D. Goodwyn, and of Eudoro Baptist church, of Shelby County; of Henry R. Taylor, of Haywood County; and of H. Pipkin, administrator of Jesse Pipkin, deceased, of Hardeman County, Tennessee, asking that their claims be referred to the Court of Claims—to the Committee on War Claims.

By Mr. TUCKER: Memorial of James Browning, superintendent of the United States National Cemetery at Staunton, Va., for an appropriation for road from that city to said cemetery—to the Committee on Military Affairs.

By Mr. MILO WHITE: Petition of the chairman and secretary of the National Legislative Committee of the Knights of Labor in favor of opening up Oklahoma to settlement—to the Committee on Indian Affairs.

By Mr. WHITING: Petition of the Franklin Harvest Club of South-

ampton, Mass., praying for the passage of the Hatch experiment-station bill—to the Committee on Agriculture.

The following petitions, praying for the enactment of a bill providing temporary aid for common schools, to be disbursed on the basis of illiteracy, were severally referred to the Committee on Education:

By Mr. W. W. BROWN: Of 469 citizens of the sixteenth district of Pennsylvania.

By Mr. J. M. CAMPBELL: Of citizens of Man's Choice, Pa.

By Mr. COOPER: Petition of the Women's Christian Temperance Union of Ohio in favor of the Blair educational bill.

By Mr. EDEN: Of 439 citizens of the seventeenth district of Illinois.

By Mr. ELDREDGE: Of 385 citizens of the second district of Michigan.

By Mr. ERMENTROUT: Memorial of the Women's Christian Temperance Union, asking for the passage of the Blair bill.

By Mr. D. B. HENDERSON: Paper from the Knights of Labor, favoring the Blair educational bill.

By Mr. LAIRD: Petition of the Women's Christian Temperance Union of Nebraska for the passage of the educational bill.

By Mr. NEGLEY: Petition for national aid to common schools, from citizens of Pittsburgh, Pa.

By Mr. RIGGS: Of 120 citizens of the twelfth district of Illinois.

By Mr. ROMEIS: Of 110 citizens of the tenth district of Ohio.

By Mr. ROWELL: Of 421 citizens of the fourteenth district of Illinois.

By Mr. W. J. STONE, of Missouri: Of 95 citizens of the twelfth district of Missouri.

By Mr. A. J. WARNER: Petition of the officers of the Women's Christian Temperance Union of Ohio in favor of the Blair bill.

By Mr. MILO WHITE: Petition of the chairman and secretary of the national legislative committee of the Knights of Labor in favor of the Blair educational bill.

SENATE.

WEDNESDAY, January 19, 1887.

Prayer by the Chaplain, Rev. J. G. BUTLER, D. D.

The Journal of yesterday's proceedings was read and approved.

EXECUTIVE COMMUNICATIONS.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Secretary of the Interior, transmitting a supplementary report of the surveyor-general of New Mexico on the private land claim designated as the "grant to Bernabe M. Montañó *et al.* No. 49;" which, with the accompanying papers, was referred to the Committee on Private Land Claims, and ordered to be printed.

He also laid before the Senate a communication from the Secretary of the Treasury, transmitting, in response to a resolution of January 6, 1887, certain information relative to the indebtedness of the bond-subsidized Pacific railroad companies.

The Chief Clerk proceeded to read the communication.

Mr. INGALLS. It is not necessary to read the communication in full. Let it be printed.

The PRESIDENT *pro tempore*. It will be printed in the RECORD, and also in the ordinary way, and, with the accompanying documents, referred to the Committee on the Judiciary, if there be no objection.

The communication is as follows:

TREASURY DEPARTMENT, January 18, 1887.

SIR: I am in receipt of Senate resolution of January 6, 1887, calling on this Department for information as to the sums of money which were owing to the United States by the bond-subsidized Pacific railroad companies, respectively, on the 1st day of January, 1887, with details of all payments made on account of the same; and also as to the sums which are due and to become due, principal and interest, under existing law, severally and collectively, from said companies, and what difference will result to the Treasury if Senate bill 1200 should become a law.

In reply thereto, I have the honor to state that the amount due from the several Pacific railroad companies for interest paid by the United States to January 1, 1887, on subsidy bonds issued to said companies was \$70,854,325.62, of which there had been repaid by the companies at that date the sum of \$21,552,144.14, leaving due on account of interest the sum of \$49,302,181.48.

There will be due on the same account at maturity of the subsidy bonds, September 11, 1897, the further sum of \$43,406,921.88, making a total of \$92,709,103.36 due and to become due on account of interest. There is also to become due on account of principal of these bonds at maturity the sum of \$64,623,512, making an aggregate indebtedness due and to become due of \$157,332,615.36.

In response to the inquiry as to "what difference will result to the Treasury if Senate bill 1200 should become a law?" it may be stated that the special method prescribed by the bill for obtaining the constant annual payment is one which, while proposing to find a constant semi-annual payment adequate to extinguish both principal and interest of the indebtedness of the companies, is insufficient to cancel even the interest, being sufficient to provide for the payment of only eleven-twelfths of the interest.

The present worth of the indebtedness of the companies as of October 1, 1886, ascertained as prescribed in the bill, is \$110,978,100.28, the semi-annual interest on which, computed at 3 per centum per annum, is \$1,664,671.50, while the constant semi-annual payment required to be made under the provisions of the bill is only \$1,525,948.88.

The constant semi-annual payment, or bond of indebtedness, required to cancel the present worth of indebtedness above mentioned (\$110,978,100.28), principal and interest, in eighty years, computed at the rate of 3 per centum per annum, reinvested semi-annually, is \$1,834,063.98.

A careful analysis of the subject has been made by Mr. E. B. Elliott, Government actuary, whose report is herewith transmitted, and to which the attention of the Senate is invited for further particulars.

Tabulated statements showing the amounts due and to become due from each of said companies, respectively, on account of interest and principal, together with the details of reimbursements made on account of interest by transportation and cash payments, are also transmitted herewith.

In conclusion, I may add that section 8 of the act of May 7, 1878, establishing a sinking fund for the Union and Central Pacific Railroad Companies, commonly known as the "Thurman law," provides:

"That said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security, and benefit of the lawful and just holders of any mortgage or lien debts of such companies, respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order." * * *

In view of this provision of law, it may be proper to consider whether the sinking fund now held in trust by the United States should be treated as an offset in determining the indebtedness due the Government from the railroad companies mentioned, as is required by the first paragraph of section 1 of Senate bill 1200, now under consideration.

Respectfully, yours,

D. MANNING,
Secretary.

Hon. JOHN SHERMAN,
President of the Senate *pro tempore*.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Secretary of War, transmitting, in response to a resolution of January 13, 1887, reports of engineer officers relative to the channel in the part of Lake Champlain which lies between the islands of North and South Hero; which, with the accompanying papers, was referred to the Committee on Commerce, and ordered to be printed.

NEW ORLEANS, BATON ROUGE AND VICKSBURG RAILROAD GRANT.

The PRESIDENT *pro tempore* appointed Mr. PLUMB, Mr. TELLER, and Mr. WALTHALL as the conferees on the part of the Senate upon the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 3186) to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes.

PETITIONS AND MEMORIALS.

Mr. MANDERSON presented the petition of James E. Boyd, mayor, and 212 other citizens of Omaha, Nebr., praying for a reduction of the special taxes, and for the repeal of the "obnoxious and prohibitory features" of the oleomargarine bill; which was referred to the Committee on Agriculture and Forestry.

Mr. CAMERON presented the petition of George Ross & Co. and other citizens of Lebanon, Pa., and the petition of McKinley & Harbison, druggists, of Philadelphia, Pa., praying for the repeal of internal taxes; which were referred to the Committee on Finance.

He also presented petitions of citizens of Easton, Bethlehem, Allentown, Media, Orbisonia, and Kittanning, in the State of Pennsylvania, and a petition of citizens of Pennsylvania generally, praying for a reduction of internal taxes; which were referred to the Committee on Finance.

He also presented the petition of Thomas P. Gilchrist and 128 other citizens of Pittsburgh, Pa., praying for a reduction of special taxes and for the repeal of the "obnoxious and prohibitory features" of the oleomargarine bill; which was referred to the Committee on Finance.

Mr. MITCHELL, of Pennsylvania, presented the petition of Guillaume Autson and 52 other citizens of Philadelphia, Pa., praying for a reduction of internal taxes; which was referred to the Committee on Finance.

Mr. HOAR presented the petition of Mrs. James Bennett, of Richmond, Ky., praying for an equal protection of the United States, with other persons, in what the fifteenth amendment defines as "the right of citizens of the United States to vote;" which was referred to the Select Committee on Woman Suffrage.

Mr. HAMPTON presented a petition of druggists, of Charleston, S. C., praying for a repeal of the internal taxes; which was referred to the Committee on Finance.

Mr. COCKRELL. I present sundry affidavits and additional evidence in support of the bill (S. 1669) granting a pension to Dobson Amick. I ask that these affidavits be received, and referred to the Committee on Pensions to accompany that bill.

The PRESIDENT *pro tempore*. There being no objection, the papers will be received and so referred.

Mr. PLATT. I present some remonstrances of citizens of Middletown, Conn., against the removal of the custom-house from Middletown to Hartford. They are addressed to me as a Senator but intended for the Senate. The bill has been reported favorably by the Committee on Commerce, and I desire for the present, therefore, that they shall lie upon the table. Perhaps some motion to recommit will be made and if the bill is recommitted the remonstrances will go with the bill.

The PRESIDENT *pro tempore*. The papers will be laid upon the table.

Mr. INGALLS presented a petition of citizens of the District of Co-