By Mr. BELL: A joint resolution (H. J. Res. 312) to prohibit use of public buildings for the inauguration of the President—to the Committee on Public Buildings and Grounds.

PRIVATE BILLS AND RESOLUTIONS INTRODUCED.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. GIBSON: A bill (H. R. 14281) for the relief of George W. Raney—to the Committee on Military Affairs.

Also, a bill (H. R. 14282) granting an increase of pension to Benjamin R. Hackney—to the Committee on Pensions.

By Mr. TAWNEY: A bill (H. R. 14283) granting an increase of pension to George Johnson—to the Committee on Invalid Pensions.

Also, a bill (H. R. 14284) granting an increase of pension to Peter Tuper—to the Committee on Invalid Pensions.

By Mr. GIBSON: A bill (H. R. 14285) granting a pension to Adella C. Chandler—to the Committee on Pensions.

Also, a bill (H. R. 14286) granting a pension to Andrew Baird—to the Committee on Invalid Pensions.

By Mr. PEARCE of Missouri: A bill (H. R. 14287) for the relief of Emma Templeton Wood—to the Committee on War Claims.

Also, a bill (H. R. 14288) for the relief of Catherine Barry Meeha—to the Committee on War Claims.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER: Petition of James Bishop, secretary of the Manchester, Iowa, Creamery Company, announcing resolutions in favor of the Grout bill—to the Committee on Agriculture.

By Mr. DALZELL: Petition of sundry citizens of Pittsburg, Pa., favoring provision for an adequate and permanent supply of water for the Pima and Papago Indians—to the Committee on Irrigation of Arid Lands.

By Mr. GIBSON: Petition of Benjamin R. Hackney, of Knox County, Tenn., to accompany House bill for his relief—to the Committee on Pensions.

Also, petition of Woman's Christian Temperance Union, of Deerlodge, Tenn., for the prohibition of intoxicating liquors in certain islands—to the Committee on Alcoholic Liquor Traffic.

By Mr. GILBERT: Petition of the Kentucky Woman's Christian Temperance Union, Mrs. F. G. Beauchamp, president, favoring the Gillett bill—to the Committee on Alcoholic Liquor Traffic.

By Mr. GRIFFITH: Petition of Indiana State Letter Carriers' Association, praying for the passage of House bill No. 10315, relating to certain claims of letter carriers for pay for extra services—to the Committee on Claims.

By Mr. KITCHIN: Petition of citizens of Halifax County, N. C., favoring the passage of the Gillett bill for the protection of the native races in our islands against intoxicants and opium—to the Committee on Alcoholic Liquor Traffic.

By Mr. LITTLEFIELD: Petitions of John G. Paton Club, of Germantown, Pa., and various churches and societies in Auburn, Me., urging the passage of House bill No. 12551, for the protection of native races in our islands against intoxicants and opium—to the Committee on Alcoholic Liquor Traffic.

By Mr. McALEER: Petition of legislative committee of Allied Printers, in relation to action on annual leave of Census Office printers—to the Committee on Appropriations.

Also, petition of Philadelphia Chapter of the American Institute of Architects, in favor of a commission to consider certain improvements in the District of Columbia—to the Committee on the District of Columbia.

By Mr. MERCER: Resolutions of the physical science department of the Nebraska State Teachers' Association, in favor of the establishment of the national standardizing bureau—to the Committee on Coinage, Weights, and Measures.

By Mr. NAPHEN: Protest of James Jeffrey Roche, editor Boston Pilot, against the passage of the Loud bill—to the Committee on the Post-Office and Post-Roads.

Also, petition of Hall & Ruckel, of New York City, N. Y., for the repeal of the special tax on proprietary medicines, etc.—to the Committee on Ways and Means.

By Mr. PAYNE: Petition of Willis J. Beecher and 5 others, favoring the passage of the Gillett bill for the protection of native races in our islands against intoxicants and opium—to the Committee on Alcoholic Liquor Traffic.

By Mr. PEARCE of Missouri: Paper to accompany House bill for the relief of Emma Templeton Wood—to the Committee on War Claims.

By Mr. ROBINSON of Indiana: Petition of E. J. Mowry, of Columbia City, Ind., for the repeal of the special tax on proprietary medicines—to the Committee on Ways and Means.

Also, petition of the Indiana State Association of Letter Carriers, in relation to House bill No. 10315, being a claim of letter carriers for extra services performed—to the Committee on Claims.

By Mr. RYAN of New York: Petitions of Woman's Christian Temperance Unions of Waverly and Sing Sing, N. Y., urging the passage of House bill No. 12551, for the protection of native races in our islands against intoxicants and opium—to the Committee on Alcoholic Liquor Traffic.

Also, petition of the Religious Society of Friends, of Philadelphia, Pa., for cessation of the war in the Philippine Islands—to the Committee on Military Affairs.

Also, petition of N. C. Newerf, of Buffalo, N. Y., against ship-subsidy bill and favoring Government ownership of vessels—to the Committee on the Merchant Marine and Fisheries.

By Mr. SPERRY: Petition of citizens of North Haven, Conn., favoring the passage of the Gillett bill, for the protection of native races in our islands against intoxicants and opium—to the Committee on Alcoholic Liquor Traffic.

By Mr. SULLOWAY: Petition of the Young Woman's Temperance Union of Epping, N. H., favoring the passage of the Gillett and Littlefield bills, for the protection of native races in our islands against intoxicants and opium—to the Committee on Alcoholic Liquor Traffic.

By Mr. TAWNEY: Petition of citizens of Olmsted County, Minn., to accompany House bill granting a pension to George Johnson, of Eyota, Minn.—to the Committee on Invalid Pensions.

By Mr. TERRY: Petition of citizens of Perry County, Ark., in regard to the navigability of Lafourche River—to the Committee on Rivers and Harbors.

By Mr. THOMAS of Iowa: Petition of Rev. E. E. Hastings and others, of Hastings, Minn., urging the banishment of the liquor traffic in Africa—to the Committee on Alcoholic Liquor Traffic.

By Mr. VAN VOORHIS: Petition of M. H. Thompson and other citizens of Zanesville, Ohio, favoring anti-polygamy amendment to the Constitution—to the Committee on the Judiciary.

By Mr. VREELAND: Petition of W. H. Thomas and others of Rushford, N. Y., favoring the passage of the Gillett bill, for the protection of native races in our islands against intoxicants and opium—to the Committee on Alcoholic Liquor Traffic.

By Mr. WADSWORTH: Petition of Rev. W. E. King and congregation of the Methodist Episcopal Church at Wyoming, N. Y., relative to an adequate and permanent supply of living water for irrigation purposes for the Pima and Papago Indians—to the Committee on Indian Affairs.

Also, resolutions of the Rice Association of America, asking for liberal appropriations for the Department of Agriculture—to the Committee on Agriculture.

By Mr. WANGER: Petition of Christian Endeavor Society of Ambler (Pa.) Presbyterian Church, urging the passage of the Gillett bill, protecting the New Hebrides from intoxicants—to the Committee on the Judiciary.

By Mr. WILSON of Idaho: Resolutions of the Northwest Fruit Growers' Association at Portland, Oreg., February 7, 1901, in favor of the passage of House bill No. 96, to prevent the introduction of insect pests and plant diseases into the United States—to the Committee on Agriculture.

SENATE.

TUESDAY, *February 26, 1901.*

Prayer by the Chaplain, Rev. W. H. MILBURN, D. D.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. TELLER, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. Without objection, the Journal will stand approved.

ORDNANCE AND ORDNANCE STORES.

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of War, transmitting, in connection with his letter of the 14th instant, a further communication from the Chief of Ordnance, United States Army, requesting that the balance remaining unexpended on June 30, 1901, of the appropriation for national defense, allotted by the President for expenditure under his direction, may be incorporated in the general deficiency appropriation bill, etc.; which, with the accompanying paper, was referred to the Committee on Appropriations, and ordered to be printed.

REPORT OF INDUSTRIAL COMMISSION.

The PRESIDENT pro tempore laid before the Senate a communication from the Industrial Commission, transmitting volumes 6 and 7 of the reports of that commission; which, with the accompanying documents, was referred to the Committee on Printing.

LIST OF CLAIMS.

The PRESIDENT pro tempore laid before the Senate a communication from the Attorney-General, transmitting an additional

list of judgments entered against the United States under the provisions of the act of March 3, 1887, to provide for the bringing of suits against the Government of the United States, etc.; which, with the accompanying paper, was referred to the Committee on Appropriations, and ordered to be printed.

AGREEMENT WITH THE WICHITA INDIANS.

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 relative to the necessity for an appropriation to provide payment under the decree of the Court of Claims rendered January 31, 1901, in the cause of the Choctaw Nation and the Chickasaw Nation *vs.* The United States and the Wichita and affiliated bands of Indians, fixing the price per acre to be paid the Wichita and affiliated bands of Indians for certain lands, etc.; which, with the accompanying papers, was referred to the Committee on Appropriations, and ordered to be printed.

VISITORS TO WEST POINT.

The PRESIDENT pro tempore appointed Mr. KEAN and Mr. TALIAFERRO members of the Board of Visitors on the part of the Senate to attend the annual examination of cadets at the United States Military Academy at West Point, N. Y.

TRUSTEES OF REFORM SCHOOL OF THE DISTRICT OF COLUMBIA.

The PRESIDENT pro tempore appointed Mr. DILLINGHAM consulting trustee on the part of the Senate of the Reform School of the District of Columbia, under section 16 of the act approved May 3, 1876, revising and amending the various acts establishing and relating to the Reform School of the District of Columbia.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2799) to carry into effect the stipulations of Article VII of the treaty between the United States and Spain, concluded on the 10th day of December, 1898.

The message also announced that the House had agreed to the concurrent resolution of the Senate to print and bind 8,000 copies of the second report of the United States Board on Geographic Names.

The message further announced that the House had agreed to the concurrent resolution of the Senate to print 14,000 copies of the general summary entitled Review of the World's Commerce, for the year 1900, and 8,000 copies of Commercial Relations of the United States, for the year 1900.

The message also announced that the House had agreed to the amendments of the Senate to the following bills:

A bill (H. R. 1845) granting pensions to William Allen and Isaac Garman;

A bill (H. R. 3784) granting an increase of pension to Linsay C. Jones;

A bill (H. R. 3861) granting an increase of pension to Jesse Millard;

A bill (H. R. 8650) granting an increase of pension to William C. Whitney;

A bill (H. R. 12442) granting an increase of pension to Mary E. Starr;

A bill (H. R. 13049) granting a pension to Elizabeth Fury;

A bill (H. R. 13086) granting an increase of pension to Eunice Henry;

A bill (H. R. 13118) granting a pension to Rebecca J. Gray;

A bill (H. R. 13154) granting a pension to Ernestine Lavigne; and

A bill (H. R. 13569) granting a pension to the minor children of Henry R. Hinkle.

The message further announced that the House had passed the following bills and joint resolution; in which it requested the concurrence of the Senate:

A bill (H. R. 11830) for the relief of the devisees of Casper Barber and their assigns from the operation of the act restricting the ownership of real estate in the Territories and the District of Columbia to American citizens;

A bill (H. R. 12331) to amend an act entitled "An act conferring on the supreme court of the District of Columbia jurisdiction to take proof of the execution of wills affecting real estate, and for other purposes," approved June 8, 1898;

A bill (H. R. 13068) to waive and release all claims of the United States by way of escheat to the real estate in the District of Columbia of which Patrick Kavanagh or his sons, Charles W. Kavanagh and William Kavanagh, died seized;

A bill (H. R. 13752) to regulate the collection of taxes in the District of Columbia:

A bill (H. R. 13866) to provide for the proceedings for admission to the Government Hospital for the Insane in the District of Columbia in certain cases; and

A joint resolution (H. J. Res. 306) concerning printing of additional copies of the annual report of the Geological Survey.

The message also announced that the House had passed a concurrent resolution requesting the President to return to the House the bill of the House (H. R. 4963) granting an increase of pension to Charles E. Churchill; in which it requested the concurrence of the Senate.

The message further announced that the House had passed a concurrent resolution requesting the President to return to the House the bill of the House (H. R. 8998) granting an increase of pension to Alexander F. Hartford; in which it requested the concurrence of the Senate.

The message also announced that the House had passed a concurrent resolution to print and bind 2,000 copies of "A Digest of all the Contested-Election Cases in the House of Representatives from the First to the Fifty-sixth Congress, Inclusive," etc.; in which it requested the concurrence of the Senate.

The message further announced that the House had passed the bill (S. 5233) granting an increase of pension to Philetus B. Axtell.

PETITIONS AND MEMORIALS.

Mr. PLATT of New York presented sundry petitions of citizens of Brooklyn, N. Y., and a petition of the Central Trades' and Labor Council, American Federation of Labor, of Rochester, N. Y., praying for the enactment of legislation to limit the hours of daily labor of workmen and mechanics, and also to protect free labor from prison competition; which were referred to the Committee on Education and Labor.

He also presented a petition of sundry war veterans of Brooklyn, N. Y., praying for the enactment of legislation giving preference to veterans in the public service; which was referred to the Committee on Civil Service and Retrenchment.

He also presented a petition of the Woman's Christian Temperance Union of Penn Yan, N. Y., and the petition of M. F. Sheppard and sundry other citizens of Penn Yan, N. Y., praying for the enactment of legislation providing for the improvement of the rations and general comforts of soldiers; which were referred to the Committee on Military Affairs.

He also presented the petition of W. H. Thomas and sundry other citizens of Rushford, N. Y., and the petition of J. S. Lindsay and sundry other citizens of New York, praying for the enactment of legislation to prohibit the sale of intoxicating liquors to the inhabitants of the New Hebrides and other Pacific islands; which were ordered to lie on the table.

He also presented a petition of Local Union No. 5, Cigar Makers' International Union, of Rochester, N. Y., praying for the enactment of legislation providing that all the remaining public lands shall be held for the benefit of the whole people and that no grants of title shall be made to any but actual settlers and builders thereon, and also for the construction of storage reservoirs to save the flood waters of the country; which was referred to the Committee on Irrigation and Reclamation of Arid Lands.

He also presented a petition of sundry citizens of New York, praying for the enactment of the so-called Grout bill, to regulate the manufacture and sale of oleomargarine; which was ordered to lie on the table.

Mr. KEAN presented a petition of the State Teachers' Association of Newark, N. J., praying for the enactment of legislation providing certain reforms in the Indian Service; which was referred to the Committee on Indian Affairs.

He also presented a petition of sundry citizens of New Jersey praying for the enactment of legislation to prohibit the sale of intoxicating liquors, opium, and firearms in the New Hebrides and other islands of the Pacific; which was ordered to lie on the table.

Mr. PERKINS presented the following joint resolution of the legislature of California; which was referred to the Committee on Pacific Islands and Porto Rico, and ordered to be printed in the RECORD:

Senate joint resolution No. 7.

Adopted in senate, February 5, A. D. 1901.

F. J. BRANDON,
Secretary of the Senate.

Adopted in assembly, February 13, A. D. 1901.

CLIO LLOYD,
Chief Clerk of the Assembly.

This resolution was received by the governor this 16th day of February, A. D. 1901.

W. J. FOLEY,
Private Secretary of the Governor.

STATE OF CALIFORNIA, DEPARTMENT OF STATE.

I, C. F. Curry, secretary of state of the State of California, do hereby certify that I have carefully compared the annexed copy of chapter 21, resolutions of 1901, with the original now on file in my office, and that the same is a correct transcript therefrom, and of the whole thereof. Also, that this authentication is in due form and by the proper officer.

Witness my hand and the great seal of State at office in Sacramento, Cal., the 16th day of February, A. D. 1901.

[SEAL.]

C. F. CURRY, *Secretary of State.*
By J. HOESCH, *Deputy.*

Chapter 21. Senate joint resolution No. 7. Resolution as to making upon the island of Molokai a leper hospital for the care of all lepers within the United States.

Whereas there has been lately annexed to these United States a large island known as Molokai, one of the Hawaiian group; and

Whereas upon the said island of Molokai there is a leper hospital, devoted entirely to the care and cure of lepers, and which island, on account of its locality and conditions, is peculiarly adapted for such purposes: Therefore, be it

Resolved by the senate and assembly jointly, That we hereby recognize the great necessity of having all those afflicted with leprosy confined within and upon the said island of Molokai, both because of its isolated condition and equable climate: Now, therefore, be it

Resolved by the senate and assembly jointly, That our Senators in Congress be instructed, and our Representatives therein requested, to vote for and use all honorable means to secure such legislation as will enable every leper found within these United States, or thereafter to be found therein, to be sent to the island of Molokai for care and treatment: And be it further

Resolved, That the governor of this State is hereby respectfully requested to transmit a copy of these resolutions to each of our Senators and Representatives in Congress.

THOMAS FLINT, JR.,
President pro tempore of the Senate.
W. C. RALSTON,
Speaker pro tempore of the Assembly.

Attest:

C. F. CURRY,
Secretary of State.

[Indorsed.]

Filed in the office of the secretary of state the 16th day of February, A. D. 1901.

C. F. CURRY, *Secretary of State.*
By J. HOESCH, *Deputy.*

Mr. PERKINS presented a petition of Pope Valley Grange, No. 320, Patrons of Husbandry, of California, praying for the enactment of legislation providing for the election of United States Senators by direct vote of the people; which was ordered to lie on the table.

He also presented a petition of sundry citizens of California, praying for the enactment of legislation to prohibit the sale of intoxicating liquors to the inhabitants of the New Hebrides and other Pacific islands; which was ordered to lie on the table.

He also presented a petition of sundry citizens of California, praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

Mr. PLATT of Connecticut presented a petition of the congregation of the United Presbyterian Church of Thompsonville, Conn., and a petition of sundry citizens of South Manchester, Conn., praying for the enactment of legislation to prohibit the sale of intoxicating liquors, opium, and firearms in the New Hebrides and other islands of the Pacific; which were ordered to lie on the table.

Mr. MCMILLAN presented a petition of sundry citizens of Harrisville, Mich., praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

Mr. QUARLES presented a petition of sundry citizens of Wisconsin praying for the enactment of the so-called Grout bill, to regulate the manufacture and sale of oleomargarine; which was ordered to lie on the table.

Mr. SCOTT presented a petition of 500 citizens of Fairmont, W. Va., praying for the enactment of legislation to prohibit the sale of intoxicating liquors, opium, and firearms in the New Hebrides and other islands of the Pacific; which was ordered to lie on the table.

Mr. HOAR presented a petition of the congregation of the First Congregational Church of Shelburne, Mass., praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

He also presented the petition of Frank E. Bullard and 20 other citizens of Lynn, Mass., and a petition of J. H. Wheeler and 37 other citizens of Lawrence and Methuen, Mass., praying for the enactment of the so-called Grout bill, to regulate the manufacture and sale of oleomargarine; which were ordered to lie on the table.

Mr. COCKRELL presented a petition of sundry citizens of Holden, Mo., praying for the enactment of legislation to prohibit the sale of intoxicating liquors in the Philippine Islands; which was referred to the Committee on the Philippines.

Mr. PENROSE presented a petition of the congregations of the Salem Evangelical, United Brethren, First Baptist, Methodist Episcopal, First Presbyterian, and Trinity Reformed churches, all of Pottstown, in the State of Pennsylvania, praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

He also presented a petition of the National Butter Makers' Association of Pennsylvania, praying for the enactment of the so-called Grout bill, to regulate the manufacture and sale of oleomargarine; which was ordered to lie on the table.

He also presented a petition of the Woman's Indian Association of Bethlehem, Pa., praying that an appropriation be made providing for an adequate and permanent supply of living water for irrigation purposes for the Pima and Papago Indians in Arizona; which was referred to the Committee on Indian Affairs.

He also presented petitions of 30 citizens of Philadelphia, of the Woman's Missionary Society and the congregation of the Presbyterian Church of Clearfield, of 50 citizens of Chester County, and of the congregation of the Presbyterian Church of Hoboken, all in the State of Pennsylvania, praying for the enactment of legislation to prohibit the sale of intoxicating liquors, firearms, and opium to the inhabitants of the New Hebrides and other Pacific islands; which were ordered to lie on the table.

INDIANS IN ALASKA.

Mr. GALLINGER. I have a very interesting letter from Rev. Dr. William Duncan, of Metlakahtla, Alaska, in which he makes recommendations concerning legislation as to the Indians of that Territory. I move that it be printed as a document and referred to the Committee on Indian Affairs.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. MARTIN, from the Committee on Claims, to whom were referred the following bills, reported them severally without amendment:

A bill (H. R. 568) for the relief of W. T. Fitzpatrick, Bedford City, Va.; and

A bill (H. R. 2294) for the relief of J. V. Davis, of Alexandria, Va.

Mr. ALLEN, from the Committee on Pensions, to whom was referred the bill (H. R. 11998) granting an increase of pension to John W. Horner, reported it without amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (H. R. 13186) granting an increase of pension to Francis M. Thompson, reported it with an amendment and submitted a report thereon.

He also, from the same committee, to whom was referred the bill (H. R. 13329) granting a pension to Grotius N. Udell, reported it with amendments, and submitted a report thereon.

Mr. GALLINGER, 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. 11795) granting a pension to Columbus S. Whitaker;

A bill (H. R. 12004) granting an increase of pension to George B. Smith;

A bill (H. R. 1215) granting a pension to Charles M. Neet;

A bill (H. R. 11197) granting an increase of pension to Eugene Leahy;

A bill (H. R. 13520) granting an increase of pension to Cornelia Hays;

A bill (H. R. 13699) granting an increase of pension to Samuel C. F. Seabury;

A bill (H. R. 13725) granting a pension to Emily S. Knight; and

A bill (H. R. 7995) granting a pension to Jane Hunter.

Mr. GALLINGER, from the Committee on Pensions, to whom was referred the bill (H. R. 12080) granting an increase of pension to John F. Carbee, reported it with an amendment, and submitted a report thereon.

He also, from the Committee on Pensions, to whom was referred the amendment submitted by himself on the 25th instant, proposing to appropriate $500 to pay John H. Walker for extra services as clerk to Committee on Pensions, and also $500 to pay Dennis M. Kerr for extra services to Committee on Pensions, intended to be proposed to the general deficiency appropriation bill, reported it with an amendment, and moved that it be referred to the Committee on Appropriations, and printed; which was agreed to.

Mr. TALIAFERRO, 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. 9539) granting an increase of pension to Ella V. Coston;

A bill (H. R. 7544) granting an increase of pension to Florence L. Stuart;

A bill (H. R. 13794) granting a pension to Hix Patterson; and

A bill (H. R. 12392) granting a pension to Henry Smith.

Mr. TALIAFERRO, from the Committee on Claims, to whom were referred the following bills, reported them severally without amendment:

A bill (H. R. 4853) for the relief of the heirs at law of Edward N. Oldmixon; and

Mr. PLATT of New York, from the Committee on Printing, to whom was referred the amendment submitted by Mr. CHANDLER on the 14th instant, providing for the printing of 1,600 copies of the proceedings in connection with the reception of the Webster statue, intended to be proposed to the sundry civil appropriation bill, reported favorably thereon, and moved that it be referred

to the Committee on Appropriations and printed; which was agreed to.

Mr. PRITCHARD, from the Committee on Pensions, to whom was referred the bill (H. R. 12232) granting a pension to Hannah Martha Dusenberry, reported it with an amendment, and submitted a report thereon.

He also, from the same committee, to whom was referred the following bills, referred them severally without amendment, and submitted reports thereon:

A bill (H. R. 1769) granting an increase of pension to Isaac H. Duvall;

A bill (H. R. 5644) granting an increase of pension to Charles Alfred de Arnaud; and

A bill (H. R. 13568) granting an increase of pension to James Hickey.

Mr. ALLEN, from the Committee on Claims, to whom was referred the bill (H. R. 11161) to refund excessive postage paid on certain newspapers, reported it without amendment.

He also (for Mr. KENNEY), 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. 12939) granting an increase of pension to Thomas J. Kerstetter;

A bill (H. R. 12507) granting an increase of pension to Ezekiel Dawson;

A bill (H. R. 7354) granting an increase of pension to Milbre V. Douglass;

A bill (H. R. 7055) granting a pension to John G. Barr;

A bill (H. R. 5645) granting an increase of pension to William H. H. Bouslough;

A bill (H. R. 1730) granting an increase of pension to Alfred H. Jones; and

A bill (H. R. 4132) granting an increase of pension to Elijah Baxter.

Mr. KYLE, 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. 4193) granting a pension to Levi C. Mann;

A bill (H. R. 6409) granting a pension to Maria E. Hamill;

A bill (H. R. 364) granting an increase of pension to Lewis Black;

A bill (H. R. 3648) granting an increase of pension to Charles W. Little;

A bill (H. R. 4588) granting an increase of pension to Peter M. Hill;

A bill (H. R. 9843) granting an increase of pension to John A. Hardy;

A bill (H. R. 12386) granting an increase of pension to William N. Hall;

A bill (H. R. 12732) granting an increase of pension to Elizabeth Reynolds; and

A bill (H. R. 12816) granting an increase of pension to Samuel A. Needham.

Mr. KYLE, from the Committee on Pensions, to whom were referred the following bills, reported them each with an amendment, and submitted reports thereon:

A bill (H. R. 10334) granting an increase of pension to Nellie T. P. Koehler; and

A bill (H. R. 2163) granting an increase of pension to Mary L. Cramer.

Mr. TURNER (for Mr. LINDSAY), from the Committee on Pensions, to whom was referred the bill (H. R. 13998) granting an increase of pension to Margaret L. B. Parsons, reported it without amendment, and submitted a report thereon.

Mr. SHOUP (for Mr. BAKER), 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. 12747) granting a pension to Arline E. McNutt;

A bill (H. R. 7321) granting a pension to Armilda J. Luttrell;

A bill (H. R. 9503) granting an increase of pension to Samuel Baughman; and

A bill (H. R. 12204) granting an increase of pension to Mary A. Tunis.

Mr. QUARLES, 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. 7072) granting a pension to Mary Barron;

A bill (H. R. 7688) granting a pension to Katy Kurth; and

A bill (H. R. 13173) granting an increase of pension to Ellen Pratt.

Mr. TELLER, from the Committee on Claims, to whom were referred the following bills, reported them severally without amendment:

A bill (H. R. 573) for the relief of Arthur Connell;

A bill (H. R. 8032) to reimburse J. A. B. Miles, E. D. Kelly, and Rawlings Webster;

A bill (H. R. 2659) for the relief of Meriwether Snuff and Tobacco Company, at Clarksville, Tenn.;

A bill (H. R. 427) for the relief of heirs of Mrs. Tellisse W. Wilson;

A bill (H. R. 8946) to pay to J. P. Ouzts $209.50 for services as deputy collector internal revenue for district of South Carolina; and

A bill (H. R. 6591) for the relief of Austin A. Yates.

Mr. ALDRICH. I am directed by the Committee on Finance, to whom was referred the bill (H. R. 12333) to provide for the extension of the charters of national banks, to report it without amendment. I give notice that I will call it up at an early day.

The PRESIDENT pro tempore. The bill will be placed on the Calendar.

Mr. WARREN. I have in my hand several different House bills which I report from the Committee on Claims, and there are perhaps twice as many more, making some twenty bills in all, for very small amounts, some of them for less than $100, that come in here from the Committee on Claims. I am requested to ask for their immediate consideration. I shall not do that, but I shall ask at a later time that we may take up the Calendar of unobjected House cases and proceed with its consideration.

The PRESIDENT pro tempore. The reports will be received.

Mr. WARREN, from the Committee on Claims, to whom were referred the following bills, reported them severally without amendment:

A bill (H. R. 5220) for the relief of Charles M. Kennerly;

A bill (H. R. 10001) for the relief of the heirs of Joseph T. Stout;

A bill (H. R. 4120) to pay Eliza R. Crawford the amount of a United States loan certificate issued in 1779;

A bill (H. R. 2617) for the relief of the legal representatives of Edwin De Leon, deceased, for $8,000 due him for judicial services; and

A bill (H. R. 3696) for the relief of the administrator of Mary R. Frost, deceased.

OLIVIA M. CLIFFORD.

Mr. TELLER. I am directed by the Committee on Claims, to whom was referred the bill (H. R. 6204) for the relief of Olivia M. Clifford, to report it favorably without amendment. As a similar bill has passed the Senate, and it is very short, I ask that it be now considered. It has passed the Senate at the present session.

The Secretary read the bill; and, by unanimous consent, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to refer to the Court of Claims the claim of Olivia M. Clifford for compensation for the alleged use and occupation by the United States, through its Corps of Engineers, of two certain docks or piers located in the Erie Basin, at the city of Buffalo, N. Y., while engaged in building the new breakwater, from January 8, 1887, to July 8, 1891, notwithstanding the bar of the statute of limitations.

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

Mr. TELLER. I move that the House of Representatives be requested to return to the Senate the bill (S. 2471) for the relief of Olivia M. Clifford.

The motion was agreed to.

NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

Mr. PLATT of New York, from the Committee on Printing, to whom was referred the following concurrent resolution from the House of Representatives, reported it without amendment, and it was considered by unanimous consent, and agreed to:

Resolved by the House of Representatives (the Senate concurring), That there be printed of the report of the Board of Managers of the National Home for Disabled Volunteer Soldiers, in addition to the usual number, 500 copies of the report proper, 500 copies of the report of the assistant inspector-general on the State Homes, and 150 copies of the record of members, for the use of the Home.

CHICKAMAUGA AND CHATTANOOGA NATIONAL PARK.

Mr. PLATT of New York, from the Committee on Printing, to whom was referred the following concurrent resolution from the House of Representatives, reported it without amendment, and it was considered by unanimous consent, and agreed to:

Resolved by the House of Representatives (the Senate concurring), That there be printed 15,000 additional copies of the report of the dedication of the Chickamauga and Chattanooga National Military Park, of which 8,000 shall be for the House of Representatives, 4,500 for the Senate, 600 for the office of the Secretary of War, 500 for the Chickamauga Park Commission, and 25 copies for each of the speakers at the dedication.

REPORT OF THE GOVERNOR OF NEW MEXICO.

Mr. PLATT of New York, from the Committee on Printing, reported the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Public Printer be, and he is hereby, authorized and directed to print 500 additional copies of the Report of the Governor of New Mexico for 1900, and to deliver the same to the Department of the Interior.

THE PEOPLE OF THE PHILIPPINES.

Mr. PLATT of New York. I am directed by the Committee on Printing, to whom was referred the resolution submitted by the junior Senator from Massachusetts [Mr. LODGE] on the 19th instant, to report it with an amendment, changing the form from a

concurrent to a Senate resolution, and I ask for its present consideration.

The Senate, by unanimous consent, proceeded to consider the resolution.

The amendment was to strike out the words "(the House of Representatives concurring);" so as to make the resolution read:

Resolved by the Senate, That there be printed 5,000 copies of the article prepared by the division of insular affairs of the War Department entitled "The people of the Philippines," of which 2,000 copies shall be for the use of the House of Representatives and 1,000 copies shall be for the use of the Senate and 2,000 copies for the use of the War Department.

The amendment was agreed to.

The resolution as amended was agreed to.

PUBLICATION OF MILITARY LAWS.

Mr. PLATT of New York. I am directed by the Committee on Printing, to whom was referred the concurrent resolution submitted by the senior Senator from Vermont [Mr. PROCTOR] on the 19th instant, to report it without amendment, and I ask for its present consideration.

The Senate, by unanimous consent, proceeded to consider the concurrent resolution, which was read as follows:

Resolved by the Senate (the House of Representatives concurring), That there be printed for the use of the Senate and House of Representatives 2,000 copies of the military laws of the United States, to include all legislation in respect to military affairs of the Fifty-sixth Congress, of which 650 copies shall be for the use of the Senate and 1,350 copies shall be for the use of the House of Representatives.

Mr. COCKRELL. I see no provision made for copies for the War Department.

Mr. PLATT of New York. There is no provision made in the resolution for the Department.

Mr. COCKRELL. I think there ought to be some copies furnished. Each head of a Department ought to have a copy of these laws.

Mr. PLATT of New York. Will the Senator from Missouri suggest an amendment?

Mr. COCKRELL. I move to insert "and 200 copies for the use of the War Department," and to increase the aggregate number 200 copies.

The amendment was agreed to.

The concurrent resolution as amended was agreed to.

REPORT OF THE GOVERNOR OF OKLAHOMA.

Mr. PLATT of New York, from the Committee on Printing, reported the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Public Printer be, and he is hereby, authorized and directed to print 1,000 additional copies of the Report of the Governor of Oklahoma for 1900, and to deliver the same to the Department of the Interior.

ESTATE OF SILAS BURKE AND OTHERS.

Mr. MARTIN, from the Committee on Claims, to whom were referred the following bills:

A bill (S. 2063) for the relief of the estate of Silas Burke;

A bill (S. 2823) for the relief of the estate of Samuel J. Hays, deceased;

A bill (S. 5253) for the relief of the estate of John Kerr, deceased;

A bill S. 3585) for the relief of the estate of Mrs. M. A. Walker, deceased;

A bill (S. 4663) for the relief of John B. Boggs;

A bill (S. 5003) for the relief of the estate of James A. Ford, deceased;

A bill (S. 5131) for the relief of Capt. Jefferson Dickerson;

A bill (S. 5344) for the relief of the heirs of Andrew S. Core, deceased; and

A bill (S. 5903) for the relief of Margaret Hallum, administratrix of Joel Hallum, deceased—

reported the following resolution; which was read:

Resolved, That the claims represented by the following bills, to wit, S. 2063, S. 2823, S. 3585, S. 4663, S. 5003, S. 5131, S. 5344, and S. 5903, for the relief of the estate of Silas Burke; for the relief of the estate of Samuel J. Hays, deceased; for the relief of the estate of Mrs. M. A. Walker, deceased; for the relief of John B. Boggs; for the relief of the estate of James A. Ford, deceased; for the relief of Capt. Jefferson Dickerson; for the relief of the heirs of Andrew S. Core, deceased, and for the relief of Margaret Hallum, administratrix of Joel Hallum, deceased, now pending in the Senate, together with all the accompanying papers, be, and the same are hereby, referred to the Court of Claims, in pursuance of the provisions of an act entitled "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887. And the said Court of Claims shall proceed with the same in accordance with the provisions of said act and report to the Senate in accordance therewith.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

Mr. BUTLER. Let it go over until to-morrow.

The PRESIDENT pro tempore. The Senator from North Carolina objects.

Mr. BUTLER subsequently withdrew his objection; and the foregoing resolution was considered by unanimous consent, and agreed to.

NEW ORLEANS AND BAYOU SARA MAIL COMPANY, ETC.

Mr. TALIAFERRO, from the Committee on Claims, to whom were referred the following bills:

A bill (S. 591) for the relief of the New Orleans and Bayou Sara Mail Company, of New Orleans, La.;

A bill (S. 1125) for the relief of the estate of Charity Clements, deceased;

A bill (S. 3863) for the relief of Mrs. Harriet Miles;

A bill (S. 4244) for the relief of Jane T. Williams; and

A bill (S. 5607) for the relief of Bettie Brooks Metcalf and the estate of Lucie Brooks Bell, deceased—

reported the following resolution; which was considered by unanimous consent and agreed to:

Resolved, That the claims represented by the following bills, to wit, S. 591, S. 1125, S. 3863, S. 5607, and S. 4244, for the relief of the New Orleans and Bayou Sara Mail Company; for the relief of the estate of Charity Clements, deceased; for the relief of Mrs. Harriet Miles; for the relief of Bettie Brooks Metcalf and the estate of Lucie Brooks Bell, deceased, and for the relief of Jane T. Williams, now pending in the Senate, together with all the accompanying papers, be, and the same are hereby, referred to the Court of Claims, in pursuance of the provisions of an act entitled "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887, and the said Court of Claims shall proceed with the same in accordance with the provisions of said act, and report to the Senate in accordance therewith.

OPENING OF LANDS IN OKLAHOMA.

Mr. HANSBROUGH. I am directed by the Committee on Public Lands, to whom was referred the bill (H. R. 12901) to supplement existing laws relating to the disposition of lands, etc., to report it with amendments, and I ask for its present consideration.

The Secretary read the bill.

Mr. PLATT of Connecticut. I wish to have the second section read again.

The Secretary read the second section.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. COCKRELL. Mr. President——

Mr. BERRY. I hope the Senator will not object.

Mr. COCKRELL. The bill has just been reported?

Mr. BERRY. Yes; it is a House bill, and it has been reported. There are two amendments.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered as in Committee of the Whole.

The first amendment of the Committee on Public Lands was, in section 1, page 2, line 10, to strike out "President" and insert "Secretary of the Interior;" so as to read:

That before the time for opening to settlement or entry of any of the lands in the Territory of Oklahoma, respectively ceded to the United States by the Wichita and Affiliated Bands of Indians, and the Comanche, Kiowa, and Apache tribes of Indians, under agreements respectively ratified by the acts of March 2, 1895, and June 6, 1900, it shall be the duty of the Secretary of the Interior to subdivide the same into such number of counties as will, for the time being, best subserve the public interests, and to designate the place for the county seat of each county, and to set aside and reserve at such county seat, for disposition as herein provided, 320 acres of land.

The amendment was agreed to.

The next amendment was, in section 1, page 1, line 15, after the word "land," to insert the following proviso:

Provided, That the Secretary of the Interior may attach any part of said lands to any adjoining county in said Territory.

The amendment was agreed to.

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.

ARTICLES FOR EXPOSITIONS IN TEXAS.

Mr. CHILTON. From the Committee on Finance I report back favorably, without amendment, the joint resolution (H. J. Res. 74) authorizing articles imported from foreign countries for the sole purpose of exhibition at the San Antonio International Fair, and at the Texas State Fair and Dallas Exposition, to be held in the cities of San Antonio, Tex., and Dallas, Tex., to be imported free of duty under regulations prescribed by the Secretary of the Treasury; and as there can be no possible objection to the joint resolution, I ask for its immediate consideration.

The Secretary read the joint resolution, and, by unanimous consent, the Senate, as in Committee of the Whole, proceeded to its consideration.

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

FRANK B. CASE.

Mr. TILLMAN. I am instructed by the Committee on Naval Affairs, to whom was recommitted the bill (H. R. 11598) for the relief of Frank B. Case, to report it favorably with an amendment. As it is a very short bill and must be acted on at once in order to get it to conference, I ask for its immediate consideration.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

The amendment reported by the Committee on Naval Affairs was to strike out all after the enacting clause and insert:

That the President of the United States be, and he is hereby, authorized to nominate and, by and with the advice and consent of the Senate, to appoint upon the retired list of the Navy, with the rank of ensign, Frank B. Case, formerly a midshipman in the United States Navy.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

Mr. TILLMAN. I ask that a conference be requested with the House of Representatives on the bill and amendment.

Mr. HALE. I suggest to the Senator not to do that. Let the bill go to the House; and if they agree to our amendment, that will end it. That is the better course.

Mr. TILLMAN. I will take the Senator's advice. I merely want to get the bill through the two Houses.

INVESTIGATION BY FINANCE COMMITTEE.

Mr. ALDRICH, from the Committee on Finance, reported the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Committee on Finance be, and they are hereby, authorized and directed, by subcommittee or otherwise, to make an investigation of internal revenue, customs, currency and coinage matters, and to report from time to time to the Senate the result thereof; and for this purpose they are authorized to sit, by subcommittee or otherwise, during the recess or sessions of the Senate, at such times and places as they may deem advisable, to send for persons and papers, to administer oaths, and to employ such stenographic, clerical, and other assistance as may be necessary, the expense of such investigation to be paid from the contingent fund of the Senate.

ESTATES OF MARIA JOHNSON AND OTHERS.

Mr. WARREN, from the Committee on Claims, to whom were referred the following bills:

A bill (S. 3988) for the relief of the estates of Maria Johnson and Sarah E. Ware, deceased;

A bill (S. 4303) for the relief of the estate of John P. Caruthers, deceased;

A bill (S. 4343) for the relief of R. M. Lay, administrator of Henry Lay, deceased;

A bill (S. 224) for the relief of Joseph F. Travers;

A bill (S. 5379) for the relief of Ella A. Hall;

A bill (S. 5902) for the relief of the legal representatives of Clarissa Lee, deceased; and

A bill (S. 5991) for the relief of Whitty S. Miller, administrator of Whitty M. Sasser, deceased—

reported the following resolution:

Resolved, That the claims represented by the following bills, to wit, S. 3988, S. 4303, S. 4343, S. 224, S. 5379, S. 5902, and S. 5991, for the relief of the estates of Maria Johnson and Sarah E. Ware, deceased; for the relief of the estate of John P. Caruthers, deceased; for the relief of R. M. Lay, administrator of Henry Lay, deceased; for the relief of Joseph F. Travers; for the relief of Ella A. Hall; for the relief of the legal representatives of Clarissa Lee, deceased, and for the relief of Whitty S. Miller, administrator of Whitty M. Sasser, now pending in the Senate, together with all accompanying papers, be, and the same are hereby, referred to the Court of Claims in pursuance of the provisions of an act entitled "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887; and the said Court of Claims shall proceed with the same in accordance with the provisions of said act, and report to the Senate in accordance therewith.

The PRESIDENT pro tempore. Is there objection to the present consideration of the resolution?

Mr. BUTLER. Let it go over, Mr. President.

The PRESIDENT pro tempore. The resolution goes to the Calendar, objection being made.

Mr. WARREN. I do not wish to have the resolution go to the Calendar, if it is objected to, because it is simply a reference, under the Tucker Act, of claims to the Court of Claims to find the facts. If it is to go to the Calendar, it will simply appear that the committee had reported these bills, when, in fact, it has only reported the resolution which has just been read.

If the Senator insists upon his objection, I will ask that the resolution lie on the table, so that I may call it up at another time.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Wyoming [Mr. WARREN]? The Chair hears none, and it is so ordered.

Mr. WARREN subsequently said: I wish to call up the resolution with reference to referring certain bills to the Court of Claims. The objection has been withdrawn, and I ask that the bills may be referred to the Court of Claims.

The PRESIDING OFFICER (Mr. KEAN in the chair). Is there objection to the present consideration of the resolution?

The resolution was considered by unanimous consent, and agreed to.

BILLS INTRODUCED.

Mr. LODGE introduced a bill (S. 6055) authorizing Lieut. William S. Sims, United States Navy, to accept a decoration tendered to him by the President of the French Republic; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Foreign Relations.

He also introduced a bill (S. 6056) authorizing Mr. Leo Bergholz, consul of the United States at Erzerum, Turkey, to accept a decoration tendered to him by His Majesty the Shah of Persia; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Foreign Relations.

Mr. HANNA introduced a bill (S. 6057) granting an increase of pension to John S. Snyder; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. PLATT of New York introduced a bill (S. 6058) to reimburse J. A. B. Miles, E. D. Kelly, and Rawlings Webster; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Claims.

Mr. JONES of Arkansas introduced a bill (S. 6059) to correct the military record of Daniel Smith; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. SULLIVAN introduced a bill (S. 6060) for the relief of Mary E. Brewer; which was read twice by its title, and referred to the Committee on Claims.

Mr. MARTIN introduced a bill (S. 6061) to authorize the supreme court of the District of Columbia to decree the sale or lease of real estate in certain cases; which was read twice by its title, and referred to the Committee on the District of Columbia.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. SEWELL submitted an amendment proposing to appropriate $50,000 to enable the Secretary of the Treasury to provide a necessary vessel to be used by the Marine-Hospital Service in boarding arriving steamers at Reedy Island quarantine station, Delaware River, 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.

Mr. TURNER submitted an amendment proposing to appropriate $504 to pay the heirs of Charles P. Culver for the translation from the German of House Miscellaneous Document No. 8, Forty-fifth Congress, third session, made by order of the chairman of the Committee on Coinage, Weights, and Measures, intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Claims, and ordered to be printed.

Mr. CLAY submitted an amendment proposing to increase the limit of cost for the completion of the post-office and court-house at Columbus, Ga., from $156,000 to $159,000, intended to be proposed by him to the general deficiency appropriation bill; which was ordered to be printed, and, with the accompanying paper, referred to the Committee on Appropriations.

Mr. FORAKER submitted an amendment authorizing the Secretary of the Treasury to reopen and adjust the claims of the several States for interest paid on the bonds sold, etc., intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations and ordered to be printed.

Mr. DANIEL submitted an amendment authorizing the President of the United States to nominate and appoint, with the advice and consent of the Senate, five commissioners to revise, codify, and report to the Attorney-General for submission to Congress, all the laws of the United States of a permanent and general nature, etc., intended to be proposed by him as a substitute for the amendment submitted by Mr. FAIRBANKS on the 23d instant to the sundry civil appropriation bill; which was ordered to be printed.

Mr. THURSTON submitted an amendment proposing to appropriate $20,000 for completing the allotments provided in the agreement with the Wichita and affiliated bands of Indians in Oklahoma, ratified by act approved March 2, 1895, etc., intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. SHOUP submitted an amendment proposing to appropriate $250 to reimburse C. W. De Knight in full for his services and necessary assistance in preparing and furnishing a revised and complete index, together with marginal and foot notes for the war-revenue law, second session, Fifty-fifth Congress, intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Printing, and ordered to be printed.

REVISION OF POSTAL LAWS.

Mr. CULLOM submitted an amendment intended to be proposed by him to the bill (H. R. 13423) to revise and codify the laws relating to the Post-Office Department and postal service, and for other purposes; which was referred to the Committee on Post-Offices and Post-Roads, and ordered to be printed.

CUBAN CONSTITUTION.

Mr. FAIRBANKS submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Secretary of War be directed to send to the Senate an English translation of the proceedings of the constitutional convention of the island of Cuba, as contained in the Diario de Sessiones.

PAYMENT OF STENOGRAPHER.

Mr. HALE submitted the following resolution; which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the stenographer employed to report the hearings before the Committee on Naval Affairs be paid out of the contingent fund of the Senate.

INTRODUCTION OF REINDEER INTO ALASKA.

Mr. TELLER. I submit a resolution, and ask that it may be now considered. I have examined the subject and find that the cost is within the Senate limits.

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

Resolved, That there be printed for the use of the Senate 1,000 copies of the Report upon the Introduction of Domestic Reindeer into Alaska for 1900, by Dr. Sheldon Jackson.

HOURS OF LABOR ON GOVERNMENT WORK.

Mr. PETTIGREW. I offer a resolution, which I ask to have printed and laid over until to-morrow. I call the attention of the chairman of the Committee on Education and Labor to the resolution.

The PRESIDENT pro tempore. The resolution will be read.

The Secretary read the resolution, as follows:

Resolved, That the Committee on Education and Labor be discharged from the further consideration of the bill (H. R. 6882) limiting the hours of daily service of laborers and mechanics employed upon work done for the United States or any Territory or the District of Columbia, thereby securing better products, and for other purposes, and that the Senate proceed to consider the same.

The PRESIDENT pro tempore. The resolution will be printed and lie on the table.

REPORT ON GEOGRAPHIC NAMES IN THE PHILIPPINES.

Mr. FOSTER submitted the following concurrent resolution; which, with the accompanying paper, was referred to the Committee on Printing:

Resolved by the Senate (the House of Representatives concurring), That there be printed 15,000 copies of the Special Report of the United States Board on Geographic Names, relating to geographic names in the Philippine Islands, transmitted to Congress by the President February 21, 1901; 3,000 copies of which shall be for the use of the Senate, 5,000 copies for the use of the House of Representatives, and 7,000 copies for distribution by said board among the Government Departments, public libraries, and other suitable depositories.

PRESIDENTIAL APPROVAL.

A message from the President of the United States, by Mr. O. L. PRUDEN, one of his secretaries, announced that the President had on the 25th instant approved and signed the act (S. 2432) granting an increase of pension to James A. Thomas.

HOUSE BILLS REFERRED.

The following bills were severally read twice by their titles, and referred to the Committee on the District of Columbia:

A bill (H. R. 11830) for the relief of the devisees of Casper Barber and their assigns from the operation of the act restricting the ownership of real estate in the Territories and the District of Columbia to American citizens;

A bill (H. R. 12331) to amend an act entitled "An act conferring on the supreme court of the District of Columbia jurisdiction to take proof of the execution of wills affecting real estate, and for other purposes," approved June 8, 1898;

A bill (H. R. 13068) to waive and release all claims of the United States by way of escheat to the real estate in the District of Columbia of which Patrick Kavanagh or his sons, Charles W. Kavanagh and William Kavanagh, died seized;

A bill (H. R. 13752) to regulate the collection of taxes in the District of Columbia; and

A bill (H. R. 13866) to provide for the proceedings for admission to the Government Hospital for the Insane in the District of Columbia in certain cases.

The joint resolution (H. J. Res. 360) concerning printing of additional copies of the Annual Report of the Geological Survey was read twice by its title, and referred to the Committee on Printing.

CHARLES E. CHURCHILL.

The PRESIDENT pro tempore laid before the Senate the following concurrent resolution of the House of Representatives; which was considered by unanimous consent, and agreed to:

Resolved by the House of Representatives (the Senate concurring), That the President be requested to return to the House the bill of the House (H. R. 4663) "granting an increase of pension to Charles E. Churchill."

ALEXANDER F. HARTFORD.

The PRESIDENT pro tempore laid before the Senate the following concurrent resolution of the House of Representatives; which was considered by unanimous consent, and agreed to.

Resolved by the House of Representatives (the Senate concurring), That the President be requested to return to the House the bill of the House (H. R. 8998) granting an increase of pension to Alexander F. Hartford.

DIGEST OF ELECTION CASES.

The PRESIDENT pro tempore laid before the Senate the following concurrent resolution of the House of Representatives; which was referred to the Committee on Printing:

Resolved by the House of Representatives (the Senate concurring), That there be printed and substantially bound 2,000 copies of "A digest of all the contested election cases in the House of Representatives of the United States from the First to the Fifty-sixth Congress, inclusive," compiled by Chester H. Rowell, 1,500 for the use of the House and 500 for the use of the Senate; and that in addition to said number there be printed and substantially bound 500 copies, the same to be deposited in the office of the Clerk of the House and distributed from time to time on his order; and that there be further printed and substantially bound the additional number of 50 copies, 10 each to be deposited in the Library of the House of Representatives and in the rooms of the Committee on Elections and 10 to be delivered to the compiler.

LYNCHING AT TALLULAH, LA.

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 Committee on Appropriations, and ordered to be printed:

To the Congress:

I transmit herewith, for the consideration of Congress, in connection with my message of January 29, 1901, relative to the lynching of certain Italian subjects at Tallulah, La., a report by the Secretary of State touching a claim for $5,000 presented by the Italian ambassador at Washington on behalf of Guiseppe Defina, on account of his being obliged to abandon his home and business.

WILLIAM McKINLEY.

EXECUTIVE MANSION,
Washington, February 26, 1901.

DISTRICT OF COLUMBIA APPROPRIATION BILL.

Mr. ALLISON. I desire to call up the conference report on the District of Columbia appropriation bill.

The Senate proceeded to consider the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 13575) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1902, and for other purposes.

Mr. ALLISON. The report is printed in the RECORD. I do not know whether it is necessary to read it in full or not.

The PRESIDENT pro tempore. Will the Senate agree to the report?

Mr. BUTLER. I desire to ask the Senator from Iowa to make a statement as to the agreement of the conference committee on the important controverted points in the bill. I do not suppose that Senators have had time to read the report of the conference committee in the RECORD. I have not; nor have other Senators, I think, when we consider the length of the sessions we are now having. It seems to me that when a bill goes to the House, which we have debated for hours here and patiently considered, when it comes from conference there should be some statement made for the information of the Senate as to what has been done with the amendments which we adopted. For the information of the Senate I think the Senator from Iowa ought to give us such a statement.

Mr. ALLISON. In brief, the matters in difference between the two Houses were chiefly matters of amount. There was no legislation in controversy upon the bill, so far as I can recollect.

The Senate increased the appropriations in the aggregate amount to over a million dollars, or about that sum. In conference all these items were gone over, and the Senate yielded nearly one-half of the total, retaining, however, what they considered the most important items, to wit, those items relating to country roads, to sewage, and to filtering the water which flows into this city from the Potomac River.

There is no legislation in the conference report, so far as I know. I shall be glad to answer any questions in respect to items in the bill which Senators may desire to propound.

Mr. BUTLER. Mr. President, it is probably my own fault that I have not read the conference report, which I was trying to do; and not having been able to do so, I am not in a position to ask the Senator specific questions, but will accept his statement. I thought it but proper that we should have some statement regarding what had been done by the conferees.

The PRESIDENT pro tempore. The question is on agreeing to the conference report.

The report was agreed to.

LETTERS OF JEFFERSON ON CUBAN ANNEXATION.

The PRESIDENT pro tempore. The Chair lays before the Senate a resolution coming over from a previous day, which will be read.

The Secretary read the resolution submitted by Mr. HANSBROUGH on the 18th instant, as follows:

Resolved, That the Secretary of State be, and he hereby is, directed to send to the Senate copies of letters written by Thomas Jefferson to President Madison and President Monroe concerning the annexation of Cuba.

Mr. HANSBROUGH. I understand the Senator from Maine [Mr. HALE] desires to offer an amendment to the resolution.

The PRESIDENT pro tempore. The resolution will go over, retaining its place.

Mr. HANSBROUGH. The resolution may lie over another day to enable the Senator from Maine to prepare his amendment, and I ask that it retain its place.

The PRESIDENT pro tempore. Is there objection to the request? The Chair hears none, and it is so ordered.

CENSORSHIP OF TELEGRAMS FROM MANILA.

The PRESIDENT pro tempore. The Chair lays before the Senate a resolution coming over from a previous day, which will be read.

The Secretary read the resolution submitted yesterday by Mr. PETTIGREW; which was considered by unanimous consent, and agreed to, as follows:

Resolved, That the President be, and he is hereby, requested to inform the Senate, if not incompatible with the public interest, whether all telegrams from Manila were subject to censor prior to February 4, 1899; and if so, for how long prior to that date were all telegrams subjected to the examination of a censor.

The President is also requested to send to the Senate a copy of General Otis's first telegram informing the Administration that hostilities had commenced; also the hour at which said telegram was filed in the cable office at Manila.

The President is also requested to send to the Senate all instructions sent by the Administration or any of the officers of the Government to our officers in the Philippines between December 10, 1898, and February 5, 1899.

THE NICARAGUA CANAL.

The PRESIDENT pro tempore. The Chair lays before the Senate a resolution coming over from a previous day, which will be read.

The Secretary read the resolution submitted yesterday by Mr. MORGAN, as follows:

Resolved, That House bill No. 2538, entitled "An act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific oceans," which was made a special order of business for the 10th day of December, 1900, by the order of the Senate, is entitled to its place and privileges as a special order of the Senate, and shall be placed on the Calendar of the Senate as a special order, entitled to such privileges under the rules of the Senate.

The PRESIDENT pro tempore. The Chair calls the attention of the Senator from Alabama to the fact that if this resolution should pass the special order named in it would be subject to a special order already on the Calendar relating to the salaries of judges.

Mr. MORGAN. Well, Mr. President, I differ with the Chair most respectfully as to what the effect of the resolution would be. I think it would restore the special order to all its privileges under Rule IX and Rule X, and those privileges are that it shall take precedence of any special order set for a later date than was fixed for the special order by unanimous consent of the Senate, the 10th day of December, 1900.

I wish to say, Mr. President, that the object of this resolution on my part is merely to get the judgment of the Senate upon a proposition relating to our rules, which is a very important one to the entire body. It will have no effect whatever upon the status of the Nicaragua Canal bill. I do not offer it with a view to affecting the status of the Nicaragua Canal bill, which I recognize as under the control of the Senate and which will remain under the control of the Senate until it shall either be destroyed or passed.

This resolution of mine is to correct what I think is a very serious error of opinion in the Senate on this question, and I propose, after the conclusion of a very few observations, to ask that the *resolution be referred* to the Committee on Rules for their consideration.

I wish to call attention, Mr. President, to the action of the Senate of the United States——

Mr. HOAR. If the Senator from Alabama will kindly pardon me a moment, when my attention was called away something was done in regard to a bill which I have in charge. Will the Chair be kind enough to state what was done in regard to the judges' salary bill? Is that the bill in order?

The PRESIDENT pro tempore. If the Senator from Alabama will yield one moment, the Secretary will read the pending resolution.

The Secretary again read the resolution yesterday submitted by Mr. MORGAN.

The PRESIDENT pro tempore. The Chair called the attention of the Senator from Alabama to the fact, as it seemed to the Chair, that, there being now a special order known as the judges' salary bill, if the resolution of the Senator from Alabama should be adopted by the Senate, it would make the bill named in that resolution subject to the judges' salary bill as a special order.

Mr. HOAR. Mr. President, I desire to raise a question of order. The rules of the Senate provide that a motion to take up any measure shall be dealt with without debate. Therefore it is not competent to introduce a resolution that a certain measure is now up and shall be proceeded with and make that debatable. This is in substance an effort on the part of the Senator, who is the mover of the resolution, simply by an order to take up that Nicaragua Canal bill and displace the bill which I have in charge; and my point of order is that that is not debatable.

Mr. MORGAN. Mr. President, the Senator from Massachusetts has either not heard or read what is before the Senate.

Mr. HOAR. Perhaps I have not. My attention was called away.

Mr. MORGAN. I announced distinctly that this resolution of mine had no effect upon the Nicaragua Canal bill, and is not intended in anywise to affect its status before the Senate at the present moment of time.

The PRESIDENT pro tempore. The Senator from Alabama asked unanimous consent that he might make a few remarks before the reference of the resolution to the Committee on Rules.

Mr. HOAR. I would not for all the world put myself in any position of antagonism, much less of discourtesy, toward the Senator. I do not understand, then, that the Chair has ruled that this resolution, if adopted, will displace the judges' salary bill.

The PRESIDENT pro tempore. The intimation of the Chair was that it would not.

Mr. HOAR. Very well, then. I have nothing further to say.

Mr. MORGAN. The Senator is entitled to the benefit of that intimation, but I feel constrained to say that I can not concede the ruling of the Chair as being a correct ruling under clause 2 of Rule X of the standing rules of the Senate, which provides:

When two or more special orders have been made for the same time they shall have precedence according to the order in which they were severally assigned, and that order shall only be changed by direction of the Senate.

What I was trying to call the attention of the Senate to, and particularly the attention of the Chair, was the fact that in 1858 the same question was raised as was made by the Senator from Rhode Island [Mr. ALDRICH] in the course of the debate on Saturday upon the bringing up of the Nicaragua Canal bill, and it was decided by the Senate. I will read that decision. The question of order was submitted by Mr. Stuart—and I think Mr. Stuart was pretty high authority——

MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE CLARKE.

Mr. CHANDLER. Will the Senator from Alabama allow me to interrupt him?

Mr. MORGAN. Mr. President, I think I had much better take my seat and let Senators get through with everything they desire to do before I proceed with my remarks.

Mr. CHANDLER. The Senator will recognize the propriety of my request when I make it.

Mr. MORGAN. I recognize the propriety of every request made by the Senator from New Hampshire when he first conceives it, of course, and before he makes it.

Mr. CHANDLER. Then, I desire to give notice that I shall ask the Senate to proceed to the consideration of resolutions paying tribute to the memory of Hon. FRANK G. CLARKE, late a Representative from New Hampshire, at 5 o'clock this afternoon, instead of half past 5 o'clock.

I beg pardon of the Senator for interrupting his eloquence.

NICARAGUA CANAL.

The Senate resumed the consideration of the resolution yesterday submitted by Mr. MORGAN.

Mr. MORGAN. Mr. Stuart, on the 16th of February, 1858—

submitted a question of order, whether a subject made the special order of the day for half past 12 o'clock, or for any other hour, for a particular day, and not during that day finally acted on, did not on any future day become a special order for the hour of 1 o'clock, unless the Senate should specifically determine otherwise?

The Vice-President thereupon took the sense of the Senate on the subject; and the Senate decided—

That the special orders which have been, or shall be, assigned for an earlier or later hour than 1 o'clock for a particular day shall, if not acted upon or completed on that day, be taken up or called on any future day, under the thirty-first rule, at the hour of 1 o'clock, unless otherwise determined by the Senate.

I read that in answer to the point which was made by the Senator from Rhode Island the other day when this case was up for the judgment of the Senate.

Here is the thirty-first rule, to which reference was made in that decision of the Senate:

31. When the hour shall arrive for the consideration of a special order, it shall be the duty of the Presiding Officer to take it up, unless the unfinished business of the preceding day shall be under consideration.

That, Mr. President, is all that the thirty-first rule contains. After that decision by the Senate the rules of the Senate were changed so as to conform to it and an addition was made to the rules.

Rule X provides:

RULE X.

SPECIAL ORDERS.

1. Any subject may, by a vote of two-thirds of the Senators present, be made a special order; and when the time so fixed for its consideration arrives the Presiding Officer shall lay it before the Senate, unless there be unfinished business of the preceding day, and, if it is not finally disposed of on that day, it shall take its place on the Calendar of Special Orders in the order of time at which it was made special, unless it shall become by adjournment the unfinished business.

Clause 2 provides:

2. When two or more special orders have been made for the same time, they shall have precedence according to the order in which they were severally assigned, and that order shall only be changed by direction of the Senate.

I now lay before the Senate the state of the law as ruled by the vote of the Senate—Rule XXXI, which was corrected or which was added to by that vote of the Senate, and Rule X, which is the outgrowth of the debate on that resolution.

Now, what is the effect of it? It is that a bill which has been made a special order by a vote of two-thirds of the Senate shall not lose its privileges on the day, or any subsequent day, for which it was set, unless the Senate has finally disposed of the bill by its passage, by its defeat, or by a refusal to consider it. I will modify that last remark by saying its passage or by its defeat. Refusing to consider it at that time would not deprive a special order of its privileges.

Every Senator here is as much interested in this question as I am; and when the Senate has voted a special order for a certain time and the Senate on that day has not found it convenient to proceed with the consideration of it, that does not repeal the former order made upon the vote of two-thirds of the Senate; but that vote making the special order stands, and the Chair is bound to execute it against everything except the unfinished business coming over from a previous day.

Mr. ALDRICH. Will the Senator allow me to ask him a question?

Mr. MORGAN. Certainly.

Mr. ALDRICH. Is there any parliamentary method, in the opinion of the Senator from Alabama, by which the Senate may reconsider its action?

Mr. MORGAN. Of course there is.

Mr. ALDRICH. In making a special order?

Mr. MORGAN. I should think not when it was done by unanimous consent.

Mr. ALDRICH. The Senate, then, is powerless forever after, if it once makes any order of business a special order, to displace it?

Mr. MORGAN. The Senate may have the power to reconsider within the limit of time which applies to all orders, bills, and resolutions on reconsideration, if it proceeds to reconsider by a motion for that purpose and to that effect. But, Mr. President, I must say that the Senate can not be held to the idea of having reconsidered its unanimous-consent agreement, because when I got up and asked unanimous consent that the appropriation bill then offered in the Senate should be considered without prejudice to the special order, and the objection came from the Senator from Rhode Island alone, which prevented that unanimous consent, and the vote was taken thereupon, I could not consider that that was a reconsideration of the special order. There was no motion to reconsider it, or anything of that kind.

Mr. President, I have disclaimed——

Mr. ALDRICH. I hope the Senator will pardon me. I did not use the word "reconsider" in any technical sense.

Mr. MORGAN. I thought you did.

Mr. ALDRICH. No. My idea was to find out whether, in the opinion of the Senator from Alabama, the Senate having fixed that special order, that special order remained good forever and that there was no way by which the Senate by a majority vote could displace it.

Mr. MORGAN. No; not by a majority vote. You can not displace an order made by a two-thirds vote of the Senate by a majority vote any more than you can revoke a treaty by a majority vote of this body after it has been ratified by a two-thirds vote by the Senate when acting as part of the treaty-making power.

Mr. ALDRICH. If the Senator will examine the precedents, he will find that the Senate has done that repeatedly.

Mr. MORGAN. If the Senate has ever done that, it must have been at some time when the Senate was slumbering in its views of its own privileges and its own rights. I have never heard of such a case before.

The Senator from Rhode Island is wiser than I am in the lore of parliamentary procedure.

Mr. ALDRICH. I will find a case for the Senator.

Mr. MORGAN. But that is not the question here, for no motion to reconsider has been made in this case at all, and I presume none will be made. If a motion to reconsider that special order is made, I shall be heard, of course, in opposition to it and will state the reasons why it should not be done.

I state again what I am trying to do now is not to give any preference or privilege to the canal bill or to advance it in any respect. I know its enemies in the Senate will take advantage of every possible advantage and opportunity to destroy it. I understand that perfectly well. All I can do is to perform my duty on this floor in regard to it, and I announced when I got up that my purpose in the introduction of this resolution was to bring the subject to the attention of the Committee on Rules. I now move to refer the resolution to that committee.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Alabama to refer the resolution to the Committee on Rules.

The motion was agreed to.

INSTRUCTIONS TO PEACE COMMISSIONERS AT PARIS.

Mr. PETTIGREW. Mr. President, the Senate on the 5th of February passed a resolution to print as a document 3,000 copies of the instructions and all accompanying papers of the President to the commissioners to negotiate the treaty with Spain at Paris. I find upon examining the papers sent to the Senate in this connection that one important telegram is not printed in the document, and I therefore ask that there be a reprint of the document of 3,000 copies, to contain this telegram.

After we had passed the order to print these instructions there was a delay of about two weeks. The papers were sent to the State Department, but I presume this telegram was overlooked, either by the printer or by the people who read the proof at the State Department. It appears to me that the telegram is important in connection with this matter. It reads as follows:

[Telegram.]

Hay to Day.

DEPARTMENT OF STATE,
(About November 1, 1898.)

Surely Spain can not expect us to turn the Philippines back and bear the cost of the war and all claims of our citizens for damages to life and property in Cuba without any indemnity but Porto Rico? Does she propose to pay in money the cost of the war and the claims of our citizens, and make full guarantees to the people of the islands, and grant to us concessions of naval and telegraph stations in the archipelago, and privilege to our commerce the same as enjoyed by Spain, rather than surrender the archipelago?

HAY.

The first instructions issued to the commissioners at Paris were of a very high-toned order. The President said to the commissioners:

It is my wish that throughout the negotiations intrusted to the commission the purpose and spirit with which the United States accepted the unwelcome necessity of war should be kept constantly in view. We took up arms only in obedience to the dictates of humanity and in the fulfillment of high public and moral obligations. We had no design of aggrandizement and no ambition of conquest.

Those were the instructions with which the commissioners started on their mission to Paris. On October 26, 1898, however, Mr. Hay telegraphed to Mr. Day, one of the commissioners, as follows:

The information which has come to the President since your departure convinces him that the acceptance of the cession of Luzon alone, leaving the rest of the islands subject to Spanish rule, or to be the subject of future contention, can not be justified on political, commercial, or humanitarian grounds. The cession must be of the whole archipelago or none.

On the 28th of October, 1898, Mr. Hay sent to Mr. Day the following dispatch:

While the Philippines can be justly claimed by conquest, which position must not be yielded, yet their disposition, control, and government the President prefers should be the subject of negotiation as provided in the protocol.

Showing we had finally reached the point where we were going to claim, and our commissioners were instructed to claim, the Philippines by conquest. We started out with the proposition that we had no design of aggrandizement, no ambition of conquest. This position, however, was declared untenable, and on the 3d of November Mr. Day telegraphed to the Department as follows:

UNITED STATES PEACE COMMISSION,
Paris, November 3, 1898—10 a. m.

(For the President.—Special.)

After a careful examination of the authorities the majority of the commission are clearly of opinion that our demand for the Philippine Islands can not be based on conquest. When the protocol was signed Manila was not captured, seige was in progress and capture made after the execution of the protocol. Captures made after agreement for armistice must be disregarded and status quo restored as far as practicable. We can require cession of Philippine Islands only as indemnity for losses and expenses of the war. Have in view, also, condition of islands, the broken power of Spain, anarchy in which our withdrawal would leave the islands, etc. These are legitimate factors. Have written fully.

Thursday, 11.30 morning.

DAY.

In response to an inquiry addressed to me by the Senator from Massachusetts [Mr. LODGE] as to what I am trying to get at, I will simply say that I am trying to illustrate from this correspondence the complete mental somersault of the President. The President starts out with a high philanthropic motive and he ends up with this proposition:

DEPARTMENT OF STATE,
Washington, November 5, 1898.

Yours of November 4, special, and that of Senator Davis received. The President has no purpose to question the commission's judgment as to the grounds upon which the cession of the archipelago is to be claimed. His only wish in that respect is to hold all the ground upon which we can fairly and justly make the claim. He recognizes fully the soundness of putting forward indemnity as the chief ground, but conquest is a consideration which ought not to be ignored. How our demand shall be presented, and the grounds upon which you will rest it, he confidently leaves with the commissioners. His great concern is that a treaty shall be effected in terms which will not only satisfy the present generation but, what is more important, be justified in the judgment of posterity.

In view of the original position that we had no desire for conquest and then of the demand that we should claim the Philippines as conquest, and finally the abandonment of that position

and the invention of the claim of indemnity as the chief ground for acquiring territory, I say there is little force in the message of the President of last December, wherein he said:

The fortune of war has thrown upon this nation an unsought trust which should be unselfishly discharged, and devolved upon this Government a moral as well as material responsibility toward these millions whom we have freed from an oppressive yoke.

Here is a clear chain of circumstances, starting from an exalted position, fixing our claim on moral grounds in response to the resolution through which we declared war against Spain, and degenerating into a proposition of indemnity and a demand that we shall assume any position necessary to enable us to acquire the islands.

His only wish—

Mr. Hay says on November 5—

in that respect is to hold all the ground upon which we can fairly and justly make the claim.

In view of these facts, this telegram, which is rather a remarkable one, ought to become a part of the document. It is one of the papers sent to the Senate by the State Department when we were considering the Spanish treaty, and therefore it is a paper from which the injunction of secrecy was removed.

It is stated on page 212 of Senate Document 62, third session Fifty-fifth Congress, in the proceedings relating to an agreement upon the protocol, that the president of the Spanish commission presented to the American commissioners the final answer of the Spanish Government to the proposition of the American commissioners to take the Philippines. From that answer I quote the following, and believe it to demonstrate that the Philippines were not thrust upon the United States—that the fortune of war did not load the Philippines upon us—that Divine Providence can not be held responsible for what has occurred:

Examined solely in the light of the legal principles which have guided the action of the Spanish commissioners during the course of these negotiations, the latter consider the American proposition in every way inadmissible, for the reason repeatedly set forth in previous documents forming a part of the protocol.

Neither can they consider the said propositions as a satisfactory form of agreement and compromise between two opposing principles, since the terms which by way of concession are offered to Spain do not bear a proper proportion with the sovereignty which it is endeavored to compel us to relinquish in the Philippine Archipelago. Had they borne such proportion, Spain would have at once, for the sake of peace, made the sacrifice of accepting them. The American commission knows that the Spanish commission endeavored, although fruitlessly, to follow this course, going so far as to propose arbitration for the settlement of the principal questions.

Spain then having on her part exhausted all diplomatic resources in the defense of what she considered her rights, and even for an equitable compromise, the Spanish commissioners are now asked to accept the American proposition in its entirety and without further discussion or to reject it, in which latter case, as the American commission understands, the peace negotiations will end and the protocol of Washington will consequently be broken. The Government of Her Majesty, moved by lofty reasons of patriotism and humanity, will not assume the responsibility of again bringing upon Spain all the horrors of war. In order to avoid them it resigns itself to the painful strait of submitting to the law of the victor, however harsh it may be, and as Spain lacks material means to defend the rights she believes are hers, having recorded them, she accepts the only terms the United States offers her for concluding of the treaty of peace. (Senate Doc. No. 62, pp. 212-213.)

President McKinley in his message says:

The fortune of war has thrown upon this nation an unsought trust.

After reading the above, do you believe the trust was unsought?

The PRESIDENT pro tempore. What is the request of the Senator from South Dakota?

Mr. PETTIGREW. I request that there be a reprint of 3,000 copies of the instructions and papers transmitted by the President to the commissioners at Paris, to include the undated telegram of about November 1.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from South Dakota?

Mr. LODGE. I do not know what proof we have that it is one of the papers. I have no recollection of it. I have looked over the papers three or four times. I do not think anyone can say from the reading of the papers. I think we ought to have an authentic copy of the telegram before we agree to print it.

Mr. PETTIGREW. Of course, I know it is very difficult to get information on this subject, and all the papers are not yet here. In transmitting these papers to the Senate the Secretary of State says:

Only certain matters of collateral import which, in the opinion of the undersigned, it would be inconsistent with the public interest to communicate, but which, however, in no wise affected the negotiation as between the United States and Spain—

Are withheld.

This telegram was a part of the papers sent, and for what reason it was not printed with the others I do not know. I had the original and I copied it. I want it to become a part of the printed instructions.

Mr. LODGE. We have the originals here. They were all sent to the Printing Office. I should like to have an opportunity to examine it and see what the difficulty is. Nothing was suppressed here.

Mr. PETTIGREW. This evidently was either suppressed or left out by neglect. We were two weeks getting these instructions when we should have secured them in twenty-four hours.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from South Dakota?

Mr. LODGE. I object, Mr. President.

Mr. PETTIGREW. I will make another suggestion if the Chair will permit. I should like to refer this matter, and I move that the request, with the dispatch, be referred to the Senator from Massachusetts as chairman of the Committee on the Philippines, to investigate and report to the Senate.

Mr. ALDRICH. It must be referred to a committee.

Mr. LODGE. I suggest that it be referred to the Committee on Printing.

Mr. PETTIGREW. I move to refer it to the Committee on the Philippines.

Mr. LODGE. Then the Committee on the Philippines.

The PRESIDENT pro tempore. The Senator from South Dakota moves to refer the matter to the Committee on the Philippines. Is there any objection?

Mr. FORAKER. I do not think it is necessary to refer it. If it should turn out that that dispatch was sent with the papers which we certainly have on file here, I certainly think it ought to be printed along with the others, especially in view of the fact that attention has been called to it, and whether or not it is one of the official dispatches we can ascertain by investigation.

Mr. LODGE. That is what I want to find out. I read these papers over three times. They all went through the hands of the Secretary of the Senate to be printed for the Senate, and nobody had a right to suppress any paper, and I want to see whether any paper has been suppressed. I will report it back to-morrow.

Mr. FORAKER. That can be ascertained by to-morrow, and I think we all feel an interest in having everything printed that was ordered to be printed.

Mr. PETTIGREW. I desire its reference to the committee.

The PRESIDENT pro tempore. Is there objection to the reference of the matter to the Committee on the Philippines? The Chair hears none, and it is so ordered.

AMERICAN REGISTER FOR STEAM YACHT MAY.

Mr. PENROSE. I ask unanimous consent to call up the bill (S. 6012) to provide an American register for the steam yacht *May*.

The PRESIDENT pro tempore. The Senator from Pennsylvania asks unanimous consent for the present consideration of the bill indicated by him. Is there objection?

Mr. ALLISON. After this bill is disposed of, I shall call for the regular order.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

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

ARMY APPROPRIATION BILL.

Mr. SHOUP. I move that the Senate resume consideration of the bill (H. R. 14017) making appropriation for the support of the Army for the fiscal year ending June 30, 1902.

The motion was agreed to.

Mr. BATE. Will the Senator from Idaho yield to me for a moment to secure the passage of a bill?

Mr. SHOUP. Certainly.

CLAIMS OF EX-CONFEDERATE SOLDIERS.

Mr. BATE. I ask unanimous consent, by the courtesy of the Senator who has the Army bill in charge, to call up the bill (H. R. 1136) for the relief of parties for property taken from them by military forces of the United States.

Mr. HOAR. Is the bill reported from any committee?

Mr. BATE. Yes, sir; the Committee on Military Affairs.

Mr. HOAR. Is it the unanimous report of the committee?

Mr. BATE. There is no objection to it now that I know of. There was the other day, but it has been explained.

Mr. BURROWS. Let me ask the Senator how much is carried by the bill?

Mr. BATE. I can not tell exactly. It depends upon the number; but it will not exceed $30,000.

Mr. BURROWS. How much in the aggregate?

Mr. BATE. Twenty-five or thirty thousand dollars will cover the whole thing. A great many of them are dead and gone.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. BURROWS. One inquiry. Would the Senator have any objection to referring this matter to the Court of Claims?

Mr. BATE. Yes, sir; it would be a denial of justice comparatively. There are so many cases there. This matter has been gone over by Senators.

Mr. SPOONER. Will the Senator permit me? I looked at this bill, and as it came from the House it was an improperly drawn bill. It would amount to a denial of justice to refer it to the Court

of Claims. The claims are all small, and I have found in my experience as chairman of the Committee on Claims that the Quartermaster-General's Department has always made very careful and much more satisfactory investigation of such claims than the Court of Claims. This really is a bill of honor, if I may be permitted to say so. It does not assume that there was any violation by the soldiers of the United States Army, acting under orders, of the terms of surrender, which authorized officers to take home with them their side arms and their private baggage and their horses, and also authorized private soldiers to do so.

Mr. BURROWS. It was not my purpose to object to this bill, but I desire to know from the Senator whether it would be agreeable to him to have it referred to the Court of Claims. But if he objects to that, I shall not interpose any objection. So he need not waste time on it.

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill, which had been reported from the Committee on Military Affairs with amendments.

The first amendment of the Committee on Military Affairs was, on page 2, to strike out section 1, as follows:

SEC. 1. That the Quartermaster-General is directed to adopt such rules and instructions as may be necessary, so that those entitled may be protected, and the Government also protected from any fraud or impositions; and he shall issue his voucher to the claimant, which shall be paid out of any money in the United States Treasury not otherwise appropriated.

And insert the following:

That the Quartermaster-General is directed, under such rules and regulations as may be approved by the Secretary of War, to investigate, or cause to be investigated, the claims of artillery and cavalry officers and private soldiers of the Confederate army for horses, side arms, and baggage alleged to have been taken from them by Federal troops, acting under orders, in violation of the terms of surrender of the Confederate armies, and he shall, subject to the approval of the Secretary of War, issue his voucher to such persons as shall be shown by such investigation to be entitled thereto, which voucher shall be paid out of any money in the United States Treasury not otherwise appropriated.

The amendment was agreed to.

The next amendment was, in section 2, page 2, line 22, to strike out:

That no one shall be entitled to or receive any voucher as herein provided unless he shall satisfy the Quartermaster-General that he was paroled at the time of said surrender; that he has faithfully kept his parole in good faith.

And insert:

That no claimant shall be entitled to or receive any voucher as herein provided unless he shall establish to the satisfaction of the Quartermaster-General that he, or the person through or from whom he asserts said claim, was paroled at the time of said surrender; that he had kept his parole in good faith; that he was the actual owner of the horses, side arms, and baggage for which he claims compensation; that such property was taken from him by troops of the United States acting under orders and in violation of the terms of surrender under which he was paroled.

So as to make the section read:

SEC. 2. That no claimant shall be entitled to or receive any voucher as herein provided unless he shall establish to the satisfaction of the Quartermaster-General that he, or the person through or from whom he asserts said claim, was paroled at the time of said surrender; that he had kept his parole in good faith; that he was the actual owner of the horses, side arms, and baggage for which he claims compensation; that such property was taken from him by troops of the United States acting under orders and in violation of the terms of the surrender under which he was paroled. And if the soldier has died since his parole was received, the sum he may be entitled to shall be paid to his wife; if she be dead, then to his children; if he has no wife or child or children living, then to his parents or either of them if one of them be dead; and no other shall be entitled to receive the same. If he has minor children, the same may be paid to their guardians.

The amendment was agreed to.

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.

The Committee on Military Affairs reported an amendment, to strike out the preamble; which was agreed to.

AGREEMENT WITH MUSCOGEE OR CREEK INDIANS.

Mr. HARRIS. Will the Senator from Idaho yield to me for a moment?

Mr. LODGE, Mr. CHANDLER, and others called for the regular order.

The PRESIDENT pro tempore. The regular order is demanded, which is the Army appropriation bill.

Mr. THURSTON. Will not the Senator from Idaho yield to me for a moment while I ask for a vote on two conference reports? They were last evening ordered to be printed in the RECORD. The reports relate to two treaty agreements with the Creek and Cherokee nations.

Mr. SHOUP. I yield.

The PRESIDENT pro tempore. The Chair lays before the Senate the report referred to by the Senator from Nebraska.

The Secretary proceeded to read the report, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 11821) to ratify and confirm an agreement with the Muscogee or Creek tribe of 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:

The PRESIDENT pro tempore. The report has been read at length, and it appears in this morning's RECORD.

Mr. THURSTON. I ask unanimous consent that the reading be waived, and that the Senate agree to the report.

Mr. CULBERSON. Before I consent that the reading shall be dispensed with, I desire to ask the Senator from Nebraska if this includes the recent agreement with the Choctaw and Chickasaw nations?

Mr. THURSTON. No, it does not. These are the Creek and the Cherokee agreements.

Mr. PETTIGREW. I should like to ask whether any material changes were made in conference?

Mr. THURSTON. There are no changes in the Creek bill at all, except the change in dates made necessary by the fact that the agreement has been delayed. It is simple to carry the agreement into effect. The one principal amendment was simply embodying a law that we referred to. We embody it now in terms.

The PRESIDENT pro tempore. The question is on agreeing to the report.

The report was agreed to.

AGREEMENT WITH CHEROKEE INDIANS.

The PRESIDENT pro tempore. The Chair lays before the Senate another conference report, submitted last evening by the Senator from Nebraska [Mr. THURSTON], which appears in full in this morning's RECORD, which will be stated.

The Secretary read as follows:

Report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 11820) to ratify and confirm an agreement with the Cherokee tribe of Indians, and for other purposes.

The PRESIDENT pro tempore. The question is on agreeing to the report of the committee of conference.

The report was agreed to.

WHITE MOUNTAIN APACHE RESERVATION.

Mr. THURSTON. I submit a conference report. It is very brief. The Senate recedes from its amendments. I ask for the present consideration of the report.

The report was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 10899) to restore to the public domain a small tract of the White Mountain Apache Indian Reservation, in the Territory of Arizona, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the Senate amendment on page 2, line 13, and agree to the same.

That the Senate recede from its amendment on page 3, line 6.

That the Senate recede from its amendment on page 3, lines 6 and 7.

That the Senate recede from its amendment on page 3, line 10.

JOHN M. THURSTON,
J. V. QUARLES,
JAMES K. JONES,
Managers on the part of the Senate.

J. S. SHERMAN,
C. D. SHELDEN,
JOHN S. LITTLE,
Managers on the part of the House.

Mr. PETTIGREW. I should like to have the report printed and lie over, because there is a principle involved in this matter, although the tract of land is very small. The question is whether we shall recognize the title of the Indians to the mineral. If we do, it involves a precedent which would in the future carry to the Indians hundreds of millions of dollars worth of property that does not belong to them and ought not to belong to them. It would be to their detriment and to the injury of the development of that entire country.

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

Mr. PETTIGREW. I wish to examine the report.

The PRESIDENT pro tempore. Without objection, the conference report will be printed in the RECORD and go over.

SPANISH WAR CLAIMS.

Mr. FORAKER. I wish to call up a conference report on Senate bill 2799.

The PRESIDING OFFICER (Mr. KEAN in the chair). The Chair lays before the Senate the conference report, which will be read.

The report was read, as follows:

The committee of conference on the disagreeing votes of the two Houses on the bill (S. 2799) to carry into effect the stipulations of article 7 of the treaty between the United States and Spain concluded on the 10th day of December, 1898, having met, after full and free conference have decided to recommend and do recommend to their respective Houses as follows:

That the House recede from its amendment to the bill of the Senate, and agree to the said bill with the following amendments:

Section 1, page 1, line 4, strike out the word "three" and insert in lieu thereof the word "five."

Section 3, page 2, line 22, strike out the word "one" and insert in lieu thereof the word "order."

Section 5, page 3, line 7, strike out all after the word "clerk," to and including the word "languages," in lines 7 and 8.

Section 6, page 4, line 17, strike out all after the word "commission" and insert in lieu thereof a period.

Section 8, page 5, line 1, strike out the word "affidavits."

In section 8, page 5, line 8, strike out all after the word "commission" to the end of the section and insert in lieu thereof a period.

Section 9, page 5, line 17, after the word "based," insert the words "together with an itemized schedule, setting forth all damages claimed."

Section 9, page 5, line 17, strike out the word "It" and insert in lieu thereof the words "Said petition."

Section 9, page 5, line 21, after the word "attorney" insert the words "or legal representative."

Section 9, page 5, line 22, after the word "agent" strike out the word "or," and after the word "attorney" insert the words "or legal representative."

Section 12, page 7, line 5, strike out all after the word "commission" to the end of the section, and insert in lieu thereof the words "and no new trial or rehearing shall be had except upon motion made within sixty days of said award."

Strike out all of section 13, pages 7 and 8, and insert in lieu thereof the following: "When the commission is in doubt as to any question of law arising upon the facts in any case before them, they may state the facts and the question of law so arising and certify the same to the Supreme Court of the United States for its decision, and said court shall have jurisdiction to consider and decide the same."

Section 14, page 8, line 20, strike out all after the word "commission" to and including the word "claimant," in line 22.

Section 14, page 8, line 22, strike out the word "adjudged" and insert in lieu thereof the words "found to be."

Section 14, page 9, line 1, strike out all after the word "award" to and including the word "affirmance," in line 2.

J. B. FORAKER,
S. M. CULLOM,
JOHN T. MORGAN,
Managers on the part of the Senate.

GILBERT N. HAUGEN,
THAD. M. MAHON,
Managers on the part of the House.

Mr. BACON. I presume the Senator from Ohio will state what is the substance of the report.

Mr. FORAKER. In response to the request of the Senator from Georgia, I will remind the Senate that this bill as originally passed by the Senate when it went to the House was amended by striking out all after the enacting clause and adopting a substitute. The bill as it originally passed the Senate provided for a commission of three to hear and determine all claims of citizens of the United States against Spain, for which we were required by the treaty of peace to become responsible. The House amended it by providing that all those claims should be sent to the Court of Claims and be there passed upon.

When the bill came back to the Senate so amended, the Senate refused to concur. Therefore when a conference was had it was upon the Senate bill, and the conferees agreed to substitute five for three commissioners and to eliminate the provision which provided for an appeal from the award of the commissioners to the supreme court of the District of Columbia, substituting instead of that a provision that the commissioners might, when they had any difficulty about any question of law, certify the same to the Supreme Court of the United States and take the judgment of that court. It further provided that section 8 of the bill as passed by the Senate should be so amended as not to require the commissioners, when they receive ex parte testimony from the State Department, which they were authorized to call for, to treat it as evidence.

The original provision was that they might call for all documents on file in the State Department, and that they should attach to the same such credibility or give to the same such weight as evidence as they might choose. That provision as to how they should treat it as testimony was eliminated by the conferees. I do not remember any other change that was made, except only such verbal changes as were necessary to be made to cause the bill to conform to those several amendments.

Mr. PLATT of Connecticut. How many commissioners are provided for?

Mr. FORAKER. Five commissioners instead of three, the award by the commissioners to be final, no appeal to be taken; but the commissioners are authorized to certify any question of law that may arise upon which they want the judgment of the Supreme Court of the United States to that court for its opinion.

Mr. PLATT of Connecticut. May I ask what the salaries of the commissioners are to be?

Mr. FORAKER. Five thousand dollars.

Mr. PLATT of Connecticut. I wish it were more.

Mr. FORAKER. Yes; I thought myself that the salary ought to be more, but that question was considered and decided adversely by the conferees.

Mr. BACON. I do not wish to be understood by my inquiry as affirming anything to the contrary, but at the same time I should like to know from the learned Senator whether there is any doubt in his mind as to the constitutionality of the provision which authorizes the certification of a question from a commission to the Supreme Court, with the implied obligation of law upon the Supreme Court to answer the question? There may be a precedent for it; I do not know; but in the absence of such a precedent, I should very greatly doubt its constitutionality.

Mr. FORAKER. I should not doubt the constitutionality of our provision that the commission should make the certification, but whether the Supreme Court would feel obligated to give an opinion is another matter.

Mr. BACON. The question I suggest is not whether the Supreme Court would feel obligated to give an opinion, but whether by legislation we can confer that power upon the Supreme Court. That court is not a statutory court, but a constitutional court. Congress can not by legislation either add to or subtract from the powers conferred upon it by the Constitution.

Mr. FORAKER. I do not know of any reason why a commission created by Congress could not be authorized to do that, as the courts already are authorized to do it.

Mr. BACON. I do not intend to object. I simply thought it was not proper that that provision should be passed without some suggestion upon the subject for the consideration of the Senator in charge of the report.

The PRESIDING OFFICER. The question is on agreeing to the report of the committee of conference.

Mr. PETTIGREW. I desire that the report shall be printed and lie on the table.

Mr. FORAKER. The report is printed in the RECORD of yesterday in the House proceedings.

Mr. PETTIGREW. In the House proceedings, but not in the Senate proceedings. It has not been called to my attention, and I desire to have it lie over in order that I may examine it.

Mr. FORAKER. Very well. Then the conference report will be printed in to-day's proceedings of the Senate, as I understand.

The PRESIDING OFFICER. It will be printed in to-day's proceedings.

EVENING SESSION.

Mr. SHOUP. I move that at 5.30 o'clock this afternoon the Senate take a recess until 8 o'clock this evening.

Mr. CARTER. I wish to call the attention of the Senator from Idaho to the fact that notice has been given that eulogies will be delivered, commencing at 5 o'clock. It is questionable whether the eulogies will be concluded as early as 5.30. I therefore suggest to the Senator a modification of his request, so that immediately after the conclusion of the eulogies the Senate stand in recess until 8 o'clock.

Mr. SHOUP. I accept that modification.

Mr. BACON. We can not hear on this side of the Chamber.

Mr. PLATT of Connecticut. The notice for the eulogies is for 5.30 o'clock.

Mr. PETTIGREW. It has been changed to 5 o'clock.

The PRESIDING OFFICER. The Chair will state to the Senator from Connecticut that the Senator from New Hampshire changed the notice to 5 o'clock. Is there objection to the request of the Senator from Idaho, that at half past 5 o'clock, or as soon thereafter as the eulogies shall have been concluded, the Senate take a recess until 8 o'clock? The Chair hears none, and it is so ordered.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12904) making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June 30, 1902, and for other purposes; further insists upon its disagreement to the amendments of the Senate numbered 45, 51, 52, 56, and 62, upon which the committee were unable to agree; agrees to the further conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. SHERMAN, Mr. CURTIS, and Mr. LITTLE managers at the conference on the part of the House.

The message also announced that the House had passed the bill (S. 5978) authorizing the Attorney-General, upon the request of the Secretary of the Interior, to appear in suits brought by States relative to school lands.

The message further announced that the House had passed a bill (H. R. 13865) relative to the suit instituted for the protection of the interests of the United States in the Potomac River Flats; in which it requested the concurrence of the Senate.

The message also announced that the House had passed with an amendment the joint resolution (S. R. 163) regulating licenses to proprietors of theaters in the District of Columbia; in which it requested the concurrence of the Senate.

The message further announced that the House had passed a concurrent resolution authorizing the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12291) making appropriations for the legislative, executive, and judicial expenses of the Government, etc., to include in their report such alterations, changes, and recommendations as they may deem proper with reference to so much of the text of the bill as relates to the officers and employees of the House of Representatives; in which it requested the concurrence of the Senate.

ARMY APPROPRIATION BILL.

The PRESIDENT pro tempore. The Army appropriation bill is before the Senate as in Committee of the Whole.

Mr. CLARK. I ask the Senator from Idaho to yield to me for one moment for a matter of pressing importance.

Mr. SHOUP. I must decline to yield further to anyone.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 14017) making appropriation for the support of the Army for the fiscal year ending June 30, 1902.

Mr. HOAR. The Senator from Alabama [Mr. MORGAN] yields to me for a moment. I proposed an amendment to the amendment yesterday, excluding substantially the granting of franchises. It removes one difficulty from the amendment, and it has found favor on both sides of the Chamber to some considerable degree.

If a vote could be taken upon my amendment now, or if the committee having in charge the matter would accept the amendment, it might direct the discussion which proceeds to other parts of the measure. I ask leave of the Senator from Alabama to move that amendment now and see whether it will be accepted by the Senate or by the committee. I understand the Senator will have the right to proceed at any time he chooses.

Mr. MORGAN. I have not had an opportunity to hear the amendment, and I will yield that it may be read.

Mr. HOAR. Let the amendment be read.

The PRESIDENT pro tempore. The amendment to the amendment will be read, if there be no objection.

The SECRETARY. At the end of line 15, page 39, insert the following proviso:

Provided, That no sale, or lease, or other disposition of the public lands, or the timber thereon, or the mining rights therein, shall be made: *And provided further*, That no franchise shall be granted which is not approved by the President of the United States and is not in his judgment clearly necessary for the immediate government of the islands and indispensable for the interest of the people thereof and which can not without great public mischief be postponed until the establishment of permanent civil government, and all such franchises shall terminate one year after the establishment of such permanent civil government.

Mr. LODGE. Mr. President, the Committee on the Philippines reported the amendment favorably, and in their behalf I desire to say that I accept this amendment to their amendment.

The PRESIDENT pro tempore. Is there objection to the present consideration of this amendment?

Mr. MORGAN. I wish to say——

Mr. BACON. Mr. President——

Mr. MORGAN. I will yield to the Senator from Georgia.

Mr. BACON. I simply desire to say, Mr. President, with the permission of the Senator from Alabama, that I see no reason why we should not go as far in the matter of franchises to be granted in the Philippine Islands as we went in the franchises to be granted in Porto Rico. We there expressly stipulated that they should be submitted to Congress, and that Congress should have the power to annul them. In the original Porto Rican bill there was a provision substantially the same as that contained in this amendment, and after full discussion, which we have not now the opportunity to give, it was stricken out and the power was given to Congress.

Mr. HOAR. If the Senator will pardon me, it has occurred to me that there might be some little railroad or a street railroad that was wanted in a hurry; and it is made terminable in twelve months, and is to be held by the President to be indispensably necessary. I ought not to abuse the courtesy of the Senator from Alabama. If this amendment may be treated as accepted, then it will be in order for the Senator from Georgia to move an addition, if he sees fit, hereafter.

Mr. LODGE. If my colleague will allow me, I will state to the Senator from Georgia that the revocation is already in the amendment.

Mr. BACON. The revocation of what?

Mr. LODGE. A provision for revoking the franchise.

Mr. BACON. Not by Congress. It does not say by Congress.

Mr. LODGE. It is to be done by the Government of the United States, as a matter of course.

Mr. BACON. I do not think so.

Mr. MORGAN. Mr. President——

The PRESIDENT pro tempore. Is there objection to the present consideration of the proposed amendment?

Mr. BACON. I have no objection if it is understood that the acceptance of this amendment does not preclude an amendment to the amendment.

Mr. LODGE. Of course.

Mr. HOAR. It will be amendable in the Senate.

Mr. BACON. I wish the Senator would so determine——

Mr. MORGAN. Mr. President, I must decline to permit a debate to spring up on a collateral matter about which there is a strong disagreement among Senators as to what the amendment should express, and I prefer to go on.

Mr. HOAR. Very well.

Mr. MORGAN. I am willing to state, however, that the amendment offered by the Senator from Massachusetts——

Mr. HOAR. Let the amendment be printed as it appears, modified.

Mr. MORGAN. As far as I have had an opportunity of examining it at all from its reading here for the first time it impresses me favorably, but I could not give my consent to have it now adopted without looking into the matter further. My preference in regard to amendments of this kind would be for the Foraker resolution, which was adopted here soon after we started in this enterprise of governing foreign territories.

Mr. HOAR. Will the Senator allow the amendment to be printed at once?

Mr. MORGAN. I have no objection to having it printed.

Mr. HOAR. Let the amendment be printed.

The PRESIDENT pro tempore. It will be printed.

Mr. BURROWS. As modified?

The PRESIDENT pro tempore. As modified.

Mr. MORGAN. I understand that the amendment is accepted by the committee that reported this bill.

Now, Mr. President, before I proceed with my remarks this morning I wish to make a statement which I very rarely feel called upon to make, in regard to an article that appeared in a newspaper of the city this morning, stating that it had been agreed between Democrats that no vote on this bill or this amendment should be taken before the 4th day of March. I wish utterly to deny the truth of that statement in every possible way and in every possible particular. No agreement has been made, no conference has been held, no interchange of opinion on that subject has taken place between the Democrats on this side of the Chamber so far as I know or believe.

Mr. BACON. And no suggestion.

Mr. MORGAN. And no suggestion. Why that paper should have indulged itself in that fabrication it is impossible for me to say. I do not care anything about it except merely I do not wish to have the Senate understand that I have occupied or will occupy one moment of the time of this body otherwise than in a fair debate of the bill which is before us on principles that I think are entirely justifiable and commendable.

I see that the chairman of the Committee on Relations with Cuba is in the Senate, and I wish to ask that Senator before I proceed with my remarks whether it is the intention of his committee to press the Cuban amendment to a vote upon this bill?

Mr. BACON. Mr. President, I hope we may have order in the Chamber. I can not hear the Senator from Alabama, although I am only 10 feet from him. It is not his fault, but it is the fault of the conversation by others.

The PRESIDENT pro tempore. Senators will resume their seats and conversation in the Senate will cease.

Mr. PLATT of Connecticut. I had hoped, Mr. President, I will say in reply to the inquiry of the Senator from Alabama, that there would be a practical unanimity of the Senate for the putting of this amendment on the Army appropriation bill.

Mr. MORGAN. There can not be a unanimity upon the paper that has been presented here by the committee without some effort to amend it in particulars that are not therein stated or alluded to. Neither do I think that the Senate is in a condition where it can possibly give intelligent consideration to that great proposition. I think we are venturing upon ground of extreme peril to the Government of the United States and also to the people of Cuba by taking up this matter to be discussed at this time and under the state of information we now have in respect of it. If it is the intention of that committee to press this amendment upon the bill, of course I want to devote some attention to it; but if the amendment should be withdrawn or a statement should be made that it would not be pressed, of course that is a different matter.

Mr. PLATT of Connecticut. Mr. President, I should not feel justified in withdrawing the amendment. I think it is very important that it should be passed at this session and upon this bill. I believe that it will settle what may be called the Cuban question satisfactorily to the people of Cuba and satisfactorily to our people. I trust that there will be no serious opposition to it.

Mr. MORGAN. Mr. President, I must therefore include in my remarks on this occasion both of these great amendments. I wish to say in regard to the Cuban feature of this business that it has not been, I think, an hour since a resolution passed this body requiring the Secretary of State or somebody to furnish us with an English translation of the Cuban constitution as it appeared in a Cuban paper, the Diario, I believe it was, and that is as near an approach as we have had yet to anything like official action in regard to that constitution or official information as to what it contains. I am totally ignorant of the provisions of that constitution. If I had an opportunity even for an hour to look it over, I might possibly become satisfied that there was no want of harmony between the proposed amendment to this bill and that constitution as resolved upon by the Cuban people.

Mr. PLATT of Connecticut. Will the Senator from Alabama permit me?

Mr. MORGAN. Certainly.

Mr. PLATT of Connecticut. I am advised that there is being made now in Cuba an unofficial translation of the constitution as far as it has progressed. I suppose it can not reach here——

Mr. BACON. Mr. President, this is certainly a very grave matter, and we are very anxious to hear; but the Senator does not speak in a tone of voice that makes it possible to hear what he says, although there is comparative quiet in the Chamber.

Mr. PLATT of Connecticut. I am speaking about as loudly as I can. If the Senate will be in order, I think I can be heard.

A SENATOR. Louder.

Mr. PLATT of Connecticut. Well, Mr. President, I will take my seat.

Mr. MORGAN. Now, Mr. President, for one I am without information as to what is the constitution of Cuba or that there is such an instrument in existence; that the Cuban constitutional convention has finally acted upon any document that is intended to stand in the place of the organic law of that island when it is erected into a separate and autonomous government, and inasmuch as the Senator *from* Connecticut, the chairman of the committee, is not willing to say that he will withdraw that amendment, I hope the Senate will not feel that I am filibustering if I undertake to express my opinion about as much of the case as I understand. I know a good deal about the case outside of the constitution, and I have it by me in black and white on Cuban authority as well as other authority.

Mr. PLATT of Connecticut. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Alabama yield to the Senator from Connecticut?

Mr. MORGAN. Yes, sir.

Mr. PLATT of Connecticut. I do not like to be put in the position of declining to give any information in my power in relation to this matter. I endeavored to do so, and I thought that Senators were not inclined to listen. I was saying that I understood there was being prepared in Cuba what might be called an unofficial translation of the constitution, but manifestly it could not reach here in three or four days, but that the draft of the proposed constitution has been published in this country, and I supposed that Senators who were interested in the matter had kept track of any changes that have been made therein. There have been very few, so far as I know, so the original draft of the constitution as published in the papers in this country gives to the Senate the practical information as to the provisions of that constitution.

Mr. MORGAN. Now, Mr. President, I still have no information about it, and surely I can not get any information about it before I am obliged, for the sake of propriety, on this occasion to close my remarks, as the Senate will proceed with its business upon this bill and upon other measures. So I am in doubt about it, and if I vote for or vote against the proposition of the Committee on Cuban Relations I must do it in the dark. That is all that I can say.

Mr. PLATT of Connecticut. May I say one word more?

Mr. MORGAN. Certainly.

Mr. PLATT of Connecticut. It has been very manifest, Mr. President, that Congress could not act upon this matter up to the present time. The Senator yesterday, in speaking of the Philippine question, complained—I do not know that I ought to use that word—but he stated that it had been before the Senate at the last session *and had not* been acted upon. He thought there had been little disposition to act upon it, and therefore it was not fair to bring it forward at this time as an amendment to the Army appropriation bill; that it ought to have been brought forward earlier.

But it is very manifest that the matter of the Cuban relations could not have been acted upon until the constitution in Cuba had been practically completed by the convention, and the convention was considering what the future relations between Cuba and the United States should be. I do not think there can be any complaint that the matter has not been brought forward as soon as it could be, and I think it is of the utmost importance that these relations should be settled now, at this session of Congress, if it is possible to do so.

Mr. MORGAN. I am not complaining, Mr. President, that the matter has not been brought forward as soon as it could be. I am complaining about this Cuban affair; that it is brought forward sooner than it can be properly brought forward, for we have not got the facts. We are anticipating in every respect what Cuba has done and what Cuba desires to do and what we ought to do in a certain event of which we are not as yet informed or upon certain conditions which are as yet obscure to us entirely. We do not know what objection they have made; we do not know whether they have made provisions that will admit of the contentions that are suggested by us and the contentions of the Government of the United States, which in their character are far more diplomatic than legislative, it seems to me.

Mr. President, I wish to do the Republican party of this Chamber all possible justice, and I am particularly anxious that nothing I shall say in this matter shall touch at all upon the merits, the character, the patriotism, or the fidelity of the President of the United States in the proper administration of this Government under the Constitution, for I hold that gentleman in very high personal esteem and I would say nothing that would reflect upon him. But he is the President of the United States, and when he permits himself to be drawn into a condition or into an attitude which I conceive to be contrary to the best interests of this Government and contrary to fair dealing and contrary to the proper methods of legislation, I shall deal with him as if he was my personal enemy so far as liberty of speech is concerned.

Now, Mr. President, I call the attention of the Senate again—for this question can not down until we have finished our action upon it—to the very strange attitude in which the President of the United States is placed before this body, I hope and believe through the anxieties of his friends. He comes to us with estimates which he is required to make under the law through his officer, the Secretary of War, for appropriations for the Army of the United States, to take effect on and after the 1st day of July, 1901.

The House framed its bill upon those estimates and sent it to the Senate, containing no reference whatever to affairs in the Philippines or in Cuba except merely to make provision for the Army that might be employed in both places upon the missions or expeditions that they are discharging there now. The Senate, however, through its committees, have brought forward two very important amendments to the bill. I must assume from the anxiety which is exhibited here and from some statements which have fallen from Senators that the President of the United States is very anxious to have both these amendments put upon the bill. I shall therefore treat the matter as if he were very anxious, though from what I happen to have heard about it from sources worthy of credit I can hardly believe that he is very anxious.

The President may be very anxious to avoid an extra session of Congress, but if he is, Mr. President, he has changed his mind within a few days, because a few days ago I might say that he was very anxious to have it and that he has never been afraid of an extra session of Congress. I do not want an extra session of Congress for the sake of staying here and laboring at a time when I should like to have relief from the duties that I have to share in with the balance of you; but I will not shrink from it at all if our duties to the country require that such a session should be held. But I will do nothing to promote that view of the question or to force the Senate of the United States or the Congress of the United States into an attitude where an extra session is necessary. That is not a part of my duty. But, Mr. President, I will not abstain or refrain from doing what I conceive to be incumbent upon me under my oath as a Senator in dealing with any measure before the Senate, though that might result in the holding of an extra session of Congress.

Now, sir, it is an unfortunate thing for any Administration that in the last week of the session of Congress now about to expire, and upon an appropriation bill of the most vital necessity and importance to this country, the President of the United States should require us to pass that bill for the support of the Army, but that in passing it he should load it with two amendments to which we are strongly and earnestly opposed, and that we shall not have a bill for the supply of the Army after the first day of July next unless we will accept from the Administration the load of these two amendments.

We have been hearing here for years and years debated at every session of Congress the great question as to whether or not general legislation should be loaded upon appropriation bills. What is the object of that rule, which is "more honored in the breach than in the observance," in the Senate of the United States? It is that the Government shall have its supplies, without reference to other great questions pending before Congress or agitating the country, and without their being loaded upon those measures which are requisite for the carrying on of the operations of the Government. And here the President of the United States asks us to pass this Army appropriation bill, knowing that if we do not pass it now, or in an extra session to be held between this and the first day of July, the Army of the United States must necessarily go to pieces.

Under the Constitution it must go to pieces. There is no law that will exist after the first day of July under which the President of the United States can supply the Army with money, pay the soldiers and the officers and the transportation, the quartermaster and the commissary supplies, unless this bill or some bill like it is passed at this session or an extra session shall be held between this and that period of time.

Now, this is the most emergent bill of appropriation that can possibly be brought before the Senate of the United States, and the emergency is intensified in this case for the reason that in China, in the Philippines, in Cuba, and in Porto Rico, countries that

are outside of the former limits of the United States, we are now maintaining armies that are necessary to be maintained in each of those places for the purpose of preserving the rights of the United States Government. That is what we are doing. The President demands supplies for those things, and when we stand ready to vote them, anxious to supply the Army, he comes in at the very last hour of this Congress and loads these bills down with two propositions to increase his powers in Cuba and in the Philippines.

Now, was an Administration ever before put in that shape? Did an Administration ever before undertake to load upon its own appropriation bills a measure which it might consider very advantageous to the country? Sir, you might just as well put the subsidy bill or the oleomargarine bill on this appropriation bill, or any other bill that the President might want to pass, and say to the Congress of the United States: "Unless you will swallow these measures which I demand shall be put as amendments upon this bill you shall be accused of breaking up the Army supply for the United States."

Mr. President, the injustice of that attitude toward the minority in this Senate is horrible. It can not be explained away. Sir, if I felt that this measure in regard to the Philippines was a constitutional measure, but unwise in policy, I would yield to that demand of the President of the United States and put it upon his bill and let him take the responsibility of it. If I did not feel that the Cuban measure is extremely dangerous in defining the policy of this Government toward those islands I would withdraw my objection to that and let that amendment go on this bill rather than be compelled to vote so as to refuse to supply the Army after the 1st day of July next with the soldiers in China, in the Philippines, in Cuba, and in Porto Rico.

I would, sir, for the sake of the patriotic duty resting upon me to supply those troops with money, forego any opinion I might entertain in respect of the policy of this measure brought before the Senate on this occasion. But when these measures are grossly unconstitutional, and when each one of them undertakes to enlarge the power of the President of the United States inconceivably, I am confronted with the demand made by the President of the United States: "You shall vote against the Army and the supplies to the soldiers unless you stand here and deliver what I further demand of you—the putting of an unconstitutional load upon this Army bill."

Senators and their friends, in their anxiety to get whatever advantage there may be or may be supposed to be out of this Philippine amendment, may be able to justify themselves in their own estimation for putting the Senate of the United States in this peculiar attitude to-day. But, sir, I resent it. Whether it comes from that side of the Chamber as a political organization or from the President of the United States—it makes no difference how—I resent it as an outrage upon the rights of the minority in this Chamber. Here is the Democratic party to be accused before this country of refusing to vote supplies for the Army in the field and engaged in military operations—in actual open hostilities—because the President of the United States thinks he has got us in a corner and he can claim this opportunity to force upon this bill an enlargement of his powers so extraordinary that it shocks the common sense of the whole country as well as the conscience of every man in it.

Why is the President of the United States here making this demand upon us that we shall delegate to him all the powers of Congress, that he may go into the Philippines as a legislator, judge, chief magistrate, as well as commander in chief, and there execute his will in his own fashion, and direct every man he appoints to an office in that country as to the manner in which he shall discharge his duties? Why does he come here and ask the Congress of the United States to yield up this extraordinary power to him? Who can excuse it? Who dares even apologize for it?

When I had the floor yesterday, Mr. President, I was discussing the parallel between the pending Philippine amendment and the acts of the Eighth Congress, in 1803, in respect of the government of the territory of Louisiana. I have nothing more to add upon that particular branch of the proposition except to discuss the next proposition which arises in my mind, when I shall have to refer to some authorities applying to both.

The government instituted in 1898 for Hawaii has been appealed to as the precedent for this legislation. I wish now to enter upon a comparison of that act of Congress with this proposed amendment. In doing so I shall have to ask leave to insert that act in my remarks, as it is not long.

The PRESIDING OFFICER (Mr. FORAKER in the chair). If there be no objection, permission to do so will be granted.

The act referred to is as follows:

[PUBLIC RESOLUTION—No. 51.]

Joint resolution to provide for annexing the Hawaiian Islands to the United States.

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The existing laws of the United States relative to public lands shall not apply to such lands in the Hawaiiam Islands; but the Congress of the United States shall enact special laws for their management and disposition: *Provided*, That all revenue from or proceeds of the same, except as regards such part thereof as may be used or occupied for the civil, military, or naval purposes of the United States, or may be assigned for the use of the local government, shall be used solely for the benefit of the inhabitants of the Hawaiian Islands for educational and other public purposes.

Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

The existing treaties of the Hawaiian Islands with foreign nations shall forthwith cease and determine, being replaced by such treaties as may exist, or as may be hereafter concluded, between the United States and such foreign nations. The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine.

Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

The public debt of the republic of Hawaii, lawfully existing at the date of the passage of this joint resolution, including the amounts due to depositors in the Hawaiian Postal Savings Bank, is hereby assumed by the Government of the United States; but the liability of the United States in this regard shall in no case exceed $4,000,000. So long, however, as the existing government and the present commercial relations of the Hawaiian Islands are continued as hereinbefore provided, said government shall continue to pay the interest on said debt.

There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

The President shall appoint five commissioners, at least two of whom shall be residents of the Hawaiian Islands, who shall, as soon as reasonably practicable, recommend to Congress such legislation concerning the Hawaiian Islands as they shall deem necessary or proper.

SEC. 2. That the commissioners hereinbefore provided for shall be appointed by the President, by and with the advice and consent of the Senate.

SEC. 3. That the sum of $100,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, and to be immediately available, to be expended at the discretion of the President of the United States of America, for the purpose of carrying this joint resolution into effect.

Approved, July 7, 1898.

Mr. MORGAN. In order that the country may understand perfectly what the situation is—for, Mr. President, I am speaking not to the Senate of the United States to-day, though I would fain address some remarks to the Senate that might affect their fixed purpose to do an act of great injustice to the country and to themselves also; but it is not in my province to take charge of their opinions or their consciences—but I have an appeal to make to the people of the United States which will not fail to address itself to men who are conscientiously considering public subjects and who uphold the balance of justice so evenly upon all public occasions and on all public subjects that I do not fear to trust my poor judgment into their hands.

Their judgment I am always willing to abide by, but I want to inform them as we go along, so that they may understand the situation and excuse me if I am wrong in the attitude I assume before the Senate.

In the Hawaiian act, which I have just caused to be inserted in the RECORD, there is this provision:

Until Congress shall provide for the government of such islands all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.

All of this power, and a great deal more, is given to the President of the United States in the pending amendment, and he is not put under the restraints which are contained in the Hawaiian act. In that act he was restrained and confined to the persons who were officers of the existing government in said islands at the time the act was passed. We did not leave the authority open to him to go out and explore all the islands of Hawaii to find such persons as he might choose to take up and install into office there. We recognized the existence of a government there and the existence of officers who were then in commission under the authority of the republic of Hawaii. We said as to those, he may remove them at his pleasure, as he removes officers of the United States Government here amongst us, and fill the vacancies so occasioned.

Suppose he had removed the governor, who was at that time

called the president of Hawaii, and was the president of Hawaii, or suppose he had removed the judges of the supreme court, or any other court of Hawaii, and had come to fill the vacancies, where would he have come? Would he go to Hawaii and fill those vacancies without coming to the Senate of the United States? Certainly not. The Constitution and laws of the United States, which were expressly carried into Hawaii by that act, would have compelled him to come with those appointments to the Senate. But in the pending amendment he does not have to do that. He can go to the Philippine Islands and make his appointments without coming to the Senate. We see, in that particular, how far these two acts parallel each other. They are not even ninety-ninth cousins of each other. This act continues:

The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine.

The Senator from Missouri [Mr. VEST] offered an amendment here on yesterday to put a similar provision—one not quite so strong as that—into the pending amendment, but the Senator from Wisconsin [Mr. SPOONER] said it was entirely useless, and he objected to it; and it will not go in here unless Senators on that side of the Chamber overrule the Senator from Wisconsin, who is in charge of this bill.

Mr. SPOONER. I am not in charge of the bill.

Mr. MORGAN. I beg the Senator's pardon; I supposed he was.

Mr. President, why did that committee not put into this provision "not inconsistent with this act" (or joint resolution as in that case) "nor contrary to the Constitution of the United States nor to any existing treaty of the United States?" Why did they put into that act that the municipal legislation of Hawaii should remain in force until Congress should otherwise determine? What was the municipal legislation of Hawaii? It was a body of laws, beginning with a constitution and passing through every phase of legislative procedure and contemplation which was the equal of any constitution and the equal of any body of laws in any State in the American Union.

Hawaii was a republic to begin with. It had all the qualities and the purposes and the powers of a republican government conformed to our Government. In every respect its laws were conformed to the laws of the United States, except in some trifling differences, and we were perfectly justified in recognizing that municipal code as a body of laws that should continue to exist in Hawaii, so far as they were not inconsistent with the Constitution of the United States, and that the officials, who had been appointed and were then in discharge of the duties of office under that government, should remain, subject to the powers of the President of the United States to remove them and to fill the vacancies thereby occasioned.

What parallel is there between that act and this amendment, which makes no provision of this kind, but, on the contrary, excludes this very provision by its necessary terms from being a part of this amendment?

We then went on to legislate about the public debt of Hawaii and about the revenue, and provided:

Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged.

Did you put that into this bill? No; and you will never do that. You will never do it for the very reason that one of the purposes of this bill is to get the tariff or customs laws into the grasp of the President of the United States and ratify his acts in advance by act of Congress, so that he may do in the Philippine Islands for all time to come, until this act is repealed, exactly what he did in Porto Rico between the date of the signature and promulgation of the treaty of Paris and the establishment of a Territorial government in that island.

During that time the President of the United States controlled with absolute power, at his discretion, all the customs laws and revenues of Porto Rico as well as the laws of internal taxation according to his will and pleasure, and nobody thought to rise in Congress and say that he had no right to do it, for he had the right to do it under those conditions, but now Congress feels the necessity, urged to it by the demand, I think, by speculators and contrivers, of forming a government, a Congressional government, in the Philippine Islands, and in doing so it wants to leave in the hands of the President of the United States the same powers he exercised in Porto Rico and would exercise in the Philippine Islands for the purpose of reaping for his friends a harvest of gold out of those tariff laws for their enrichment.

There is no other conclusion, Mr. President, that can be reached upon a fair analysis of this bill, and there is no other conclusion that can be reached historically, when we come to look at what the President did, and what he had the right to do, in the island of Porto Rico, between the time of the ratification of the Paris treaty and the time we instituted a Territorial government there.

That lease of arbitrary and uncontrolled power in the hands of the President of the United States is what is contended for in this bill. It is the necessary effect of this bill, and the history of our dealings with Porto Rico shows that that is the purpose of this bill.

We went further in that act and provided that there should be no immigration of Chinese into the Hawaiian Islands. How is it about Chinese in the Philippines? They have been pouring into those islands for three centuries, and they are in a large sense, a very large sense, the merchants of the Philippines. They work the natives, the Igorrotes, the Negritos, and even the Tagalogs on their rice farms, on their sugar plantations and banana fields, and in whatever else they want to work them in. They pay them and become the lords and masters of the country in a very extensive sense in all of those different islands, and particularly in Luzon.

Our laws here protecting the people and the Government of the United States against a surging immigration of Chinese that threatened the overflow of this country, threatened its labor, and all that—our laws went so far in the direction of checking this Chinese immigration that it has been said time and again, and with great truth, that the Congress let the treaty with China stand, but deliberately violated some of its most important provisions in their enactments. I voted for those violations, if they are such.

I must state, however, that at the time I gave, and I now give, the reasons or the excuse for that, that the Emperor of China had passed a decree forbidding his people to come to the United States or to go to any foreign country, and I voted to carry out that decree of the Emperor, which, while it did not violate the Burlingame treaty or any other treaty, was necessarily in antagonism to the principles of free immigration of Chinamen into the United States. But did we not pass laws here, and are they not yet upon the statute books, filled up with penalties and with definitions of crimes and punishments which we are now exerting against Chinese who come to this country? Are we not now earnestly engaged in using all the powers of this country, executive and judicial, for the purpose of excluding Chinese immigration to the United States?

What are we going to do about it in this bill? When we passed the Hawaiian bill we put in an express provision which prevented the further immigration of Chinese into that country, except under the laws of the United States. In this bill there is no such provision. The men who can go down there under corporate charters or for private gain to establish sugar and rice and banana plantations and other important industries in that land, such as the cultivation of manila hemp, out of which mints of money have been realized by the owners of property in the Philippines, are at perfect liberty to do what Hawaii did before we interposed our power to prevent it—to invite Chinese labor or Japanese labor, or contract labor from any nation in the world on terms that will suit them—they are perfectly at liberty to do so—and Congress does not dare to raise its voice in this amendment to this bill for the purpose of enforcing its policy and its laws against Chinese immigration, while in the Hawaiian bill we came out expressly and made this provision:

There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

We put that provision in that act as a necessary precaution, harmonizing perfectly with our national policy for the exclusion of Chinese immigration and hired or contract labor into the United States and also into Hawaii. We protected the United States as well as Hawaii by this act of annexation, and yet that is quoted as authority here to support this amendment.

Mr. President, it is an impossible conception that that act annexing Hawaii can have any sort of bearing as a rule of interpretation for the measure that is now before the Senate.

Let me ask again, Why did we not put that provision into this amendment? For reply to that question I can not go to the Senate, but I can go to the holders of great sugar and rice estates, and manila-hemp properties, and the like of that. I can go to them, and if they made a candid answer it would be this: "We shall need Chinese labor in the Philippines to develop the industries of that country, and we want free access to China for all the laborers that we can carry there." We have got to take it and swallow it if we carry this amendment. You gentlemen who pass it will have to account for it hereafter. Thank God, I will not have to account for it, for I disclaim all responsibility for it.

Here is the Constitution of the United States recognized in Hawaii, a country that was allowed to remain under the government of a republican President, an independent President, from the time of the passage of that act until such time as we instituted there a Territorial government. What was the result? I happened to have the honor—and I appreciated it very highly—of being one of the commissioners sent to Hawaii for the purpose of organizing a system of laws and to introduce a Territorial government into those islands. The first question I had the honor to

suggest to my brother commissioners was this: "Your courts are in session here"—two of those commissioners were Hawaiians; one was the governor or the President and another was the chief justice of the supreme court, and they were men of very great ability and of the highest possible character—I put to that tribunal this question: "Your courts are in session here. The constitution of Hawaii requires that all process of every kind shall run in the name of the Republic of Hawaii, but here is an act of annexation which has extinguished your sovereignty, and which has brought Hawaii within the limits of the United States, where the Constitution of the United States is supreme. What are we going to do about that?" The President was consulted; his opinion and his order was taken; and it was that process in Hawaii should still run in the name of the Republic of Hawaii; that the constitution and laws of Hawaii for the government of that country had been adopted by Congress in solido, and without exception or amendment, for the further government of that country until the Congress of the United States should organize there a Territorial government.

So it went, and men were indicted by the Republic of Hawaii, tried upon a jury system that allowed capital punishment to be inflicted upon the vote of eight out of twelve jurors, and dispensed with a grand jury entirely. Men were convicted of capital offenses and hanged in Hawaii under that state of law before we formed a Territorial government. They were indicted in the name of the Republic of Hawaii.

So much, Mr. President, for the potency of an act of Congress in the adoption of a state of law existing in a foreign country for its government until such time as Congress might choose to adopt a different form of government. We have never done anything of that kind in regard to the Philippines. We have allowed the Spanish law to stand there, and without any sort of change. It is there to-day.

I wish now to call the attention of the Senate to some decisions of the Supreme Court of the United States which show the effect of that situation. I will repeat that statement, Mr. President, in order, if I can, to emphasize it, that the Congress of the United States has not inaugurated any government in the Philippines, but it found a government there, which is in full force and effect, according to what the Supreme Court of the United States has decided to be the law of the United States, and the effect of the Constitution of the United States upon those laws. I read from the case of Pollard's Lessee *vs.* Hagan, 3 Howard, page 225:

> If it were true that the United States acquired the whole of Alabama from Spain, no such consequences would result as those contended for. It can not be admitted that the King of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives, and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the constitution and laws of its own government, and not according to those of the government ceding it.

I do not think it is necessary to enlarge upon that, Mr. President. I think that the judicial establishment of the United States in all of its parts and in every locality in this country not only will recognize that as being the law, but has oftentimes recognized it and never disputed it.

But it does not seem to settle all the questions that can possibly arise out of this category that we are struggling with now, for it appears that the Supreme Court of the United States is now ruminating or consulting upon questions that challenge the correctness of that decision of the Supreme Court of the United States, some of them contending that there is no modification of Spanish law in Porto Rico or in the Philippines, of course, by the effect of the operation of the Constitution of the United States, for the simple reason that the Constitution is not there; that it has never been extended by act of Congress into that country.

I wish to excuse myself from the discussion of a proposition that is so absurd as that. I think I can just content myself with relying upon its gross absurdity, and let the argument on the other side go.

Then it appears from this decision that when we acquired the Philippines by the treaty of Paris we acquired the government that was there and the laws of Spain that governed those people until they should be changed by Congress, but under the condition, that those laws gave way to the statutes of the United States applicable to that territory, and also to the Constitution of the United States applicable to all the Territories and all the places that are in the territorial limits of this Government. That is the present situation.

Now comes the repealing clause in this act, which has been put upon it by the vote of the Senate. I want to read it, so as to get the text of it in my remarks. Here it is:

> All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.

We find that the decision in the case of Pollard's Lessee *vs.* Hagan carried the laws of the United States that were applicable to the Territories at large, to all the Territories alike, into those islands. Here comes, then, the provision of this act which says that—

> All laws or parts of laws inconsistent with the provisions of this act are hereby repealed.

That sweeps by the board, Mr. President, all the general statutes that we have enacted in Congress now for more than a hundred years applicable alike to all the Territorial governments in this country. They are all swept out of the way of this amendment and of the administration of the law in the Philippines. They are abolished. They are all actually repealed.

If it said they are actually repealed so far as they are inconsistent with this act or the purposes of this act, then there might have been some part of them reserved from the repealing power of Congress; but here is a broad, sweeping declaration that these laws, because they are inconsistent with this act, these laws not specially reenacted in this act, are repealed, and all of that body of law that we have ordained from time to time and instituted for the purpose of controlling the Territories by general laws is swept out of the way of this tremendous amendment, this rider upon an appropriation bill.

I have concluded all I wanted to say in regard to the acts which were attributed to Mr. Jefferson and the acts attributed to the Congress in 1898 in the enactment of the Hawaiian annexation law, and which were supposed to justify this measure, and I feel that I have sufficiently demonstrated that there is no precedent in either of those laws for what we are doing now. The law that we are now trying to enact stands exactly opposed, not only to those acts in regard to Louisiana territory and Hawaii, but stands confessedly opposed to every general law that Congress has ever enacted for the government of the Territories at large.

Mr. President, I will now return to the further consideration of the power of the Congress to delegate its civil, military, and judicial powers necessary to govern the Philippines to the President, to be by him vested in such persons as he may select for executing these offices. That is a question of very great importance, and one that is fundamental in this Government as in all free parliamentary governments. In support of my proposition that the Congress has no such power, I desire to have read by the Secretary, for the information of the Senate, a note that is appended to Hayburn's case in Second Dallas, which, I suppose, is a note prepared by Judge Curtis, and I will read a few of the initiatory statements that brought the subject to the attention of the court:

> The circuit court for the district of New York, consisting of Jay, chief justice; Cushing, justice, and Duane, district judge, proceeded on the 5th of April, 1791, to take into consideration the act of Congress entitled "An act to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions;" and were, thereupon, unanimously of opinion and agreed.

I ask the Secretary to read, commencing at the point marked with cross marks.

The Secretary read as follows:

> That by the Constitution of the United States the Government thereof is divided into three distinct and independent branches, and that it is the duty of each to abstain from and to oppose encroachments on either.
>
> That neither the legislative nor the executive branches can, constitutionally, assign to the judicial any duties but such as are properly judicial and to be performed in a judicial manner.
>
> That the duties assigned to the circuit courts by this act are not of that description, and that the act itself does not appear to contemplate them as such, inasmuch as it subjects the decisions of these courts, made pursuant to those duties, first to the consideration and suspension of the Secretary at War, and then to the revision of the legislature; whereas by the Constitution neither the Secretary at War nor any other executive officer, nor even the legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court.
>
> As, therefore, the business assigned to this court by the act is not judicial, nor directed to be performed judicially, the act can only be considered as appointing commissioners for the purposes mentioned in it by official instead of personal descriptions.
>
> That the judges of this court regard themselves as being the commissioners designated by the act, and therefore as being at liberty to accept or decline that office.
>
> That as the objects of this act are exceedingly benevolent and do real honor to the humanity and justice of Congress; and as the judges desire to manifest on all proper occasions and in every proper manner their high respect for the National Legislature, they will execute this act in the capacity of commissioners.
>
> That as the legislature have a right to extend the session of this court for any term which they may think proper by law to assign, the term of five days, as directed by this act, ought to be punctually observed.
>
> That the judges of this court will, as usual, during the session thereof, adjourn the court from day to day, or other short periods, as circumstances may render proper, and that they will, regularly, between the adjournments, proceed as commissioners to execute the business of this act in the same court room or chamber.
>
> The circuit court for the district of Pennsylvania, consisting of Wilson and Blair, justices, and Peters, district judge, made the following representation in a letter jointly addressed to the President of the United States on the 18th of April, 1792:
>
> "To you it officially belongs to 'take care that the laws' of the United States 'be faithfully executed.' Before you, therefore, we think it our duty to lay the sentiments which, on a late painful occasion, governed us with regard to an act passed by the Legislature of the Union.
>
> "The people of the United States have vested in Congress all legislative powers 'granted in the Constitution.'
>
> "They have vested in one Supreme Court and in such inferior courts as the Congress shall establish 'the judicial power of the United States.'
>
> "It is worthy of remark that in Congress the whole legislative power of the United States is not vested. An important part of that power was exercised

by the people themselves when they 'ordained and established the Constitution.'

"This Constitution is 'the supreme law of the land.' This supreme law 'all judicial officers of the United States are bound, by oath or affirmation, to support.'

"It is a principle important to freedom that in government the judicial should be distinct from and independent of the legislative department. To this important principle the people of the United States, in forming their Constitution, have manifested the highest regard.

"They have placed their judicial power not in Congress, but in 'courts.' They have ordained that the 'judges of those courts shall hold their offices during good behavior,' and that 'during their continuance in office their salaries shall not be diminished.'

"Congress have lately passed an act to regulate, among other things, 'the claims to invalid pensions.'

"Upon due consideration, we have been unanimously of opinion that under this act the circuit court held for the Pennsylvania district could not proceed:

"First. Because the business directed by this act is not of a judicial nature. It forms no part of the power vested by the Constitution in the courts of the United States; the circuit court must, consequently, have proceeded without constitutional authority.

"Second. Because if upon that business the court had proceeded, its judgments—for its opinions are its judgments—might, under the same act, have been revised and controlled by the legislature and by an officer in the executive department. Such revision and control we deemed radically inconsistent with the independence of that judicial power which is vested in the courts and, consequently, with that important principle which is so strictly observed by the Constitution of the United States.

"These, sir, are the reasons of our conduct. Be assured that though it became necessary, it was far from being pleasant. To be obliged to act contrary either to the obvious directions of Congress or to a constitutional principle in our judgment equally obvious, excited feelings in us which we hope never to experience again."

The circuit court for the district of North Carolina (consisting of Iredell, justice, and Sitgreaves, district judge), made the following representation in a letter jointly addressed to the President of the United States on the 8th of June, 1792:

"We, the judges now attending at the circuit court of the United States for the district of North Carolina, conceive it our duty to lay before you some important observations which have occurred to us in the consideration of an act of Congress lately passed, entitled 'An act to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions.'

"We beg leave to premise that it is as much our inclination as it is our duty to receive with all possible respect every act of the legislature, and that we never can find ourselves in a more painful position than to be obliged to object to the execution of any, more especially to the execution of one founded on the purest principles of humanity and justice, which the act in question undoubtedly is. But however lamentable a difference in opinion really may be, or with whatever difficulty we may have formed an opinion, we are under the indispensable necessity of acting according to the best dictates of our own judgment after duly weighing every consideration that can occur to us, which we have done on the present occasion.

"The extreme importance of the case and our desire of being explicit beyond the danger of being misunderstood will, we hope, justify us in stating our observations in a systematic manner. We therefore, sir, submit to you the following."

Mr. MORGAN. That was a splendid, noble act of self-abnegation. It was worthy of the judiciary of North Carolina and also of the United States, both of the judicial establishments having declined to execute that act of Congress, which was for very benevolent purposes—the granting of pensions to widows and the like. In the amendment presented here the hand of Federal power, wielded by the President of the United States, grasps authority that is not judicial and grasps power that is preeminent over the judiciary and claims the right from Congress to create the judgeship, to appoint the holders of the office without the consent of the Senate, to define their jurisdiction, and whenever they have acted in accordance with his will, unrestrained by any act of Congress or in any other way, he shall direct, as this act says, the manner in which they shall exercise their offices.

If the President had had the power over these two courts, and if he had been as much wedded to that bill for pensions as the President of the United States is asserted to be wedded to this amendment to increase his powers, he would have directed those courts as to the manner in which they should render their judgment, and they would have taken a jurisdiction that they very reluctantly declined.

This measure comes from the consolidation of the powers of government in the hands of one man in this country. I wish to read now, in order to call the attention of the Senate further to this subject, from Story on the Constitution, a great and eminent writer. He says, after having written very much that is very pertinent and very instructive, in section 520, page 364 of his work:

In the establishment of a free government, the division of the three great powers of government, the executive, the legislative, and the judicial, among different functionaries has been a favorite policy with patriots and statesmen. It has by many been deemed a maxim of vital importance that these powers should forever be kept separate and distinct. And accordingly we find it laid down with emphatic care in the bill of rights of several of the State constitutions. In the constitution of Massachusetts, for example, it is declared that "in the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men."

This amendment institutes in the Philippine Islands a government of a man and not a government of the law; but Congress, in delegating this power to the President of the United States, expressly refuses to prescribe any law for his government at all, but leaves him to enact the law.

Other declarations of a similar character are to be found in other State constitutions.

He then goes on to quote what Montesquieu had to say about it, and in section 522 the author continues:

The same reasoning is adopted by Mr. Justice Blackstone in his Commentaries.

The English law writer, laying down the law that controls in the British monarchy, says:

In all tyrannical governments the supreme magistracy, or the right both of making and of enforcing laws, is vested in the same man or one and the same body of men, and wherever these two powers are united together there can be no public liberty. The magistrate may enact tyrannical laws and execute them in a tyrannical manner, since he is possessed, in quality of dispenser of justice, with all the power which he, as legislator, thinks proper to give himself. But where the legislative and executive authority are in distinct hands the former will take care not to intrust the latter with so large a power as may tend to the subversion of its own independence, and therewith of the liberty of the subject.

Again:

In this distinct and separate existence of the judicial power in a peculiar body of men, nominated, indeed, by, but not removable at, the pleasure of the Crown, consists one main preservative of the public liberty, which can not long subsist in any state, unless the administration of common justice be in some degree separated from the legislative and also the executive power. Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges, whose decisions would then be regulated only by their opinions, and not by any fundamental principles of law, which, though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance for the legislative.

I wish I could take the time to lay this subject before the American people, not before the five Senators upon the other side of the Chamber, the four Senators, the three Senators, the two Senators. A number of gentlemen whom I recognize there are not Senators. There are only two on the other side of the Chamber now, and neither of them is listening to what I have to say. Therefore, my time would be needlessly consumed here in reading.

Mr. BACON. Mr. President, I want to do justice to the Senator from Indiana [Mr. FAIRBANKS]. He is giving very close attention to the Senator from Alabama.

Mr. MORGAN. I beg his pardon.

Mr. FAIRBANKS. I think I have not lost a word that has fallen from the Senator's lips.

Mr. MORGAN. The country, however, all of the country, is interested in those ancient writers in respect of the institutions of our Government, who laid down and defined the boundaries of power between the different departments of a government that has separate departments and is not a pure autocracy or tyranny. Therefore, I read with great pleasure what I find in this author, whose authority, I believe, nobody in this country is brave enough or bold enough to dispute, so that my fellow-citizens in the country may have an opportunity of looking again at the foundations of their liberty, notwithstanding the Senate pays no attention to them, and may call us, myself included, into severe account for our disobedience to the organic law upon which the liberties of the people of the United States are based.

The author goes on in section 530:

It is proper to premise that it is agreed on all sides that the powers belonging to one department ought not to be directly and completely administered by either of the other departments; and, as a corollory, that, in reference to each other, neither of them ought to possess, directly or indirectly, an overruling influence in the administration of their respective powers. Power, however, is of an encroaching nature, and it ought to be effectually restrained from passing the limits assigned to it. Having separated the three great departments by a broad line from each other, the difficult task remains to provide some practical means for the security of each against the meditated or occasional invasions of the others. Is it sufficient to declare on parchment in the Constitution that each shall remain and neither shall usurp the functions of the other?

No one well read in history in general, or even in our own history during the period of the existence of our State constitutions, will place much reliance on such declarations. In the first place, men may and will differ as to the nature and extent of the prohibition. Their wishes and their interests, the prevalence of faction, an apparent necessity, or a predominant popularity will give a strong bias to their judgments and easily satisfy them with reasoning, which has but a plausible coloring. And it has been accordingly found that the theory has bent under the occasional pressure, as well as under the occasional elasticity of public opinion, and as well in the States as in the General Government under the confederation. Usurpations of power have been notoriously assumed by particular departments in each; and it has often happened that these very usurpations have received popular favor and indulgence.

The Federalist is cited in support of what I have just read.

In the next place, in order to preserve in full vigor the constitutional barrier between each department, when they are entirely separated, it is obviously indispensable that each should possess equally and in the same degree the means of self-protection. Now, in point of theory this would be almost impracticable if not impossible, and in point of fact it is well known that the means of self-protection in the different departments are immeasurably disproportionate. The judiciary is incomparably the weakest of either, and must forever, in a considerable measure, be subjected to the legislative power. And the latter has, and must have, a controlling influence over the executive power, since it holds at its own command all the resources by which a chief magistrate could make himself formidable. It possesses the power over the purse of the nation and the property of the people. It can grant or withhold supplies; it can levy or withdraw taxes; it can unnerve the power of the sword by striking down the arm which wields it.

Omitting to read the five hundred and thirty-second section:

The truth is that the legislative power is the great and overruling power in every free government. It has been remarked with equal force and sagacity that the legislative power is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex. The founders of our Republic, wise as they were under the influence and the dread of the royal prerogative which was pressing upon them, never for a moment seem to have turned their eyes from the immediate danger to liberty from that source, combined as it was with an hereditary authority and an hereditary peerage to support it. They seem never to have recollected the danger from legislative usurpation, which, by ultimately assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpation.

The representatives of the people will watch with jealousy every encroachment of the Executive Magistrate, for it trenches upon their own authority. But who shall watch the encroachment of these representatives themselves? Will they be as jealous of the exercise of power by themselves as by others? In a representative republic, where the executive magistracy is carefully limited, both in the extent and duration of its power; and where the legislative power is exercised by an assembly, which is inspired by a supposed influence over the people with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate the multitude, yet not so numerous as to be incapable of pursuing the objects of its passions by means which reason prescribes, it is easy to see that the tendency to the usurpation of power is, if not constant, at least probable, and that it is against the enterprising ambition of this department that the people may well indulge all their jealousy and exhaust all their precautions.

I will not read more from that work, although there is much more in the chapter from which I have been reading that is extremely interesting and extremely important at the present time. That reference to the aggressive power and the aggressive tendency of the legislative bodies of this country and of all countries is remarkably apposite just at this moment of time. We have seen here in very recent date various measures brought before Congress in which the opposition to the measures have charged that there were combinations of great monetary power in the recent form of fraudulent usurpation that we call trusts that were pressing upon the Congress of the United States personal demands for an opportunity to take money out of the Treasury of the United States.

I need not specify those cases. The recent debates in the Senate of the United States show the cases to which I refer. Now, when measures before the Senate claiming millions and hundreds of millions of dollars are charged upon just or at least probable ground with being actuated by persons and personal interests outside of the legislative circles in this Capitol, it is time that the legislators should look with some degree of jealousy and circumspection and with regard to their own powers and the exercise of them in this country when such opportunities are being made by our legislation; and it is an apt time for the quotation of this great writer to whom I have just referred, and whose writings I have just read for the purpose of causing the Congress of the United States to guard its own step lest in the desire to usurp power it should ride over the rights and liberties of the country.

Here, Mr. President, is not only a usurpation of power but a consolidation of power and a transmission of it by delegation into the hands of a single man, and from him into the hands of his inferiors or subordinates, the persons to whom he chooses to intrust it. There is no conception that I can possibly have of the virtue of the best man in the world which justifies me as a member of the Senate in conferring upon any living human being or any who has lived powers like this which may be wrested for the purposes of personal gain to the friends of the Executive and to the destruction of the interest of many poor and dependent people. Such, Mr. President, is a proper characterization of the project that is contained in this measure.

I will read another extract from Blackstone's Commentaries, which, while it repeats in a measure what has already been read in the decision of the Supreme Court of the United States to which I have alluded, is very important, and comes to us as a warning against what we are now about to do in this body:

In this distinct and separate existence of the judicial power in a peculiar body of men, nominated, indeed, but not removable at pleasure by the Crown, consists one main preservative of the public liberty, which can not subsist long in any state unless the administration of common justice be in some degree separated from the legislative and also from the executive power. Were it joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges, whose decisions would be then regulated only by their own opinions and not by any fundamental principles of law, which, though legislators may depart from, yet judges are bound to observe.

I have read that before.

Were it joined with the executive, this union might soon be an overbalance for the legislative.

I read that.

For which reason, by the statute of 16 Car. I, c. 10, which abolished the court of star chamber, effectual care is taken to remove all judical power out of the hands of the King's privy council, who, as then was evident from recent instances, might soon be inclined to pronounce that for law which was most agreeable to the prince or his officers. Nothing, therefore, is more to be avoided in a free constitution than uniting the provinces of a judge and a minister of state. And, indeed, that the absolute power, claimed and exercised in a neighboring nation, is more tolerable than that of the Eastern empires is, in great measure, owing to their having vested the judicial power in their parliaments, a body separate and distinct from both the legislative and executive; and if ever that nation recovers its former liberty it will owe it to the efforts of those assemblies. In Turkey, where everything is centered in the Sultan or his ministers, despotic power is in its meridian, and wears a more dreadful aspect.

I think, sir, that I have sufficiently supported my statements by the highest authority that any man can quote, to be entirely satisfied and content now to leave it to the judgment of the people of the United States. That these opinions will have any effect or will even be drawn in question or considered by the Senate I have no expectation. But they are in the RECORD, Mr. President, not upon my statement or ipse dixit, but upon the statement of the greatest law writers of this country and England. This bill violates every principle in every case that I have quoted. It runs ruthlessly and roughshod over all of the organic law of England and America, and it comes back to sweep out those traditional rights that we got from the great German ancestry that stands at least at the head of all of our civilization.

I probably have said enough on that subject. I probably have gone as far as my duty requires me to go in the investigation of this amendment. There was a point that I wanted to investigate, but I am still unable to do so, for the reason that the Taft report is still incomplete. The last installment of it was sent to the Senate on yesterday and ordered to be printed. It has not yet reached this body, so far as I am advised. Certainly I have had no opportunity to examine those additional acts, running from 55 to 68, which have been enacted by the Taft commission and which are the law of the Philippine Islands. As far as I have seen those enactments, as far as the Administration has seen proper to place them in the possession of the Senate, they cover every phase of legislative authority, and I am not at all warranted or disposed to doubt their authority in the Philippines.

I have seen none of them that violate the Constitution of the United States, and perhaps there may be none (though I have not looked particularly with that view) which violate or repeal the laws of Congress. But this bill repeals the laws of Congress, all of them, by express provisions which stand in the way of anything that the Taft commission may choose to do, if the President shall adopt that as the form of government in the Philippines, or any other government he may establish there through the amazing powers that we propose to confer upon him in this bill.

There have been other quotations made in the CONGRESSIONAL RECORD with respect to the opinions of American statesmen, to one of which I wish to make a short reference. I will read a short extract from a debate that occurred in the House of Representatives for the purpose of getting at the state of the law, as reported in 10 Howard, page 96. The speaker on that occasion said:

The ordinance applied not to the States, but to the Territories exclusively.

That was the ordinance of 1787.

Hence, it can not be said that the ordinance extended to the States and conflicted there with the Federal Constitution. In 10 Howard, page 96, the Supreme Court held that the people of the Territories were parties to our Constitution, and that it was the "supreme law throughout the United States," clearly showing the term "United States" included States and Territories.

The court says:

The Constitution was, in the language of the ordinance—

That is the ordinance of 1787—

adopted by common consent, and the people of the Territories must necessarily be regarded as parties to it and bound by it, and entitled to its benefits as well as the people of the then existing States. It became the supreme law throughout the United States. And so far as any obligations of good faith had been previously incurred by the ordinance, they were faithfully carried into execution by the power and authority of the new Government.

In the Millikin case (4 Wallace) the court said:

This Constitution of ours operates in war as well as in peace, in all places, and under all circumstances. It is a law for the rulers as well as for the people; each and every one everywhere within our political jurisdiction is bound by it.

I read now a statement made by Thomas H. Benton, which was quoted in the CONGRESSIONAL RECORD, I think, by the present junior Senator from Iowa [Mr. DOLLIVER]:

Maj. Gen. Andrew Jackson, governor of the provinces of the Floridas, exercising the powers of the captain-general and intendant of the island of Cuba over the said provinces and the governors of said provinces, respectively.

In the United States, where the people are accustomed to the regular administration of justice, the summary proceedings of General Jackson appeared to be harsh and even lawless; but they were all justified by the Administration and sanctioned by the negative action of Congress.

In reply to the statements that were made by Mr. Benton, and which are here quoted in part, General Jackson wrote a letter from the Hermitage on the 27th March, 1845, while he was almost in extremis, but he still had that vitality which hung about his reputation and the grandeur of his character and made him quick and alert in every matter which concerned his personal or his political history. He said, addressing Commodore J. D. Elliott:

Your letter of the 18th instant, together with the copy of the proceedings of the National Institute, furnished me by their corresponding secretary, on the presentation by you of the sarcophagus for acceptance on condition it shall be preserved and in honor of my memory, have been received, and are now before me.

That is not the point I wished to read. However, I will insert that letter in the RECORD [illegible] in that place. What I

wanted to read was General Jackson's refusal to accept from the Government of the United States certain powers that they wanted to confer upon him in Florida. Here is what he said:

I am clothed with powers which no one under a republic ought to possess, and which I trust will never again be given to any man. Nothing will give me more happiness than to learn that Congress, in its wisdom, shall have distributed them properly and in such a manner as is consonant to our earliest and deepest convictions.

When powers were given to him as a ruler in the Floridas which he thought were inconsistent with the laws and Constitution, the institutions and spirit of the United States, he declined to exercise them, and recommended to Congress that they would never again attempt a matter like that. It is with the utmost pleasure that I quote the statements made by that eminent statesman and lawyer, and that true American citizen, that lover of the independence and the Constitution of his country, when declining powers that the Government of the United States tendered to him as a ruler in Florida.

I would be glad to-day, sir, that the President of the United States would do justice to his own character and to his own political career by saying to the Senate of the United States, "I decline to accept at your hands the powers you propose to confer upon me in the Philippines." But instead of that his friends and supporters and partisans are here making this terrible demand upon Congress, making it upon an appropriation bill as a rider, making it under circumstances which means that if you do not pass this Philippine resolution or amendment and with it the Army appropriation bill you shall be gibbeted before the world as unpatriotic men who are unwilling to supply their Government with money for the carrying on of the war in the Philippines or in China, or for military operations in those countries, or in Cuba, or in Porto Rico.

I wish I could to-day realize that the President of the United States would rise up and rebuke the men who are trying to confer upon him powers that violate the Constitution of the United States. Suppose that they are simply doubtful, what business has a President of the United States to exercise doubtful constitutional powers bearing upon great measures like the rule of 10,000,000 of people in the Philippines and the disposal of the destiny of Cuba? How can he dare to approach a subject of this magnitude without a tremor, such as a grand, supreme Executive must feel when the ground under him trembles in doubt, and when the people are in consternation at the thought that he is about to grasp a new scepter of power, and we now about to pass through our coronation.

It takes place next Monday. He is to participate in that and become the honored object of that vast and beautiful pageant which is to sweep through the streets of Washington, in which the acclaim of the American people will be devoted in a large measure to a eulogy upon the character of Mr. McKinley, as it has been established in four years of executive administration, but in a still higher and more triumphant eulogy upon the institutions of our country, which preserve the liberties of the least as well as the greatest without touch or contamination.

In that pageant, Mr. President, the power behind the throne may ride in the carriage with the power of the throne—I do not know—but if the power behind the throne exhibits itself with the words of this statute written upon its banner it will receive the just and contemptuous scorn of a free and enlightened people. Not even the President of the United States can save that power behind the throne from the condemnation that is as sure to rest upon it as death is the doom of every man in this Chamber.

Mr. President, I now turn to this new astonishing phase of this measure, the other wing of this amendment to this bill—the Cuban question.

Mr. WOLCOTT. May I interrupt the Senator?

The PRESIDING OFFICER (Mr. PETTUS in the chair). Does the Senator from Alabama yield to the Senator from Colorado?

Mr. MORGAN. Yes, sir.

POST-OFFICE APPROPRIATION BILL.

Mr. WOLCOTT. Mr. President, the Senator from Alabama has kindly consented to yield to me for a few moments while I present the conference report on the Post-Office appropriation bill, which may lead to a very short discussion, I think, for which I should like to ask the consideration of the Senate.

The PRESIDENT pro tempore. The conference report will be read.

The Secretary read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 13729) making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1902, 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 amendments numbered 7, 9, and 10.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 4, 5, 6, and 8; and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment as follows: Strike out all of amendment numbered 11, lines 19, 20, and 21, page 2, and lines 1, 2, 3, and 4, page 3, of said amendments and insert in lieu thereof:

"When any publication has been accorded second-class mail privileges the same shall not be suspended or annulled until a hearing shall have been granted to the parties interested."

And the Senate agree to the same.

As to amendments numbered 2 and 3 the conferees are unable to agree.

E. O. WOLCOTT,
WILLIAM E. CHANDLER,
MARION BUTLER,
Managers on the part of the Senate.

E. F. LOUD,
GEORGE W. SMITH,
CLAUDE A. SWANSON,
Managers on the part of the House.

Mr. WOLCOTT. Mr. President, the conferees of the House and the Senate upon the Post-Office appropriation bill have agreed upon all of the eleven points of difference with the exception of two. There are two amendments to the bill inserted by the Senate to which the House conferees decline absolutely to concede or to yield. We have been for many hours in consultation and deliberation, and it has become my duty, as the conferees on the part of the Senate stood by the amendments of the Senate, to report the amendments to the Senate, and ask the Senate what action we shall take.

The two amendments were both introduced by the Senator from North Carolina [Mr. BUTLER]. The presentation of one of them was cut short by my at once accepting the amendment, believing at the time I accepted it that there would be no objection to it. I had hoped and believed that the amendment would be accepted by the House. The first of the two amendments is this:

For the experiment in cities, towns, and villages not now free-delivery offices of the delivery of mail through mail repositories or compartment boxes, including the cost of the boxes, repository, and salary of person to serve such box or repository, $20,000.

The contention—I believe I may state it without impropriety—of the House conferees has been that this was new legislation; that it committed the Government to an experiment, at least, upon a new measure and a new movement that, if carried out, would eventually cost the Government from fifteen to twenty million dollars a year.

We have now the carrier system in all cities of over 10,000 population or where the revenues of the post-office exceed $25,000 a year. We have appropriated this year $3,500,009 for rural free mail delivery, increasing the appropriation over last year $1,750,000, which service extends to people living, not within incorporated towns, but in farm houses and isolated places, a free delivery of their mail. The Post-Office Department reports the experiment a great success. But that leaves out of the enjoyment of the advantages, if they are advantages, of free mail delivery people who live in hamlets and unincorporated towns and municipalities with less population than 10,000 and with a less post-office income than $25,000 per annum. It is to meet an experiment as to this delivery that the amendment was introduced by the Senator from North Carolina.

The House conferees contend that the pressure for this is not from communities, but from holders of patent post-office boxes who desire that in towns of a shoe-string character, where the street is long or the road is long, and it is some distance in muddy weather to go to the post-office, and not always wholly convenient, that there shall be 20 or 30 boxes bunched or grouped together, with access by a key to all of them by the mail deliverer or carrier, and the rental of the boxes to the different people residing in that end of the place. It is contended that this would be a great convenience to the people who do not desire to go to the post-office for their mail, which may be some hundreds of yards distant.

That is the contention of the House, added to which is their contention that it is general legislation upon an appropriation bill, and that the Senate should not insist upon it if the House refuses to take it. I may say the House conferees were very strenuous in their opposition to this amendment.

The other amendment is as follows:

With a view to securing the transmission through post-offices and over post roads of communications by electricity, the Postmaster-General is hereby authorized and directed to investigate the cost of establishing, as a part of the postal service, a postal telegraph connecting all post-offices in incorporated towns and cities, and connecting therewith all remaining post-offices either by telegraph or telephone, and to report at what cost the Post-Office Department could furnish such increased service to the public and make this department of the postal service self-sustaining.

The contention of the House conferees, unanimous and strenuous, to this amendment is that it is new legislation, that it calls upon the Postmaster-General to give an estimate, which no man living could give unless he might be enlightened by an extended report of a duly authorized commission which would collate the facts, and that it simply stands as a notification to the world that the Government eventually intends to take over to its own uses the telegraph and telephone systems of the United States and apply them to postal purposes. The House conferees decline, therefore, to yield to our contention that this should go upon the appropriation bill. The amendment carries no appropriation with it.

On the other hand, the Senate conferees, led by the Senator from

North Carolina, who is a member of the committee, who introduced the amendment, and who very ably presented it to the conferees, contended that it is of the utmost value that in country post-offices there should be a constant communication by telephone with other offices by which information could be conveyed, and in which, instead of mailing letters, a man in one of the fourth-class post-offices who desired to communicate with another fourth-class post-office some distance away could, by giving the postmaster in the sending office a stamp of a certain sum, call up his customer or his correspondent at the other end of the long-distance telephone and convey his information by telephone.

The Senator from North Carolina also contended that on other matters, meteorological and otherwise, the amendment was of the greatest value; that fourth-class postmasters could give early notice of impending frosts and other circumstances which might develop in the weather, which would convey valuable and important information to other rural communities. But the House conferees refused to accept this view and, as I say, were unanimous and strenuous in their opposition to both amendments.

We have reached agreements, except as to these amendments, and the bill is ready to be reported as soon as these differences can be reconciled. The Senate conferees feel bound to loyally stand by the Senator from North Carolina in his able presentation of the reasons which impelled him to introduce the amendment, and we come back now to the Senate to ask the Senate to determine for us whether we shall recede or whether we shall go back to our conference room and again insist that the House must accept upon this bill the Senate amendments.

Mr. CHANDLER. I move that the Senate insist upon its amendments; and I wish to say a few words only in reference to the principal amendment upon which there is disagreement. That amendment simply directs the Postmaster-General to make an estimate of the cost of establishing, in connection with the Post-Office Department, a postal telegraph, utilizing also for postal purposes the telephone. It was originally proposed by the Senator from North Carolina [Mr. BUTLER] to have the Postmaster-General make an investigation. That is the way the amendment stands as adopted by the Senate; but the conferees have agreed to substitute for that proposition merely a direction to the Postmaster-General to make an estimate, to be submitted to Congress at the next session as to the cost of a postal telegraph system.

Mr. President, it does not occur to me that there is any objection to that. I can not conceive that there is any reasonable objection, at any rate. The Senator from Colorado [Mr. WOLCOTT] states that the House objection is that adopting a direction of this kind to the Postmaster-General is an intimation that Congress wants to consider the subject of a postal telegraph, and that the idea prevails in Congress that such a system of postal telegraph, in connection with the post-office service, might be desirable. That is true, Mr. President, but it is not a violent intimation, and I do not believe that the Senate will think that we are unreasonable in simply asking the Postmaster-General to submit to the Senate an estimate of the cost of establishing a postal telegraph.

Senators will please remember that, under the general telegraph law, the United States has now the right to take possession, at a valuation, of all the telegraph lines in the country. The Senator from North Carolina has the law——

Mr. BUTLER. In that connection, for the information of the Senate——

Mr. CHANDLER. And either now or when he speaks himself, the Senator will read that law.

Mr. BUTLER. Very well; I will read it after the Senator concludes.

Mr. CHANDLER. There it stands, Mr. President—the reserved right already established by a law of the United States to take all the existing telegraph systems at a valuation and make them a part of the postal service. This amendment simply proposes to ask the Postmaster-General to submit to Congress an estimate of what such a system would cost. It does encourage the idea that there may at some time be a postal telegraph in connection with the Post-Office Department. I, for one, am in hearty accord with the Senator from North Carolina in desiring that the Postmaster-General shall perform this duty, not making an expensive investigation, not spending any money whatever in making the inquiry, but that from the best data he has before him, or may be able to obtain without the expenditure of public money, he shall submit to Congress an estimate of the cost of a postal telegraph. Therefore, I hope the Senate will insist on the amendment, and that there will be another conference on the subject.

Mr. BUTLER. Mr. President, the matter in controversy has been so fully and fairly stated by the chairman of the committee [Mr. WOLCOTT] and the Senator from New Hampshire [Mr. CHANDLER] that it is unnecessary for me to make any extended remarks.

There is really no dispute on the first amendment, on extending free delivery, because the conferees agreed to a substitute, which will be brought in when we reach a final agreement for requiring the Postmaster-General to investigate and report as to the feasibility of extending the free delivery of mail to towns and villages and the best methods, without giving him any specific direction and without making any appropriation. He is to make a report to the next session of Congress. That is really not a matter of controversy, because we have agreed unanimously in the conference committee on that point.

The other matter, which is really the hitch, is a very simple one. The only objection that the conferees of the other House made to the amendment calling for information—for that is all it calls for—was that it might be considered a declaration, or at least an intimation, that the Government intended to establish as a part of the postal system a postal telegraph and telephone. Mr. President, every bridge bill which is passed carries that intimation. There is not a bridge bill passed in this body that does not contain a paragraph to the effect that the Government reserves the right to use that bridge for a postal telegraph if the Government should ever establish such a system.

Further than that, here in the permanent statutes of this Government, being chapter 230 of the laws of 1886, is a general telegraph law which provides that every telegraph line built under that law shall be built with a notice and with a condition that the Government can take all of such lines for military purposes or postal purposes or any other purposes at a fair appraisement at any time. So every telegraph line that has been built has not only been built with that notice, but with a written contract in which that reservation has been put into the contract under the provisions of this law.

Therefore, there is absolutely nothing in this question that is an intimation in advance that the Government is going into such a policy. Here is the permanent law that makes the declaration as to every telegraph line that is built the company has to sign a contract containing such a provision, and this amendment simply asks for an estimate from the Postmaster-General as to the cost of putting that law into operation if the Government should at any time see fit to do it. That is all there is in it.

Mr. President, in this connection, while not bearing on this amendment, I will take just a moment to say—and I will be as brief as possible, for I do not want to take unnecessarily the time of the Senate—that as I read the Constitution it is the imperative duty of Congress to use electricity for the rapid transmission of information. The same clause of the Constitution of the United States (Art. I, sec. 8) which empowers Congress to declare war, raise and support armies and a navy, to coin money, regulate commerce, and borrow money on the credit of the United States, includes the provision to "establish post-offices and post-roads."

If that is not an exclusive duty conferred upon Congress, then there is not one in the whole instrument; and I believe to-day that Congress is acting in an unconstitutional manner when it does not exercise that power and establish a postal telegraph and telephone. I believe it is just as unconstitutional for us to allow a part of the communications of the Government to be carried by private individuals as it would be to allow a part of the money coined to be coined by private individuals, or allow private individuals to raise one-half of our Army and support it. Indeed, the power of Congress is exclusive; therefore it is unconstitutional for this most important part of the postal service to be in the hands of a private monopoly.

There can not be any getting around this. Practically the Supreme Court has so held in 96 United States Reports, an extract from which decision is as follows:

> The powers thus granted are not confined to the instrumentalities of commerce or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country and adapt themselves to the new development of time and circumstances. They extend from the horse, with its rider, to the stagecoach; from the sailing vessel to the steamboat; from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth.

This was a unanimous decision of the court.

This same view was held by John C. Calhoun, who was the strictest of strict constructionists. He held that the power of Congress over the transmission of information was an "exclusive power."

Mr. Justice Brown, of the Supreme Court, in a leading article in the August Forum for 1895, said:

> If the Government may be safely intrusted with the transmission of our letters and papers, I see no reason why it may not also be intrusted with the transmission of our telegrams and parcels, as is almost universally the case in Europe.

Mr. Sherman, who was then a Senator from Ohio, in a speech in Congress held that it was the duty of Congress to take charge of the telegraph system, and he discussed the question at some length. Among other things he said:

> I should rather, also, in this connection, consider one other subject of infinitely greater importance than even this proposition (to reduce postage), and that is whether the time has not arrived in this country when the Government should assume to convey intelligence by electricity; not the management of the present telegraph lines, but when we should transmit through our post-offices and our post-roads communications by electricity, by wires

constructed by the Government itself. The Government of the United States might duplicate all the wires and all the means of transportation by electricity for about $20,000,000 or $25,000,000.

If, therefore, we wish to do an actual good to our people; if we wish to confer upon them an enormous benefit, we should assume that which we have a right to assume as a part of the postal service of the country, the transmission of intelligence by electricity. In that way, by the expenditure of probably $15,000,000 or $20,000,000, we would save to the people of the United States $10,000,000 a year and increase our revenue. This has been done by other countries situated in that connection no better than ourselves.

In a speech on the floor of the Senate, January 20, 1883, Senator Edmunds said:

What the United States, in regard to its postal affairs and the welfare of its people, needs more than anything else is the construction of a postal telegraph, beginning moderately between great points in the country and all intermediate points, and then extending it, just as we have the mail system, as the needs of the community and fair economy would require, until every post-office should have or be within the reach of a postal telegraph.

But I beg the stock operators in New York not to suppose that I for one am in favor of the United States buying out any telegraph company anywhere. I am in favor of the United States building its own postal telegraph and managing it in its own way, and leaving the gentlemen who are engaged in private pursuits to pursue their operations in their own way as private pursuits.

We introduced into the postal system not long ago a provision for carrying merchandise, but we did not think it necessary to buy out the operations of the Adams Express Company, or the Southern Express Company, or the Union Express Company, or the United States Express Company, and so on, although what we did very seriously diminished their profits and impaired their business. Everything that the United States does operates in that way upon the interests of its private citizens—everything except the appropriation of money directly.

In 1888 the Committee on Commerce said:

1. That the time has arrived when the Government should construct and operate a postal-telegraph system as a branch of its postal service.
2. That the service will undoubtedly be self-supporting.
3. That the Government has the right to build and operate telegraph lines under the jurisdiction of its Post-Office Department.

In this connection Professor Ely says:

We find that, after long years of experience, practically the whole civilized world except the United States has decided in favor of the public ownership and management of the telegraph. Nowhere has it been found that there is any political objection to public ownership and management. The experience of monarchical and that of republican countries tells the same tale.

Henry Clay made the danger of private ownership an emphatic part of his splendid plea for a national telegraph in 1844. He said:

It is quite manifest that the telegraph is destined to exert great influence on the business affairs of society. In the hands of private individuals they will be able to monopolize intelligence and to perform the greatest operations in commerce and other departments of business. I think such an engine should be exclusively under the control of the Government.

Thus we see that Henry Clay held that it was the duty of the Government to establish a postal telegraph. Cave Johnson, the Postmaster-General at the time, held that that was the duty of the Government, and Congress so declared, practically, when it reserved this right and when Congress passed this law. The law to which I refer is chapter 230 of the acts of 1866. This law provides that the Government can now, and all the time has had the right to, take charge of all the telegraph lines or establish an independent system as a part of the postal system.

In short, in every country save ours alone the power of the monopoly has failed to maintain a system so unconstitutional and so opposed to the best interests of the public. Hence, in every country except ours the telegraph and telephone are constituent parts of the post-office, with the double result that the post-office facilities of the telegraph and telephone are extended to the country post-offices and the postal revenues show a profit instead of a loss. Notably Great Britain, which has most widely extended the use of the telegraph and telephone as a part of its post-office, shows a large annual profit from its post-office, instead of a deficit, which was usual before the telegraph and telephone were added to that department by Mr. Gladstone in 1870.

Judge Walter Clark, of the supreme court of North Carolina, in a recent magazine article discussing the postal telegraph in England, says:

As taxes upon the diffusion of intelligence among men and deficiences in the postal service affect everyone, I condense the following from the official report on the workings of the Government telegraph in England made to our Government by the United States consul at Southampton, England, and printed in the last number of the Consular Reports. He says:

On January 29, 1870, all the telegraphs in the United Kingdom were acquired by the Government from the corporations which had previously operated them, and thenceforward became an integral part of the post-office. The English people owed this great measure in their interest, like so many others, to Mr. Gladstone, who bore down all opposition from the companies, who were making big profits. Till then the districts paying best had ample service, though at high rates (as is still the case with us), while whole sections off the lines of railway were destitute of telegraphic facilities.

The Government at once extended the telegraph to all sections and reduced the rate to 1 cent a word. The following is the result: In 1870, under private ownership, 7,000,000 individual messages and 22,000,000 words of press dispatches were annually sent. Now that the telegraph is operated by the post-office, the annual number of individual messages sent is 70,000,000 (ten times as many), and over 600,000,000 words of press dispatches (thirty times as many) are used. This at a glance demonstrates the overwhelming benefit to the public of the change and their appreciation of it.

The press rates have been reduced so low that every weekly country paper can afford to print the latest telegraphic dispatches as it goes to press, and a telegraph or telephone is at every country post-office. In London the telegraph has largely superseded the mail for all the small and necessary details of life—to announce that you are going to dine at a certain house, or to inform your wife that you are detained on business and not to keep dinner waiting, and the like—over 30,000 telegrams being sent daily in that city alone.

The following is quoted from the consul, verbatim:

"The service is performed with the most perfect punctuality. It is calculated that the average time employed to-day in the transmission of a telegram between two commercial cities in England varies from seven to nine minutes, while in 1870 (under private ownership) two to three hours were necessary.

"The rate of 1 cent a word includes delivery within the postal limits of any town or within 1 mile of the post-office in the country. Beyond that limit the charge is 12 cents per mile for delivery of a message. The telegraph being operated as a constituent part of the postal service, it is not possible to state how much profit the Government receives from it, but the English Government does not consider that it should be treated as a source of revenue. It regards it a means of information and education for the masses and gives facilities of all kinds for its extension in all directions."

This unbiased and impartial report, officially made to our Government, is worthy of thought and consideration. It may be added that in every civilized country except this the telegraph has long since been adopted as one of the indispensable agencies of an up to date post-office department. Even in half-civilized Paraguay (as we deem it) they have better postal facilities than we, for the post-office there transmits telegrams at 1 cent a word and rents out telephones at $1 per month.

At present, owing to high rates, 46 per cent of all telegrams in this country are sent by speculators (who thus get an advantage over producers) and only 8 per cent are social or ordinary business messages. In Belgium, where the Government rate is less than 1 cent per message, the social and ordinary business messages between man and man are 63 per cent of the whole. Figures could not be more eloquent as to the vast benefit this confers upon the great mass of people, who bear the bulk of the burdens of any government and receive so few of its benefits. With the telegraphs and telephones operated by our Post-Office Department at moderate rates, say 5 or even 10 cents per message, a similar change would take place here. Individual and news messages would increase tenfold to thirtyfold, as elsewhere—probably more—and the monopoly now held by speculators would cease.

The average telegraph rate now charged in this country, by the reports to Congress, is 31 cents per message—three times the average rate in all other countries under post-office telegraph service; and experts say that our Government could probably afford, with the vast increase of business, a uniform rate of 5 cents, as the average cost of a message is about 3 cents. According to experts, the telegraph plants now in use could be superseded by the Government with a superior plant at $15,000,000, while the present corporations are strangling commerce to earn heavy dividends on a watered stock of over $150,000,000.

According to English experience the transfer of the telegraph to the Post-Office Department would result in (1) a uniform rate of 10 cents for 10 words between all points, or possibly less; (2) an increase in individual messages of at least 10 for every 1 now sent; (3) an increase in press dispatches of 30 words or more for every 1 now sent; (4) a popularization of the telegraph for all uses, social or business; (5) an increase in the promptness of delivery, the average there being now seven to nine minutes as against two to three hours formerly; (6) no section would be destitute, but at each one of our 70,000 post-offices there would be a telephone or a telegraph. By adopting the telephone at most post-offices instead of the telegraph the increase in the number of post-office employees would be inconsiderable.

The vast influence of the great telegraph monopoly can be used for political purposes by coloring news and in other more direct ways. When the telegraph service is made a part of the post-office and placed under civil-service rules and subject to the direct force of public opinion, the experience in other countries has been that it exerts no more power on party politics than the army or judiciary. Originally the telegraph (in 1846) belonged to the post-office. When it was abandoned to private corporations on account of its supposed expense, Henry Clay, Cave Johnson, and other leaders of both parties had the foresight to foretell the mischief done in abandoning an essential governmental function to private monopoly.

To prevent this great benefit being given to the masses and to preserve to consolidated capital the control of the most efficient avenues of intelligence, with the great advantages thus given that element in addition to the enormous tolls it can thus levy on the rest of the nation, there is practically only the inexorable will of one powerful and exacting corporation which has fastened itself on the body politic. It is the oldest trust in this country. It is the pioneer on which so many others have been patterned. It is the most burdensome because its oppressive tolls restrict communication between men and levy a tax on knowledge. It is illegal, since the Constitution requires Congress to establish the post-office, to leave this most essential function of a modern, up to date postal service in the hands of private corporations.

The telegraph is a source of gigantic emoluments to these corporations, while the Government restricts its postal services to antiquated and more dilatory processes. It is no wonder that such a postal service is not self-sustaining and shows an annual deficit while the telegraph companies pay enormous dividends. In other countries, where the telegraph is a part of the post-office, that department shows annual profits; but the monopoly fastened on us is intrenched in the sympathy of all other trusts. It has the support of the large city dailies (all owned by large capitalists) who fear the competition of dailies in small towns and of the weeklies if news should become free, and its transmission cheaper over a Government postal telegraph.

It is backed by the powerful lobby which it constantly maintains at Washington, paid out of the excessive telegraphic rates still exacted in this country alone out of a long-suffering and too patient people. And not least, it is said that it distributes franks to every Senator and every member of Congress. How many accept these favors and how many are influenced by them no one knows except the corporation officials, but that they do know may be seen from the fact that tenders of such favors have not ceased.

Mr. President, that goes to the merits of the question, which I do not wish to discuss further at this time because we are not now discussing the question of the postal telegraph, but I simply make this statement to show you how pertinent this amendment is which asks the Postmaster-General to make us an estimate as to what it would cost to carry that law into effect. That is all. Congress certainly can not be afraid of the information. It is a simple matter. I do not think it needs further discussion, and without taking further time I ask for a vote on the motion of the Senator from Colorado.

Mr. BUTLER subsequently said: I request that chapter 230 of the act of 1866, to which I referred in my remarks on the conference report a few moments ago, be included in the RECORD as a part of my remarks. It is short.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from North Carolina? The Chair hears none, and it is so ordered.

The chapter referred to is as follows:

An act to aid in constructing telegraph lines, and to secure to the Government the use of the same for postal, military, and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any telegraph company now organized, or which may hereafter be organized, under the laws of any State in this Union, shall have the right to construct, maintain, and operate lines of telegraph through and over any portion of the public domain of the United States, over and along any of the military or post roads of the United States which have been or may hereafter be declared such by act of Congress, and over, under, or across the navigable streams or waters of the United States: *Provided*, That such lines of telegraph shall be so constructed and maintained as not to obstruct the navigation of such streams and waters, or interfere with the ordinary travel on such military or post roads.

And any of said companies shall have the right to take and use from such public lands the necessary stone, timber, and other materials for its posts, piers, stations, and other needful uses in the construction, maintenance, and operation of said lines of telegraph, and may preempt and use such portion of the unoccupied public lands subject to preemption through which its said lines of telegraph may be located as may be necessary for its stations, not exceeding 40 acres for each station, but such stations shall not be within 15 miles of each other.

SEC. 2. *And be it further enacted*, That telegraphic communications between the several Departments of the Government of the United States and their officers and agents shall, in their transmission over the lines of any of said companies, have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General.

SEC. 3. *And be it further enacted*, That the rights and privileges hereby granted shall not be transferred by any company acting under this act to any other corporation, association, or person: *Provided, however*, That the United States may at any time after the expiration of five years from the date of the passage of this act, for postal, military, or other purposes, purchase all the telegraph lines, property, and effects of any or all of said companies at an appraised value, to be ascertained by five competent, disinterested persons, two of whom shall be selected by the Postmaster-General of the United States, two by the company interested, and one by the four so previously selected.

SEC. 4. *And be it further enacted*, That before any telegraph company shall exercise any of the powers or privileges conferred by this act such company shall file their written acceptance with the Postmaster-General of the restrictions and obligations required by this act.

Approved July 24, 1866.

The PRESIDENT pro tempore. The question is on agreeing to the report of the committee of conference.

The report was agreed to.

The PRESIDENT pro tempore. The Senator from New Hampshire [Mr. CHANDLER] has moved that the Senate further insist upon its amendments disagreed to by the House and ask a further conference with the House.

Mr. WOLCOTT. Mr. President, I do not know whether or not I should ask for the yeas and nays upon this motion. I am not disposed to do it, and unless some other Senators think it should be done, I am willing to have the instructions of the Senate on a viva voce vote.

The PRESIDENT pro tempore. The motion before the Senate is that the Senate insist upon its amendments and request a further conference.

Mr. WOLCOTT. I call for a vote upon that motion.

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. WOLCOTT, Mr. CHANDLER, and Mr. BUTLER were appointed.

ARMY APPROPRIATION BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 14017) making appropriation for the support of the Army for the fiscal year ending June 30, 1902.

Mr. DANIEL. I offer an amendment to the Army appropriation bill, which I ask to have printed and lie on the table.

Mr. MORGAN. Let it be read.

The PRESIDENT pro tempore. The amendment will be stated.

The SECRETARY. It is proposed to insert after line 10, on page 19, the following:

Provided, That no officer of the Army, whether regular or volunteer and whether in or out of the United States, shall receive by executive or military authority or otherwise any pay or allowance whatsoever than such as is provided for by statute law; and any such officer who shall be convicted by court-martial of violation of this provision of law shall be dismissed the service.

The PRESIDENT pro tempore. The pending question is on the amendment offered by the Senator from Missouri [Mr. VEST].

Mr. ALLEN. Mr. President, I have no intention of discussing this bill at any length.

The PRESIDENT pro tempore. Has the Senator from Alabama yielded the floor?

Mr. MORGAN. I consented to yield for five minutes, I believe it was.

Mr. ALLEN. The Senator yields to me?

Mr. MORGAN. Yes.

Mr. ALLEN. Mr. President, I have no desire or purpose to discuss this bill at any length. That the amendments offered by the Senator from Connecticut [Mr. PLATT] and by the Senator from Wisconsin [Mr. SPOONER] are clearly in violation of the Constitution, I have no doubt. I do not think it is possible for Congress to confer upon the President of the United States or upon any other person or any body of persons all of the executive, legislative, and judicial power of this Government, in so far as they may exercise it over the Philippine Archipelago or over any other territory subject to the jurisdiction of the United States.

The Army and the Navy, Mr. President, constitute the armed force of the United States. They are intimately connected; each is indispensable to the Government, and each is indispensable to the other. We have had occasion very recently to discuss the conditions existing at the Military Academy at West Point, and this morning I desire to call the attention of the Senate to an article appearing in the Star of last night, comprising a letter from Charles Morgan, a gunner, to Admiral Sampson, asking for promotion from his present position to that of ensign in the Navy. I desire to read the letter of Morgan and the comments or indorsement of the Admiral. This is the letter of Charles Morgan, gunner in the United States Navy:

UNITED STATES TORPEDO STATION,
Newport, R. I., February 13, 1901.

DEAR SIR: The new bill whereby 6 gunners are to be commissioned ensigns tempts me to write you, trusting you will pardon the liberty I take in so doing.

As I served on the flagship *New York* during your command of the fleet, you will know whether my abilities, whatever they may be, are of such merit as to warrant me in filling the position of ensign. I would say here that I never use tobacco or liquor in any form.

If, in your estimation, I am worthy of this position, I should be most grateful to you if you will recommend me to the Department.

I am, very respectfully, yours,

CHARLES MORGAN,
Gunner, U. S. N.

Admiral WILLIAM T. SAMPSON,
United States Navy.

This letter was indorsed by Admiral Sampson and forwarded to the honorable Secretary of the Navy, as follows:

NAVY-YARD,
Boston, Mass., February 14.

Indorsement 1. Respectfully forwarded to the Navy Department for its consideration.

2. Mr. Morgan has good professional ability. He also has, which distinguishes him from most other warrant officers, a gentlemanly bearing. If he were to be commissioned as an ensign, he would probably compare favorably, both professionally and in personal conduct and bearing, with other officers of that grade, as far as his technical education would permit.

3. It is earnestly to be hoped, however, that the Secretary of the Navy will not find it necessary to take advantage of the authority which I understand is to be granted him to appoint a certain number of warrant officers to the grade of ensigns.

While it is true that these men are selected from a large class of men of very unusual ability, which distinguishes them as perhaps the professional equals of their officers as far as their technical education stands, it is also true that they are recruited from a class of men who have not had the social advantages that are a requisite for a commissioned officer.

It is submitted that in time of peace the Navy's function consists, to a certain extent, of representing the country abroad, and it is important that the Navy's representatives should be men of at least refinement. While there are, perhaps, a certain few among the warrant officers who could fulfill this requirement, I am of the opinion that the vast majority of them could not.

CONSEQUENCES MIGHT NOT BE CREDITABLE.

Once they are commissioned they will have the same social standing as other officers, and no distinction properly could be made in extending general invitations. The consequences that would arise from their acceptance might not redound to the credit of the Navy, or the country which the Navy represents.

I do not mean to detract from the sterling worth of the warrant officers of the Navy; I merely mean to suggest to the Department that, unfortunately for them, they have been deprived of certain natural advantages, and in consequence their proper place is that of leading men among the crew, and not as representatives of the country in the ward-room and steerage.

4. I request that this may be brought to the personal attention of the Secretary of the Navy.

W. T. SAMPSON,
Rear Admiral, U. S. N.

Mr. President, I suppose this letter is genuine. I do not know whether it is or not. I take it, however, that it would not appear as it does in this paper or in any other paper unless it is a correct transcript of the indorsement of Admiral Sampson on the letter of Gunner Morgan. This proves beyond the shadow of a doubt what I have always supposed and what I have always contended, that there is a snobbish aristocracy in both the Army and the Navy that is detrimental to the public service and a disgrace to the country represented by these and other like officers.

That Gunner Morgan has the requisite education, the requisite personal bearing, whatever that may be, is not denied by the Admiral; in fact, he goes on to say that he would compare very favorably in his knowledge of his profession and in his gentlemanly deportment with those who are especially educated for this particular branch of the public service; and yet because Gunner Morgan was not born under an auspicious star, because he comes from the ranks of the plebeians, if I may so speak, the Admiral thinks that the Secretary of the Navy would be warranted in debarring him of the privilege of promotion on account of his birth.

If William T. Sampson is the author of that indorsement he is a conceited ass, and he ought to be so marked down in the world. [Manifestations of applause in the galleries.] We are not rearing in this country a race of snobs. If I am correctly informed, there was a time when Sampson was no better, if as good, as Morgan, the gunner. He comes from no better stock, and I am glad to

say, as a rule, that the true aristocrat, not the brass-jeweled aristocrat, is a man who is considerate of the feelings and of the worth and of the merit of the people whom he may regard as inferior to himself. Is it possible that a great admiral of the Navy of the United States would speak in disparaging terms of a young man like this gunner Morgan, as Sampson has spoken of him here?

Mr. President, if a man is debarred the privilege of an education in the Military Academy or in the Naval Academy is he to be forever stamped with the seal of inferiority, and may the time never come when through gentlemanly deportment, through education, through adaptibility, and through heroic service he may receive the rewards of his country by promotion? And yet if this rank and arrant coward—for a man is a coward who would put that indorsement upon a letter—is to be believed, and if the course he recommends is to be pursued, the time will never come in the history of this country when a poor boy, struggle as he may, meritorious as he may be, can rise to the honor and dignity of a position worthy of his talents and education.

Mr. MORGAN. Mr. President——

Mr. ALLEN. I want to stand here and condemn this thing in the severest possible language I can use, and I want to say to Sampson and his friends that I am responsible for what I say.

Mr. MORGAN. Mr. President——

The PRESIDENT pro tempore. The Senator from Alabama.

Mr. CHANDLER. I wish to make a few remarks in reply to the Senator from Nebraska.

Mr. MORGAN. I had no idea that there was to be any discussion as between Sampson and Schley on the pending bill. Is there any amendment in this bill——

Mr. CHANDLER. The Senator from Alabama allowed a speech to be made, and I should like to say a few words.

The PRESIDENT pro tempore. No Senator can obtain the floor and portion out the time to other Senators to make speeches and still hold it.

Mr. MORGAN. Mr. President, the next branch of this question which I wish to discuss——

Mr. CHANDLER. Mr. President, I claim recognition.

The PRESIDENT pro tempore. Does the Senator from Alabama yield to the Senator from New Hampshire?

Mr. CHANDLER. I ask the courtesy of the Senator from Alabama to allow me to reply to the Senator from Nebraska. I hope he will not refuse.

Mr. MORGAN. I have not heard what the Senator from Nebraska said. If he said anything personal to the Senator from New Hampshire——

Mr. CHANDLER. I have heard what he said, and I want to reply.

Mr. MORGAN. Is it personal to the Senator from New Hampshire?

Mr. CHANDLER. No, sir; but personal to Admiral Sampson.

Mr. MORGAN. I beg pardon. I should rather the Admiral should be relegated to a time of war instead of a time of peace.

Mr. CHANDLER. Does the Senator decline to allow me to speak?

Mr. MORGAN. Yes, sir.

Mr. CHANDLER. Mr. President, I claim the right to speak.

The PRESIDENT pro tempore. The Chair has recognized the Senator from Alabama.

Mr. CHANDLER. I think the Senator from Alabama had better let me speak a few words.

Mr. MORGAN. I do not propose to lose the floor upon this measure in order to accommodate any friend or any gentleman. I do not think it is required.

Mr. PETTIGREW. I shall desire to reply to the Senator from New Hampshire, if he is allowed to speak on this question.

Mr. CHANDLER. Nothing would delight me more than to have the Senator do so, but I want him to do it after I have spoken. The Senator from Alabama is aware that he allowed quite a long speech to interrupt his speech. It destroyed the continuity of his speech, and it will not destroy it any more if he will allow me to say a few words in reply to the Senator from Nebraska.

Mr. MORGAN. And then the Senator from South Dakota and I do not know who else will wish to speak.

Mr. STEWART. Several others.

Mr. TELLER. Several others.

Mr. STEWART. There will be several others if the Senator from New Hampshire speaks.

Mr. CHANDLER. Does the Senator from Alabama decline?

Mr. MORGAN. I have declined. I do not wish to be abrupt about it, but I wish to hold the floor.

Mr. President, the second amendment is one which presents the most important question that has yet come before the Congress in my recollection in reference to our foreign relations, our relations arising under the treaty of Paris. I enter upon a discussion of that amendment with apprehension and with timidity, for the reason that it may be that even what I may say may have some disadvantageous influence upon the minds of people in Cuba or perhaps upon the minds of the people of the United States, and I think no Senator will venture to discuss this amendment without feeling the same apprehension. I will ask the Secretary to read, so as to have inserted in my remarks, the amendment, in order that the Senate may get a clearer idea of it, and I may, too.

The PRESIDENT pro tempore. To what amendment does the Senator from Alabama refer?

Mr. MORGAN. The amendment reported by the Senator from Connecticut [Mr. PLATT] in relation to Cuba.

The PRESIDENT pro tempore. The Secretary will read as requested.

The SECRETARY. On page 6, line 12, insert:

That in fulfillment of the declaration contained in the joint resolution approved April 20, 1898, entitled, "For the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect," the President is hereby authorized to "leave the government and control of the island of Cuba to its people" so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:

I.

That the government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise, lodgment in or control over any portion of said island.

II.

That said government shall not assume or contract any public debt, to pay the interest upon which, and to make reasonable sinking fund provision for the ultimate discharge of which, the ordinary revenues of the island, after defraying the current expenses of government shall be inadequate.

III.

That the government of Cuba consents that the United States may exercise the right to intervene for the preservation of Cuban independence, the maintenance of a government adequate for the protection of life, property, and individual liberty, and for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States, now to be assumed and undertaken by the government of Cuba.

IV.

That all acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

V.

That the government of Cuba will execute, and as far as necessary extend, the plans already devised or other plans to be mutually agreed upon, for the sanitation of the cities of the island, to the end that a recurrence of epidemic and infectious diseases may be prevented, thereby assuring protection to the people and commerce of Cuba, as well as to the commerce of the southern ports of the United States and the people residing therein.

VI.

That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

VII.

That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points, to be agreed upon with the President of the United States.

VIII.

That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States.

Mr. MORGAN. The first question which arises in this matter is whether the action we are about to take is required by the treaty with Spain, or whether it is required by a joint resolution of the two Houses of Congress. This amendment refers to the joint resolution as the basis and foundation of the action we are now about to take. The treaty of Spain was the result of a declaration of war, which is as follows:

First. That war be, and the same is hereby, declared to exist, and that war has existed since the 21st day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain.

Second. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry this act into effect.

The date mentioned in that act as the date at which actual war existed between the United States and Spain did not refer to any special event by the act itself, but we all understand that it refers to the sinking of the war ship *Maine*. That is the date at which actual hostilities are alleged to have commenced between the United States and Spain, and that event is the one upon which those hostilities are predicated as the act of war.

The joint resolution which we adopted on the 20th day of April, 1898, twenty days after that date from which war is said to have existed between Spain and the United States, was a joint resolution of the two Houses, which reads as follows:

Whereas the abhorrent conditions which have existed for more than three years in the island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship, with 265 of its officers and crew, while on a friendly visit in the harbor of Habana, and can not longer be endured, as has been set forth by

the President of the United States in his message to Congress of April 11, 1898, upon which the action of Congress was invited: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, First. That the people of the island of Cuba are, and of right ought to be, free and independent.

Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.

Third. That the President of the United States be, and he hereby is, directed and empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States, to such extent as may be necessary to carry these resolutions into effect.

Fourth. That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.

It will be observed that the war declared against Spain on account of all these things recited in the joint resolution was concluded and resulted in a treaty of peace, the Paris treaty, which contained this article:

ARTICLE I.

Spain relinquishes all claim of sovereignty over and title to Cuba.

And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

If we were to speak of the effect of Article I of this treaty without reference to the joint resolution which was adopted by Congress, we would find no difficulty in saying that the supreme sovereignty over Cuba had been as much and as thoroughly and fully ceded to us by this treaty as the sovereignty over Porto Rico or the Philippine Islands; for while it does not mention the transfer of the sovereignty, it confers upon the United States, to exercise at its own option, discretion, and according to its own judgment, occupation, under which occupation we have assumed to discharge obligations that may arise under international law, or that result from the fact of occupation, for the protection of life and property. That is as complete sovereignty over a country as can be stated, for the reason that there is no country in the world that has any right to make an objection to it. There is no organized people recognized by acts of Congress who have the right to make an objection to the manner in which we shall exercise, and the time for which and during which we shall exercise, the powers and be held to the responsibilities that devolve upon us by that first article of that treaty.

Now, whatever rights Cuba or the Cuban people may possess, whether they are actual, legal, or simply moral in respect of the United States Government, are not derived from that instrument at all. They have no recognized rights in that treaty, either as a body, a community, a body politic, or government. They have the rights of life, liberty, and property, and that is as far as that article of the treaty goes. But the political rights which are covered in the resolution of the two Houses of Congress are not mentioned in this treaty. One sovereign transfers its supreme jurisdiction by relinquishment to the next, the successor sovereign, without taking any notice of the Cuban people or the manner in which they are to be treated by the United States.

Spain did not go into those joint resolutions for the purpose of determining how we should treat Cuba, and consequently in the transmission of sovereignty there was no qualification of that sort upon the act of transmission, or the act of abandonment—if you please to call it such—or relinquishment, if you please to call it that.

So, in considering the questions now before the Senate we must address ourselves to the relations between Cuba and the United States, and between the United States and the outside world as the Government which has the right to control the relations of Cuba to-day, as to all the nations of the earth, and as to the people who are located there or the people who may go there as visitors, commercial men, or otherwise during the period of our occupation. The most prominent feature of this obligation on our part is to enforce all the rights that belong to all the people of the world who may be in Cuba with their persons or their property, according to the laws of nations.

We have assumed the obligation to do this thing. We have not left Cuba in an irresponsible position without a sovereign head and without a government, and no one at all liable for her or responsible for any wrongs that might be done there to the citizens of other countries. We have assumed the whole burden. It is ours, and it will continue to be ours so long as we choose to occupy it. We have said nothing in that about the pacification of Cuba or about the establishment of a permanent government. None of the questions that are brought forward by this amendment here are questions that grow out of the treaty relations between the United States and Spain, and a government foreign to Spain, foreign to the United States, foreign to Cuba in every possible sense has a perfect right to say to us, "You have assumed responsibility to us which continues until a certain time; that is to say, so long as we have people in that island who need your protection;" and that government has something to say about this business.

We are not left alone to judge of our relations and duties toward the people who may be found in Cuba by our will or caprice, leaving it when we please and abandoning it into the hands of anybody we please. If we had that privilege, we could wait until a moment of time when insurrection and strife of every imaginable character, attended with crimes that belong to a condition of insurrection or rebellion or mobocratic outbreak, existed, and then say to the nations of the world, "We leave your citizens and your property in the island of Cuba to the mercies of such a distracted community."

Now, Mr. President, what I am trying to determine is this: Whether our control in the island of Cuba under that treaty, that being the only instrument in existence that we find to describe what that control shall be, is in the nature of sovereignty. It must be in the nature of sovereignty, because it requires of the sovereign Government of the United States the performance of certain duties under the laws of nations, which duties we could not perform except as a sovereign power, duties that may require not merely judicial intervention, but which may require the intervention of the military arm of the Government of the United States. We can not escape from this responsibility to Christendom, because we have assumed it in this treaty. Neither can we be released or absolve ourselves from these responsibilities toward the people who may be in Cuba, whether they are natives or whether they are Spanish immigrants who have come from the peninsula since the time of peace, or whoever they may be.

In the amendments that are proposed we assume to assert that sovereignty over these islands. We can not legislate, as we are asked to do in this amendment, to confer these rights upon the Cuban people otherwise than as a sovereign possessing the right. When the Cuban people obtain the rights that are proposed to be guaranteed to them by the United States under this amendment, they have obtained them from the sovereignty of the United States. They are not mere waifs that have been lost and are floating about in unknown places and conditions waiting for the period of time when we may choose to give our assent to the Cuban people that they should duly exercise them, but they are rights that pass by the instrument, they are rights that pass by the amendment, they are rights that pass by the law, and only by the law, which we are about to enact.

So in every view of the question, whether you take the duties and obligations that arise out of the treaty or whether you take the proposition which is contained in this amendment, the sovereign Government of the United States proposes to a certain people or to a certain government yet to be instituted and ordained in Cuba what is here proposed to be turned over to them in the way of political power, autonomy, and government.

It occurs to me that the legislative branch of the Government of the United States in limine, in the beginning of this matter, has very little to do in dealing with this subject. It occurs to me that there is presented here a class of questions that the Constitution of the United States devolves upon the diplomatic functions of this Government, and that the recognition of a government in Cuba which is contained here upon conditions that can be made by the Congress of the United States or by the diplomatic power of the Government so as to give them the status of a free, sovereign, and independent country, and thereby capacitate them to treat with us, had better come after the terms of the agreement have been settled between the United States and Cuba by diplomatic action, and have been considered by that function of our Government which is diplomatic and which can not act by a bare majority, but must act by a majority of two-thirds.

I believe, sir, that the future destiny of Cuba, so far as her sovereignty and independence are concerned, is to depend upon the consent of the two-thirds vote of the Senate of the United States in ratification of some agreement or some compact between the United States and a recognized government there. I do not believe that the lawmaking power of the United States can do anything more than make a tentative proposition, which must be followed up and accepted by the Cuban government by an appeal to and an exercise of its treaty-making power. The operation of this amendment, if it should be carried into law, would be merely to enable the President of the United States, upon the performance of certain conditions which, in his opinion, would meet the requirements of this amendment, to recognize that in Cuba there was a government capable of treating, and after that recognition the government there would have to treat with the Government here through our treaty-making power, and it would require a vote of two-thirds of the Senate of the United States as a treaty-making power to consummate this arrangement.

Now, that is perhaps a question which is very debatable, but at the same time it is a question, and it is a serious question, and it is one that the act of Congress upon this appropriation bill can not foreclose. Congress can not make an agreement with a government in Cuba which it undertakes in part at least to create by a legislative act here. Suppose the people of Cuba have some imaginary sovereign power in that island, would it follow from such a condition as that, admitting it as strongly as you please, that

the Congress of the United States to-day would have no right to pass an act which should have its full operation and effect within the limits of the island of Cuba and which would control the destiny of those people?

They are subject to the power of Congress to-day, as far as our sovereignty is concerned, and we can enact laws, if we choose to do so, by which crimes will be punished, by which revenues will be collected, or anything of that kind. If we wish to do so, Congress has the power to enact these laws, so that the very moment of time they are signed by the President of the United States they shall be operative within the limits of the island of Cuba. We have already enacted one law in regard to Cuba, and that is a law for the rendition of fugitives from justice (I believe that is the ground they put it on), but, at all events, a law to send a man there and answer before a tribunal in Cuba for an offense against the government of what? Against the Post-Office Department of the United States.

I do not care now to go into that, but I want to call the attention of Senators to the proposition that in whatever we do here we ought not to undertake finally to foreclose this question by an act of Congress, but we ought so to provide as that by mutual authority of commissioners or otherwise both sides to this question can be heard. For us to-day to enact an iron rule which Cuba must conform to must necessarily be offensive to the pride of those men who feel that they have the right to govern in Cuba and that that is their country. We come at them with an ultimatum, not laid down after a discussion and presentation of their side of the case at all, but an ultimatum fixed in an act of Congress, which neither the President nor anybody else can escape from or deny, and they shall stand up now and subscribe to what we prescribe to you, or else what?

Now, what? We will continue to occupy the country; we will continue to preserve the peace; we will continue to preserve life and property; we will continue to hold our obligations to outside nations in respect of the conduct of the Cuban people toward their citizens. What is the result? What is the penalty? What is the end of this process of legislation that we are about to institute now? Who can execute it, and in what way? It amounts to either an assumption of authority over Cuba that implies an absolute right to govern them and compel them to submit to such terms as we prescribe, or else it amounts to nothing more than a mere tender of a diplomatic agreement to them, and shall there be a tender of an agreement of a diplomatic sort where they shall not be heard to question the rights that we insist upon or to dispute the justice of the ground we take?

The whole matter, Mr. President, is premature, and it is unwise, and it will lead to consequences of which we have now, I fear, no real conception. It is a dangerous attitude for the Government of the United States to take. Then they will ask us the question, and I make the answer to it here, Have you read the constitution of Cuba, formed by a convention which was assembled under an electoral law that was prescribed here by Gen. Leonard Wood, your governmental representative in the island of Cuba? Have you read it? No; we never have read it. Have you ever seen it? We have not seen it. Has it ever been officially communicated to the Congress of the United States? No; it has not. How have you arrived at your conclusion as to what you ought to force us to do until you see the attitude we have assumed, at least in that constitution, and are capable of judging of its wisdom and propriety?

I answer to Cuba to-day, we have seen none of it; we are working now upon our own judgment, our own forecast of the future; our estimate of your right. We are doing that despotic kind of an act which we would not do with a tribe of Indians in the United States. We have often judged what their destinies shall be and what they shall do without ever having consulted or sent an agent amongst them to find out through a talk what they claim that they desire.

Who has the power to rise in the Senate to-day and declare what Cuba is bound to accept or ought to accept in reason, or will accept? Nobody. This is an ultimatum, a legislative ultimatum to Cuba. Take this or die, for they can not resist. Take this and abandon your hopes of an independent, sovereign, autonomous government. Take this and lay your national and your race pride beneath the feet of the Anglo-Saxon and let him walk over you. You must stand and deliver. We make the exaction upon you through a solemn act of the Congress of the United States, and we leave nothing to be adjusted in the future except, perhaps, the mere terminology of the agreement, but in substance all the provisions that we here lay down to you must be adopted by you as conditions precedent to your expectation or your right to demand any sort of autonomy, independence, sovereignty, or freedom.

Then they will appeal to that academic declaration which we made in the joint resolution, which a man can scarcely read without either laughing or weeping. What is that? Before the war with Spain had actually been inaugurated, as a matter of fact before any guns had been fired except by the Cubans, and after we had refused to recognize the republic of Cuba under General Cisneros, that had a written constitution and a pretty well formed government—before any of these events, and in the presence of these events and of our action in that direction, we made the declaration:

Resolved, That the people of Cuba are, and of right ought to be, free, sovereign, and independent.

Well, were they free, sovereign, and independent at the time we made that famous declaration? That is why I say there is a time for tears or a time for laughter, according to the mood that a man may be in; whether he is in a mood of regret for his folly or in a mood of amusement for having been so ridiculous. "The people of Cuba are, and of right ought to be, free, sovereign, and independent." Mr. President, the first declaration in that series can not be proved by anything we can do hereafter, that they were at that time free, sovereign, and independent; and while I admit that the sentimental or, if you please, the moral duty which arises out of that declaration should guide us in our conduct hereafter in Cuba, I can not admit as a matter of fact that there was any truth in it at all. It was not true. Does it stand in the way; does it qualify; does it in any wise release us from the duties and obligations that we entered into with Spain, the sovereign whose recognition we completely confess in this treaty? Not by any means. It has no effect upon it.

Now, in the execution of the engagements that are contained in that treaty it is not necessary for us to repeat to the people of Cuba the words which are contained in that joint resolution. I do not care whether we do or whether we do not. I do not want to depart from them at all. Under that condition we went into Cuba and we found there an organized Cuban army, and we appealed to it. We furnished it with guns, uniforms, and provisions and put them to work fighting Spain, increasing the power of Gomez, Garcia, and other men who were engaged then in open hostilities with Spain, and had been in a state of war with that Monarchy for then five or six years.

We had refused to these same men who belonged to the army of Cuba a recognition of their independence or their autonomy or their existence as a power, either de jure or de facto, when we refused to grant to these Spanish people and the Cuban army or the Cuban government the rights of belligerency under a declaration of neutrality on the part of the United States. We had condemned them by the refusal to grant that privilege to such a condition as that they had no autonomy at all, either de facto or de jure. We treated them as a set of rebellious subjects of Spain, and when we declared war against Spain we declared war against every man, woman, and child in Cuba or elsewhere in the Spanish power or in the Spanish realm, making by law each one of the men who comprised and constituted the so-called republic in Cuba the national enemy of the United States. Does anybody deny that proposition? During all that war, and until the time peace was declared through the Paris treaty, every man, woman, and child in the island of Cuba that owed natural allegiance to the Government of Spain was declared a public enemy of the United States.

So, Mr. President, they were treated at the time the treaty was made. They were public enemies of the United States, and notwithstanding our resolution as to what they wanted and what we intended to do with that country in the event it fell into our hands as a result of the war, we were then making concessions to men who were our national enemies. We might just as well have made concessions to the people in Madrid, Catalonia, or anywhere else in the peninsula of Spain as to have made them to the people in the island of Cuba, for the reason that they all stood on the same ground precisely, and were all of them national enemies of the United States.

I am not mentioning this to get rid of the moral effect of our obligations, self-assumed, self-imposed, and to be self-executed, without any respect at all to the request of the people of Cuba or any faction there, and particularly of the faction in Cuba that we had refused to recognize as a government either de facto or de jure.

Now, let us see what these amendments do propose to the people of Cuba and let us see whether we have the power under our Constitution to do things that are required by this act.

I.

That the government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise lodgment in or control over any portion of said island.

That is a perpetual covenant, a perpetual obligation. No lapse of time will change it. There is no period for its determination, and there is no event upon which it is to be determined. It can never be determined as long as the United States Government has the power to maintain it own sovereignty and independence as a nation. The obligation runs along with our sovereignty, and we are never released from it, and it can not be taken away from us so long as we are a sovereign and an autonomous nation. That is the first obligation as to the length of time when this amendment of ours on Cuba is to extend. It—

Shall never enter into any treaty.

Now, can you imagine a country so bound to another that it

can never enter into a treaty with any foreign power upon any subject whatever, that is a sovereign power? It is a power under a suzerainty, and according to the terms of the agreement which creates that relation of suzerain it may be a protectorate. But unquestionably in either view Cuba is placed by that declaration in a position where she is not sovereign. So we would be obliged to admit to the Cuban people if they made the question.

Mr. President, the world has had a fresh and recent example of a great national and widespread catastrophe, growing out of such a relation as this between the Orange Free State and the Transvaal Republic and the Government of Great Britain. Great Britain had acquired it, I think, from the Netherlands, by one of those ancient treaties that swept about over the world and gathered in territories and realms, which were inscribed upon maps and written in the body of instruments, but which were not practically attended with occupation by the power to which sovereignty was transferred. One of these treaties, running back upon a line of treaty obligation and transfer that dated centuries before, put the Government of Great Britain in the possession of a certain portion of South Africa which extended above the line where the Transvaal and the Orange Free State were afterwards located.

They were the nominal sovereigns on paper of that part of South Africa. The Boers came up from Cape Colony or Cape Town, the southern part. They made a movement and first settled down in the southern or eastern portion of South Africa, at Natal. The British followed them there, claiming their rights of sovereignty, and the Boers retreated to another part of the same territory, over which this paper title of Great Britain continued to exist.

When they grew into power through their own energies and virtues the British Government found it necessary, particularly after the discovery of the gold and diamond mines in those countries, to assert that ancient title, and did so. They came to a compromise, and the compromise was that Great Britain should be suzerain over these countries and should have the right to assent to all the treaties with foreign powers that these Republics, when they got to be divided into two Republics, should make at any time. But there was an implied understanding, so the Boers insist, that there should be no interference with local government. It was entirely confined to the foreign relations of the Boer people. That subject got into controversy, and as the Boer power increased their laws became, as the British contended, in some sense—perhaps in an extraordinary sense—oppressive on the British subjects and discriminative against British property in taxation. The British Government came down upon the Boer settlements and insisted that they should modify their statutes and that they should not have intercourse with other nations at all.

Who has ever heard of a consul or a minister from the Transvaal or from the Orange Free State in the United States? Why have they not been here? Why have we not had diplomatic or consular relations with that great country? We send consuls there, but they have sent none here. They could issue an exequatur under their arrangement with Great Britain for consuls to reside in their country, but they could send neither consuls nor ministers to the United States. They were hampered.

Let us begin to draw the parallel a little. Here is the rich island of Cuba, with mines of iron in it that are more valuable to the United States and to Cuba than the diamond mines and the gold mines which are found in the Orange Free State or in the Transvaal, and whose agricultural productions are of almost immeasurable and inconceivable value. The time has passed in which there was a transmission of authority from Spain to the United States of some kind or other in regard to the island of Cuba, and in that period of time the Government of the United States has exercised control over Cuba, and our control has been as authentic and very much of the same character as that which the British Government exercised, or undertook to exercise, over the Transvaal.

Now comes the question in dispute, the right of the Cuban people to govern that land according to their own pleasure. We propose to them that they shall put themselves in relations to the Government of the United States very similar to those that exist between the Transvaal and the Orange Free State and Great Britain. Suppose those relations are adopted, suppose that we assume a protectorate over the island of Cuba, or become suzerain over the island of Cuba, have we not a perfect right, Mr. President, to anticipate, and must we not anticipate and expect that in the further development of that island in its mines, in its forests, in the valuable productions of its agriculture, its lands, the same class of questions will arise between the United States and Cuba as have arisen between the Transvaal and Great Britain?

We invite it; we provide for it. We shut our eyes to the lessons of the most recent history of the whole world, and the most disastrous, and we deliberately enter upon a proposition here by which we shall become suzerain over Cuba. What else is it? We say to them in the first branch of this proposition:

> That the government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain by colonization or for military or naval purposes or otherwise lodgment in or control over any portion of said island.

Suppose, after we have imposed these obligations upon Cuba, she does not comply with them, where is your remedy? War, nothing but war—a renewal of the Transvaal struggle. If Cuba should undertake, after she has entered into that engagement, to shake off the fetters imposed upon her by that article, we manacle her by this proposition, if she accept it, and then we ask her forever to be still; but in the history and course of nature men will not keep still when they are goaded by chains like these. The least of all we have the right to expect is that the Cubans will keep still.

Mr. President, I want to call the attention of the Senate very briefly to the question whether or not we have got the power on our side to enter into a protectorate—for that is a protectorate or a suzerainty—I want to know whether the Government of the United States has got the constitutional power to become the protector of any foreign country? While that question makes no impression upon this Senate, Mr. President, it will arise necessarily. It is one of the most formidable questions that can possibly be suggested, not in respect to Cuba alone, but also in respect of the Philippines. Have we a right, for instance, in the Philippines to relinquish our actual title and drop down to a protectorate?

There is one view of the question which has been very much insisted upon by certain gentlemen in this body—have we a right in the case of Cuba to establish a protectorate? We have no right to establish any State, I care not what it may be, except a State that has a republican form of government. It is very true that by the treaty that was made by one of our military officers we have assumed a certain jurisdiction over the sultan of the Sulu Islands, at the southern extremity of that archipelago. It is equally true that under our authority in the Constitution we make treaties with the Indian tribes. We have assumed authority over them by treaty; some of those tribes, like the Seminoles, being polygamists and also slaveholders, and many of the tribes being addicted to polygamy, and not only addicted to polygamy, but recognizing it distinctly as a law of their tribal government.

So that I do not count those instances as bearing upon us at all, because they are based upon the idea that subject or Indian tribes in this country under our Constitution may be treated with, not because they are sovereign or foreign powers, but simply because they are subject powers or subject organizations. But I am speaking now of the power of recognizing a State, whether it is in the Union or out of the Union. Can we go abroad, for instance, and accept a suzerainty or a protectorate over a foreign monarch? I put it in that view. There is no power in this Constitution to do that, Mr. President, because the Government of the United States can not extend its powers into or over any government that is not republican in form. That is enough to say about that view of the question.

We can not go to any island of the Pacific Ocean, or any other place in the world, neither could we go to China, where we are now with armies and ships hovering about the border, and with the consent of all the civilized powers in the world, including those who have got armies there, we could not accept a protectorate over China. If we had as much physical power as you please to do it, as much inducement as you could imagine for doing it, the question arises, Is it possible that the Government of the United States can accept and exercise a protectorate over an oligarchy or an autocracy in China, retaining that Government in the same fashion as it is now as an autocratic monarchy?

I think, Mr. President, that the answer to that question is at once felt and seen by every person to whom it is stated. There is no answer necessary to a question of that kind. It is not within the powers of the United States to hold the relation of protectorate toward any government, at least that is not republican in form, for our Constitution and our laws are totally at variance with all governments that are monarchic or autocratic; and so our Constitution can not enter such a country, and our laws can not enter there; and that would shut us off from the power to create and carry on the suzerainty in such a country.

Neither can we create a suzerainty or a protectorate over any country, whether republican or otherwise, that is not within the limits of the territory of the United States. We have had offers of that kind from republics. Honduras has made such offers to us, and in a very famous case Haiti has done it; but yet we have refused to accept the annexation of those States, and we have never been called upon to accept a protectorate over them, because everybody knew that we could not and would not do it.

When we go to creating a government independent of us in Cuba, and then to exercising a protectorate or a suzerainty over that government, we simply step outside the lines of constitutional power that this Government possesses, whether in the diplomatic, executive, or legislative branch.

There are, then, two reasons why this proposition should not be submitted. One is that Cuba would never accept it; the other is that the Government of the United States as a government has no right to offer it—two sufficient reasons, in my judgment.

The amendment proceeds:

II.

That said government shall not assume or contract any public debt to pay the interest upon which and to make reasonable sinking-fund provision for the ultimate discharge of which the ordinary revenues of the island, after defraying the current expenses of government, shall be inadequate.

If we have a positive agreement between the island of Cuba and the United States Government, and if Cuba chooses to violate it by creating some debt that runs over the margin of its limit, or if, disregarding it absolutely, she goes along like a free government, making the engagements that she must make suited to her necessities, what is the penalty you impose upon Cuba in this case? What are you going to do with her if, after having made the engagement, she is unable to comply with it and live, or is unwilling to comply with it? Do we not foresee that no government that has a pretension to or expectation of sovereignty will ever consent to enter into such a stipulation as that?

Mr. President, we must not act toward the government and people of Cuba as if we supposed they were children. We must at least assume that they have intelligence enough to take care of themselves when we propose to give them autonomy, and yet that second branch of this amendment assumes everthing else but that. We can not expect Cuba to accept it, and what is the use of putting it in this act, and putting it here as a part of an ultimatum, when it is perfectly obvious that Cuba can not accept it consistently with her own dignity as a free government, as an independent power?

Again, the amendment provides:

III.

That the government of Cuba consents that the United States may exercise the right to intervene—

What is meant by intervening? It means to send troops and ships of war into that country—

for the preservation of Cuban independence.

That means to draw us into any war that Cuba may force herself into with any foreign power, for any war that Cuba might get into with any foreign power of any magnitude whatever would necessarily involve her independence. The result of that war would be that the foreign power would either be defeated, or, if successful, conquer and annex or conquer and appropriate the island of Cuba.

Is not that perfectly manifest? If we intervene with an idea for the prevention of that, how do we intervene? We do it with armies and navies, and we are bound here by a stipulation that we will make war on any power that makes war against Cuba if that power has the ability, or the supposed ability, at last to conquer Cuba and to make intervention necessary for the preservation of her independence. That comes to us. I do not see that I would be willing at this time to make an engagement of this solemn character with Cuba, by which we are obliged to intervene in her wars whenever a war that is made against her would threaten her independence.

How easy it would be for the ruling authorities in Cuba to involve themselves in a war, and thereupon call upon the United States and say, "If you do not come to our support, we will be obliged to yield our independence," and then we have got to go to war with some foreign country to fight, not merely for the independence of Cuba, but to fight in order to preserve her rights and her relations toward the United States. I would not give to any power which exists in this world a compact or a treaty right to draw this Government into her quarrels under such conditions and circumstances. It is an unwise thing to do; it is a dangerous thing to do.

We have a right also under this amendment to intervene for—

the maintenance of a government adequate for the protection of life, property, and individual liberty.

Whose right, whose property, and whose individual liberty? That means, of course, of the people of Cuba.

Suppose that some case occurs down there in which we might suppose that the government was not adequate to the preservation of life, property, and individual liberty, either through the corruption of its authorities or for the want of enough police power or strength to enforce the decrees of its courts or tribunals, then we have the right to intervene; and not merely the right, Mr. President, but when such rights are connected with life, liberty, and the preservation of property it is our duty to intervene, and we have got the privilege of intervening.

Thus we may be drawn into the actual administration of the internal affairs of Cuba, to ascertain from time to time whether her government is adequate to the maintenance of life, liberty, and property in Cuba. Here we are with that kind of a protectorate over the people of Cuba against the government—the people against the government. We say to the people of Cuba, "You are not adequately protected by this government and can not be; and therefore we will intervene under the arrangement we have made with Cuba, in which we have got the right to and it has become a duty on our part to intervene." Then we also have a right to intervene—

for discharging the obligations with respect to Cuba imposed by the treaty of Paris on the United States.

We recognize obligations there as continuing; we recognize in that phraseology that there is no period of time that terminates our obligations toward Cuba so long as we retain suzerain power or the protectorate power that is conferred under this and other articles of this proposition, for we have the right to intervene with respect to Cuba to discharge all the obligations to Cuba imposed by the treaty of Paris on the United States, and that is an unlimited obligation in point of time; it is not terminated at the time that we give up to Cuba the right to this so-called independent and autonomous government.

IV.

That all acts of the United States in Cuba during its military occupancy thereof are ratified and validated, and all lawful rights acquired thereunder shall be maintained and protected.

That is clearly right. There is no question about that.

V.

That the government of Cuba will execute, and as far as necessary extend, the plans already devised, or other plans to be mutually agreed upon, for the sanitation of the cities of the island.

The difficulty in that is that we do not know how we are going to enforce the obligation after she has consented to it. We have not prescribed what sanitation is, and what is effective sanitation; and if Cuba does not apply proper rules as to sanitation she will lose her independence. What are we going to do with it? I am afraid that in any event and under all the circumstances presented in this amendment to the bill we are about to become the owners of a white elephant that we do not know how to control or get rid of. It is extremely dangerous legislation in any aspect of it.

VI.

That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

Mr. President, that is giving away the Isle of Pines to Cuba if she can beat us in a negotiation for it hereafter, when this treaty gives us as clear a title to the Isle of Pines as it does to Porto Rico or the Philippines:

Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

That follows the first article of the treaty, in which it is said:

Spain relinquishes all claim of sovereignty over and title to Cuba.

And she also—

cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.

What can be plainer than that, this being an island under Spanish dominion and authority in the Caribbean Sea, or in the group of islands in the West Indies, that it was passed by this treaty to us without a recognition of one particle of title of Cuba to the Isle of Pines? Why should we palter with this subject when dealing with Cuba, and say to her that we will relinquish to you the title that we have acquired from Spain to the Isle of Pines? Did the Isle of Pines ever belong to Cuba? Never. Cuba never owned any territory outside of her own insular boundaries. She was neither sovereign nor suzerain over any part of the islands in that West India group of islands. She was herself but a province of Spain.

Some time before the last war occurred the Spanish Government had changed its relations to Cuba, and had decreed that she was one of the provinces of the Peninsula, not geographically, but politically, and she had her right to representation in the Cortes accordingly, but she had her separate captain-general, who was not a captain-general of Cuba or of Cuban authority, but a captain-general of Spain assigned to command in Cuba. That was all. He might have included the Isle of Pines or of Porto Rico, for that matter, or any other Spanish islands in his jurisdiction without changing the political or geographical relations between the Isle of Pines and the island of Cuba.

They were both under the Spanish Government, and the Isle of Pines received no part of its government from or through Cuba. All her rights came directly from Spain. We are entitled to that island beyond all question, and why do we put in here this proposition to negotiate with Cuba, after a government is established there, about the ownership of the Isle of Pines? There is no reason for it, you know, except one of these boastful contentions of the Spaniards, or the Cubans, or the Spanish people in Cuba, that they intended to have the Isle of Pines; that it was a necesary part of the geography of Cuba, necessary for her protection and her defense against foreign enemies.

When a suggestion was made, as we were informed by the newspapers, in the Cuban constitutional convention that perhaps the

United States might assert some title under the Paris treaty to the Isle of Pines, there was a general flutter of the cocks all over the main, crowing and carrying on, swearing and insisting that they intended to have that island. That was a mere bluster, a mere idle boast, and we ought not to pay any respect to it. If we want to treat with these people so as to have results, we had better not set out by giving an admission of this sort in their favor, where we have got a perfect title, and trying to settle it by some future negotiations. I oppose that.

The Isle of Pines, as I am informed, is a fruitful island, well inhabited. It was used by the Spanish Government as a penal colony during the time that Spain had the dominion of it. It has a most admirable harbor, deep and well protected, and it lies nearer to Jamaica and nearer to Santa Lucia, and as near to the passage between the island of Cuba and Haiti as Habana. It is in a very commanding position with respect to all future rights that we may have in a canal through the Isthmus of Darien, whether it is in Nicaragua or Costa Rica or elsewhere. It is a very important military possession for the United States, which, above all things else, we ought not to put in question by yielding it as a subject of negotiation when our title under the treaty is absolutely perfect.

I would not vote for any measure that contained that provision in it, for I would feel that I had given away a very important part of the acquisitions from Spain in doing such a thing as that.

VII.

That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points, to be agreed upon with the President of the United States.

There we transfer the power of diplomacy and negotiation to the President. We here abandon the legislative function of prescribing an ultimatum, and we say, in respect of this particular matter found in the seventh proposition, "We leave that to you and the President to negotiate as to whether it shall be a lease or whether it shall be a sale outright, carrying a title," and not naming the ports or points or the number of them to which we are entitled or would be entitled under the agreement. But "lands necessary for coaling or naval stations" means two at least. It does not mean three. It does not mean four. We can not have naval stations on the island of Cuba that are of any real advantage to us unless they command the entrances or the passageways between that island at either end and the countries that are opposite over the sea. What we want with naval stations at Cuba is to guard the entrance into the Caribbean Sea. We have San Juan. I hope we will get St. Thomas, the Danish possession. It is quite easy, if we choose, to get Samoa, in Haiti.

We ought by all means to acquire a naval station at the easternmost end of the island of Cuba, and we ought to swing around to the west and have one at the westernmost end of the island of Cuba to cover that deep-water passage that all the ships must pass through between that and Yucatan. There is where we need these places. But we need more than two. We need one on the north coast to cooperate with our naval stations and our fortifications at the Dry Tortugas and at Key West. The possession of the Isle of Pines makes unnecessary, or, at least, not very important, that we should have the Bay of Santiago de Cuba. What we have there would probably stand as a substitute for such possessions or such rights as we might want to get in either of the ports I have mentioned; but while we are fixing up for this business, what are we doing it for?

What is our purpose? Why do we want any naval stations in the Gulf of Mexico or in the Caribbean Sea. I can suggest a reason why we want them. It comes from a Government that is wiser than we are, from men who certainly are wiser than I am, for reasons which have materialized in the fortifications from Nova Scotia around to Honduras, in the possession of the British Government, and have been in their possession since the first ordination of our Government here, and upon which they have spent millions and millions of money. For what purpose? Not to protect Great Britain, not to keep our vessels from approaching her coast, but to guard our coasts so that she shall have the shortest lines from her naval stations to every important city in the United States—the picket post of Great Britain that looks right down into the heart of the United States on the Atlantic.

Now, if we shall acquire these ports there, commencing with two or three in Cuba, one in Haiti, one in St. Thomas, to be added to the one we now have at San Juan, we will have a string of fortifications, including the Dry Tortugas and Key West, which will prohibit Great Britain from assuming and holding the absolute military control of the Caribbean Sea, and when we have done that she will lose her interest in the subject and be willing to abandon her fortifications at any place, at least north of that line.

Mr. President, we have not made any acquisition in connection with this whole war that is more important to us than the Isle of Pines, and it is impossible for us, considering our own national defense, to permit Cuba to escape from the situation she is now in and rise to the dignity and power of a free, sovereign, and independent republic until she has stipulated with us as to at least two, perhaps three, perhaps four places which we shall have the right to control, so that we can use them for purposes of national self-defense. We ought not to quibble with this subject and leave so material a matter as that open to a discussion and to a diplomatic controversy with Cuba after she has risen to the dignity of a sovereign power through our assistance.

It must be remembered, on our side of the question, that the republic of Cuba was as prostrate as any people or any person who pretended to be an organized community had ever been in all the history of time. Weyler had persecuted those people with starvation until they had died by hundreds of thousands and until it is said now that you can scarcely find a child who was born in the period of the Spanish struggle. Their mothers were destroyed or else population was interrupted by starvation. The horrors of that period I do not wish to recite. They are very disagreeable to any man, but certainly extremely disagreeable to those of us who had to deal with them while they were in existence.

Look back at the history of the people of Cuba from which we have delivered them. We began with them in the abject extremity of want and desperate disease, and we have raised them and raised them and raised them by our charity, by our benevolence administered through Government agencies, by our laws, by our moral and actual military and legal influence, until now it is said that the island of Cuba is covered with wealth newly sprung from her soil. We see that this convention, met in Cuba, has set itself up as the arbiter of the destiny of the United States, instead of being willing to accept from the United States a fair share of the benevolence that we have bestowed upon them.

Do I imagine that there is any man in the world who has a higher grade of the opportunity of liberty than have I, a citizen of the State of Alabama, in the American Union? If we were to conceive of a higher political status than that, where would we go to find it? Why is not a position of that kind quite sufficient for the security of the life, the liberty, the property, and the pride even of a Spanish hidalgo? Who is it that outclasses an American citizen in his political rights and privileges? And for these men to stand and spurn and with contumely to deride that, the idea of being associated with Americans in an American Union, is something that invokes simply the pity of mankind. That is all. We know what we are doing, and we know that if we could confer those blessings upon that people we would confer the last and the utmost of all the privileges that have ever been conferred by any government in the world upon a people.

So I have very little patience with the kind of obstruction and objection that arises out of the thought that a temporary or, if you please, a perpetual independent government of the people of Cuba, as they are called (a most queer admixture of people after all), is to them or to the world a matter of more consequence than that they should be in, of, and with the Government of the United States, whether as States or Territories. The people of our Territories have as many rights as the people of the States, except that they do not have the trouble of being harassed with Presidential elections.

That by way of further assurance the government of Cuba will embody the foregoing provisions in a permanent treaty with the United States.

What is a permanent treaty? One that can not be broken, or one simply that has the continuity of moral obligation attending it? That is all.

I wish to say to the honorable Senate that I have communications from the officials of Cuba, dating way to February 16, 1899, which show their disposition toward the United State Government as clearly as those people do now, and practically in the same line, and that they are absolutely irreconcilable to the United States unless we would withdraw from the island of Cuba all sovereignty and all suzerainty. If the Senate has doubt about this, at some appropriate time—it may not be during this debate—I will present to it in a secret legislative session what I do not choose to publish to the world, not because there is any ban of confidence about it, but because I do not wish to ever inform our people of the sentiment in the breast of those people.

How do these official papers happen to exist between a Senator of the United States and a Cuban committee? I had been the friend of Cuba during all the struggle of her warfare, and was known as such. I had not had any correspondence with any Cuban whatever. I had a personal acquaintance with only a very few of them. After the struggle was over and the treaty of Paris had been made, in February, 1899, General Garcia, who fought most splendidly along with our troops at Santiago de Cuba, a prominent and splendid officer belonging to the Cuban republic, came here in company with about 20 of the leading men of that island, sent as a committee to the President of the United States for the purpose of making some arrangement with him in respect of the plans and theories upon which the future of Cuba was to be administered and conducted.

When they got to the city of Washington, of which I knew nothing until their arrival, except that the newspapers informed us that they were coming, they did me the honor to write me a note asking me to appear before them at the Hotel Raleigh, intimating in their note that they wanted a conference with me about Cuban affairs.

I instantly took warning from that, and I determined that what I had to say to them should be in writing and not otherwise. I determined also that I would neither see the President nor the Secretary of State nor anybody else to ascertain from them any information whatever about their views in regard to Cuba, because I expected them to try to get information from me, and I intended to be entirely free.

I went to those gentlemen two days after their invitation reached me. I notified them when I would appear, and there they all were, including General Garcia and several gentlemen who are members of the present Cuban convention, and very important members. Mr. Quesada was one, Mr. Sanguilly was another, and there were various others. They were men magnificently educated and in every respect gentlemen; high-toned, splendid people. I was struck with admiration that the island of Cuba could produce a committee of that kind. Where did they come from? They came from a convention which met in the island of Cuba, which was a part of and an advisory body to the Cuban republic, and had been all the time. They came with instructions from that convention to hold their intercourse with the President of the United States.

When I came before them, as I said, what I had to say was in writing, in sixteen propositions, not propositions for settlement, but propositions defining what I believed to be the relations between the United States and Cuba. I can read these propositions without reading the answers, and I think I will do it if the Senate will permit me. They are not long. Immediately after these propositions had been submitted to them in open council and taken under advisement by them for three or four days and replied to by them, I sent the original propositions and the original reply to the Secretary of State to inform him of the actual feeling, opinion, belief, and attitude of this great committee of Cubans; and the Secretary of State wrote me a letter thanking me for having done so.

Since that time I have never mentioned the matter to mortal man, but I have had the papers here to note what changes, if any, have taken place in Cuban sentiment, and there were none. We deceive ourselves when we suppose that we are going to meet in Cuba a set of men who are not bent and determined on having their own way about that government. I think it is my duty to caution the Senate about this business; and in order that you may see the scope of what happened between us, without reading what they had to say, I will read what I said to them. I left the paper in their possession:

1. Congress expressly refused to recognize the existence of any government in Cuba except that of the Spanish monarchy. This refusal included the Cuban republic and the autonomist government.

2. Congress declared war against Spain to avenge the destruction of the *Maine* and for wrongs done to our people and the insult to our flag while it was in Habana Harbor by invitation.

3. In this declaration there was an ultimatum, which, if it was accepted, would have prevented active hostilities. That condition was that Spain should withdraw from Cuba and abandon her claim of sovereignty over the island of Cuba.

4. Spain refused and resented this condition and declared that a state of war existed.

5. This situation made all the people of Spain, including those of Spain and Cuba, national enemies of the United States. No exception was made by Congress as to the supporters of the republic. This was refused by voting down an amendment to that effect—

I offered the amendment which was voted down. The members thanked me for it—

6. But Congress denounced the treatment of the Cubans in arms, by the Spanish army and Government, as being inhuman and contrary to the laws of nations—

7. Congress failed to act on the Senate resolutions that declared the belligerent rights of the Cuban republic, thus leaving its supporters in the attitude of insurrectionists against the authority of the Crown. This was the actual and legal situation when the war commenced and when it ended.

8. But Congress, in its declaration of war, declared that the people of Cuba are, and of right ought to be, free and independent.

9. That declaration is good and is binding in morals upon the United States, but it is not an agreement with anybody, nor is it a decree or a law—

Right there they took sharp issue with me—

It remains to be executed by the United States in such manner and at such time as the competent authority in the United States shall provide.

It will be so executed.

10. In executing this self-imposed policy and duty the initial step is, necessarily, the restoration of peace and industry in the island, and for this purpose, chiefly, the Army of the United States will occupy Cuba, as the supreme military power.

11. Until this has been accomplished, and until a permanent civil government has been established in Cuba, or its establishment is assured, the military power of the United States can not be withdrawn, and the civil powers in Cuba, as well as any military organizations will be subordinate to the military power of the United States. Its flag, supported by its arms, will represent sovereign power and authority in Cuba, and civil sovereignty will be in suspense. This sovereignty will be accorded to the people of Cuba when they have established a permanent government, republican in form.

Until that event the military control of the island and the civil administration will remain in the government of the island.

12. The method of procedure on the part of the United States to bring about this result will be left largely, if not exclusively, to the President, as Commander in Chief of the Army of the United States, as Congress can not enact laws to govern Cuba until the full sovereignty of the island has been assumed by the United States.

13. Congress can enact laws, if it is necessary, to empower the President to enlist Cubans in the Army or to organize them into police forces, and can provide for their supply and payment.

The President, in my opinion, now possesses that authority. Peace between Spain and the United States does not establish peace in Cuba, if there are organizations there that refuse to accept the military authority of the United States as being supreme throughout the island. Nor does it establish the condition of peace in Cuba until civil government has been established, which is the only form of government that can be recognized as sovereign by the nations of the earth. All purely military government is provisional.

14. If these views are correct, the first duty of the United States and of every inhabitant of Cuba is to establish peace, order, and industry in the island, and then to establish just and permanent civil government.

15. This should be done, and can only be done, upon the initiative of the supreme military authority in Cuba, while it remains in power, addressed to the people through such agencies or organizations as it may select.

16. The selection of these preliminary agencies or organizations should be made with reference to the sincere and free expression of the will of all the people of Cuba, for it is all the people, and not a part of them, whom Congress has recognized as being entitled to become "free, sovereign, and independent."

I withhold the answers that these gentlemen made to these propositions, to some of which they most seriously disagreed. I learned from that transaction with these very important men of Cuba that we are handling edged tools in this business, and we are not to expect, however much it might be desired, a pacific and proper-minded submission, I will call it, to what is the actual situation and to what would be an indescribable blessing to those people, who have much of my confidence and respect and a large share in my affections. But I do not want to put the Government of the United States in contact with a magazine that a match might set off and impose upon us the necessity of controlling by arms.

When you had your Army organization bill before this body, I offered an amendment that authorized the President of the United States to enlist volunteers and to carry them to Cuba in the event that an emergency arose. You rejected it. You would have nothing to do with it. I would have been perfectly willing and was desirous that we should provide in that act for an additional army of 25,000 men at least, and in doing that we should have admonished Cuba, as well as the rebels in the Philippines, that the Government of the United States intended to go on its course of absolute but unimpeded justice.

Mr. President, I will speak for myself alone; but if I wanted to reconcile the Cubans to the Government of the United States my first proposition would be absolute free trade between the United States and Cuba. My second proposition would be immediately to recognize their independence without any other proposition at all, and leave them to see whether they could fight their way out. I believe that the Government of the United States, standing as it does in its relation to Cuba, will never be wanting in power or determination to take care of her own interest, but I believe what I recommend now would almost necessarily result in a picnic down there of throat cutting, which would very much convince those people that the best way to become free is to have respect for the liberties and rights of each other.

I have stated only what I believe to be the correct policy in Cuba, and I do not oppose these resolutions upon that policy so announced, for they all work in harmony with it; but if I was going to say what the result of the working out of this programme here would be, granting that it can get through without too serious friction, it would be the same that I desire for Cuba—absolute free trade between the people of Cuba and the people of the United States and a government there which would last long enough to satisfy those people that the best home for liberty, after all, is in the United States.

I have said now all that I desire to say at this time and probably at any time at all upon this bill. I can not express my thanks to the Senate for their kind attention to what I have been saying, with three Republican Senators in the Chamber at a time; but I have tried to do my duty in this business, and only that; and if I have uttered any language in this discussion that is expletive or superfluous, it has been in some unguarded moment, for I have not desired to occupy the time of this body except simply long enough to present my objections against this measure, and both wings of it, as embraced in these amendments. If I were to make the very last invocation in the world to the Senate, it would be, gentlemen, abandon these amendments and let us pass the Army bill.

MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE CLARKE.

Mr. GALLINGER. Mr. President, I ask that the Chair lay before the Senate resolutions from the House of Representatives upon the death of my late colleague, Mr. CLARKE.

The PRESIDING OFFICER (Mr. HANSBROUGH in the chair). The Chair lays before the Senate the resolutions of the House of Representatives, which will be read.

The Secretary read the resolutions, as follows:

IN THE HOUSE OF REPRESENTATIVES, *February 23, 1901.*

Resolved, That the House has heard with profound sorrow the announcement of the death of Hon. FRANK G. CLARKE, late a member of the House of Representatives from the State of New Hampshire.

Resolved, That the business of the House be now suspended that opportunity may now be given for paying fitting tribute to his memory.

Resolved, That the Clerk communicate these resolutions to the Senate and transmit a copy of the same to the family of the deceased.

Resolved, That as an additional mark of respect the House, at the conclusion of the memorial exercises of the day, do adjourn.

Mr. GALLINGER. Mr. President, I offer the resolutions which I send to the desk.

The PRESIDING OFFICER. The Secretary will read the resolutions.

The Secretary read the resolutions, as follows:

Resolved, That the Senate has heard with profound sorrow the announcement of the death of Hon. FRANK G. CLARKE, late a Representative from the State of New Hampshire.

Resolved, That the business of the Senate be now suspended, in order that fitting tribute be paid to his memory.

Resolved, That as an additional mark of respect the Senate, at the conclusion of these ceremonies, do take its recess until 8 o'clock this evening.

Mr. GALLINGER. Mr. President, on Wednesday, January 9, FRANK G. CLARKE, Representative in Congress from the Second Congressional district of New Hampshire, died at his home in Peterboro after a brief illness. His death came as a great shock to the community in which he lived, to his friends in all parts of the State, and to his Congressional associates, by whom he was highly respected and deservedly honored. Congressman CLARKE was not a man of strong physique, but he was active, energetic, and self-reliant, and no one who knew him was prepared for the sad news of his death when the end so suddenly came.

With a fatal disease firmly fastened on him he entered the Presidential campaign with vigor, making many addresses in different parts of the State, and when the campaign closed he quietly went to work organizing his forces as a candidate for United States Senator. While thus engaged his health completely gave way, and, after vainly struggling for a short time against the malady, he gracefully withdrew from the Senatorial contest and bravely met death, after a struggle marked by true heroism and wonderful calmness. He had selected the very day he died for a journey to the capitol to look after his Senatorial interests, but instead he entered on a journey the length and nature of which is beyond human knowledge or calculation.

Mr. CLARKE was born in the town of Wilton, N. H., September 10, 1850. He was the son of Moses Clarke, who survives him. His early education was received in the public schools of his native town, after which he attended Kimball Union Academy, at Meriden, N. H., there fitting himself to enter Dartmouth College, from which he graduated with honor. After his college course was completed he studied law, and in his twenty-fifth year entered upon the practice of his profession in the town of Peterboro, being associated with the late Albert S. Scott. His genial manners, kindly disposition, and ability as a lawyer drew clients to him, and soon his practice became large and lucrative. He was both a safe counselor and an able advocate, and the success that he achieved in his profession was but a fulfillment of the promise that his school and college days gave.

He early took an interest in political affairs, and became the acknowledged leader of his party in the town of Peterboro. In 1885 he was elected to the State legislature, after having served two years as a colonel on the staff of Governor Hale. In the legislature he was associated with many able men, and by common consent he was early accorded a place in the front rank. He engaged in many warm debates and gained a reputation for forensic ability of a high order, winning many laurels in the hot debates of that year.

In 1889 he was again called from his professional duties to represent his district in the State senate, where he greatly added to the reputation already achieved. In 1891 he was again selected to represent his town in the State legislature, and was honored with an election to the speakership of that body, in which position he won unstinted praise for his impartiality and ability as a presiding officer.

Continuing active in politics, he was made the nominee of his party for Congress in 1896, being elected by a flattering majority, and in 1898 he was given a reelection. In the House of Representatives Colonel CLARKE won many friends.

His cordial manner and genial disposition made him a favorite, and his witty sayings and amusing stories will long be remembered by his Congressional associates. He was fond of society, while at the same time devoted to his family; and among men he was universally recognized as a true friend, a pleasant companion, and a generous, honorable, high-minded gentleman. His death removes from the State an honored son and public servant, whose memory will long be cherished, and whose good deeds will not be forgotten.

Mr. President, on these occasions the mind naturally turns to the contemplation of divine things, and especially are we led to meditate upon the great question of immortality. For our friend life's work has ended. What of the future?

At a dinner given to Victor Hugo in Paris many years ago that great man delivered an impromptu address in which he gave expression to his faith in the Infinite and in the soul's immortality. It is one of the most remarkable utterances on the subject that ever fell from mortal lips. His friend Houssaye, who was present, describes the scene in these words:

Hugo at that time was a man of steel, with no sign of old age about him, but with all the agility, the suppleness, the ease, and grace of his best years.

He was contradicting the atheists, and his friend further says:

His face was bright with the heavenly halo, and his eyes shone like burning coals.

"There are no occult forces," he said, "there are only luminous forces. Occult force is chaos; the luminous force is God. Man is an infinite little copy of God. This is glory enough for man. I am a man, an invisible atom, a drop in the ocean, a grain of sand on the shore. Little as I am, I feel the God in me, because I can also bring forth out of my chaos. I make books, which are creations. I feel in myself that future life. I am like a forest which has been more than once cut down; the new shoots are stronger and livelier than ever.

"I am rising, I know, toward the sky. The sunshine is on my head. The earth gives me its generous sap, but heaven lights me with the reflection of unknown worlds. You say the soul is nothing but the result of bodily powers. Why, then, is my soul more luminous when my bodily powers begin to fail? Winter is on my head and eternal spring is in my heart. I breathe at this hour the fragrance of the lilacs, the violets, and the roses as at twenty years ago. The nearer I approach the end the plainer I hear around me the immortal symphonies of the worlds which invite me.

"It is marvelous, yet simple. It is a fairy tale, and it is historic. For half a century I have been writing my thoughts in prose and verse, history, philosophy, drama, romance, tradition, satire, ode, and song. I have tried all, but I feel I have not said a thousandth part of what is in me. When I go down to the grave I can say, like many others, I have finished my day's work, but I can not say I have finished my life. My days will begin again the next morning. The tomb is not a blind alley; it is a thoroughfare. It closes on the twilight to open on the dawn."

Has ever human language more clearly expressed the thought that comes to us always as we contemplate the mysteries of death and the grave? To every human soul sorrow and death must come. The sunlight is ours, so also is the darkness, and as Hallock has said, "If we never had nights we could never see the stars."

When the sun withdraws its light,
Lo! the stars of God are there;
Present host, unseen till night—
Matchless, countless, silent, fair.

It has well been said that we are passing toward final rest, and that we should not regret it if the eyes grow dim, for we will see better by and by. If the ear is heavy we need not be sorry. If youth is passing and beauty fading, we need not mourn. If the hand trembles and the foot is unsteady with age, let us not be depressed in spirit. With every impediment, with every sign of the taking down of this tabernacle we should remember that it is the striking of the tent that the march may begin, and that when the tabernacle is next pitched it will be on an undisturbed shore, and that there, with eyes unwet, and before a God unveiled and never to be wrapped in darkness, that there, looking back upon this world of ignorance and suffering and trouble, and upon the hardships of the way, we can with full and discerning reason lift up our voices and give thanks to God and say: "There was not one trouble too much; there was not one sorrow too piercing." And we will thank God in that land for the very things that wrung tears from our eyes in this.

Such is our hope and aspiration, and that is the message that we would to-day convey to the hearts of the family and friends of our dead associate and brother.

We all instinctively shrink from death, yet why should we? The physician knows that death brings a feeling of unutterable relief and joy to the poor, burdened, suffering body. Herman Merivale has painted a beautiful picture of what death really is in these lines:

Miscall me not. Men have miscalled me much,
Have given hard names and harsher thoughts to me,
Reviled and evilly treated me,
Built me strange temples as an unknown god,
Then called me idol, devil, unclean thing,
And to rude insult bowed my godhead down.
Miscall me not, for men have marred my form
And in the earthborn grossness of their thoughts
Have coldly modeled me of their own clay,
Then fear to look on that themselves have made.
Miscall me not. Ye know not what I am,
But ye shall see me face to face and know.
I take all sorrows from the sorrowful
And teach the joyful what it is to joy.
I gather in my landlocked harbor's clasp
The shattered vessels of a vexed world,
And even the tiniest ripple upon life
Is to that calm sublime as tropic storm.
When other leechcraft fails the breaking brain,
I only own the anodyne to still
Its eddies to visionless repose.
The face distorted with life's latest pang,
I smooth in passing with an angel's wing,
And from beneath the quiet eyelids steal
The hidden glory of the eyes to give
A new and nobler beauty to the rest.
Believe me not. The plagues that walk the earth,
The wasting pain, the sudden agony,
Famine and war and pestilence and all
The terrors that have darkened round my name,
These are the works of life; they are not mine;
Vex when I tarry, vanish when I come,
Instantly melting into perfect peace
As at His word whose master spirit I am
The troubled waters slept on Galilee.
Tender I am, not cruel. When I take

The shape most hard to human eyes and pluck
The little baby blossom yet unblown,
'Tis but to graft it on a kindlier stem,
And leaping o'er the perilous years of growth,
Unwept of sorrow and unscathed of wrong,
Clothe it at once with rich maturity.
'Tis I that give a soul to memory,
For round the follies of the bad I throw
The mantle of a kind forgetfulness,
But canonized in dear love's calendar
I sanctify the good for evermore.
Miscall me not. My generous fullness lends
Home to the homeless, to the friendless friends,
To the starved babe the mother's tender breast,
Wealth to the poor, and to the restless rest.

And so, Mr. President, to-day we choose to think of our friend as being free from the cares, labors, and disappointments of this life in a better and more peaceful world than this. He acted well his part here, and his reward will be commensurate with his good deeds and his generous, kindly, helpful life on earth. We deeply realize our loss, and tenderly and reverently place on his tomb a garland of appreciative and tender remembrance.

Mr. CLAY. Mr. President, it has been an unbroken custom when one of the members of either branch of Congress has deceased to lay aside the intense work of official life to recall his virtues and to pay our tribute of respect to his memory. It is well to sometimes forget the intense everyday work of the life we live and turn our thoughts to the life beyond. Life and death are the most significant words in our language. We are often more deeply concerned about the life we live, the success we achieve while living, than we are about death, the life beyond the grave. Life and death and their issues are of such transcendent importance it is well to lay aside the affairs of state, where there is so much of strife and contention, that we may think upon not only what we are, but what we are to be when our work is finished here. We sit to-day in the presence of the voiceless mystery of death.

Hon. FRANK G. CLARKE, a member of the House of Representatives from the Second Congressional district of the State of New Hampshire, and a few days ago vigorous in life, radiant in hope, and strong in courage, has joined the silent army of the dead. He was at the time of his death in the meridian of his life. He died at the early age of 50, and was respected, honored, and loved by the people of his State. I can not speak of the distinguished dead from the standpoint of a close and intimate personal friendship. I, however, knew him as a member of Congress, and that he was recognized as an able, conscientious, industrious, and painstaking member.

He enjoyed to a high degree the respect and confidence of the people of his State, and had been honored by his own people. He had received honors at the hands of his own people to a degree which it is the privilege of few men to enjoy. He represented a progressive, intelligent, patriotic, liberty-loving constituency. In every way he demonstrated his fitness for the high position which he filled. He was faithful to his trust and his official life makes a record of which his State may well be proud. The deceased had been a member of both branches of the legislature of New Hampshire and enjoyed to a remarkable degree the esteem and confidence of his fellow members, and this fact is borne out by the history of his public services, for he was elevated to the position of speaker of the house of representatives during his second term as a member of that body and discharged the duties of that position with conspicuous ability and such impartiality as to give entire satisfaction to both political parties.

The history of the public life of the deceased points unerringly to the conclusion that he was a man of eminent ability, a useful legislator, and a wise and safe counselor. This was the estimate placed upon his character by the people of his own State. He served as a member of Governor Hale's staff with the rank of colonel in 1883, and in 1885 was elected a member of the house of representatives of his State. We are told by those who were familiar with his public life that he immediately forged to the front and won many laurels in the hotly contested debates of the year. In 1889 following he was again called into political prominence by an election to the State senate. Two years later he was again elected a member of the house of representatives of his State and was chosen speaker by a handsome majority in the Republican caucus. This was a high honor which few public men enjoy.

His public life, however, did not end with his service to his State. He was elected a member of Congress from the Second Congressional district of New Hampshire, and reelected in 1898, and his term of office would have expired March 4, 1901, and at the time of his last illness he was a prominent candidate for the high office of United States Senator. This field of eulogy, probably, belongs to the distinguished Senators from his own State, and I merely mention the public positions he held to show that he possessed the esteem and confidence of the people of New Hampshire, where he was born, lived, and died.

These facts, Mr. President, bear testimony that the deceased was no ordinary man. I know that no man can be honored by a State like New Hampshire with the positions of trust held by the deceased who is not deserving, able, and strong, and who has not earned in some way the confidence of the people whom he represents. We know that the best traditions and instincts of the Anglo-Saxon race long ago took deep root in New England. The people of New Hampshire have made for themselves a character for honesty and intelligence; and a certificate of election from the people of that great State is the highest evidence of the integrity, ability, and fidelity of their public officials.

He left behind him a character of inestimable value to his beloved wife and daughter and to the people of his State. He was regarded as a useful, intelligent, and painstaking legislator. As a private citizen his life was without reproach, and he was universally esteemed by those who knew him well as a member of Congress. To have won the political success which he achieved and to have enjoyed the confidence of the people among whom he lived as he did evidences the purity of his life.

A distinguished Senator, who knew him well and who enjoyed his close and intimate friendship, said to me that Mr. CLARKE was a lawyer of ability, faithful in the discharge of his duty to his clients, one in whose judgment they could trust implicitly; that he was a kind and affectionate father and devoted husband, a good neighbor, and a private citizen who met and discharged faithfully all the duties of good citizenship, and that he was a public official of the highest integrity, working unceasingly for the upbuilding of his country. He was loyal and devoted to the best interests of his own great State. What more can be said of the life of any man? He knew his duty and did it well. His work is ended, and, as the passing years move on, the influence he has left behind him will live to bless his memory. An exemplary life of strong integrity, of sterling honor, and of sincere devotion to the cause of justice, and marked with a high degree of interest in the welfare of others, properly and correctly sums up his life. Such a life needs no eulogy, and such a life marks the career of our departed friend.

Mr. President, has that life which so impresses itself upon others ended? We are taught that no man lives for himself and that no true man lives entirely in himself but also lives in the lives of others with whom he associates and upon whom he impresses his own character. Faith and reason convinces us that such a life is not ended. We hope, we believe, and in the light of revelation we feel, we know that the mortal life which was so developed and rounded out here has now begun its period of immortal development and growth.

The able lawyer, the faithful, practical, efficient legislator, the modest, unassuming, dignified private citizen has preceded us across the river, but he has left a monument builded by himself—the spotless record of a pure, dignified, useful public and private life.

Mr. HEITFELD. Mr. President, my acquaintance with Hon. FRANK G. CLARKE dates back to the extra session of the Fifty-fifth Congress. We first met as members of the funeral party which accompanied the remains of the late Isham G. Harris to their last resting place at Memphis, Tenn.

Who would have thought at that time that after only three years we would be called upon to visit the old Granite State on a like sad mission, and that FRANK CLARKE would be the one we were to mourn?

Mr. CLARKE was a quiet and unassuming man, sincere and honest in all his dealings with his associates. Others may have attained greater reputations and greater fame, but there are few who have left behind a better and a purer name. He was faithful and true to his position, ever looking after the interests of his constituency and his State, always at his post of duty, never tiring when it came to serving those who had honored him with the high office he held.

In the modest biographical sketch inserted in the Congressional Directory we find that he had served his native State in various official positions, and the positions he was honored with are evidence of the confidence his fellow-citizens had in him.

Mr. President, the esteem in which a man is held at his own home is generally a criterion of his true worth, and while paying the last, sad tribute to our friend I observed that his friends and neighbors fully realized what a loss the death of their Representative was to them. After the services at the quaint old church in his home town a great many of the residents took a last parting glance at his remains. There were men and women of all classes, from every station in life, and their faces expressed the sadness that was in their hearts. Truly the old proverb "A prophet is not without honor save in his own country" had no application in this case, especially when we take into consideration the fact that he lived and died within a very short distance from where he was born.

Mr. President, our departed friend did not live man's appointed time. The time given him fell far short of the allotted three score and ten years. He was cut off in the midst of his usefulness, but those who remain have the satisfaction to know that the time which was given him was used to good purpose and that the world is better for his having lived in it.

Mr. President, we laid him among the rugged, snow-covered hills of old New Hampshire. He sleeps surrounded by the stately pines and firs of that picturesque old State. He is gone, but with those who knew him best his memory will live for years to come.

Mr. KEAN. Mr. President, among the granite hills of New Hampshire the late Representative CLARKE was born September 10, 1850. He died January 9, 1901. He is said to have been a self-made man, though little is here known of his early career. His education was received at the schools in Wilton, his native town, and he was afterwards graduated from Dartmouth College, where he was held in high esteem by his classmates and college associates. He was admitted to the bar in 1876, and by his ability, high character, and great energy became a leader in his profession.

The people of his section showed their regard for him by repeatedly sending him to the house of representatives of his State and afterwards to the State senate. While a member of the State house of representatives that body showed its appreciation of his ability by electing him speaker, and he presided over its three hundred and fifty-odd members with impartiality, ability, and promptness, demonstrating his fitness for the discharge of the duties of the position the people of his district had intrusted to him.

He was elected to Congress in 1896, and served with ability in the Fifty-fifth Congress, and was again elected to serve in the Fifty-sixth. Such is a brief outline of the life of the late Representative FRANK G. CLARKE, to whose memory we, in connection with his colleagues in the House and the people of New Hampshire, to-day pay tribute.

As one of the thirteen original States, New Hampshire was the ninth to adopt the Constitution. She came into this Union intending to stay and to develop this nation and make the Union what it is to-day. When necessity arose, it was a son of New Hampshire, Daniel Webster, the great expounder and defender of the Constitution, who made it possible for the Union to survive.

Among her other distinguished sons I recall to mind Franklin Pierce, Levi Woodbury, and John P. Hale. Perhaps some of them, like the great Webster, were inclined in their course to yield and to compromise on the then great subject before the country; but every year that a conflict was put off the union of the States was being more thoroughly knit together, and so, if they were wrong then, we think them right now.

New Hampshire has been fortunate in her distinguished sons as representatives in the Senate and House in former years, and none the less fortunate to-day. May she in the future occupy the same position that she has held in the past.

Mr. DEPEW. Mr. President, I think it is a happy custom, a sad one, and yet a suggestive one, that both Houses of Congress lay aside public duties for a brief hour when one of their number has died, for the purpose of paying tribute to his memory.

The rewards of public life are very evanescent; the applause for those who are active in it is very rare, but it is a gratification that there will be placed in the minutes of the two Houses a record of the public service of the departed member, and in the printed proceedings of the two Houses the tributes to his memory by his associates.

There is another and deeper significance to these ceremonials which is of special moment to those of us who are in active life, and especially in public life, and that is the uncertainty of our career.

We are here to-day; we are gone to-morrow. The milestones which we pass to-day are behind us. Therefore we learn the lesson of the folly of not gathering by the way as we go along all that there is of infinite variety which is offered to every man in the course of his career. I deem that man to have led a foolish life who has not gone out of his own occupation in which he is engaged to enlarge his understanding and to broaden his horizon. We see constantly around us men who might contribute much to the pleasure and instruction of their fellow-men who do nothing toward either.

The career of our departed friend is an illustration of the best view of American life, from the fact that he did have the courage to break away from his profession and enter the public service, to enlarge and broaden his vision, and to be something more than the mere accumulator of this world's goods. I have found in my experience that the one question which is constantly coming through the mails and in the press is how to succeed. It seems to press more urgently at present than at any period in our history; but what is success is a broader and a more interesting question. We measure the standards of success by the ideals of any period. Find out what may be the ideals of a people or a country, and then you can judge with reasonable accuracy whether that country is to advance or retrograde.

We look over our own history and find that the ideals have changed several times since the day when George Washington was inaugurated President of the United States. For his generation the ideals before the youth were Washington, Jefferson, Hamilton, Adams, and their compatriots. It was a high standard of public duty, to which everything else must be surrendered. We come to the next period, and then the ideals were Webster, Clay, and Calhoun; to be distinguished in the profession of the law, and then to win equal distinction in Congress, in the Cabinet, with the ultimate aim of the Presidency. We come down to the period of the civil war, and then the ideal of the country, whether on the Union or on the Confederate side, was to risk life in the charge, in the imminent deadly breach, or at the cannon's mouth, in order that there might be won the stars which signify the reward of a grateful country.

After the civil war our industrial development has been so rapid and fortunes have accumulated so fast that the ideals of to-day seem to be purely material. Anywhere in the press, in our travels, in the social circle, we do not find that there is admiration for great achievements in statesmanship or in letters or in arms, but almost worship for those masters of the industrial problems of the day who have solved them for the accumulation of fortunes for themselves beyond the dreams of avarice and incomes beyond the revenues of kingdoms and republics.

I deem it unfortunate that the country should in its schools and colleges have abandoned its old ideals and surrendered to these sordid propositions. We respect the masterful men who can create great enterprises and in them accumulate fortunes. It is a duty to secure independence and make provision for our families. But I trust that there may be a turn in the public sentiment, so that our youth will look upon those who have won distinction by their brains and their contribution to the information and the happiness of mankind as having contributed the larger measure to the best interests of their country.

Environment goes a great way in the make-up of a public man or a man in private station. I believe in the influence of heredity, not only of ancestry, but of the great examples in the lives of the distinguished citizens of ones State and country. We see what this accomplishes illustrated in the fact that in New England there is still a high ideal of public life. There the rewards of public life are coveted by her sons regardless of the sacrifice of material interests. We recognize that the New England Representatives are trained and able, and inspired by a long line of statesmen, and have a power in the councils of our Government wholly disproportionate to the territory from which they come. With only about one-fifteenth of the population of the United States, New England is to be reckoned with in every measure which passes either House and in every policy which is to be adopted by any party.

It was the good fortune of the member to whose memory we to-day pay tribute that he lived in New England and that he was a product of the Puritanism of New Hampshire. The Puritanism of New Hampshire has been little invaded in modern times except in the broadening and the liberalization which puts it abreast with the spirit of the age without losing anything of the force, the energy, and the purity which made the Puritan Commonwealth and from it so much of the Republic in which we live to-day. The impress of Dartmouth College and its traditions, the impress of the inviolability of charters against the encroachment upon vested rights which came in the Dartmouth College case, the inheritance of Daniel Webster, of Jeremiah Mason, of Levi Woodbury have been felt in every school in New Hampshire and by every man in the public and private life of the Commonwealth.

I remember as if it was yesterday one of the first impressions which I received of what a grand idea uttered by a great man can be in the possibility of its moving a nation to wonderful deeds. It was a speech upon the anti-slavery side of that question from a statesman of New Hampshire, a great advocate of liberty and a strong factor in the results in which we all rejoice, Senator John P. Hale.

Now, Mr. President, we have in that life which has passed away a proof of what can be accomplished by grasping opportunities for the enjoyment of this world. This is a bright, beautiful, happy world in which we live. It is full of pleasures of every kind and of the best kind. Its accidents and its misfortunes are simply incentives to energy, to activity, and to achievement.

To have been born in a little village in a mountain State, to have educated one's self in liberal learning and acquired a profession, and then to have won distinction in it, and then, in this day when we are grasping at materialism as the only element of success, to have had the courage to accept the call of his fellow-citizens to serve them in the legislature and in Congress, shows just that quality of mind and just that result of heredity which makes a great man, a good citizen, and a valuable contribution to the best side of American life.

Mr. CLARKE whose career is commemorated here to-day and whose many virtues have been stated by the Senator from New Hampshire [Mr. GALLINGER] and will be stated again by the other Senator from New Hampshire [Mr. CHANDLER] seems to me to have made what we all wish to leave behind us, the record of a good citizen, father, and husband, the record of a wise and an able legislator, of a man who in every sphere in which he was did his best for his State, his country, and his kind, a record of which his family, State, and country may well be proud.

Mr. THURSTON. Mr. President, I have no set words in which to express my thoughts on this occasion. I knew the deceased member of the House but slightly, and my greater knowledge of his character comes to me from what I know of his public career.

Mr. CLARKE was a New Englander, born of New England parentage, inheriting the New England characteristics. It has been said that New England is rock bound, that it is a land of mountains, that its reluctant soil yielded to the early pioneers but scant livelihood. Yet, Mr. President, New England has furnished one product that has done much to make this country what it is to-day. It has given to the nation character of the first quality and of the highest type.

Ever since the Puritans landed on the shores of the New World and set up the standard of religious tolerance on this side the sea the New England character has been foremost in everything that tends to the progress and civilization and advancement of the people of the United States. Their orators, their soldiers, their statesmen, their preachers, have all done and said much to elevate and strengthen and secure the highest standard of American excellence. Their sons, born in the shadow of the eternal hills, have gone out into every settlement and every hamlet of the country, and have in a large measure became leaders of men, molders of public affairs. To-day in the Congress and Senate of the United States the New England representation is not alone from New Hampshire, or Vermont, or Maine, or Massachusetts, or Rhode Island, or Connecticut, but there are more New England born men representing other States in the two branches of Congress than there are from east of the Hudson River.

Mr. President, Mr. FRANK G. CLARKE grew up in his boyhood home. His life from the beginning to the end was witnessed by his neighbors. A man who grows up among those who have known him from childhood to distinction, yea, to greatness, to political preferment, to popular indorsement, must be a good man. Some men in the turmoil incident to a newer civilization may succeed in public affairs, not on their merits, but by various efforts and processes not altogether creditable; but no man can grow up in New England in the place of his birth, with his daily life open to the eyes of his youthful associates, of his friends and neighbors, and acquire great distinction without being a good man.

So the deceased was a good man, as his record testifies; a good husband, a good father, a good neighbor, a good citizen, a good representative of his people. He must have been a man of great natural ability to have succeeded as he did in this New England community and this New England State.

The New England people are all able; they are all educated; they have a high standard of excellence. No man grows in public esteem unless he possesses far more than the ordinary amount of natural ability.

Mr. CLARKE succeeded as a lawyer. He succeeded among environments which made it necessary for success that he should devote himself to his chosen profession. A lawyer to win distinction at the bar amid such surroundings must be a student; he must be in earnest. He must make constant effort. He must be the careful adviser and the skillful advocate, for in a rural community there is not the division of practice in the several branches of the law that we find in the great cities of the country, where our professional brethren become specialists.

He must have been an able man, for early in life he came to represent his people in the legislature of his State. He came to be speaker of the house of representatives, a great body of men, between three and four hundred in number, drawn from the people of the whole State. A house of that character could not select for its presiding officer an unworthy or a weak man. In smaller legislative bodies political combinations might prevail, but in an assemblage of that kind it must be true that Mr. CLARKE was selected speaker because of his peculiar ability for the position. So when he was elected by the people of his State to represent them in the National Congress it must have been because of his high qualifications, because of his ability to clearly present and secure consideration for the important interests of his State and of New England.

How powerful New England has been in the Congress of the United States! She has been powerful in every avenue of American development, but most powerful of all in the Congress of the United States; and it must be because of two things. The New England people select men on their merits to represent them in Congress. They are chosen for their ability and honesty and integrity and patriotism and popular qualities. And when New England once places a man in Congress or the Senate of the United States she does not make it necessary for him to devote a large part of his time and energy to secure a renomination or reelection. His tenure of office under the customs and usages of New England has been made to a reasonable extent secure, and the people he represents see to it that he is not disturbed or put aside as long as he serves them faithfully.

Mr. President, I am of the New England people, and I love that section of the country. I have seen how strong the New England influence has been in the settlement of the great West. I have noticed how powerful have been the efforts, how successful the work of the New England pioneers who have gone into the West and have pushed backward the barrier of the wilderness and made way for the civilization and development of our country.

New England is to-day what she always was. She represents the best thought, the highest purpose, the most patriotic endeavor of the American people. The man whose memory we mourn was one of her chosen representatives, bearing her certificate of greatness, devoting himself to her interests, holding her confidence, and to-day he is mourned by all those whom he represented in the Congress of the United States.

Mr. President, I do not mourn in the presence of death. When I stand by an open grave, I do not look down, but up. I do not give myself over to sad memories, but to glorious hopes. For after all, this life is but the beginning of the infinite life beyond. The human soul has protested since the beginning of time against the idea of a finite existence. God wrote in a legible hand upon the tablets of human consciousness the assurance of eternal life. So I do not mourn for him who is dead. His family will miss him and mourn him. His State will miss him and mourn him. The body in which he occupied so distinguished a place will miss him and mourn him.

But, Mr. President, his work is but just begun. He has been thus suddenly summoned from his sphere of usefulness for some wise purpose. We do not understand, but we believe—

> God keeps a niche in heaven for our idols,
> And though He break them to our sight
> And deny that our soft kisses shall impair their white,
> Yet I know that we shall see them again,
> The dust swept from their faces, glorified,
> Singing in the great God-light.

Mr. CHANDLER. Mr. President, in the southwest portion of New Hampshire, on the Massachusetts border, stands the solitary mountain Monadnock. Its summit is barren granite rock, but its lower sides are encompassed by balmy forests and verdant fields, by attractive rural villages, and by charming summer residences. From its base flows the river Contoocook, which runs north and east until it reaches the Merrimac near Penacook, in Concord, at the spot were lies the island renowned by the fierce vengeance and heroic escape from the Indians of Hannah Dustin.

Near the sources of the Contoocook is the thriving manufacturing town of Peterboro, where our late associate, Representative FRANK G. CLARKE, made his home, and not far away is the prosperous town of Wilton, where he was born on September 10, 1850. He lived, he died. Behold the sum. His life was not a strange, eventful history, yet it was the complete life of a New England gentleman. Educated in his own State, at the noted Meriden Academy and our beloved Dartmouth College, he entered upon his law studies well grounded in the essentials of general learning. His career was principally that of a lawyer, and the pursuit of his chosen avocation required great acuteness of mind, constant devotion, and strenuous labor.

New Hampshire has never adopted a code of laws, and its legal proceedings are governed by the principles of the common law as modified by a few carefully drawn statutes and by the occasional edicts of adventurous judges. Mr. CLARKE stood high in his profession, and leaves a record as a lawyer and advocate with which those who knew him and loved him may well be more than satisfied. Necessarily, all such lawyers in our State take some part in local government. Mr. CLARKE served in the house of representatives in 1885, in the State senate in 1889, and was again a member of the house in 1891 and became its speaker. It is no light honor to be called upon to preside over a New Hampshire house. Its members have always numbered between three and four hundred, and impartiality combined with graciousness, firmness manifested with tact, are qualities necessary to success as speaker, and these traits Mr. CLARKE showed in ample measure.

In 1897 he came to Congress, was reelected for a second term, that of the Fifty-sixth Congress, and died at Peterboro on January 9, 1901. Those of us who were called to attend his funeral aided in laying him to sleep surrounded by the midwinter snows of his earthly home and returned to our duties in this Capitol with kind thoughts and tender words concerning our comrade whom we had known and loved and for a time had lost.

It is now my privilege, having known Mr. CLARKE during his whole life, to speak of his character truthfully and without exaggeration of his merits, because of my sweet memories of our personal relations. He had superior intellectual powers, and was a master of his profession of the law. He was a rhetorician of no inferior rank, and as an orator was instructive, argumentative, humorous, and pathetic by turns, with a pleasing voice and clear and attractive utterance. On special occasions and at political meetings he demonstrated his ability and influence as an orator

whom his State will place in the front rank of her eloquent speakers of the present generation.

But I love best to think of him as a friend of genial and gentle manners. To his wife and daughter, to his brethren of the bar, to his Masonic associates, to his political comrades, to the Senators and Representatives who knew him, he was ever cheerful, courteous, and kind. No one ever disliked to see him approach; everyone instantly rejoiced to see him coming; and there can be no truer test than this of the affection which is borne toward an acquaintance. His death brought to me a great and subduing shock. His tendency to the ailment of which he died had never been known to me. He was a candidate for United States Senator, with a support sufficient to make him hopeful, and he looked forward with interest and inspiration to the canvass before the legislature.

During the first week he could not come to Concord, but he did not doubt that he should be there on the second week, before the nomination, which was to take place on January 10. I received a letter from him dated January 3 saying he should come and join in the friendly contest with high hope and confident expectation. But on Sunday, the 6th, his doctors forbade him to move, and he wrote a letter of withdrawal on the 7th. It seems that only a determined mind had sustained him so long against the failing powers of his body. He died on the 9th; and on the 12th we, his friends, saddened and softened by this startling illustration of the fact that always in the midst of life we are in death, all of us—including the victor and all the vanquished in the worldly contest—bowed sorrowfully over his mortal frame as it was carried to its resting place.

Mr. President, these oft-recurring ceremonies in the Senate, which are tributes to the memories of our departed comrades in both Houses, make deep impression upon me.

Coming here in December, 1887, there entered with me only 5 new Senators. Fourteen years later, when I go out on the 4th of March, 1901, there will be left but 16 Senators who have been here longer than myself. Retirement and death have done their work, and the new men are here to control the action of the Senate according to their judgment and will.

It is with me an interesting question what should be the age for retirement from active participation in the affairs of government. Mr. Lecky, in The Map of Life, expresses very decided views. "In the case of men who have played a great part in public affairs, the best work is nearly always done before old age. It is a remarkable fact that although a senate, by its very derivation, means an assembly of old men, and although in the Senate of Rome, which was the greatest of all, the members sat for life, there was a special law providing that no Senator, after 60, should be summoned to attend his duty." This fact is asserted by Mr. Lecky on the authority of Seneca, de Brevitate Vitae, cap. 20. A search for the original authority leads to the conclusion that the limitation of age mentioned by Seneca was not 60, but 65.

Mr. Lecky proceeds: "In the past centuries active septuagenarian statesmen were very rare, and in parliamentary life almost unknown. In our century there have been brilliant exceptions, but in most cases it will be found that the true glory of these statesmen rests on what they had done before old age, and sometimes the undue prolongation of their active lives has been a grave misfortune, not only to their own reputations, but also to the nations they influenced. Often, indeed, while faculties diminish, self-confidence, even in good men, increases.

"Moral and intellectual failings that had been formerly repressed take root and spread, and it is no small blessing that they have but a short time to run their course. In the case of men of great capacities the follies of age are perhaps even more to be feared than the follies of youth. When men have made a great reputation and acquired a great authority, when they become the objects of the flattery of nations, and when they can, with little trouble or thought or study, attract universal attention, a new set of temptations begins. Their heads are apt to be turned. The feeling of responsibility grows weaker; the old judgment, caution, deliberation, self-restraint, and timidity disappear.

"Obstinacy and prejudice strengthen, while at the same time the force of the reasoning will diminishes. Sometimes, through a failing that is partly intellectual, but partly also moral, they almost wholly lose the power of realizing or recognizing new conditions, discoveries, and necessities. They view with jealousy the rise of new reputations and of younger men, and the well-earned authority of an old man becomes the most formidable obstacle to improvement. In the field of politics, in the field of science, and in the field of military organization these truths might be abundantly illustrated. In the case of great but maleficent genius the shortness of life is a priceless blessing. Few greater curses could be imagined for the human race than the prolongation for centuries of the life of Napoleon."

Mr. Lecky reenforces his argument thus: "We are here, however, dealing with great labors and with men who are filling a great place in the world's strife. The decay of faculty and will that impairs power in these cases is often perceptible long before there is any real decay in the powers that are needed for ordinary business or for the full enjoyment of life. But the time comes when children have grown into maturity and when it becomes desirable that a younger generation should take the government of the world, should inherit its wealth, its power, its dignities, its many means of influence and enjoyment; and this can not be fully done till the older generation is laid to rest."

Yet his sketch is not one of old age, wholly gloomy. He says: "Often, indeed, old age, when it is free from grave infirmities and from great trials and privations, is the most honored, the most tranquil, and perhaps on the whole the happiest period of life. The struggles, passions, and ambitions of other days have passed. The mellowing touch of time has allayed animosities, subdued old asperities of character, given a larger and more tolerant judgment, cured the morbid sensitiveness that most embitters life. The old man's mind is stored with the memories of a well-filled and honorable life.

"In the long leisures that now fall to his lot he is often enabled to resume projects which in a crowded professional life he had been obliged to adjourn. He finds, as Adam Smith has said, that one of the greatest pleasures in life is reverting in old age to the studies of youth, and he himself often feels something of the thrill of a second youth in his sympathy with the children who are around him. It is the St. Martin's summer, lighting with a pale but beautiful gleam the brief November day." Again, however, he recurs to his saddening picture: "But the time must come when all the alternatives of life are sad, and the least sad is a speedy and painless end. When the eye has ceased to see and the ear to hear, when the mind has failed, and all the friends of youth are gone, and the old man's life becomes a burden, not only to himself, but to those about him, it is far better that he should quit the scene. If a natural clinging to life or a natural shrinking from death prevents him from clearly realizing this, it is at least fully seen by all others."

Nor, indeed, does this love of life, in most cases of extreme old age, greatly persist. Few things are sadder than to see the young, or those in mature life, seeking, according to the current phrase, to find means of "killing time." But in extreme old age, when the power of work, the power of reading, the pleasures of society, have gone, this phrase acquires a new significance. As Madame de Staël has beautifully said, "On dépose fleur à fleur la couronne de la vie." An apathy steals over every faculty, and rest, unbroken rest, becomes the chief desire. I remember a touching epitaph in a German churchyard: "I will arise, O Christ, when Thou callest me; but oh! let me rest a while, for I am very weary."

Mr. President, here again is repeated the idea of rest in the grave. While it is true that this idea of rest is the prevailing one when sad and weary mortals meditate concerning the future state, yet reason teaches us that if we are immortal we are, after resting awhile, to be called to new activities and we are to arise when called. Alternate rest and movement are the rule for us in this life; rest alone will not be the rule of the next.

The true and complete idea is that after rest will come renewed labor and service. We shall be laborers in our new homes among the stars. If it is not to be so, life is a mockery and all the experiences of life are useless. Existence is given for the formation of character with which to engage in the activities of the coming hereafter; and the only encouragement for good thoughts, good words, and good deeds in this world comes from the conviction that they fit us for active happiness in the world to come.

These are obvious conclusions, but worthy of reiteration and acceptation. For the encouragement of those, whether young or old, who are truly striving for excellence of soul against the adverse influences of this imperfect world, let me read some assertions by high authority that such exertions become happily visible in the outward forms which the spirit temporarily inhabits in this probationary state.

Ralph Waldo Emerson says: "There is no beautifier of complexion or form or behavior like the wish to scatter joy and not pain around us."

John Ruskin wrote: "It is not in words explicable with what divine lines and lights the exercise of godliness and charity will mold and gild the hardest and coldest countenance, neither to what darkness their departure will consign the loveliest. For there is not any virtue the exercise of which, even momentarily, will not impress a new fairness upon the features, neither on them only, but on the whole body the moral and intellectual faculties have operation, for all the movements and gestures, however slight, are different in their modes according to the mind that governs them, and on the gentleness and decision of right feeling follows grace of actions, and, through continuance of this, grace of form."

James Lane Allen, in The Choir Invisible, says of his heroine: "Her beauty had never faded. Nature had fought hard in her for

all things, having prepared her for all things, and to the last youth of her womanhood it burned like an autumn rose, which some morning we may have found on the lawn under a dew that is turning to ice. But when youth was gone, in the following years her face began to reflect the freshness of Easter lilies. For prayer will in time make the human countenance its own divinest altar; years upon years of true thoughts, like ceaseless music shut up within, will vibrate along the nerves of expression until the lines of the living instrument are drawn into correspondence, and the harmony of visible form matches the unheard harmonies of the mind. It was about this time also that there fell upon her hair the earliest rays of that light which is the dawn of the eternal morning."

These may be fancies, but they give us happiness and hope, and they induce us to strive that men may take knowledge of us that we are not wholly of the earth earthy, but are resolutely setting our faces heavenward, ready, first, for the rest, and next for the labors of that world which eye has not yet seen and of which we have but a faint conception, but concerning the glories of which we love to think. Two eloquent writers, in words somewhat alike, picture our future home as beginning with the waves of a heavenly ocean.

Read Mr. Blaine's closing words in memory of President Garfield: "As the end drew near, his early craving for the sea returned. The stately mansion of power had been to him the wearisome hospital of pain, and he begged to be taken from its prison walls, from its oppressive, stifling air, from its homelessness and its hopelessness. Gently, silently, the love of a great people bore the pale sufferer to the longed for healing of the sea, to live or to die, as God should will, within sight of its heaving billows, within sound of its manifold voices.

"With wan, fevered face tenderly lifted to the cooling breeze, he looked out wistfully upon the ocean's changing wonders; on its far sails, whitening in the morning light; on its restless waves, rolling shoreward to break and die beneath the noonday sun; on the red clouds of evening, arching low to the horizon; on the serene and shining pathway of the stars. Let us think that his dying eyes read a mystic meaning which only the rapt and parting soul may know. Let us believe that in the silence of the receding world he heard the great waves breaking on a farther shore, and felt already upon his wasted brow the breath of the eternal morning."

Stopford Brooke sings these notes of heavenly triumph: "When all is over here and the noise and strife of the earthly battle fades upon your dying ear, and you hear instead thereof the deep and musical sound of the ocean of eternity, and see the lights of heaven shining on its waters, still and fair in their radiant rest, your faith will raise the song of conquest."

That conquest will be of immortal life, whether we float upon the waves or linger upon the shores of an eternal ocean, or wander by the streams or climb the slopes in the valleys of delectable mountains, or walk the streets of the golden city—the New Jerusalem—and dwell in the house of many mansions prepared for us by the Saviour of all the souls of men.

Mr. President, I ask for the adoption of the resolutions.

The resolutions were unanimously agreed to; and (at 6 o'clock and 20 minutes p. m.) the Senate took a recess until 8 o'clock p. m.

EVENING SESSION.

The Senate reassembled at 8 o'clock p. m.

HOUSE BILL REFERRED.

The bill (H. R. 13865) relative to the suit instituted for the protection of the interests of the United States in the Potomac River Flats was read twice by its title, and referred to the Committee on the District of Columbia.

ACCOUNTS OF OFFICIALS IN ALASKA.

The PRESIDENT pro tempore laid before the Senate a communication from the Attorney-General, transmitting, in response to a resolution of the 14th instant, a copy of all accounts presented to the Department of Justice by officials of the second judicial division of the district of Alaska during the present fiscal year, etc.; which, with the accompanying papers, was, on motion of Mr. PLATT of Connecticut, referred to the Committee on Territories, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the following joint resolutions; in which it requested the concurrence of the Senate:

A joint resolution (H. J. Res. 249) providing for the publication of the report of the board of management of the United States Government exhibit at the Tennessee Centennial Exposition; and

A joint resolution (H. J. Res. 259) to regulate the distribution of public documents to the Library of Congress for its own use and for international exchange.

The message also announced that the House had passed with an amendment the bill (S. 3205) for the relocation of certain tracks of street railways in the District of Columbia; in which it requested the concurrence of the Senate.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills and joint resolutions; and they were thereupon signed by the President pro tempore:

A bill (S. 76) for the relief of the University of Kansas;

A bill (S. 95) to provide for the refunding of certain moneys illegally assessed and collected in the district of Utah;

A bill (S. 227) for the relief of the Continental Fire Insurance Company and others;

A bill (S. 345) granting a pension to Catherine L. Nixon;

A bill (S. 413) granting a pension to Albert S. Cummings;

A bill (S. 648) granting a pension to Margaret G. White;

A bill (S. 715) granting a pension to Fidillar White, alias William Johnson;

A bill (S. 726) for the relief of Alice Walsh;

A bill (S. 880) for the relief of L. O. Maddux, doing business as Maddux, Hobart & Co.;

A bill (S. 914) granting a pension to Charles L. Summers;

A bill (S. 1017) for the relief of John M. Guyton;

A bill (S. 1065) granting an increase of pension to Bettie Lee Ward;

A bill (S. 1126) for the relief of Mrs. Narcissa G. Short;

A bill (S. 1203) granting an increase of pension to Lewis S. Horsey;

A bill (S. 1212) granting an increase of pension to John W. Canaday;

A bill (S. 1269) granting a pension to Nancy J. Dunaway;

A bill (S. 1293) for the relief of Francisco V. De Coster;

A bill (S. 1365) granting an increase of pension to Lorinda N. Smith;

A bill (S. 1455) granting an increase of pension to Alexander W. Browning;

A bill (S. 1550) granting an increase of pension to Kate Ezekiel;

A bill (S. 1602) granting an increase of pension to Morris B. Kimball;

A bill (S. 1673) to grant an honorable discharge from the military service to Charles H. Hawley;

A bill (S. 1698) granting an increase of pension to Henry Hegwer;

A bill (S. 1722) granting an increase of pension to Bertha Leavey;

A bill (S. 1786) granting an increase of pension to Fielding Marsh;

A bill (S. 1850) granting an increase of pension to James C. Delaney;

A bill (S. 1936) granting a pension to Mamie Craig Lawton;

A bill (S. 2037) granting an increase of pension to George F. Burrage;

A bill (S. 2079) granting a pension to William Ashmead;

A bill (S. 2104) granting an increase of pension to William L. Aten;

A bill (S. 2153) granting an increase of pension to Jesse N. Dawley;

A bill (S. 2163) granting an increase of pension to Franklin Kersting;

A bill (S. 2227) granting an increase of pension to Uriah Clark;

A bill (S. 2232) granting a pension to Frederick Sien;

A bill (S. 2709) granting a pension to Marietta Elizabeth Stanton;

A bill (S. 2738) granting an increase of pension to James M. Munn;

A bill (S. 2785) granting an increase of pension to William H. Gardner;

A bill (S. 2828) granting an increase of pension to Hippolyte Perrault;

A bill (S. 2843) granting an increase of pension to John Johnson;

A bill (S. 2905) granting a pension to George M. Wilson;

A bill (S. 2915) granting an increase of pension to Samuel Z. Murphy;

A bill (S. 3030) granting an increase of pension to Henry Guckes;

A bill (S. 3193) granting an increase of pension to Charles H. Force;

A bill (S. 3280) granting an increase of pension to Henry Keene;

A bill (S. 3339) for the relief of Leonard Wilson;

A bill (S. 3343) granting a pension to Keziah Fansler;

A bill (S. 3386) granting a pension to Catherine L. Taylor;

A bill (S. 3391) granting a pension to John Black;

A bill (S. 3400) granting an increase of pension to Charles T. Shaw;
A bill (S. 3481) to permit certain burials of the dead in the lands of the Protestant Episcopal Cathedral Foundation of the District of Columbia, and for other purposes;
A bill (S. 3482) granting an increase of pension to Elias M. Lynch;
A bill (S. 3483) granting an increase of pension to Jeremiah Jackson;
A bill (S. 3521) granting a pension to William P. Payne;
A bill (S. 3535) for the relief of the Brooklyn Ferry Company of New York;
A bill (S. 3554) for the relief of W. T. Scott and others;
A bill (S. 3580) granting an increase of pension to Theron Johnson;
A bill (S. 3619) granting an increase of pension to Mary A. Colhoun;
A bill (S. 3648) granting a pension to Peter Shelt;
A bill (S. 3653) granting an increase of pension to Henry Smith;
A bill (S. 3746) granting an increase of pension to George W. Bodurtha;
A bill (S. 3935) granting an increase of pension to James Ryan;
A bill (S. 4237) granting a pension to Frances Helen Lewis;
A bill (S. 4531) granting a pension to Harriett S. Richards;
A bill (S. 4542) granting a pension to Jane W. Wood;
A bill (S. 4543) granting an increase of pension to Stacy H. Cogswell;
A bill (S. 4630) granting an increase of pension to James H. Bellinger;
A bill (S. 4692) granting an increase of pension to Asa W. Taylor;
A bill (S. 4695) granting a pension to James Dorcey;
A bill (S. 4728) granting an increase of pension to Marvin V. Tufford;
A bill (S. 4731) granting an increase of pension to Henrietta M. Leiper;
A bill (S. 4734) granting a pension to Mary A. O'Brien;
A bill (S. 4772) granting an increase of pension to John W. Eichelberger;
A bill (S. 4828) granting an increase of pension to Norman Stewart;
A bill (S. 4938) granting an increase of pension to Esther Ann Grills;
A bill (S. 4960) granting a pension to Minerva M. Helmer;
A bill (S. 4985) granting an increase of pension to George C. Jarvis;
A bill (S. 5006) granting an increase of pension to John T. Comegys;
A bill (S. 5007) granting an increase of pension to George N. Tarburton;
A bill (S. 5019) granting an increase of pension to Julia Crenshaw;
A bill (S. 5031) granting an increase of pension to Margaret A. Potts;
A bill (S. 5039) granting an increase of pension to Lucie M. Mabry;
A bill (S. 5050) granting an increase of pension to Charles A. Marsh;
A bill (S. 5074) granting an increase of pension to Sarah F. Bridges;
A bill (S. 5119) granting a pension to Jesse A. Bruner;
A bill (S. 5144) granting an increase of pension to Charles Scott;
A bill (S. 5146) granting an increase of pension to Robert H. Jones;
A bill (S. 5170) granting a pension to Louise Wolcott Knowlton Browne;
A bill (S. 5171) granting an increase of pension to Albert W. Fairchild;
A bill (S. 5172) granting a pension to Elizabeth Baughman;
A bill (S. 5187) granting a pension to Corinne R. Strickland;
A bill (S. 5191) granting an increase of pension to Selah V. Reeve;
A bill (S. 5201) granting a pension to Samuel F. Radford;
A bill (S. 5204) granting an increase of pension to John Scott;
A bill (S. 5233) granting an increase of pension to Philetus M. Axtell;
A bill (S. 5272) granting an increase of pension to Thomas M. Wimer;
A bill (S. 5322) granting an increase of pension to Daniel W. Warren;
A bill (S. 5326) granting a pension to Maggie Alice Brady;
A bill (S. 5363) granting a pension to Lizzie Wattles;
A bill (S. 5369) granting an increase of pension to Edmund Cragg;
A bill (S. 5397) granting a pension to Charity McKenney;
A bill (S. 5400) granting a pension to Martin Dismukes;
A bill (S. 5405) granting an increase of pension to John H. Taylor;
A bill (S. 5409) granting an increase of pension to John W. Philips;
A bill (S. 5428) granting an increase of pension to Charles R. Cole;
A bill (S. 5431) granting an increase of pension to William H. Ball;
A bill (S. 5450) granting an increase of pension to Rachel J. B. Williams;
A bill (S. 5451) granting an increase of pension to Mary M. Hyde;
A bill (S. 5505) granting a pension to Kate M. Scott;
A bill (S. 5506) granting a pension to Mary Fryer, now Gardner;
A bill (S. 5507) granting a pension to Mary Priscilla Allen, now Barry;
A bill (S. 5525) granting an increase of pension to Warren Damon;
A bill (S. 5559) granting an increase of pension to Adolphus Richardson;
A bill (S. 5560) granting an increase of pension to James W. Harden;
A bill (S. 5586) granting an increase of pension to John F. Townsend;
A bill (S. 5622) granting an increase of pension to Georgina M. Mack;
A bill (S. 5675) granting an increase of pension to Mary C. Holmes;
A bill (S. 5681) granting an increase of pension to Merit C. Welsh;
A bill (S. 5726) granting an increase of pension to Zadok S. Howe;
A bill (S. 5857) to extend the time granted to the Muscle Shoals Power Company by an act approved March 3, 1899, within which to commence and complete the work authorized in said act to be done by said company;
A bill (S. 5868) granting an increase of pension to Hubert Bascombe;
A bill (S. 5869) granting an increase of pension to Martin Rodman;
A bill (S. 5925) to revive and amend an act to authorize the Pittsburg and Mansfield Railroad Company to construct and maintain a bridge across the Monongahela River;
A bill (S. 6050) to create the eastern division of the northern Federal judicial district of Georgia, and for other purposes;
A bill (H. R. 1845) granting a pension to William Allen and Isaac Garman;
A bill (H. R. 3784) granting an increase of pension to Linsay C. Jones;
A bill (H. R. 3861) granting an increase of pension to Jesse Millard;
A bill (H. R. 4345) to create a new Federal judicial district in Pennsylvania to be called the middle district;
A bill (H. R. 4718) to regulate the collection and disbursement of moneys arising from leases made by the Seneca Nation of New York Indians, and for other purposes;
A bill (H. R. 8650) granting an increase of pension to William C. Whitney;
A bill (H. R. 9140) providing that entrymen under the homestead laws who have served in the United States Army, Navy, or Marine Corps during the Spanish war or the Philippine insurrection shall have certain service deducted from the time required to perfect title under homestead laws, and for other purposes;
A bill (H. R. 12442) granting an increase of pension to Mary E. Starr;
A bill (H. R. 13049) granting a pension to Elizabeth Fury;
A bill (H. R. 13086) granting an increase of pension to Eunice Henry;
A bill (H. R. 13118) granting a pension Rebecca J. Gray;
A bill (H. R. 13154) granting a pension to Ernestine Lavigne;
A bill (H. R. 13569) granting a pension to the minor children of Henry R. Hinkle;
A bill (H. R. 13951) authorizing Calhoun County, State of Texas, to construct and maintain a free bridge across Lavaca Bay;
A joint resolution (S. R. 159) extending the time within which certain street railroads in the District of Columbia may be constructed; and
A joint resolution (S. R. 157) authorizing the Secretary of the Interior to remove from the files of the Department of the Interior certain letters to be donated to the State of Iowa.

REPORT OF A COMMITTEE.

Mr. GALLINGER, from the Committee on Pensions, to whom was referred the bill (H. R. 3491) granting a pension to Melvina Greenawalt, reported it without amendment, and submitted a report thereon.

AUTOMATIC CAR COUPLERS.

Mr. PETTIGREW. I offer a resolution, which I desire to have read and lie over until to-morrow.

The PRESIDENT pro tempore. The resolution will be read.

The Secretary read as follows:

Resolved, That the Committee on Interstate Commerce be discharged from further consideration of H. R. 10302, an act to amend an act to promote the safety of employees, etc., by requiring common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, etc., approved March 2, 1893, and that the Senate proceed to the consideration of said bill.

Mr. BUTLER. I will say to the Senator from South Dakota that, if I am not greatly mistaken, the bill referred to in the resolution was reported favorably by the committee some time ago.

Mr. PETTIGREW. Yes; but it was recommitted yesterday.

The PRESIDENT pro tempore. The resolution will lie over and be printed.

LIST OF JUDGMENTS.

Mr. HALE submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Attorney-General be directed to transmit to the Senate a list of judgments rendered against the United States by the circuit and district courts of the United States under the provisions of the act to provide for bringing suits against the Government of the United States, approved March 3, 1887, not heretofore reported to Congress.

LIST OF CLAIMS ALLOWED.

Mr. HALE submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the Secretary of the Treasury be, and he is hereby, directed to transmit to the Senate a schedule of all claims allowed by the accounting officers of the Treasury under appropriations the balances of which have been exhausted or carried to the surplus fund, under the provisions of section 5 of the act of June 20, 1874, since the allowance of those heretofore reported to Congress at the present session; also a list of judgments rendered by the Court of Claims not heretofore reported to Congress.

GEORGE WEISEL.

On motion of Mr. KYLE, it was

Ordered, That leave be granted to withdraw from the files of the Senate the papers relating to the application of George Weisel for the correction of his military record, there being no adverse report.

HOUSE BILLS REFERRED.

The following joint resolutions were severally read twice by their titles, and referred to the Committee on Printing:

A joint resolution (H. J. Res. 249) providing for the publication of the report of the board of management of the United States Government exhibit at the Tennessee Centennial Exposition; and

A joint resolution (H. J. Res. 259) to regulate the distribution of public documents to the Library of Congress for its own use and for international exchange.

ARMY APPROPRIATION BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 14017) making appropriations for the support of the Army for the fiscal year ending June 30, 1902.

The PRESIDENT pro tempore. The Chair calls the attention of the Senator from Wisconsin [Mr. SPOONER]. The Senator from Massachusetts [Mr. HOAR] offered an amendment to the pending bill, and asked that it be printed. The Chair understood the chairman of the committee to say that he modified the amendment before the Senate by accepting that amendment.

Mr. SPOONER. I so understood it, Mr. President. I understood the Senator from Massachusetts [Mr. LODGE], the chairman of the Committee on the Philippines, to announce that he accepted the amendment offered by his colleague [Mr. HOAR].

The PRESIDENT pro tempore. If there be no objection, that modification of the amendment will be made to perfect it; and the pending question will be on the amendment offered by the Senator from Missouri [Mr. VEST].

Mr. PLATT of Connecticut. Let that be read.

The PRESIDENT pro tempore. The amendment proposed by the Senator from Missouri will be read.

The SECRETARY. On page 39, at the end of line 15, it is proposed to insert the following:

Provided, That no judgment, order, nor act by any of said officials so appointed shall conflict with the Constitution and laws of the United States.

Mr. HOAR. Mr. President, if I may interrupt, I came in a moment late, and I desire to ask what has been done with the amendment I proposed?

The PRESIDENT pro tempore. The Senator having the bill in charge accepted the amendment offered by the Senator from Massachusetts, and perfected his amendment by so doing.

Mr. HOAR. Very well.

Mr. TELLER. Is the amendment now accepted a part of the amendment?

The PRESIDENT pro tempore. It is a part of the amendment.

Mr. HOAR. Will the Chair be kind enough, if I may ask the indulgence of the Senate so far, to have the amendment read as accepted?

The PRESIDENT pro tempore. The amendment will be read as amended.

Mr. HOAR. I do not desire to have the whole amendment read, but only the part added.

The PRESIDENT pro tempore. That part of the amendment will be read.

The SECRETARY. At the end of the amendment offered by Mr. SPOONER the following has been added:

Provided, That no sale or lease or other disposition of the public lands or the timber thereon or the mining rights therein shall be made: *And provided further*, That no franchise shall be granted which is not approved by the President of the United States and is not in his judgment clearly necessary for the immediate government of the islands and indispensable for the interest of the people thereof, and which can not, without great public mischief, be postponed until the establishment of permanent civil government; and all such franchises shall terminate one year after the establishment of such permanent civil government.

The PRESIDENT pro tempore. The amendment offered by the Senator from Missouri [Mr. VEST] will be read.

Mr. ALLEN. What does the amendment which has just been read amend, Mr. President?

The PRESIDENT pro tempore. It amends what is known as the Philippine amendment.

Mr. ALLEN. Let the whole thing be read.

The PRESIDENT pro tempore. The whole amendment?

Mr. ALLEN. As it will stand with this amendment added.

The PRESIDENT pro tempore. The whole paragraph will be read, at the request of the Senator from Nebraska.

The SECRETARY. On page 39, beginning with line 3, as amended, the amendment reads:

All military, civil, and judicial powers necessary to govern the Philippine Islands acquired from Spain by the treaties concluded at Paris on the 10th day of December, 1898, and at Washington on the 7th day of November, 1900, shall, until otherwise provided by Congress, be vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said islands in the free enjoyment of their liberty, property, and religion: *Provided*, That all franchises granted under the authority hereof shall contain a reservation of the right to alter, amend, or repeal the same.

Until a permanent government shall have been established in said archipelago, full reports shall be made to Congress, on or before the first day of each regular session, of all legislative acts and proceedings of the temporary government instituted under the provisions hereof, and full reports of the acts and doings of said government and as to the condition of the archipelago and its people shall be made to the President, including all information which may be useful to the Congress in providing for a more permanent government: *Provided*, That no sale or lease or other disposition of the public lands or the timber thereon or the mining rights therein shall be made: *And provided further*, That no franchise shall be granted which is not approved by the President of the United States, and is not in his judgment clearly necessary for the immediate government of the islands and indispensable for the interest of the people thereof, and which can not, without great public mischief, be postponed until the establishment of permanent civil government; and all such franchises shall terminate one year after the establishment of such permanent civil government.

Mr. STEWART. Mr. President, I shall not offer an amendment to this bill against the wishes of the committee having it in charge, but there is a subject connected with the government of newly acquired provinces or territories which ought to be deliberately weighed.

An honest judiciary, where men can have their rights maintained, is of the first importance. I speak with over fifty years of experience and observation in new countries, where conditions existed similar to those which must exist in the Philippines.

In California everything was easy except the settlement of land titles. After thirty years of expense and trouble and riot and corruption and bribery and scandal, 8,000,000 acres were confirmed. There was not an adequate judiciary to dispose of the cases to the satisfaction of the people there and to keep order and preserve peace.

In the Territories, where large mining interests exist, the judicial system was an absolute failure. First came the Comstock, out of which $600,000,000 have been produced. The whole of that title was litigated before judges who were sent from the East with salaries of $3,000, to live with their families, where the expenses were at least $10,000; and of course they failed. Scandals grew up; exposures were made; resignations were forced; and particularly was this the case preceding the admission of Nevada into the Union. The reason why the people of the Territory of Nevada consented that it should become a State was that the territorial court was in such a condition and the exposures were of such a character that the whole court was compelled to resign in a single day. The same things occurred, only in a less degree, in the State of Colorado, and the Senator from Colorado [Mr. TELLER], who has had some of these experiences, can speak for himself.

In Cape Nome to-day we have the same thing, and I have the documents here to prove it. There is a worse condition of things there than ever occurred in the Philippines or Cuba under Spanish rule, and those things are now occurring in Cape Nome for the want of a proper judiciary.

Mr. SHOUP. Will the Senator yield to me?

Mr. STEWART. No; I will not yield now. I want to get through with my remarks.

I say if you go to Cape Nome you will find that a worse condition exists there than ever existed in any country under Spanish rule, and it is for the want of taking into account the necessity of an honest and able judiciary that such is the case.

In the Philippines there are vast property interests. Under Spanish rule titles were seldom perfected. There was always something left open for litigation. Everything was litigated in California; so it was in Texas; so it was in Louisiana; and so it was in Florida.

It is well known that when we take possession of a Spanish country everything has to be litigated. So far as the Philippines are concerned, I would have less litigation. I would try to buy out the friar and other mythical titles; I would quiet titles in that way if it can be done, and then dispose of the land to bona fide purchasers; but I shall not discuss that now.

The first thing to be established there ought to be a judiciary. I am satisfied that it is impossible to appoint the members of that judiciary here, with such salaries as we pay, to go into one of these new countries and discharge the obligations required by the office. Many men have gone to such countries with high aspirations to do right, but they have generally failed. The conditions were such that they were not able to acquit themselves satisfactorily.

I had prepared an amendment which I intended to offer, but I do not wish to embarrass this bill and will not offer it. I will, however, ask to have it read, merely as a suggestion as to the organization of a judiciary for the Philippines. I ask the Secretary to read what I send to the desk as a part of my remarks.

The PRESIDENT pro tempore. The Secretary will read as requested.

The Secretary read as follows:

That there shall be a supreme court for the Philippine Islands, consisting of five judges, to be appointed by the President, by and with the advice and consent of the Senate, who shall hold their offices for life, unless sooner removed by the President, with such salaries as the President may find it necessary to secure the services of competent persons, not exceeding $20,000 per annum for each of the associate justices and $25,000 for the person who shall be named for chief justice. Such court shall have appellate jurisdiction of all matters at law and in equity where the amount in controversy exceeds $500, and shall have power to make rules and regulations for the transaction of business in all inferior courts and tribunals in the islands, and for the taking of appeals and writs of error from inferior courts to said supreme court; and the Supreme Court of the United States shall have jurisdiction of appeals and writs of error from the supreme court of said islands of all questions involving the validity of any law of Congress or construction of the Constitution of the United States, and of all other matters where the value of the property in controversy exceeds $20,000. Said supreme court of said islands shall also have power to appoint all judicial officers, marshals, and prosecuting attorneys in the islands, and to remove the same at pleasure. The judicial system hereby authorized shall extend to all districts and places in said islands where peace exists and the orders of the courts can be enforced without resort to military power.

Mr. STEWART. Mr. President, that is a suggestion. I believe if we had such a court in the Philippines, composed of five men, with salaries sufficient to secure the best talent in this country, salaries sufficient to take them from the supreme benches of the States, men of great experience, men who could be relied on to appoint the inferior judges and marshals—if we could have such a court as that, the problem might be worked out. A court of that character would have immediate supervision of the inferior courts. The judges of the inferior courts would not have large salaries. They would be mostly natives.

But to the judges of the supreme court we should offer such a salary as would tempt such a man as the Senator from Nebraska [Mr. ALLEN], for instance, to accept the position and secure his services. That is the kind of men I want. I want to be sure that we are going to secure men equal to him. It would satisfy me very well if we could have that. We do not want such a man as a speculator might put in his pocket and carry out there. I do not think the Senator from Nebraska would fit in such a position, for he is too large, and I do not think he would consent to it. I have seen that too often in the fifty years of my experience; and the troubles that it brings are immeasurable.

If you appoint judges to go to these far-off islands and you have to wait until we try them and bring them back here to get them removed, the amount of harm that you and we might do in the meantime would be incalculable; but if an appellate court on the ground were to appoint the judges of the inferior courts, they would be better acquainted with the qualifications of the men, and if they proved to be unsatisfactory or corrupt, the court could remove them immediately. They could also reform many Spanish methods.

I say with regret that I have not the highest respect for the justice of Spanish methods. It is true they are not as bad as some of our methods have been; but they are bad enough. They have more uncertainty in the administration of justice than we have in some of our Territorial courts, where great interests are involved. There is some irregularity about it; but that the Spanish system is based upon our ideas of justice is untrue. It is not. Some of the Spanish-American countries, however, are working up to it. President Diaz is getting Mexico up to it. He is educating the judges in Mexico up to the idea of deciding cases on their merits. He is a wonderful man; in many respects the most wonderful who has ever been on this hemisphere, and he has done great things for Mexico.

In the Philippines you will find the judges demoralized. You must have native judges, and if you appoint them from here and wait for a report of their unfitness before removing them, everything will be in confusion and the people there will run the gamut of fraud, oppression, anarchy, discord, and riots. If you could but establish justice in the Philippines and let the natives understand that they will have a fair trial of their rights, every good man in the whole archipelago would soon become a friend of the United States.

I am not going to insist that the amendment I have offered be adopted, but I want to make this suggestion, and I want to put myself on record as making a suggestion for a way out of the trouble which seems to me inevitable.

The matter of appointing governors and other officers for Territories, and all that, is a matter about which the Administration can not go far wrong. The governors will be good enough, but the trouble will be to get a court of justice to decide honestly. I have seen that occur too often under our system of appointing judicial officers.

Gentlemen in the best of faith will recommend a lawyer who has not been tried, but is a respectable gentleman, who has never been greatly tempted; a gentleman whom his neighbors recommend as an honest man; and Senators and Members will sign his recommendation, and the President, without knowing anything to the contrary, relying on what they say, will appoint him, when at the same time he may have made an arrangement with some speculator to go out there and make a raid upon the people over whose courts he is to preside. That often happens. Then when you come to bring this man to justice his friends say he has borne a good reputation and you must give him a hearing. While you are giving him a hearing the property of the people is being confiscated. They have rights. They can not wait for a hearing when you have got a bad judge, and the only way is to have a supervision over him in the shape of a superior court present on the ground.

You have got to use native judges in the Philippines. There are 10,000,000 people and a great deal of property there. You will have to give them a judicial system, and you will have to use it; you must have alcaldes and local judges and other officials. If you have nobody to supervise them they will go wrong and you will have great scandals.

We have undertaken to protect life and property and do justice in the Philippines, and we must take the necessary measures to accomplish that object. I know that it may seem to some Senators that a salary of $20,000 or $25,000 is large; but it is not too large for this service when you consider the sacrifices that a man would have to make to go to those island possessions. You will have to take them off the supreme benches of the States—you will have to take the best talent in the country.

You do not need to pay all the judges large salaries. You will have many native judges there whose salaries will be low. The ordinary judges there will be the natives, and it will be cheaper to have them. Men from this country do not understand the native language. They do not understand the great mass of the people. A judge going there under the ordinary arrangements is lost at once.

We must have somebody in those islands who will appoint those judges and see that justice is done. I understand that the Philippine Commission is doing that, but the commission can appoint judges only during the military possession, and the commission can not appoint permanent judges, because it only lasts during the military occupation. You can, however, appoint a supreme court, and you can give the appointing power to that court under the Constitution. The Constitution provides for that, and you can have it legally done.

There is occasion for courts there now. Let your military go on just as it does wherever insurrection is rampant; but where there is peace, courts can be established and can be put in operation. There are many places where the military is not necessary now, and there will be many more before long. The courts can go there, and as fast as the military is withdrawn justice can be administered, and it will be much easier to bring about peace if justice is firmly established. If the people know that with peace comes justice, if they can be sure that they will be protected in their property—and there are a great many property holders in the Philippines—if they can be sure that their rights will be absolutely and scrupulously protected and impartial justice administered, they will be friends of the United States.

In the sense that we understand it, justice has never been enjoyed by the people of the Philippines. They are unacquainted with impartial justice. Let us, then, establish a thorough system of justice, and with such a system great reform will follow. All other great questions of administration will also follow. That is the great problem before us in pacifying those people. Let them know that their rights of property and person are to be protected absolutely and impartially, and they will be our friends. They will know that speculators are not going among them to get their money. We will have no Cape Nome scandals or California land-title scandals, or such scandals as occurred during the Comstock trial. Let them feel that such is to be the case; let them

understand that justice will be secured to them, then you will not have anarchy and you will not have to destroy the people. They do not love injustice.

I should like very much to see justice established in the Philippines. I believe that a court of appellate jurisdiction, with power to appoint all subordinate court officials, with the judges paid a sufficient sum in order to get five of the best men in America, would do more to pacificate the islands and make the inhabitants our friends than 200,000 soldiers. You would not have to kill them if they understood that justice was going to be done. There would be no trouble about that. All people love justice, no matter who they are.

Those who have property want justice in order to have their property protected; and the protection of life and property are the main things that are guaranteed by the Declaration of Independence. The right to life, liberty, and the pursuit of happiness is a great thing, and without a court of justice in the Philippine Islands all of that is denied. You can not secure it at long range. The power to see that justice is done must be lodged near home, and you should give the people a court that the whole United States will have confidence in.

Judge Taft, the head of the Philippine Commission, would be an admirable man for such a place as that. If we would get five such men as he, we might then rest our souls in peace, sure of having justice and of having the Filipinos love this country and of hastening the time when free institutions and liberty would be established in those islands. Nobody can have confidence in the temporary courts that we are appointing there. They are simply military courts. Everybody understands who studies our Constitution that the arrangement in the islands is only temporary, and people do not have confidence in temporary arrangements. They want a pillar of justice so firm and strong that it can not be torn down by anybody. I believe it is in the power of Congress to erect that pillar of justice on so firm a foundation that the world will know that wherever the American flag goes there goes justice.

Are we going to be speculators in the Philippines where we have undertaken to guarantee the rights of liberty, property, law, and order? There are many foreigners interested in that country, in fact, all the world is interested in the Philippine Islands. They will know very quickly whether we carry out our pledge and whether we administer to them justice. If we do, the name of America will be respected everywhere; but if we have repeated there the California scandals, the Comstock scandals, the Cape Nome scandals, then the name of America will be a reproach in every nation on earth, because they are all interested there. I say that the establishment of courts in the islands, which would have supervision and control over the lower courts and would see that justice was done, ought to be the paramount object of all we have in view.

Of course this amendment will not be accepted, because the committee do not want it; they have got another scheme; but I may hereafter bring it in. I do this in simple justice, hoping that the powers that be will reflect seriously upon it and will see the responsibility resting upon us to make sure that justice is done. Having tried to appoint judges here under like conditions and found that they failed to administer justice, finding that justice at long range is not always the most accurate, finding that attempts to act under such circumstances have failed everywhere, we ought not to try it in the Philippine Islands.

We ought to try something else, because the honor of the nation and the good name of every American is involved under the solemn pledge to protect life and property and give these people liberty and a government by law. It seems that we ought to leave no stone unturned to accomplish that grand result. I believe it can only be done by a few brave, strong, learned men, men that can be found in the United States who will set up a court there to preside over the destinies of that country and see to it that the inferior courts do their duty, and if they fail to do their duty, that they are removed.

Let that be done, and the inauguration of a new era will begin in the Philippine Islands. The people there have been under Spanish rule for more than three hundred years, and justice is unknown to them. It is only the Anglo-Saxon race that has a conception of justice as we understand it. Let us first plant the foundations of justice srtong and deep there, and the tree of liberty will grow and flourish.

Mr. BACON. Will the Senator from Nevada permit me to ask him a question?

Mr. STEWART. Certainly.

Mr. BACON. I understood the Senator from Nevada to say imperial courts.

Mr. STEWART. I am not a blasphemer. I do not trifle with a thing of that kind.

Mr. BACON. I understood the Senator to use that word.

Mr. STEWART. The Senator knows I did not use it at all. I do not belong to that criticising, harping class of men. I speak of it as imperial. Oh, pshaw!

Mr. BACON. If I am wrong——

Mr. STEWART. The Senator is wrong; he never has been right.

Mr. BACON. I will say that if the Senator did not use the word imperial not only I but those sitting around me understood him to use it.

Several SENATORS. "Inferior."

Mr. BACON. Oh, "inferior."

STREET RAILWAY TRACKS.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 3205) for the relocation of certain tracks of street railways in the District of Columbia, which was to strike out all after the enacting clause and insert:

That whenever the Bunker Hill road or Wisconsin avenue is improved by the Commissioners of the District of Columbia, the said Commissioners are authorized to permit the street railroad tracks upon said highways to be located in the middle of the roadway, should such location be considered for the best interests of the public.

Mr. MCMILLAN. I move that the Senate concur in the amendment of the House of Representatives.

The motion was agreed to.

THEATER LICENSES IN THE DISTRICT OF COLUMBIA.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the joint resolution (S. R. 163) regulating licenses to proprietors of theaters in the District of Columbia, which was to strike out all after the enacting clause and insert:

That any license issued by the assessor of the District of Columbia to the proprietor of a theater or other public place of amusement in the District of Columbia may be terminated by the Commissioners of the District of Columbia whenever it shall appear to them that, after due notice, the person holding such license shall have failed to comply with such regulations as may be prescribed by the said Commissioners for the public decency.

Mr. MCMILLAN. I move that the Senate concur in the amendment of the House of Representatives.

The motion was agreed to.

SPANISH WAR CLAIMS.

Mr. FORAKER. I ask for the present consideration of the conference report on the bill (S. 2799) to carry into effect the stipulations of article 7 of the treaty between the United States and Spain, concluded on the 10th day of December, 1898. It was under consideration earlier in the session to-day and was at the time passed, upon the request of the Senator from South Dakota [Mr. PETTIGREW], but he has since notified me that he has examined the report and that I need not defer asking consideration of it further on his account.

The PRESIDENT pro tempore. The report is before the Senate.

Mr. FORAKER. It was fully read and explained at the time.

The PRESIDENT pro tempore. The question is on agreeing to the report.

The report was agreed to.

Mr. BACON. I desire to call the attention of the Senator from Ohio to the suggestion I made to him this morning, that the conference report contains, in my judgment—it is not alone my judgment, it is the judgment of other Senators whose judgment is superior to my own—a provision that is utterly unconstitutional; and if so, we would stultify ourselves in putting it upon the statute books.

I allude to the matter to which I called the attention of the Senator from Ohio this morning—that it is beyond the jurisdiction of Congress to appoint a commission for any purpose and give that commission the power to certify questions to the Supreme Court and lay upon the Supreme Court the obligation to answer those questions. The Supreme Court is a court created by the Constitution, with powers limited and defined by the Constitution, powers which we can not add to or subtract from, and if I am correct in this, I think we ought not to proceed without an amendment in that particular.

Very hurriedly I called the attention of the chairman of the Judiciary Committee and the Senator from Wisconsin [Mr. SPOONER], who is a member of that committee, to the matter. I had no time for conference, but I called their attention to it hurriedly, and they agreed with me about it. If so, we ought to give it attention before we dismiss it.

Mr. HOAR. I ask that that part of the conference report which raises this question may be read.

The PRESIDENT pro tempore. That part about which question is raised will be read. Will the Senator from Ohio call the attention of the clerks to it?

Mr. FORAKER. In just a moment I will be able to point it out.

The provision was incorporated in the bill upon the suggestion of the Senator from Alabama [Mr. MORGAN], who, I regret to see, is not in his seat at the present moment; but it did not occur to me or to any other member of the committee that there was anything unconstitutional about the provision. It is simply a provision which was inserted in lieu of a provision that was in the original bill as it passed the Senate, providing for an appeal from an award

made by the commissioners to the supreme court of the District, and the substitute is that the commission, while their award is final and no appeal can be taken from it, may nevertheless as to any legal question about which they may have difficulty among themselves, certify that legal question to the Supreme Court of the United States for its opinion upon it.

This does not undertake to lay, except only, of course, by inference, upon the Supreme Court the duty of rendering an opinion upon such certificate of difference of opinion by the commission. I have not myself thought there was any difficulty about it, and I have made no examination whatever of the matter. As the Senator from Georgia says, he has——

Mr. BACON. No; I beg pardon. The Senator will permit me for a moment. The Senator will recall that this morning I called the attention of the Senator to it and stated that while I did not intend to affirm that as a correct principle, I was very strongly of that opinion. I did not anticipate that it was coming up again to-night or I would have given it a little more careful attention, but upon general principles the principle seems to be correct.

Mr. HOAR. I think when the Court of Claims was established and throughout the history of the legislation in regard to the Court of Claims Congress has always gone on the theory that the Supreme Court of the United States could not have imposed upon them any jurisdiction or duty which did not involve the rendering of a judgment. It is not very uncommon, at any rate in our State constitutions, to provide that the supreme court shall answer legal questions put to them by the executive or one of the houses of the legislature of the State.

But that was not adopted in our Constitution in regard to the Supreme Court of the United States; and I understand that when the Court of Claims was established Congress was of opinion that they could only refer such questions to the Supreme Court, going up from the Court of Claims, as were accompanied by the power to render judgment, and that wherever the Court of Claims find facts for the government of Congress or as in some recent statute are obliged to find and give their opinion as to the law governing those facts, there is no appeal to the Supreme Court. I should be sorry indeed to interpose an objection, without having reflected and examined the question, to anything to which so eminent a lawyer as my honorable friend the Senator from Ohio has given careful attention and thinks is right, but I hope the report will be allowed to go over until to-morrow morning, and perhaps the matter will then be cleared up by examination.

Mr. FORAKER. If the Senator will bear with me for a moment, it does not seem to me that there is any difficulty about it at all. I have not been able to hear all that the Senator from Massachusetts said, but it seems to me it is competent for Congress to confer upon the Supreme Court jurisdiction to give an opinion in such a case as that provided for by this amendment. I will first read the amendment.

Mr. HOAR. Where is the jurisdiction in the Constitution?

Mr. FORAKER. Section 2 of Article III provides:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

If not found under any other clause, certainly it is found under that all-comprehensive clause which provides that the jurisdiction of the Supreme Court of the United States shall extend to all controversies to which the United States shall be a party.

Mr. HOAR. Will the Senator read the last sentence of the clause on the two hundred and fifth page, or I will read it, if the Senator will allow me.

In all the other cases before mentioned—

That is, cases affecting ambassadors, other public ministers and consuls, and those in which the States shall be parties—

In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction both as to the law and fact, with such exceptions and under such regulations as the Congress shall make.

My suggestion is, Is this jurisdiction over a case in the constitutional sense as applied to a court, when all it does is to ask a question? Is it a case in the technical sense, as is suggested to me by a Senator? The case does not go there. The controversy does not go there. The right to render any judgment does not go there, and when the court answers the question, as the bill is, it speaks with no authority. The power that has to render judgment or settle the matter may regard or disregard the opinion of the Supreme Court, as it sees fit.

Mr. FORAKER. The point I make in answer to all that the Senator from Massachusetts says is that the jurisdiction of the Supreme Court shall extend to all cases arising under the Constitution and the laws enacted by Congress, and not alone to all cases arising under the laws enacted by Congress, but also to all controversies with respect to which the Congress of the United States may see fit to confer jurisdiction on the Supreme Court, to which controversy the United States is a party. Here is a controversy. The United States creates a commission. It gives it jurisdiction to hear the controversy, to hear testimony, to ascertain the facts, to hear argument as to the law applicable to those facts, and it provides that the Supreme Court shall have jurisdiction with respect to that controversy to which the United States is a party to the extent in the case given of rendering an opinion as to the law governing the question that has been certified.

Mr. ALDRICH. I suggest that the report go over until to-morrow morning.

Mr. HOAR. The provision, if I now understand it correctly, is very different from what has been stated. I did not hear the reading. The provision is:

When the commission is in doubt * * * they may state the facts and the question of law so arising and certify the same to the Supreme Court of the United States for its decision, and said court shall have jurisdiction to consider and decide the same.

That removes my difficulty.

Mr. FORAKER. I am very much gratified to have the Senator from Massachusetts reach that conclusion.

Mr. HOAR. I thought from the statement made on the floor by the Senator from Georgia that all the Supreme Court of the United States did is what our supreme court in Massachusetts does—answer a question of law and send it back to the other party for final decision. But I do not see why this is not as competent as the ordinary judgment of the Supreme Court on cases appealed from the Court of Claims.

Mr. FORAKER. It seems to me to be so most clearly, because the jurisdiction of the Supreme Court is by the terms of the Constitution so comprehensive as to cover all controversies, and the matter in which a controversy may be taken to the Supreme Court is for the Congress to decide, and we propose to do that here.

Mr. CULBERSON. I ask that that part of the conference report be read.

Mr. FORAKER. I will read it as a part of my remarks. I have it before me:

When the commission is in doubt as to any question of law arising upon the facts in any case before them, they may state the facts and the question of law so arising and certify the same to the Supreme Court of the United States for its decision, and said court shall have jurisdiction to consider and decide the same.

And the constitutional jurisdiction conferred upon the Supreme Court is as to all controversies to which the United States shall be a party.

Mr. SPOONER. Will the Senator allow me to ask him a question?

Mr. FORAKER. Certainly.

Mr. SPOONER. Is there any appeal from the decision of these commissioners to the Supreme Court of the United States?

Mr. FORAKER. No appeal is provided. The award is final, except only in the case specified, when in doubt as to the law. Then the case in that instance must be certified to the Supreme Court for its decision upon the law and facts.

Mr. BACON. Will the Senator from Ohio please read the sentence which speaks of the final decision by the commission? I wish he would read it in connection with the amendment.

Mr. FORAKER. It says:

When the commission is in doubt——

Mr. BACON. No, preceding that. I wish to have read that part of the bill which says the decision of the commission shall be final, and then says when they are in doubt as to a question of law they may get the decision of the Supreme Court on the question.

Mr. FORAKER. The Senator wants me to read the whole section?

Mr. BACON. Only that part of it to which I refer. The Senator stated it this morning.

Mr. FORAKER. It is rather lengthy.

SEC. 12. That all awards of said commission shall be final, unless a new trial or hearing shall be granted by said commission or the order reversed or modified as hereinafter provided.

Then this follows as section 13:

When the commission is in doubt as to any question of law arising upon the facts in any case before them, they may state the facts and the question of law so arising and certify the same to the Supreme Court of the United States for its decision, and said court shall have jurisdiction to consider and decide the same.

As I remarked a while ago, this section was incorporated in the report upon the motion of the Senator from Alabama (Mr. MORGAN), who is not here to-night.

Mr. TELLER. May I interrupt the Senator long enough to ask him who renders the judgment in this case, the commission or the court?

Mr. FORAKER. As I said a moment ago, this is the language of the Senator from Alabama [Mr. MORGAN]. I understood it to be a provision under which the case in the contingency named would go to the Supreme Court of the United States, where the final decision would be rendered.

Mr. HOAR. Final judgment.

Mr. FORAKER. Final judgment, and it would be sent there upon a statements of facts, to avoid the expense and trouble of certifying up the entire record, which might be burdensome.

Mr. SPOONER. Where questions are certified, as they sometimes are under the Federal law, to the Supreme Court, the court answers the question, but the court below enters the judgment.

Mr. FORAKER. That is true.

Mr. SPOONER. What is the court to decide under this proposed law—questions of law that are certified up?

Mr. LINDSAY. That is all.

Mr. FORAKER. I think that is all. That would be my interpretation. They decide the questions presented to them.

Mr. SPOONER. Then we might have so provided for the Southern Claims Commission, when there was one, or the Interstate Commerce Commission——

Mr. FORAKER. We might do it.

Mr. SPOONER. And for a vast variety of commissions.

Mr. FORAKER. It is a question of policy, I imagine, rather than a question of power. It may not be good policy. I would not have thought of it, of putting in the provision, but the Senator from Alabama did, and it met with favor at the hands of the conferees, and it was put in.

Mr. SPOONER. My recollection, if the Senator will permit me, is that way back somewhere there was a decision of the Supreme Court upon this question. Does the Senator object to permitting the report to go over until to-morrow?

Mr. FORAKER. No; certainly not. I was only trying to get it out of the way at a time when I thought it would suit the convenience of the Senate and save as much time as possible; but if any Senator desires to examine the question further, I recognize its importance and am quite willing to let it go over.

Mr. SPOONER. I remember an opinion of the Supreme Court in which they defined the controversy and held that it must be a suit.

Mr. FORAKER. I think that is true, but I think the Senator will concede that this is a suit. This bill provides that claimants who are eligible under the proposed law to have their claims adjudicated shall file a petition against the United States; the United States shall appear and answer or demur or plead otherwise, as they may see fit; and then, after issue has been joined, testimony shall be taken, and there shall be a hearing of witnesses and an ascertainment of facts; and then, when the facts have been ascertained, an order shall be made. But if, when the commission comes to consider the law applicable to any particular case, there be any troublesome question, it may certify it up; and then the Supreme Court is called upon to render an opinion as to that question which is certified to it in a case, or rather, I should say, to employ the language used in the Constitution, in a controversy to which the United States is a party. It seems to me it is competent for Congress to confer jurisdiction upon the United States Supreme Court in this kind of a controversy as well as any other.

Mr. ALLEN. Will the Senator from Ohio yield to me for a question? What is the jurisdiction of this commission?

Mr. FORAKER. The jurisdiction of the commission is a general jurisdiction to hear and determine all claims against the United States of the character specified.

Mr. ALLEN. Is this commission a court? Are you creating it into a court?

Mr. LINDSAY. Yes.

Mr. FORAKER. I should call it at least a quasi judicial tribunal. It is a judicial proceeding.

Mr. SPOONER. I think the Senator gets it right. It is quasi.

Mr. FORAKER. Well, I used that term.

Mr. SPOONER. The Supreme Court is not quasi.

Mr. FORAKER. I am not talking about the Supreme Court in this connection at all.

Mr. SPOONER. I do not think a quasi tribunal can send a question to the Supreme Court of the United States.

Mr. FORAKER. I will retract, then, what I said. I simply meant by that that this is not a judicial tribunal in one sense. We do not call it a court. It is simply a commission that is created by Congress and clothed with judicial powers and judicial functions.

Mr. SPOONER. I do not think the Senator ought to retract it.

Mr. ALLEN. How are you going to enforce its decisions?

Mr. FORAKER. I can not hear both Senators.

Mr. SPOONER. I do not think the Senator ought to have retracted. "Quasi" was right.

Mr. FORAKER. Well, I was right in a sense and I was not right in the sense the Senator from Wisconsin undertook to put me.

Mr. ALLEN. I should like to ask——

Mr. ALDRICH. I ask that this matter may go over.

Mr. HOAR. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Ohio yield to the Senator from Massachusetts?

Mr. HOAR. I thought the Senator from Ohio had finished.

Mr. FORAKER. I yield with pleasure.

Mr. TELLER. I suggest that we had better have the regular order, and let this go over until to-morrow.

Mr. ALDRICH. That is the better course.

Mr. HOAR. This is the regular order. It is a conference report.

Mr. NELSON. I suggest that the conference report has been already adopted. Debate is too late.

Mr. HOAR. I wish to make one observation, if the conference report is before the Senate and is to go over, in order that it may go into the RECORD. It will take but one moment.

Mr. NELSON. Will the Senator from Massachusetts allow me to suggest that the conference report has already been adopted?

Mr. HOAR. What does the Chair say on that subject?

The PRESIDENT pro tempore. The Chair will consider it an open question. It was declared agreed to by the Chair, but where on matters of this kind Senators rise immediately afterwards, the Chair regards it as an open question.

Mr. HOAR. I should like to make one observation. I do not wish to interfere with the desire of any Senator by haste, but I should like to make it now.

It seems to me that this commission is precisely like the Court of Claims in the substance of its authority and in the substance of its composition, except, of course, the appointments are not for life. It is an inferior tribunal. Therefore, it has a controversy regularly before it, a suit through a claim stated in writing in the proper way against the United States, and renders a binding judgment.

That being the condition of this tribunal, I understand this proposition is that instead of rendering its own final judgment in any particular case it may certify the facts and the questions of law arising thereon to the Supreme Court for its decision, and thereupon the Supreme Court decides the controversy—decides the claim. The defendant has forever lost his suit if it decide against him, and there is a decision in the nature of a judgment against the United States if it be that way.

It is equally the substance of a final judgment of the Supreme Court of the United States, whether the Supreme Court enters a judgment on its own records or whether it enters what is in substance a final judgment, a mandate to the commission below to enter its judgment and certify there. That is exactly what the Supreme Court does in a great many instances of inferior courts. It sends its mandate to the tribunal. Questions go up by certificates of disagreement, and did from the beginning. Where the circuit judge and the district judge disagree, the question was certified up to the Supreme Court of the United States. The Supreme Court decided the question and issued its mandate to the court below to render judgment accordingly, or it rendered a judgment itself, if it saw fit, without the further interposition of the court below.

I have not heard the whole bill read, and there may be a mistake about what the text of the bill is; but if I can understand correctly the Senator from Ohio, that is precisely what he undertakes to do; nothing more and nothing less; and I can not see that there is any greater constitutional difficulty in making such a provision in regard to this commission than in the similar provision which exists in regard to the Court of Claims.

Mr. FORAKER. The Senator from Massachusetts has correctly stated the character of this bill, the character of the commission, and its powers created by the bill.

The first section of the proposed law provides that these commissioners are to be appointed, who shall be learned in the law. They shall constitute a commission whose duty it shall be, and they shall have jurisdiction to receive, examine, and adjudicate all claims of citizens of the United States against Spain, which the United States agreed to adjudicate and settle by the treaty of peace, referring to the seventh clause with appropriate words.

Then it provides that the proceeding shall be instituted by each claimant by the filing of a petition, in which he shall set up his claim with particularity. It prescribes what the procedure shall be, how the United States shall be served with process, how it shall make answer or otherwise plead, how an issue shall be finally joined, and how testimony shall be taken, and each commissioner is authorized to minister that oath. In short, it is a judicial tribunal and procedure throughout.

Mr. TELLER. Mr. President, I rise to a question of order. The Senator from Ohio stated some time ago that this report might go over. What is the use of debating it now and debating it in the morning? Several of us would like to look at the report. It seems to me that we are wasting a good deal of time to-night that we will repeat to-morrow morning.

Mr. FORAKER. I have no objection to its going over.

Mr. TELLER. If the Senator is going to give us an opportunity to look at it, let it go over. If not, let us go on and debate it the rest of the evening.

Mr. FORAKER. I appeal to the Senator to bear me out in the

statement that I have not been insisting that the report should be disposed of this evening.

Mr. TELLER. As long as the Senator continues to debate it some one else will reply.

Mr. FORAKER. After I agreed that the report might go over some remarks were made about it, to which I wanted to make a brief answer, and I was making them, not for my benefit, but for the benefit of Senators who had not read the bill, in order that there might be a correct comprehension of it. I had already concluded my statement that it is a judicial tribunal, a judicial procedure throughout, resulting in a final judgment.

Mr. TELLER. It is a subject too large to finish to-night, and I hope the Senator will let the report go over.

Mr. FORAKER. It will go over.

Mr. ALLEN. Mr. President, I desire to submit an observation or two in this connection before the report passes by. It might as well be debated to-night as at any other time. I do not want to take it for granted, or I do not want the Senator from Ohio to think, at least as far as I am concerned, that I concede for a moment the power of Congress to pass a bill of this character.

The Senator has not explained, and he will not be able to explain, perhaps, that we undertake to delegate to an administrative court judicial powers in plain contradiction and plain contravention of the provisions of the Constitution, for if the Constitution is plain in anything it is that all judicial power is invested in a Supreme Court and such subordinate courts as Congress may from time to time establish.

Now, I want to ask the Senator from Ohio how he proposes to delegate, or by what means Congress can delegate, judicial power to this administrative board, which has not the functions of a court, which has no jurisdiction whatever because of its lack of judicial power. If that be true, how is it true, as the Senator from Massachusetts says, that the Supreme Court can get jurisdiction from a tribunal which itself has no jurisdiction of the subject-matter of the action?

In the first place, there is no action before this commission. It is a mere administrative board. It proceeds as irregularly as a county board of supervisors. Now, if it be without jurisdiction, if under the Constitution you can not confer judicial power upon an organization like this, how is it possible that the Supreme Court, upon a certificate from these commissioners, will obtain jurisdiction sufficient to make its judgment or its conclusions of law binding upon that tribunal and binding upon the party?

I know, Mr. President, it is not a very uncommon thing to undertake to parcel out the judicial power of the Government to administrative boards, but the Supreme Court, it seems to me, has settled this question when it determined that the Interstate Commerce Commission has no jurisdiction whatever.

There is an entire lack of power on the part of this board to enforce any of its judgments. A court must have power to enforce its judgments. If it can not issue an execution, if it can not put process in the hands of a marshal, if it can not seize property, if it can not sequester property and subject that property to its jurisdiction and to the payment of the judgment rendered by it, then it is not a court within the meaning of the Constitution.

Mr. LODGE and others. Regular order!

ARMY APPROPRIATION BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 14017) making appropriation for the support of the Army for the fiscal year ending June 30, 1902.

The PRESIDENT pro tempore. The pending question is on the amendment offered by the Senator from Missouri [Mr. VEST] to the amendment reported by the committee as amended.

Mr. HANSBROUGH. Mr. President, when I came into the Chamber a few moments ago, I was informed by a Senator that the Senator from Nevada [Mr. STEWART] had undertaken to reflect very seriously upon a judge in Alaska. I presume the Senator from Nevada referred to Judge Arthur H. Noyes, of the Nome division.

I regret very much that at this late period in this short session this matter should be brought up here, but it does seem to me that I ought to be heard, in view of the fact that the friends of Judge Noyes up to this moment have kept quiet upon this matter, and notwithstanding the fact that the newspapers and persons who appear to have a peculiar interest in the matter have industriously denounced Judge Noyes during the past six or eight months Judge Noyes and his friends have not seen fit to reply up to this time. I was in hopes that out of consideration for the high office of judge nothing would be brought into the Senate; but now that it has been brought in here it does seem to me that something should be said in behalf of Judge Noyes. I do not propose to occupy the time and attention of the Senate at any great length, but I do want to read from a letter which I received from Judge Noyes a short time ago indicating the condition existing in that country and entering something of a defense against the outrageous charges that have been made against that officer.

I have here a letter, dated the 15th day of October, from Judge Noyes. This controversy, as Senators probably know and as the country well knows by reason of the newspaper advertising certain parties have done, grew out of the appointment by Judge Noyes of a receiver for certain mining properties at Cape Nome. The receiver appointed is in every respect an honorable and responsible man. On this subject Judge Noyes writes me as follows, under date of October 15:

> The cases in which I appointed McKenzie receiver are known as the Anvil Creek cases. When McKenzie was appointed receiver he was called upon to give a bond in each case. I further made an order requiring the receiver to deposit all the gold dust taken from the various mines separately in the safety-deposit vaults of the Alaska Safe and Deposit Company, and that no portion thereof should be withdrawn without an order of the court and on notice to all parties interested. I further made an order allowing both the plaintiffs and the defendants and all parties interested or claiming an interest in the different claims to be present either in person or by authorized agent at all "clean ups," so that they might know the exact amount of gold taken from the claims regardless of the report of the receiver.
>
> McKenzie has never received a dollar for his services as receiver nor has he been allowed a dollar to pay attorney's fees, and has conducted the business of the mines in the most economical and approved manner, as is admitted by both plaintiffs and defendants themselves, so that as a result of his stewardship there is now on deposit in the safety-deposit vaults all the gold that has been taken out of these mines, subject to the final determination of the court, and then the court above should either party conclude to carry the case so far.

Further along in his letter Judge Noyes says:

> It is not necessary for me to ask you to withhold your judgment in regard to the outrageous charges made against me in the newspapers. I never did a dishonorable thing in my life and never spent a dishonest dollar in my life and I never expect to. The golden opinions of my fellow-men are treasures far too rich to be swapped for golden dust. If I am ever rich it will be in such opinions rather than in dollars, and I feel an ambition to demean myself here in such a way as to receive a welcome from you and the others who placed me here.

Again, in his letter, the judge has this to say:

> The only offers of money—

And, by the way, I wish to remark that I understand the Senator from Nevada indicated that owing to the very small salary that is paid to these judges in these new parts of the country it is necessary for them to go outside of the salary they receive in some way in order to gain a living. I think this part of the judge's letter applies to that feature of the discussion—

> The only offers of money that I have received have been to do something in favor of the gang that has tried to destroy me. I do not say the offers came from them, because I have no proof of it; that I leave to inference. And that I have been offered money—and good sums of money, too—often is perhaps something of a shame to me. In years gone by I have wondered how the man would look who would have the temerity to offer to buy me, but his face has appeared so many times of late that it has become familiar, but I have not sold yet, Senator, and I will not sell for some time. If not honest, I am at least high-priced, and I shall claim some credit on that score, and I can assure you that they have not the price.
>
> It is impossible for you to conceive of the species of emissaries that are sent to me and the traps that are laid for me. A party came to me the other day and said it was reported that I was going to resign, and that before resigning I was going to make some orders in favor of the defendants in the Anvil Creek cases, and in a very simple way asked me if it were true. He knew it was false, but I allowed him to think that I was just stupid enough to believe that he was honor bright, and informed him that nothing short of a Gatling gun or an order from the Government would take me off this bench.
>
> They charged me with dishonor and corruptness, and when they found that they would not go they consented to give me back my reputation in that regard, and then, to be more contemptible, circulated the story that I was weak and vacillating. Now, if I am not pulled off by the Government or shot off the bench by these cowards, I am going to assist in establishing the fact that I am fairly strong and tolerably certain.

Mr. President, it seems to me that that has the ring of a true man and is an honest expression of an interesting situation.

Now, further than that, the Department of Justice in this city has had an agent in Alaska to investigate the transactions of the various courts in that country. That agent has reported to the Department. Just what those reports say of course I do not know, because they are the secret papers of the Department, but I do know that several affidavits have been filed with the Attorney-General, and I am satisfied that with the tremendous pressure which has been put upon the Attorney-General and the Administration here generally to have Judge Noyes removed without a hearing, had it not been for the reports of those agents and the affidavits which were laid before the Attorney-General, doubtless some hasty action would have taken place.

In this connection I have here a brief of the affidavits which have been filed with the Attorney-General. It consists of about four pages of typewritten matter, and I will ask the Secretary to read it. I think it is due Judge Noyes that this recital of what has been going on in Alaska should be read before the Senate.

Mr. HOAR. Mr. President, I rise to a question of order.

The PRESIDENT pro tempore. The Senator from Massachusetts will state his point of order.

Mr. HOAR. Is the paper read by the Secretary as of right under the rule? It does seem to me that this discussion ought not to go on in the Senate—a discussion of the character of an individual judge having no relation whatever to the matter before the Senate. If there be any question in regard to this gentleman's conduct, it should come up in the other House and not before us. If he is impeached, we then sit as judges. If he is not impeached, the presumption is that he is an upright man. I hope the Senator——

Mr. HANSBROUGH. I will say to the Senator there are but

four pages of that brief. The affidavits are very lengthy, and I will not ask that they be read. I desire to have the summary read.

Mr. STEWART. All right; have it read.

Mr. HANSBROUGH. I will not occupy the attention of the Senate beyond the reading of the paper.

The PRESIDENT pro tempore. Does the Senator from Massachusetts make the point of order or make the objection? If any objection is made to the reading of the paper, the question must be submitted to the Senate.

Mr. HOAR. I will not make the point of order or objection against the Senator. If the Senator insists, after the suggestion, and thinks it ought to be read, I will not go so far as to object.

Mr. GALLINGER. It is done about twenty times a day here every day of the year. Of course the question will have to be submitted to the Senate if objection is made, but I think the Senator from Massachusetts is not going to object. The Senator from North Dakota can read it himself.

Mr. HANSBROUGH. I can read it myself in my own right if necessary; but I prefer to have the Secretary read it, and then I shall not occupy the attention of the Senate further.

The PRESIDENT pro tempore. No objection being made, the Secretary will read as requested.

The Secretary proceeded to read the summary of affidavits.

Mr. HANSBROUGH. Mr. President, I will not insist upon a further reading, but will ask simply to have the summary inserted in the RECORD. I do not want to take up time under the pressure of business. I would not have brought the matter up at all if it had not been alluded to by the Senator from Nevada.

The PRESIDING OFFICER (Mr. BEVERIDGE in the chair). The Chair hears no objection, and the paper will be printed in the RECORD.

The matter referred to is as follows:

SUMMARY OF AFFIDAVITS.

The Pioneer and Wild Goose Mining Companies, assisted by their attorneys, united first in their efforts to break down the district court of Alaska (second division) by bribery, secondly by intimidation, and lastly by perjured testimony.

Immediately upon the arrival of Judge Noyes and party at Nome last summer C. P. Braslan, an employee of the Pioneer Mining Company, offered Judge Noyes and Deputy Court Clerk Dickey free quarters at the Lawrence Hotel. The offer was refused. At many and divers times Braslan told A. K. Wheeler, the Judge's private secretary, that his people (meaning the Pioneer Mining Company) had plenty of money; that they were willing to spend it and that Judge Noyes was a fool if he did not get on their side of the litigation then pending in court, and thus get some of their money.

Next, Braslan offered Judge Noyes half of his earninge if he would appoint him United States commissioner at Council City, which offer was promptly declined. Braslan also told the judge that he could easily make $20,000 to $25,000 a year. The mining company did build a house for C. E. Dickey, deputy clerk of the court, within two weeks after his arrival at Nome, and which he continues to occupy.

Last July Judge Noyes was offered $20,000 by United States Marshal Vawter if he would discharge Alexander McKenzie as receiver, after a motion for the discharge of said receiver had been made in court. Noyes was also threatened in anonymous communications with death if he did not "change his ways" in the litigation then pending. Spies and detectives, in the employ of the Wild Goose and Pioneer mining companies, occupied rooms adjoining the judge's chambers. They had bored holes in the walls and ceiling for the purpose of spying and eavesdropping. The Judge was also continually shadowed.

Charles Herron was a detective in the employ of the mining companies to secure evidence of various sorts for them. During the latter part of August Attorney Metson gave Herron a quantity of twenty-dollar marked gold pieces to give Judge Noyes for the appointment of a commissioner in an outlying district. In the event of Judge Noyes accepting this bribe Metson stated that he would have the Judge and Mrs. Noyes shadowed and regain possession of the money for comparison with other marked coin in his safe. About the same time Metson handed Herron $100, to be given some pugilist or tough character who would agree to knock Alex. McKenzie on the head.

Instead of complying with the above requests, Herron immediately reported the circumstances to Assistant District Attorney Humes. Following the above attempts and failure to entrap Judge Noyes, it was then decided by Attorneys Knight and Metson to continue the attempts to buy the judiciary, if possible. Herron was shown $22,500 by Knight and Metson, and informed that that amount had been set aside for the purpose of disposing of the judge, who, in return for $20,000, was to consent to these four propositions:

(1) That he would remove McKenzie as receiver.

(2) That he would cause all the gold dust in McKenzie's possession to be turned over to the mining companies.

(3) That he would sign an order removing R. N. Stevens as commissioner of the Nome mining district.

(4) That he would place his resignation as judge in their hands, but would stay on the bench until the mining companies could communicate with San Francisco and Washington and have a man of their own choice appointed in Noyes's place.

Herron informed Metson that he did not see how they could expect him to bribe the judge with $20,000, as they had already offered him that amount through the United States marshal. Metson replied that they expected an order, allowing an appeal, from San Francisco, and that they now believed the judge would be willing to accept the $20,000 and leave the country.

After being satisfied that they could neither intimidate, entrap, or bribe the judge, Attorneys Metson and Knight asked Herron to make an affidavit accusing Judge Noyes of accepting a bribe. Herron declined, and was then told to find someone who would make such an affidavit. On October 9 Herron went to one Frank Reece, who agreed for $1,000 to make the affidavit. Before doing so, however, Reece laid the matter before the United States district attorney, and also made an affidavit for him setting forth the proposition that had been made to him by the attorneys.

Upon the advice of the district attorney Reece made the false affidavit for the sole purpose of exposing Knight and Metson. This was on October 16, and Reece was paid only $750 instead of $1,000, as promised. Immediately thereafter Reece made a counter affidavit for the district attorney exposing the attempt to impeach the character of Arthur H. Noyes for honesty and integrity in his official conduct as judge. Knight informed Reece at the time that he and his clients would probably need Reece to testify in person before a committee at the present session of Congress respecting and substantiating the matter and things contained in the affidavit, which are and were false and untrue, in an effort and attempt to be made in Washington to have Noyes impeached and have him removed as judge.

The district attorney at once informed Judge Noyes of the existence of the false affidavit, and on the morning of October 20 Noyes sent for Knight, who appeared at his chambers about 10 o'clock. Knight was then and there informed by the district attorney that he understood he (Knight) had an affidavit in his possession, in which it was charged that one of the judicial officers of the district court had been guilty of accepting a bribe.

The district attorney demanded that Knight turn over to him such affidavit in order that he (the district attorney) might enforce the laws of the district. Knight admitted that he had such an affidavit, but not in his possession at that time; that he knew where it was and would procure same and turn it over to the district attorney within two hours. This Knight did not do, and at 4 o'clock that afternoon writs of attachment for Knight were issued and placed in the hands of four deputy marshals, but they were unable to locate or find Knight, as he had left the country.

It was afterwards learned that Knight had secreted himself on the steamship *St. Paul*, en route from Nome to San Francisco, on which vessel Reece had also taken passage for Seattle. On the way down Reece was hounded and frequently asked to make another affidavit, to the effect that anything he might have said in the counter affidavit was untrue. This he declined to do, notwithstanding that many tempting offers of money had been made to him. At Port Townsend a notary public was brought aboard and much pressure was brought to bear upon Reece to sign the desired affidavit.

After Reece's arrival in Seattle he continued to be hounded by Knight and his gang, and finally he was threatened with arrest on some fictitious charge unless he would make the affidavit which Knight wanted, for which they agreed to pay Reece $2,000 more. While in Seattle, Attorneys Knight and Hatch learned that General Metcalf was Reece's counsel, and they immediately went to him, with a prepared affidavit, and agreed to give Metcalf all of the Seattle business of the Pioneer and Wild Goose mining companies if he [Metcalf] would advise his client, Reece, to sign this affidavit, which exonerated Knight of subornation of perjury. Metcalf declined to so advise Reece, and has made an affidavit setting forth these facts.

Mr. STEWART. Mr. President, I can not allow any whitewashing of Judge Noyes to pass unnoticed, and I will not depart in my remarks from his judicial record. I have examined a large number of the record cases from Nome, and I find in those records the following facts:

Judge Arthur H. Noyes, Receiver Alexander McKenzie, and Robert Chipps, the plaintiff in the most important of the Nome cases which was brought before the Supreme Court of the United States on a writ of certiorari, left Seattle together on the same ship for Nome, arriving there Saturday, July 21, 1900.

Monday, July 23, 1900, Judge Noyes granted injunctions ex parte and without bond against the persons in possession of five of the most productive claims in the mining district, and in each of these cases appointed Alexander McKenzie receiver before any papers were filed, and ordered him to take immediate possession of all these claims, which he did.

That is the record and is undisputed.

Similar proceedings were continued by Judge Noyes in granting injunctions and appointing receivers in numerous cases, including nearly all of the mines in operation in the mining district, and in nearly all cases injunctions were granted not only ex parte and without notice, but in all without bond, although the civil government law of Alaska, section 384, page 297, requires bond upon the issuance of an injunction.

Now, here a whole district was enjoined without bond. Just contemplate that for a moment—placer claims to be worked out in a few days or a few months and to have an injunction without bond and a receiver appointed! Do you talk about a supervision of the mines? Who can supervise a receiver, with numerous mining claims under his control, to see whether the gold dust is properly cared for?

There was no showing in any of the cases for either an injunction or a receiver except the naked affidavit of the complainant attached to the complaint, and in no case was there any showing in the bill or otherwise that a receiver was necessary to protect the property from injury.

In the case of Chipps *vs.* Lindeberg, folio 156, the record of which is now in the Supreme Court of the United States, the receiver was ordered by Judge Noyes to take possession of about $100,000 worth of personal property——

Mr. TURNER. I should like to ask the Senator what he is reading?

Mr. STEWART. I am reading from an abstract of the record in the Nome mining cases that I made myself, and I know it is true. I took the record and made the abstract. I had the record copied, and I know what it is. I know that every word of it is true, and it is commented upon by the judge of the circuit court of San Francisco.

Mr. WOLCOTT. I desire to ask the Senator, having come in late, what section of the Army appropriation bill it is that is now under discussion?

Mr. STEWART. It is the first and last section, and all of it.

Mr. WOLCOTT. It is the first and last?

Mr. STEWART. Yes.

Mr. WOLCOTT. Thanks.

Mr. STEWART. This record proceeds:

The receiver was ordered by Judge Noyes to take possession of about $100,000 worth of personal property, without even an averment in the complaint or in any other pleading that the property belonged to the complainant, and the receiver took possession and held such personal property without bond or any other authority than the arbitrary order of Judge Noyes, which order was made without pleading, petition, or written application from any person whatever.

All this the record shows, and the court of appeals finds the same facts in the contempt case against Mr. McKenzie.

In all cases the first notice which the defendants and the parties in possession of the mines had was from the receiver in person, who took possession of the mines—

There was no office of the clerk of the court or anything of the kind. This is proved by the record contained in the appendix. I will ask that this document, with the appendix, referring to the record, be put in as part of my remarks, if there is no objection.

The matter referred to is as follows:

THE CASE OF JUDGE ARTHUR H. NOYES, OF NOME, ALASKA.

[References to Appendix, hereto attached.]

Judge Arthur H. Noyes, Receiver Alexander McKenzie, and Robert Chipps, the plaintiff in the most important of the Nome cases which was brought before the Supreme Court of the United States on a writ of certiorari, left Seattle together on the same ship for Nome, arriving there Saturday, July 21, 1900.

Monday, July 23, 1900, Judge Noyes granted injunctions ex parte and without bond against the persons in possession of five of the most productive claims in the mining district, and in each of these cases appointed Alexander McKenzie receiver before any papers were filed, and ordered him to take immediate possession of all these claims, which he did. (Appendix, p. 5.)

Similar proceedings were continued by Judge Noyes in granting injunctions and appointing receivers in numerous cases, including nearly all of the mines in operation in the mining district, and in nearly all cases injunctions were granted not only ex parte and without notice, but in all without bond, although the civil government law of Alaska, section 384, page 297, requires bond upon the issuance of an injunction. (Appendix, p. 5.)

There was no showing in any of the cases for either an injunction or a receiver except the naked affidavit of the complainant attached to the complaint, and in no case was there any showing in the bill or otherwise that a receiver was necessary to protect the property from injury. (Appendix, p. 6.)

In the case of Chipps *vs.* Lindeberg (folio 156), the record of which is now in the Supreme Court of the United States, the receiver was ordered by Judge Noyes to take possesion of about one hundred thousand dollars' worth of personal property, without even an averment in the complaint or in any other pleading that the property belonged to the complainant, and the receiver took possession and held such personal property without bond or any other authority than the arbitrary order of Judge Noyes, which order was made without pleading, petition, or written application from any person whatever. (Appendix, p. 7.)

In all cases the first notice which the defendants and the parties in possession of the mines had was from the receiver in person, who took possession of the mines. The defendants applied to the court with a mass of evidence, showing title to the property and the injustice of the proceedings. No showing whatever was made by the various plaintiffs, except the original complaints, which were then on file. (Appendix, p. 5.)

Judge Noyes refused every application made for relief against the arbitrary orders granting injunctions and appointing receivers. (Appendix, p. 8.)

The defendants then in several cases in which the records are here made application for appeal to the circuit court of appeals, at San Francisco, from the orders granting the injunctions and appointing receivers. Judge Noyes refused to allow the appeals (see below), although appeals in such cases were expressly authorized by section 507 of the Alaska Code (Appendix, p. 9), signing the following order:

"Defendant herein having this day presented a proposed bill of exceptions for settlement and allowance by the judge of this court as the bill of exceptions herein, together with a petition for an order allowing an appeal to the circuit court of appeals of the United States for the Ninth circuit, and assignment of errors, and an undertaking on appeal:

"Now, therefore, it is by the said judge ordered that the said proposed bill of exceptions is in each and every part thereof disallowed as a bill of exceptions herein, and the settlement thereof or of any proposed bill of exceptions herein is hereby refused; that said petition for an order allowing said appeal is hereby denied, and said judge declines to accept or fix the amount of any bond for costs thereof, or to allow a supersedeas bond to be given, or to fix the amount thereof.

"Dated Nome, Alaska, August 15, 1900.

"ARTHUR H. NOYES, *Judge.*"

The circuit court of appeals for the Ninth circuit, on the filing of the records in that court, set aside the orders of Judge Noyes granting injunctions and appointing receivers, and ordered the property to be turned over to the defendants. (Appendix, pp. 10, 11.)

McKenzie, the receiver, refused to deliver up the property, and upon application to the circuit court of appeals a peremptory order was issued for the delivery of the property and the arrest of McKenzie for contempt. (Appendix, p. 13.)

McKenzie, in his defense against proceedings for contempt of the orders of the circuit court of appeals, states that after the service of the order of said court upon himself and Judge Noyes, setting aside the injunction and orders appointing receivers and directing McKenzie to deliver over the property in his possession to the defendants, he was unable to make such delivery for the reason that Judge Noyes ordered the United States marshal to take possession of the gold dust which the receiver had deposited in bank and to allow no one to interfere with it. (Appendix, pp. 16, 17, 18.)

The marshal also makes affidavit in the McKenzie contempt case that he was ordered by the court to take possession of the gold dust which the receiver had on deposit and to hold it against everybody. The marshal continued to hold the property under the orders of Judge Noyes until the military authorities, under the orders of the appellate court, took possession of the gold dust and delivered it to the defendants.

APPENDIX.

NO BOND REQUIRED FROM PLAINTIFFS UPON ALLOWING INJUNCTION.

The civil government law of Alaska provides (sec. 384, p. 397, Session Statutes, first session Fifty-sixth Congress) that before allowing an injunction "the court or judge shall require of the plaintiff an undertaking, with one or more sureties, to the effect that he will pay all costs or disbursements that may be decreed to the defendant, and such damages, not exceeding an amount therein specified, as he may sustain by reason of the injunction, if the same be wrong or without sufficient cause."

No bond was required (Chipps *v.* Lindeberg, folio 144; Webster *v.* Nakkela, folio 12; Rogers *v.* Kjellmann, folio 9; Melsing *v.* Tornansis, folio 12), although the defendants were enjoined from interfering with the receiver in mining and working said placer-mining claim or interfering with his possession and management of any part of the property or of its operation, such orders all being made ex parte on July 23. (Chipps *v.* Lindeberg, folio 145; Melsing *v.* Tornansis, folio 11; Rogers *v.* Kjellmann, folio 8; Webster *v.* Nakkela, folio 11.)

EX PARTE APPOINTMENT OF RECEIVER.

McKenzie was appointed receiver on July 23, under bill filed the same day, without any supporting affidavit except plaintiff's, and without notice or process.

Chipps *v.* Lindeberg, folios 11 to 23, inclusive, and 144 and 145.
Webster *v.* Nakkela et al., folios 2 to 12, inclusive (no supporting affidavit).
Melsing *v.* Tornansis, folios 2 to 11, inclusive (no supporting affidavit).

NO GROUND FOR THE APPOINTMENT OF A RECEIVER.

There is no averment contained in the bills of complaint justifying the appointment of a receiver. The bills are framed upon the theory that the plaintiffs will be wronged unless the defendants are enjoined, but they do not show that the plaintiffs will be in any respect injured if the mine is left unworked, nor do they show plaintiffs' ownership of, or interest in, the personal property on the surface of the claims. The appointment of a receiver to work a placer-mining claim is entirely unknown, except on special averments, none being contained in the bills herein.

APPOINTMENT OF RECEIVER WITHOUT NOTICE NOT JUSTIFIED.

No exigency was stated in the bills, and none appears of record, justifying the extraordinary procedure of the appointment of receivers without notice to the persons to be deprived of their property, nor was it alleged that there was any difficulty in serving process. In fact, copies of the orders of appointment were served in certain cases on the day they were made, and, of course, rules to show cause might have been as readily served. (Melsing *v.* Tornansis, folio 12; Webster *v.* Nakkela, folio 12.)

RECEIVER'S BOND INADEQUATE.

The bond required of the receiver in each case bore no relation to the value of the property coming into his hands.

Chipps *vs.* Lindeberg: Amount of gold theretofore extracted, $200,000; being taken out daily, $15,000; bond, $5,000. Folios 13, 21, and 145.

Rogers *vs.* Kjellmann: Gold theretofore extracted, $10,000; being taken out daily, $500; bond, $5,000. Folios 7 and 8.

Webster *vs.* Nakkela: Gold theretofore extracted, $50,000; being taken out daily, $500; bond, $5,000. Folios 5 and 11.

Melsing *vs.* Tornansis: Gold theretofore extracted, $150,000; being taken out daily, $5,000; bond, $5,000. Folios 5 and 11.

APPOINTMENT OF IMPROPER RECEIVER.

Although the bills in each case (Chipps *vs.* Lindeberg, folio 14; Webster *vs.* Nakkela, folio 6; Melsing *vs.* Tornansis, folio 5; Rogers *vs.* Kjellman) all charged unskillful management of the mines claimed, yet in every case a receiver was appointed who was without mining experience and had lived at Cape Nome but two days, reaching there, in company with the judge, on July 21.

DEFENDANT'S PERSONAL PROPERTY SEIZED.

The bills of complaint do not aver that the personal property upon the placer mines in question was the property of the respective plaintiffs, nor at any point is there any petition disclosed by the records for the appointment of a receiver for such personal property, yet the court ordered (Chipps *vs.* Lindeberg, folio 156) that the receiver shall take possession of "tents, buildings, safes, scales, and all personal property, fixed and movable; gold, gold dust, and precious metals; money, books of account, and each and all personal property upon said claim, connected therewith or in any way appertaining thereto, in possession of or under the control of the defendants," etc., estimated to be worth $200,000, contrary to the provisions of the special code of Alaska limiting the appointment of a receiver to special actions or proceedings "other than an action for the recovery of specific personal property."

(Section 753, special code, page 451, Session Statutes, first session Fifty-sixth Congress.)

On August 15, 1900, orders relative to personal property, similar to that in the Chipps case, were granted in the remaining cases.

REFUSAL OF RELIEF.

Motions to set aside the orders appointing receivers were all denied. (Chipps *vs.* Lindeberg, folio 146; Melsing *vs.* Tornansis, folio 48; Webster *vs.* Nakkela, folio 65; Rogers *vs.* Kjellmann, folio 60.)

The usual form of order was as follows:

"On reading the complaint and petition of the above-named plaintiff and the affidavits in support thereof, and on reading the affidavits of the defendants herein in support of a motion asking for the discharge and dismissal of the receiver heretofore appointed in the above-entitled proceedings, and on hearing the oral arguments of the attorneys for the several parties plaintiff and defendant herein, it is hereby

"*Ordered*, That the said motion asking for the discharge and dismissal of the said receiver, heretofore made under order of this court, be, and the same is hereby, dismissed, the appointment of said receiver being hereby confirmed, and that the receivership be continued until the further order of this court.

"Dated August 10, 1900.

"ARTHUR H. NOYES, *Judge.*'

WRONGFUL REFUSAL OF APPEAL.

The judge refused to allow an appeal (Chipps *vs.* Lindeberg, folio 161; Melsing *vs.* Tornansis, folio 60; Rogers *vs.* Kjellmann, folio 72; Webster *vs.* Nakkala, folio 75), although the civil code of Alaska provides (section 507, page 415, Session Statutes, first session Fifty-sixth Congress) that "An appeal may be taken to the circuit court of appeals from any interlocutory order granting or dissolving an injunction, refusing to grant or dissolve an injunction made or rendered in any cause pending before the district court within sixty days after the entry of such interlocutory order"—

and although the Supreme Court of the United States, in the case of the passing of an order precisely similar to those passed in these cases, had decided, in 168 U. S., page 583, In re Tampa Suburban Railroad Company, that the order granting an injunction was appealable.

The order refusing appeal is contained in the foregoing statement.

REFUSAL TO ALLOW BILL OF EXCEPTIONS, OR TO FIX BOND, OR ALLOW SUPERSEDEAS BOND.

The judge refused to settle or sign bill of exceptions or fix amount of bond or allow supersedeas bond. (Melsing *vs.* Tornansis, folio 60; Rogers *vs.* Kjellman, folio 72; Webster *vs.* Nakkala, folio 75.)

See copy of the order so signed in each case in the foregoing statement.

ALLOWANCE OF APPEAL BY CIRCUIT COURT OF APPEALS.

Appeal was allowed by circuit court of appeals.

See Chipps *vs.* Lindeberg, folio 169.

ORDER ALLOWING APPEAL.

On motion of J. C. Campbell, esq., counsel for respondents, and on filing the petition of Jafet Lindeberg, Erik O. Lindblom, and John Brynteson for an order allowing an appeal, together with an assignment of errors, it is ordered that an appeal be, and is hereby, allowed to the United States circuit court of appeals for the ninth circuit from the interlocutory order entered on the 11th day of August, 1900, granting an injunction pendente lite against respondents herein, and from each and every part and portion of said order.

That the amount of the bond upon said appeal be, and is hereby, fixed at the sum of $35,000.

That upon the execution and approval of said bond by this court a writ of supersedeas issue under the seal of this court, directed to complainant herein, his agents and servants, and the receiver therein appointed under said order, that

they desist and refrain from in any manner interfering with said property, or in any manner enforcing or attempting to enforce said order of August 11, 1900, until said appeal be heard and determined, or the further order of this court.

That a certified transcript of the record and proceedings herein be forthwith transmitted to the said United States circuit court of appeals.

Dated August 27, 1900.

WM. W. MORROW, *Judge.*

(Indorsed): Order allowing appeal, granting writ of supersedeas, etc. Filed August 27, 1900.

F. D. MONCKTON, *Clerk.*

WRIT OF SUPERSEDEAS.

Folios 175, 176, and 177 of the record in the case of Chipps *vs.* Lindeberg contains the following form of supersedeas:

Whereas in the above-entitled cause, upon petition of the appellants to this court for an order allowing an appeal to this court from an interlocutory order and decree made and entered by the said district court for the district of Alaska, second division, on the 11th day of August, 1900, granting unto the complainant herein an injunction ordering and directing the defendants and appellants to cease from working a certain mine in said bill of complaint mentioned, called the "Discovery," situated within said district of Alaska, and also ordering and directing said defendants to turn over the possession of said mine, together with all the personal property in said order mentioned, unto the said Alexander McKenzie, as receiver thereof, and also ordering and directing said receiver to take possession of said mine and mining property and conduct and work the same as receiver thereof, together with such other and various things as are in said order provided; and whereas said appellants also pray for a writ of supersedeas, and said appeal having been by said circuit court of appeals allowed and said petition for a writ of supersedeas granted upon the appellants filing a bond in the sum of $35,000, to be approved by this court, and said bond in said sum of $35,000, with approved sureties, having been filed and approved by this court.

"Now, therefore, you, the said Robert Chipps, Alexander McKenzie, and Arthur H. Noyes, judge of said district court for district of Alaska, second division, and each of you, are hereby commanded that from every and all proceedings on any execution of the aforesaid order or in anywise molesting the said defendants on the account aforesaid or in any manner interfering with their possession of said property you entirely surcease and refrain as being superseded, and that you, the said Alexander McKenzie, do forthwith return unto said defendants the possession of any and all property of which you took possession under and by virtue of said order, and that you do make return of this supersedeas, together with your acts and doings thereon, to said district court for said district of Alaska, second division, as you will answer the contrary at your peril; and you, the judge of said district court for the district of Alaska, second division, are hereby commanded to stay any and all proceedings which may have issued, as aforesaid, upon said order, and to stay any and all further proceedings in relation to the said order, and the appointment of a receiver thereunder in this case pending the appeal last aforesaid in this court.

"Witness the Hon. Melville W. Fuller, Chief Justice of the United States, this twenty-eighth day of August, in the year of our Lord one thousand nine hundred.

[SEAL.] "F. D. MONCKTON,
"*Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.*"

(Indorsed:) "Copy writ of supersedeas."

(Similar writ in other cases cited.)

SERVICE OF COPY OF WRIT ON JUDGE NOYES AND OTHERS.

The following certificate of service fixing date thereof appears at folio 183, Chipps *vs.* Lindeberg:

I certify that I served a duly certified copy of the within writ on each of the following-named persons by handing each of them said certified copy in Nome, Alaska:

Alexander McKenzie, at 12 m., September 14, 1900.
Messrs. Hibbard, Beeman & Hume, at 12.30 p. m., September 14, 1900.
Robert Chipps, at 12.30 p. m., September 14, 1900.
Hon. Arthur H. Noyes, at 2 p. m., September 14, 1900.
Dated Nome, Alaska, September 14, 1900.

C. L. VAWTER,
United States Marshal, District of Alaska, Second District Thereof.

ORDER DIRECTING ENFORCEMENT OF SUPERSEDEAS AND ATTACHMENT OF M'KENZIE FOR CONTEMPT.

In the United States circuit court of appeals. In and for the ninth circuit. William J. Kjellmann, defendant and appellant, *vs.* Henry Rogers, complainant and appellee.

Whereas on the 29th day of August, 1900, an order was made by the Hon. W. W. Morrow, one of the judges of this court in the above-entitled cause, allowing an appeal from the decree of the district court of the United States for the district of Alaska, second division, and a further order was made by said W. W. Morrow granting a supersedeas in the said action; and

Whereas a writ of supersedeas based upon said order was thereupon issued from this court, signed by the clerk thereof and attested by the seal thereof, to Arthur H. Noyes, judge of the said district court, and to Alexander McKenzie, receiver appointed by the said district court in the above-entitled cause, which writ was in the words following, to wit (then follows a copy of the writ of supersedeas, before given):

And whereas it has been made to appear to the satisfaction of this court by affidavit that the said Alexander McKenzie has been served with the said writ, and that he has refused to comply with the orders therein contained: Now, therefore, it is ordered that the United States marshal of the northern district of California proceed forthwith to the city of Nome, in the district of Alaska, and that he then and there enforce the orders and provisions of the said writ of supersedeas.

And it is further ordered that he attach the person of the said Alexander McKenzie, and produce him before this court at the city and county of San Francisco, State of California, to answer for his refusal to carry out the orders and process of this court, and for his contempt thereof, on Monday, the 5th day of November, 1900.

ORDER OF JUDGE NOYES STAYING PROCEEDINGS (BUT NOT COMPLYING WITH THE WRIT OF SUPERSEDEAS BY DIRECTING TRANSFER OF PROPERTY TO DEFENDANT).

On reading and filing the certified copies of the petition of defendant to the United States circuit court of appeals, in and for the ninth circuit, for an order allowing him to prosecute an appeal to said circuit court of appeals from the interlocutory order, judgment, and decree given and rendered in this action on the 23d day of July, 1900, in this district court, appointing a receiver to take charge of and control and manage the placer mining claim mentioned in the complaint, said interlocutory order embodying therein, as incident thereto, a restraining clause restraining the defendant from interfering with the property in the hands of receiver, and also from the order made and entered herein on the 10th day of August, 1900, in this district court denying the defendant's motion for an order discharging and dismissing the receiver theretofore appointed under the above-mentioned order of the 23d day of July, 1900, and on reading and filing the certified copy of the assignment of errors presented to the said circuit court of appeals by the defendant herein; the order of Hon. William W. Morrow, judge of said circuit court of appeals, dated August 29, 1900, allowing an appeal to said circuit court of appeals for the ninth circuit from said interlocutory order, judgment, and decree; the citation issued on August 29, 1900, by the said Hon. William W. Morrow, judge of the circuit court of appeals, directed to the plaintiff, Henry Rogers, citing him to appear before said circuit court of appeals at San Francisco, Cal., on the 28th day of September, 1900, the writ of supersedeas granted herein on the 29th day of August, 1900, by the said United circuit court of appeals, directed to Hon. Arthur H. Noyes, judge of the district court for the district of Alaska, and to Henry Rogers and Alexander McKenzie; and the certified copy of the supersedeas bond, dated the 29th day of August, 1900, it is hereby

Ordered, That all further proceedings herein in relation to said interlocutory order of this district court of said 23d day of July, 1900, be, and they are hereby, stayed, pending the said appeal from said interlocutory order to said circuit court of appeals.

By the court.

[SEAL.] ARTHUR H. NOYES,
Judge of the United States District Court,
District of Alaska, Second Division.

(Indorsed:) No. 7. United States district court, district of Alaska, second division. Henry Rogers, plaintiff, *v.* William A. Kjellman, defendant. Original order staying proceedings. Filed in the United States district court, district of Alaska, second division. September 17, 1900. Geor. V. Borchsenius, clerk. John T. Reed, deputy.

Pages 130, 131, and 132 of the printed record in Kjellman *v.* Rogers.

AFFIDAVIT OF RECEIVER M'KENZIE IN CONTEMPT PROCEEDINGS.

In the United States circuit court of appeals for the ninth circuit: William A. Kjellman et el., appellants, *vs.* Henry Rogers, appellee. In the matter of Alexander McKenzie for contempt.

Now comes Alexander McKenzie, defendant herein, and saving and reserving all objections heretofore made in his plea to the jurisdiction of this court and excepting to the overruling thereof, and answering under protest the order to show cause why he should not be punished for contempt heretofore made herein by this honorable court, respectfully alleges:

That on the 14th day of September, 1900, all of the gold and gold dust received by him as receiver on the properties described in the pleadings herein was deposited in the said vault of the Alaska Banking and Safe Deposit Company in obedience to the orders of the said district court of Alaska, except such portions as had been withdrawn by order of said court.

That on the 15th day of September Arthur H. Noyes, judge of said district court of Alaska, ordered and directed the United States marshal for the district of Alaska, second division, to take possession of the portions of said vault containing the gold and gold dust held by this defendant as receiver, place a guard over it, and not to permit this defendant access to said vault.

That the said C. L. Vawter, marshal, as aforesaid, in obedience to the orders of said Arthur H. Noyes, judge, as aforesaid, immediately took possession of said vault and placed a military guard in charge thereof with instructions to enforce the orders of said district judge and not to permit this defendant to have access to said vault or to the boxes thereof containing the gold dust received by him as such receiver.

That from and after said 15th day of September, 1900, this deponent never was permitted to have access to the boxes in said vault containing the gold and gold dust deposited by him as such receiver, and he was not permitted to exercise any control whatever over the same.

That on said date and thereafter this defendant was without the ability to comply with the order of this court.

Defendant admits that the demand for the immediate delivery of the property described in the pleadings herein and the gold and gold dust, the proceeds thereof, was made on him on the 14th day of September, in the manner and form set forth in the affidavit of Samuel Knight heretofore filed herein.

That said defendant is not learned in the law, and desired to be made acquainted with his rights and duties in the premises on such date by his counsel, and immediately submitted the matters to his counsel, asking for his opinion as to the law applicable in the premises.

That before receiving such advice the Hon. Arthur H. Noyes, judge of the district court of Alaska, had made and issued the order to the United States marshal hereinbefore set forth, and thereafter it was not in the power of this defendant to comply with the order of this court; and the said order to said marshal was made without the knowledge, consent, or solicitation of this defendant; and further, that this defendant was advised that between the 15th and 19th days of September, 1900, applications were made to the Hon. Arthur H. Noyes, judge of the district court of Alaska, and to said district court by the defendants in the above-entitled action, requesting said Arthur H. Noyes, judge as aforesaid, and the said district court to order and direct this defendant to surrender to the defendants herein the gold and gold dust then in his possession, the proceeds of the property described in the pleadings herein, and the said Arthur H. Noyes did, on said dates, fail, refuse, and decline to make such orders so requested by appellants.

That said gold and gold dust, the proceeds of said properties aforesaid, and contained in the vault of the Alaska Banking and Safe Deposit Company, has not been under the possession of or under the control of this defendant since the 14th day of September, 1900.

That no other or further demand was made on him to comply with the writ in this case than as hereinbefore set forth.

That on the said 15th day of September, 1900, said C. L. Vawter, marshal of the district court of Alaska, as aforesaid, in obedience to the orders of said Arthur H. Noyes, judge as aforesaid, immediately took possession of the said vault and placed a military guard in charge thereof, with instructions to enforce the order of the said district judge and not to permit this defendant to have access to such vault or the boxes contained therein.

ALEXANDER McKENZIE.

AFFIDAVIT OF UNITED STATES MARSHAL IN CONTEMPT PROCEEDINGS.

UNITED STATES OF AMERICA, SECOND DIVISION, DISTRICT OF ALASKA.

C. L. Vawter, being duly sworn, deposes and says that he is the United States marshal for the second division for the district of Alaska, duly appointed and qualified, and acting as such.

That on the 15th day of September, 1900, Judge Arthur H. Noyes, United States district judge for the district of Alaska, second division, ordered this affiant, as such marshal, to repair to the building occupied by the Alaskan Banking and Safe Deposit Company, in which the gold and gold dust held by Alexander McKenzie, as receiver of sundry claims in Alaska, was deposited, and to place a guard over such vaults, and not to permit any persons, especially the said Alexander McKenzie and the parties interested, to have access to the boxes in which the gold and gold dust so held by said receiver was so contained until a further order of the court, and not to permit any person, especially the said Alexander McKenzie and the parties in interest, to open said boxes or to withdraw any portion of the gold or gold dust contained therein until the said order of the said court.

That in pursuance of the aforesaid order he repaired to said bank and placed a guard of United States soldiers over said vault. That such guard continued without interruption, day and night, until the 16th day of October, 1900.

That said guard of soldiers was instructed by him as said marshal not to permit

said Alexander McKenzie or any other interested person to enter said safety boxes or to have access thereto.

That he informed said Alexander McKenzie of said order of said Arthur H. Noyes, district judge, as aforesaid, that he would not permit said Alexander McKenzie to enter said vault or have access thereto without first securing an order from said judge.

That on the 13th day of October, 1900, said Alexander McKenzie did request of this affiant that he be permitted to enter said vault to open one of the boxes containing gold and gold dust taken from certain of said claims, for the purpose of withdrawing therefrom a quantity of said gold dust for the purpose of paying claims against such mining property, as provided in a certain stipulation that day accepted by attorneys for plaintiffs and defendants.

That this affiant informed said Alexander McKenzie that he would have to obtain an order from said judge so permitting him to enter said boxes for the purpose of procuring said money.

That in the absence of said order this affiant would not permit him to enter said vault.

That thereafter on same day, after the gold had been withdrawn under the stipulation and order of the court above referred to, this affiant went to said Judge Arthur H. Noyes for further instructions, and said Judge Arthur H. Noyes then and there instructed this affiant to let the previous order continue and not permit Receiver Alexander McKenzie, or any other person or persons, to have access to said gold or withdraw any of same until further order of the court.

C. L. VAWTER.

Subscribed and sworn to before me this 18th day of October, 1900.

[SEAL.] GEO. A. LEEKLEY,
Notary Public in and for the District of Alaska.

(Indorsed:) No. 636. U. S. circuit court of appeals for the ninth circuit. William A. Kjellman *v.* Henry Rogers. Affidavit of C. L. Vawter. Filed January 16, 1901. F. D. Monckton, clerk.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing to be a full, true, and correct copy of affidavit of C. L. Vawter, filed in the cause entitled William A. Kjellman, Appellant, *vs.* Henry Rogers, No. 636, as the original thereof remains and appears of record in my office.

Attest my hand and the seal of said circuit court of appeals at San Francisco, California, this 17th day of January, A. D. 1901.

[COURT SEAL.] F. D. MONCKTON, *Clerk.*
[10-c. I. R. stamp.]

Mr. STEWART. It appears that some of these parties were able to appeal. They applied, as this record shows, to Judge Noyes to allow an appeal. He refused to allow an appeal in the most emphatic terms. It went to the circuit court of appeals at San Francisco. That court allowed the appeal and set aside Judge Noyes's order taking the property from the defendants and ordered it turned back into the possession of the defendants. The receiver, McKenzie, refused to obey this order.

When the Army was ordered to assist the circuit court in executing the order and take the property and give it to the defendants, Judge Noyes then directed the marshal to take possession of it, and a more terrible record never was exhibited than is shown in this opinion of Judge Ross.

Judge Ross is well known. He has been on the district bench of California for the past twenty-five or thirty years. No man stands higher or is more respected. He never was accused of wrongdoing. He is a man of great learning and integrity, and this is his opinion. I think the Senate ought to hear this opinion read. It sets forth the Nome transaction in such a light as would make any honest man blush. I will ask for the reading of this opinion or I will read it.

Mr. HAWLEY. Will not the Senator consent to have it printed in the RECORD?

Mr. STEWART. Is there objection to reading it?

Mr. BUTLER. I will ask the Senator from Nevada if that is not the opinion which was published in the Post a few mornings ago.

Mr. STEWART. It was published in part in the Post.

Mr. BUTLER. I read it with interest. Is it not sufficient to put it in the RECORD? It was published in the Post and I read it.

Mr. STEWART. I will have it printed in the RECORD, but I will call attention to one or two points.

Mr. LINDSAY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Kentucky?

Mr. STEWART. Yes, sir.

Mr. LINDSAY. I ask whether or not the offenses charged against Judge Noyes are of such a character as to warrant his impeachment?

Mr. STEWART. Undoubtedly.

Mr. LINDSAY. Then, ought we to be trying him before he is impeached?

Mr. STEWART. We are not trying him.

Mr. LINDSAY. I think we are.

Mr. STEWART. Just let me read a few lines and I will show you what is the condition of affairs going on at Cape Nome.

Mr. LINDSAY. I know it. I have read it all.

Mr. JONES of Arkansas. Will the Senator allow me a moment?

Mr. STEWART. Yes; I will give you a moment.

Mr. JONES of Arkansas. I want to make one suggestion. The Senator must know that it is utterly impossible for this matter to be disposed of and considered by the Senate now. There are but three or four days of this session remaining, and there are a number of appropriation bills that are matters of great public importance. So I hope Senators will allow the appropriation bills to go on and the public business to proceed.

Mr. STEWART. That is all very well, but I shall get through in a few minutes. It is important that the Senate and the country should know of the conditions at Cape Nome and know what is the situation there. There are thirty or forty mining claims which have been enjoined and put into the hands of receivers, and many of the miners are unable to appeal owing to the great distance from the appellate court, and some of those people have no money to appeal.

But suppose that they should go to trial before Judge Noyes, who has been fixing it all up; if they should get judgment, they would have no redress, for the mines would be all worked out. I say again if Senators would go into that mining district and see the methods which are being used by the judge in enjoining mining claims and putting them in the hands of his associate, his receiver, without notice to anybody, and confiscating the property of men in that far-off country, not one of them would tolerate or apologize for such a condition of things.

A receiver should never be appointed in mining cases except where it is necessary to protect the property, and placer mines should not be put in the hands of a receiver at all. There is no precedent for so doing. If there is any doubt about a particular title, an injunction is a complete and proper remedy. But here is a case where a whole district has been gone over in this way, where nearly all the mining property has been put into the hands of one man as a receiver, and we are told that there is no corruption about that. The decision of the court of appeals at San Francisco, rendered by Judge Ross, stigmatized this proceeding as shocking and "to have no parallel in the jurisprudence of this country."

I say that taking possession of a whole mining district by means of injunctions and a receiver, without a hearing, is a more high-handed outrage than has ever been perpetrated under Spanish rule in any country. The more you know about this Nome scandal the more you will be shocked at it. It is now sought to whitewash this man Noyes. Think of the defense made by himself, that bullying defense, in the letter read by the Senator from North Dakota. It is in keeping with all his conduct.

Mr. SHOUP. Is the Senator through?

Mr. STEWART. I will ask that the decision of the circuit court of appeals be printed in the RECORD, and also the statement of Mr. Dunham, one of the victims. Let that also go into the RECORD.

Mr. PETTIGREW. I shall object to the printing of the statement in the RECORD. The Senator will have to read it himself if it is to go into the RECORD. There has been perjury enough already in this matter.

Mr. STEWART. A lot of affidavits have already been put in the RECORD by the Senator from North Dakota [Mr. HANSBROUGH].

Mr. PETTIGREW. I do not object to the opinion of the court being printed in the RECORD, but I do object to your machine-made affidavits.

Mr. STEWART. Then I will put the opinion of the court in the RECORD, and I will read part of the statement made by Mr. Dunham.

The opinion of the court is as follows:

In the United States circuit court of appeals for the ninth circuit. John I. Tornanses, appellant, *vs.* L. F. Melsing et al., respondents. William A. Kjellman, appellant, *vs.* Henry Rogers, respondent. Filed February 11, 1901.

OPINION AND JUDGMENT.

Page, McCutchen, Harding, and Knight for appellants.
Thomas J. Geary and A. C. Severance, for respondent Alexander McKenzie.
Before Gilbert, Ross, and Morrow, circuit judges.
Ross, circuit judge, delivered the opinion of the court:

The proceedings now before the court in the above-entitled cases grow out of the alleged disobedience by one Alexander McKenzie of certain writs of supersedeas issued out of this court upon the order of Hon. William W. Morrow, one of its judges. They have been argued and submitted together, and will be so considered. Each case originated in the United States district court for the second division of the district of Alaska, of which Arthur H. Noyes is the judge, George V. Borchsenius the clerk, and C. E. Dickey a deputy clerk. Placer mining claim known as No. 10 Above Discovery, on Anvil Creek, a tributary to Snake River, was the subject of controversy in the action of Melsing et al. *vs.* Tornanses, and placer mining claim No. 2 Below Discovery, on the same creek, was the subject of contention in the action of Rogers *vs.* Kjellman.

Both claims are situated within the Cape Nome mining district of Alaska. The act of Congress under which Judge Noyes was appointed was approved June 6, 1900 (31 Stat., L, 321). In its fourth section it is provided that: "The judge designated to preside over division No. 2 (within which division is the Cape Nome mining district) shall reside at St. Michaels during his term of office, and shall hold at least one term of court each year at St. Michaels, in the district, beginning the third Monday in June."

It is further provided in the fourth section that each of the three judges provided for by the act "is authorized and directed to hold such special terms of court as may be necessary for the public welfare or for the dispatch of the business of the court, at such times and places in the district as they or any of them, respectively, may deem expedient, or as the Attorney-General may direct;" and that "at least thirty days' notice shall be given by the judge or the clerk of the time and place of holding special terms of the court."

It is not pretended that Judge Noyes held any term of the court at St. Michaels in June, or that any notice was given by him or the clerk of the court of the holding of a special term thereof at Nome, or elsewhere, prior to the acts out of which the present proceedings arise. On the contrary, it appears from the records and proofs on file in this court that the steamer on which Judge Noyes went from the city of Seattle, Wash., to Alaska did not reach the roadstead of Nome until July 19, 1900, and that he did not go ashore until Saturday, July 21.

Two days thereafter, to wit, Monday, July 23, he signed orders appointing Alexander McKenzie receiver of said placer mining claims, with directions to take immediate possession thereof and to manage, mine, and work the same; to preserve the gold, gold dust, and proceeds resulting from the working and mining of the claims, and to dispose of the same subject to the further orders of the

court; and further ordering the persons then in possession of the claims to deliver to the receiver their immediate possession, control, and management, and expressly enjoining them from in any manner interfering with the mining or working of the claims by the receiver, or with his control or management thereof.

The amount of the bond required by the judge of the receiver was $5,000 in each case. These orders were signed at the same time, and the circumstances under which they were made appear in the proceedings of the court of August 3, 1900, on the motion of counsel for the parties against whom they were directed, made for their annulment on July 24. We extract from the record in the case of Melsing et al. *vs.* Tornanses, precisely similar proceedings appearing also in the case of Rogers *vs.* Kjellman:

Upon the hearing of the applications to set aside appointments of receiver in the Anvil Creek cases Mr. Knight, of counsel for defendant, after reading affidavits in support of his application, continued as follows:

In addition, if the Court please, to these affidavits we desire to introduce the records of the court in this case, and if Mr. Dickey is here, I desire to call him as a witness.

The COURT. I believe Mr. Dickey is inside.

Mr. KNIGHT. I desire to call Mr. Dickey with reference to the filing of these papers.

(It is ascertained that Mr. Dickey is not in.)

The COURT. The records are here; can you use them instead?

Mr. KNIGHT. I desire to prove, if the court please, that the papers were not filed in this case until after an order had been made appointing a receiver; and further, that no process was issued at that time, or summons, and that so far as I know it has not been issued at the present time.

Mr. HUME. So far as the plaintiff is concerned, the papers were delivered to the clerk to be filed, all at the same time.

Mr. KNIGHT. The summons has not been served on any of our people.

Mr. HUME. So far as I know, the summons has not been served in any of these cases. Preparation was made to serve the summons, but the defendants came into court the next morning, and the question of the propriety of their appearance here before answer coming up, personal service has been delayed until the court should pass upon that matter. We have been getting the papers ready to serve each and every person interested with a copy of the complaint.

Mr. KNIGHT. I wish simply to make the point that the papers were not filed before the order was issued.

The COURT. All the papers were before the court; they were left here.

Mr. KNIGHT. But my point is that they were not filed until after the order appointing the receiver was made, and that the order was made before process issued. I think your honor will agree as to the fact that the bill of complaint was presented to your honor on the afternoon of the 23d day of July, 1900, and that your honor thereafter made an order appointing a receiver, and the papers were subsequently that evening handed to the deputy clerk of the court for filing, but that no process was issued in the cases in which I now appear—that is, in the cases involving No. 2 below, Nos. 10 and 11 above, and No. 1 Nakkela. Mr. Hume, is that correct?

Mr. HUME. Well, of course, as to the time they were filed, we can agree to this fact—that all the papers, the affidavits, and bills of complaint and summons, were all presented here to the court. They were not presented to the clerk. We couldn't find the clerk at that time; he had no office. They were presented to the court and left with the court. All the papers were left with the court, and the clerk was to file them, but he, being out some place, we were unable to find him, and he having no special office, we presumed they were not filed until later. Everything was in confusion then, and we simply left the papers with the court; that is all we could do.

The COURT. I remember this, that the papers were here on the table, and I called Mr. Dickey's attention to them.

Mr. KNIGHT. After the order had been made?

The COURT. Oh, yes.

Mr. KNIGHT. It is agreed further, then, that no process has yet issued in this case?

Mr. HUME. I think the summons has been issued. I know it was made out.

Mr. KNIGHT. But no process has been placed in the hands of an officer for service?

Mr. HUME. No; I think not. I think not placed in the hands of an officer.

The COURT. I think you will find as a matter of record that the summons has been issued.

Mr. KNIGHT. As far as the issuance of process is concerned, the records will speak for themselves.

It thus appears that the injunctions and orders appointing a receiver of the claims in question were made before the organization of the court, without notice of any character, and before any paper of any kind had been placed on the files of the court—assuming the court to have been organized and in condition for the transaction of business.

Not only so, but the injunction granted and the appointment of the receiver in the case of Rogers *vs.* Kjellman was based upon a pleading which is without a single allegation of an equitable nature. That pleading alleges only the citizenship of the plaintiff Rogers and the alienage of the defendant Kjellman; the competency of the plaintiff to make locations under the mining laws of the United States; his discovery of gold on, and his location of claim No. 2 Below Discovery, on Anvil Creek, on the 6th day of June, 1899; his marking of its boundaries in accordance with the statutes of the United States and with the local rules of the mining district within which it is situated, and the recordation of notice of the location in the office of the recorder of the district; the possession of the claim by the plaintiff until his dispossession by the defendant on or about July 1, 1899; the withholding thereof by the defendant ever since, and the extraction therefrom by the defendant and others under him of $100,000 in gold and gold dust, to the damage of the plaintiff in that sum and the right of the plaintiff to a restitution of the possession of the claim. The prayer is only for such restitution of possession of the property and for $100,000 damages and for costs.

In other words, the complaint in the case of Rogers *v.* Kjellman, upon which the judge granted an injunction and appointed a receiver, was an ordinary complaint in ejectment, without a single allegation of even an equitable nature. It is true there was presented to the judge at the same time the affidavit of the plaintiff, Rogers, and the affidavit of one Charles Cooper, in which they swore, in substance, that the defendant Kjellman was not a citizen of the United States and had never declared his intention to become such; had never located or marked the claim in question in accordance with law, but had extracted therefrom during the mining season of 1899 gold to the amount of $100,000 and removed the same beyond the jurisdiction of the court, and that his servants and assigns were then in the possession of and working the claim, whose only value consisted of the gold it contained, and, if allowed, would continue to work the claim and extract therefrom $5,000 a day and appropriate the same to their own use in fraud of the plaintiff's rights.

In the case of Melsing et al. *v.* Tornanses, the order granting the injunction and appointing the receiver was based upon an unverified bill praying for an injunction and an order appointing a receiver, supported by the affidavits of one T. H. Downing and one E. W. Bacon. L. F. Melsing, H. L. Blake, D. B. Libby, W. T. Hume, and O. P. Hubbard are the complainants in that bill and John I. Tornanses is the sole defendant thereto, although it appears in more than one place in its body that the complainants contemplated naming other parties also as defendants.

In the bill it is, among other things, alleged "that the complainant L. F. Melsing has begun an action at law against the defendant herein to recover the possession of the premises herein described, a copy of which complaint is attached to this bill and made a part hereof; that in order to preserve the rights of the complainant in said action at law and in said placer-mining claim pending the termination of said action at law, to prevent the extraction of gold from said claim and the appropriation thereof by defendants his lessees, agents, servants, employees, and grantees, and preserve the said property and the gold extracted therefrom, it is necessary, proper, and convenient that a receiver should be appointed by this honorable court to take possession of, charge of, and care for said claim, and to hold, operate, and mine and control the same, under the orders of this honorable court, until the termination of said action at law; that the complainants H. L. Blake, D. B. Libby, O. P. Hubbard, and W. T. Hume are grantees, for a valuable consideration, of the said complainant L. F. Melsing of an undivided interest each in said placer-mining claim, and are the owners of a substantial and undivided interest in the land and premises hereinbefore described, alleged, and designated as said Placer Mining Claim No. 10 above Discovery, on Anvil Creek."

The record shows that the complaint in the action at law thus spoken of was verified by Melsing on the 25th day of August, 1899, and is entitled in the district court of the United States for the district of Alaska, which court was abolished by the act of Congress of June 6, 1900. (31 Stat. L., 321.) That complaint, however, appears from the record to have been filed in the district court for the district of Alaska, second division, created by the last-mentioned act of Congress, at the time the bill in the case of Melsing et al. *v.* Tornanses was filed therein, together with an affidavit of Melsing, made by him on the 25th day of August, 1899, evidently to be used in some way in connection with the action at law entitled in the abolished court.

The bill in the case of Melsing et al. *vs.* Tornanses further alleges that on the 11th day of March, 1899, Melsing discovered gold in the ground known as said placer-mining claim No. 10 Above Discovery, and, being at the time competent to do so, located the ground under the mining laws of the United States, marking the boundaries thereof in accordance with law and recording the notice of the location in the office of the recorder of the district in which the claim is situated, and took peaceable possession thereof; that thereafter, and on or about May 1, 1899, the defendant Tornanses wrongfully and forcibly, by himself and others under him, ejected Melsing from the premises and took possession of the claim, and has ever since withheld its possession from him; that during the mining season of 1899 the defendant worked the said claim and extracted therefrom gold of the value of at least $150,000, and at the opening of the season of 1900 commenced and still continues the working of the claim, thereby extracting therefrom each day gold and gold dust of the value of at least $5,000, all of which the defendant Tornanses, his lessees and grantees, have appropriated to their own use and benefit to the injury of the complainants and in fraud of their rights; that the ground is valuable only for the gold it contains, and that the defendant Tornanses, his agents, lessees, and grantees, are insolvent, and that the defendant Tornanses is an alien and has never declared his intention to become a citizen of the United States. This bill, as has been said, was never verified.

The affidavits of Downing and Bacon, presented in support of the bill, are only to the effect that in July, 1900 (that of Bacon fixing the date as the 19th of that month), they saw working upon claim No. 10 Above Discovery a large number of men, under, as they were informed and believe, the defendant or his assigns or grantees, and that the claim was being unskillfully worked, with the object of taking only the richest pay dirt without regard to the manner in which the claim would be left thereafter, and that the continuation of such work in that manner would destroy the value of the claim.

The affidavit of Bacon further states that he was informed by the men at work that they were getting gold therefrom at the rate of a dollar a shovel, and that in addition to the work by hand the persons working the ground had a steam plant in operation thereon for the purpose of expediting the extraction of the gold contained therein, and that the pay dirt was then so exposed as to be easily sluiced and worked when there should be sufficient water in Anvil Creek, and that when there should be more water in the creek the parties then working the ground "could take thousands of dollars out of said claim, and virtually destroy the same for sale or proper operation unless restrained by order of the court."

It was upon the showing here stated and under the circumstances above detailed that Judge Noyes, on the 23d day of July, 1900, signed the orders granting the injunctions and appointing the receiver of the mining claims in question, who at once took possession of them. On the 24th day of July, 1900, in the case of Melsing et al. *vs.* Tornanses, and on the 30th day of July, 1900, in the case of Rogers *vs.* Kjellman, the parties claiming under Tornanses and Kjellman moved the court to vacate these orders, supporting the motions by the notices of location of the respective claims by Tornanses and Kjellman, by their respective deeds of conveyance, and by numerous affidavits.

The notice of location by Kjellman of claim No. 2 Below Discovery described the claim, set forth the discovery of gold thereon on the 22d day of September, 1898, and its location on that day, and appears to have been witnessed by John Brynteson and Erik O. Lindblom, and was filed for record at 12 o'clock noon on October 12, 1898, with A. N. Kittelsen, recorder of the mining district. The notice of location by Tornanses of claim No. 10 Above Discovery was similar and purported to have been witnessed by G. W. Price and A. N. Kittilsen, M. D., and filed for record at 12 o'clock noon on October 18, 1898.

The deeds thus presented to the court were conveyances from those original locators, for a valuable consideration, to Charles D. Lane of their interests in the claims. The affidavits presented in support of the motions to vacate the orders referred to set forth, among other things, that Tornanses was the first locator of the aforesaid claim No. 10 Above Discovery, and that Kjellman was the first locator of the aforesaid claim No. 2 Below Discovery; that prior to the respective locations gold was discovered by the locator in the ground located, and that in making each of said locations the boundaries thereof were so marked upon the ground that they could be readily traced, and that from the time of their location each of the claims was in the possession of the locator and his successors in interest, and during each working season thereafter was mined for gold in a proper, miner-like way; that the conveyance of those claims to Lane was made to him for and on behalf of the Wild Goose Mining and Trading Company, a corporation—that of the aforesaid claim No. 2 Below Discovery on the 9th day of September, 1899, and that of the aforesaid claim No. 10 Above Discovery on the 18th day of September, 1899, since which time neither Kjellman nor Tornanses have never had possession of or control over either of said claims, but that both of them thereupon departed from the United States, and neither has ever returned, and that the property has since been held and worked by Lane and those holding under him, and was so worked and held at the time of the initiation of these cases. The affidavits on behalf of the moving parties also deny the alleged insolvency of Lane and those holding under him, and, on the contrary, aver that both Lane and the Wild Goose Mining and Trading Company are amply able to respond in any damages that may be recovered against them.

In each case the district court, on the 10th day of August, 1900, made and entered an order denying the motion so made to vacate the order granting the injunction and appointing the receiver, and on the 14th day of August, 1900, counsel for the defendants in each case petitioned the court for an order allowing an appeal from the order granting the injunction and appointing the receiver, at the time presenting to the court a proper bond on appeal, together with an assignment of errors and a proposed bill of exceptions for settlement and allowance, in response to which the judge, on the 15th day of August, 1900, made an order in each case "that said proposed bill of exceptions is in each and every

part thereof disallowed as a bill of exceptions herein, and the settlement thereof, or of any proposed bill of exceptions herein, is hereby refused; that said petition for an order allowing said appeal is hereby denied, and said judge declines to accept or fix the amount of any bond for costs thereof, or allow a supersedeas bond to be given, or fix the amount thereof.

Dated NOME, ALASKA, *August 15, 1900.*

"ARTHUR H. NOYES, *Judge.*"

On the same day, to wit, August 15, 1900, the judge made and entered the following order in each case:

"Now, at this time, comes the plaintiff by his attorneys, Hubbard, Beeman & Hume, and Dudley Du Bose, and moves the court for an additional and further order in the matter of the appointment of Alexander McKenzie as receiver in the above-entitled suit, and the court being fully advised in the premises:

It is further ordered that in addition to the powers and authorities already granted the receiver appointed, the said receiver is hereby ordered to take possession of the placer claim mentioned in the complaint herein, and all sluice boxes, dams, excavations, machinery, pipe, boarding houses, tents, buildings, safes, scales, and all other personal property fixed or movable on the said placer claim; also all gold, gold dust, precious metals, money, books of account, and each and all personal property upon the said claim connected therewith, and in any way appertaining thereto, in possession of and under the control of the defendant, his lessees, grantees, assigns, employees; and all and every person in possession of the said claim or claiming any right, title, or interest in and to the said placer claim or any gold dust therein or any personal property thereon of any nature whatsoever, are hereby ordered to deliver the same to the said receiver, and are hereby restrained from interfering with the said receiver in quiet and peaceable possession of the same, or any agent that the said receiver may designate to take possession thereof.

It is further ordered that this order shall revoke all and any order in conflict herewith, and does hereby revoke the same; and

It is further ordered that this order shall remain in full force and effect until further order of this court.

It is further ordered that a copy of this order shall be served upon any person in possession of or claiming possession of the property described.

Done in chambers this 15th day of August, 1900.

ARTHUR H. NOYES, *Judge.*

For this sweeping order against any and every person, whether a party to the suit or not, and this express requirement of the receiver to take possession, among other things, of all sluice boxes, machinery, pipe, boarding houses, tents, safes, scales, money, books of account, and all other personal property upon the claims, of whatsoever kind or nature, no basis of any kind appears from the records which have been brought here upon certiorari to have been presented to the court below, although the order recites upon its face that the court was "fully advised in the premises."

Nor does it appear that the slightest attention was paid to an express provision of the very statute under which the court was created and existed, in terms prohibiting the appointment of a receiver in any action for the recovery of specific personal property (Alaska Code, sec. 753), nor to sections 301 or 475 of the same code, which provide as follows:

"SEC. 301. Any person who has a legal estate in real property, and a present right to the possession thereof, may recover such possession, with damages for withholding the same, by an action. Such action shall be commenced against the person in the actual possession of the property at the time, or, if the property be not in the actual possession of anyone, then against the person acting as the owner thereof."

"SEC. 475. Any person in possession, by himself or his tenant, of real property, may maintain an action of an equitable nature against another who claims an estate or interest therein adverse to him for the purpose of determining such claim, estate, or interest."

It will be observed from these provisions that by the code governing Alaska an action of ejectment is required to be brought "against the person in the actual possession of the property at the time, or if the property be not in the actual possession of anyone, then against the person acting as the owner thereof;" and that the right to maintain an equitable action for the purpose of determining an adverse claim is only given to one in possession by himself or his tenant.

The successors in interest of the defendants to the suits having thus been denied an appeal from the orders granting the injunctions and appointing a receiver, not only of the mining claims in question, but of their personal property as well, with directions to the receiver to extract from the claims the gold which constituted their sole value, the defendants applied, with all speed possible, to a judge of this court for the allowance of the appeals which had been denied them in Alaska.

The judge of this court, to whom the applications were made, and upon a showing embracing much of this shocking record, at once granted the appeals, requiring and approving a supersedeas bond in each case in the sum of $20,000, and thereupon ordered a writ of supersedeas to issue out of this court under its seal, in each case; and, in writing, approved the form thereof, staying all proceedings under the orders granting the injunctions and appointing the receiver, and further ordering the receiver to at once restore to the defendants from whom he had taken them the said mining claims, together with the gold, gold dust, and other personal property received by him under the orders appealed from.

Certified copies of the order allowing the appeal in each case, together with certified copies of the assignment of errors and of the bond, were, with the original writ of supersedeas and the original citation in each case, filed in the lower court on the 14th day of September, 1900, and copies thereof at once served upon the Receiver McKenzie and a demand made upon him for the restitution of the property in accordance with the writs.

The evidence taken upon the hearing of these proceedings is to the effect, and we so find the fact to be, that the respondent McKenzie thereupon refused and continued to refuse to restore, in accordance with the requirements of the writs of supersedeas, the gold, gold dust, and other personal property received by him under the orders of the trial court, and that fact being made to appear to this court by affidavits on the 1st day of October, 1900, and it further being then made to appear to this court that the last steamer for the season would leave the city of Seattle for Nome within a few days, and that no further communication could be had with that section of the country until the spring or early summer of 1901, this court thereupon made an order directing its marshal to proceed to Nome, enforce its writs of supersedeas, arrest the offending receiver and produce him at the bar of this court. The evidence taken upon the hearing of these proceedings is also to the effect, and we so find the fact to be, that the respondent McKenzie at all times had it within his power to comply with the requirements of the writs of supersedeas issued out of this court; that he contumaceously refused to restore the gold, gold dust, and other personal property to the defendants, as required by those writs, and has continued such refusal ever since.

It is said by counsel for the respondent McKenzie that the action of Judge Noyes in refusing to allow the appeals petitioned for and in refusing to settle any bill of exceptions was based upon the opinion that no appeal is allowed by law from the orders made by him, and it is here so contended.

Provision is made by section 504 of the Alaska Code for the taking and prosecution of an appeal from the final judgment of the district court for the district of Alaska, or any division thereof, direct to the Supreme Court of the United States in certain cases within which the present cases do not come, and it is then provided "that in all other cases, where the amount involved or the value of the subject-matter exceeds the sum of $5,000, the United States circuit court of appeals for the ninth circuit shall have jurisdiction to review upon writ of error or appeal the final judgment (and) orders of the district court."

And section 507 of the same code declares that "an appeal may be taken to the circuit court of appeals from any interlocutory order granting or dissolving an injunction, refusing to grant or dissolve an injunction, made or rendered in any cause pending before the district court within sixty days after the entry of such interlocutory order. The proceedings in other respects in the district court in the cause in which such interlocutory order was made shall not be stayed during the pendency of such appeal, unless otherwise ordered by the district court."

Leaving out of consideration the last-quoted section, which in express terms authorizes an appeal from an order granting an injunction and without considering the right of the defendants to the suits in question to thus have reviewed the orders enjoining them from working the mining claims involved in them, and as a necessary incident the right of the court to appoint a receiver of the property claimed by them, we think we may safely rest the jurisdiction of this court to review those orders upon section 504 of the Alaska code, above referred to.

And it is for this court, subject to review of its action by the Supreme Court, to determine whether it may entertain jurisdiction of the cause removed and to dispose of controversies in respect to the form of its writs, the parties, the citation, and their service, without interference from any other court. (In re Chetworth, 165 U. S., 443.) Courts take judicial notice of the general physical and climatic condition of the country within their jurisdiction. We therefore know judicially, as well as from the record in these cases, that the sole value of the mining claims in question consisted in the mineral contained in them.

The extraction of that is, therefore, the taking of the very substance of the estate, and when all of it is removed nothing of value will remain in the claims. In the case of a vein or lode mine, with tunnels, drifts, and shafts in which there are timbers to be placed, replaced, or repaired, or water to be controlled, it sometimes happens that the appointment of a receiver becomes necessary to take possession of and operate the mine pending the litigation, in order to preserve the property; but even in that class of cases the necessity for a receiver is not of frequent occurrence.

This is well shown in the case of Bigbee *vs.* Summerour (101 Ga., 201, 228; S. E. Rep., 642). So, too, in the case of placer-mining claims, valuable only for the oil contained in them, where it becomes necessary for the proper preservation of the claim that the ground be worked to prevent its substance from being drawn off by the operation of wells on adjoining ground, or where it is shown that a receiver is necessary in order that the annual work required by law may be performed for the benefit of the party who may ultimately be adjudged entitled to the ground.

But nothing of that sort is shown to have existed with respect to the claims here involved. Here the gold in the claim would have remained as safe as it was during all the ages it had been there, and an injunction (assuming a proper showing for one to have been made) staying the working of the claims pending the litigation would have perfectly preserved the property for whomsoever might be ultimately adjudged to be entitled to it. The value of mining property of every character, like the value of any other kind of property, largely depends upon the manner in which it is operated. Many good mines prove unprofitable because of loose management or extravagant methods of working them.

The successors in interest of the defendant to the suits in which this receiver was appointed were in possession of the claims under a claim of right, and were engaged in mining the ground on a large scale and had been so engaged during the working season of the year 1899, as well as that of the then current season of 1900. They may, therefore, be properly presumed to have been, at least, somewhat familiar with the proper working of placer claims. But there is no evidence that the respondent ever saw a placer or any other kind of mining claim before he was appointed receiver of these and, at least, two other similar claims on the 23d day of July, 1900.

It is in evidence in at least one of the contempt proceedings now pending before us against McKenzie that, shortly before going to Alaska, he caused to be organized a corporation called the Alaska Gold Mining Company, with a capital stock of $15,000,000, a majority of which he held, and that, having placed a portion of the remainder where he thought it would stand him in good stead, he proceeded with Judge Noyes to Nome, arriving there on Saturday, July 21, 1900, and on Monday, July 23, before the court was organized and before the filing of any paper of any character with the clerk of the court, was appointed by Judge Noyes receiver of at least four of the richest claims in the district of Nome, upon complaints made by persons the interest therein of at least one of whom had theretofore been acquired by the receiver's corporation, the Alaska Gold Mining Company.

It has been already seen that the orders under which this was done in the present cases directed the receiver to take possession of and mine the claims in question, and enjoined the parties then in possession from in any manner interfering with the claims or with the acts of the receiver. It has been seen also that in the case of Rogers *vs.* Kjellman this was done upon a complaint which did not even ask for the appointment of a receiver or for such injunction, and in the case of Melsing et al. *vs.* Tornanses that the only relief that was asked was the granting of an injunction and the appointment of a receiver, all of which was granted by the court by the orders made by it on July 23, 1900.

We have no hesitation in holding that an order by which a placer mining claim, whose proper preservation in no respect requires it, is taken from one who is in the actual possession thereof and turned over to a receiver, with instructions to extract from it its only value, is in effect a final decree and appealable as such, for its entire value may be thus destroyed by improper working or extravagant management or by the extraction of all its mineral, while he from whom it is taken and who asserts a right to it may prefer to work the claim to a limited extent only, or in a particular manner, or not at all. He may prefer to hold it for sale or other disposition; yet, under such orders as are here involved, the operations of the receiver of necessity constantly exhausts the very substance of the property and may speedily render it absolutely worthless.

Surely the authority, by whatever name called, under which such a result may be wrought is, in effect, a final judgment. As was said by the circuit court of appeals for the third circuit in Potter *v.* Beal (50 Fed. Rep., 63), the determination of the question as to what is or is not a final decree "is to be governed by the essence of what is done and not by the appellation given to it." In the Farmers' Loan and Trust Company case (129 U. S., 206) it was held that an order allowing a receiver of a mortgaged railroad to issue certificates which should be preferred to the mortgage was a final decree in effect and appealable.

In the case of Sharon *v.* Sharon (67 Cal., 215) the supreme court of California held that an order made pendente lite, directing the payment of alimony in a divorce suit, is in the nature of a final decree and appealable as such. (See also the Tampa Railway Company case, 168 U. S., 583, 588, and Iron Co. *v.* Meeker, 109 U. S., 180.) A mine is, as was held in Bigbee *v.* Summerour, supra, destroyed as such, as fast as the mineral is taken out; so that the necessary effect of the orders in question was to gradually, and perhaps rapidly, destroy the mining claims, and, as a matter of course, the personal property embraced by the orders would necessarily perish by use.

The remaining points urged on behalf of the respondent may be briefly disposed of. It is contended that in order to give effect to the orders made by Judge Morrow allowing the appeals it was essential to file the original orders in the lower court. Only certified copies of those orders were so filed; but the

original citation and the original writ of supersedeas were filed in the lower court in these cases, together with certified copies of the assignment of errors and of the supersedeas bond. All of these papers were filed in the district court September 14, 1900. That that was sufficient to give effect to the appeal has been expressly decided by the Supreme Court in two cases—Brown *vs.* McConnell (124 U. S., 489) and Stewart *vs.* Masterson, (Id., 493).

Section 1007 of the Revised Statutes declares:

"In any case where a writ of error may be a supersedeas, the defendant may obtain such supersedeas by serving the writ of error, by lodging a copy thereof for the adverse party in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment, he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterwards, with the permission of a justice or a judge of the appellate court. And in such cases where a writ of error may be a supersedeas, execution shall not issue until the expiration of (the said term of sixty) (ten) days."

It is contended that the supersedeas thus provided for by statute does not require the restoration to the defendants, pending the appeal, of any property taken by the receiver. Let that be admitted, and the fact remains that, in each of these cases, Judge Morrow ordered a writ of supersedeas to be issued out of this court, under its seal, and, in writing, approved the form of the writs, each of which required the receiver, among other things, to restore to the possession of the defendants the personal property he had taken from them, together with the gold and gold dust extracted by him as such receiver from the claims. It is said that a single judge of this court can not grant a writ of supersedeas. Sections 1000 and 1007 of the Revised Statutes, the case In re Claasen, 140 U. S. 200, rule 36 of the Supreme Court, and section 11 of the act, approved March 3, 1891, creating this court, conclusively answer this objection.

By section 11 of the circuit court of appeals act it is, among other things, provided that "any judge of the circuit court of appeals, in respect of cases brought or to be brought to that court, shall have the same powers and duties as to the allowance of appeals or writs of error and the conditions of such allowance as now by law belong to the justices or judges in respect of the existing courts of the United States respectively."

In the case In re Claasen, supra, the Supreme Court held that a justice of the Supreme Court was authorized to grant a supersedeas, saying, "By section 1000 of the Revised Statutes it is provided that every justice or judge signing a citation on any writ of error shall take security for the prosecution of the writ, and for costs, where the writ is not to be a supersedeas and stay of execution, and for damages and costs where it is to be. In a criminal case there are no damages, and in such a case, the United States being a party, it is provided by subdivision 4 of rule 24 of this court that in cases where the United States are a party no costs shall be allowed in this court for or against the United States.

Section 1007 of the Revised Statutes provides for the manner in which a supersedeas may be obtained on a writ of error. It is by serving the writ of error, by lodging a copy thereof for the adverse party in the clerk's office where the record remains within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But as there is no security required in a criminal case, the supersedeas may be obtained by merely serving the writ within the time prescribed, without giving any security, provided the justice who signs the citation directs that the writ shall operate as a supersedeas, which he may do when no security is required or taken.

We hold, therefore, that the allowance of the supersedeas in the present case was proper, and we deny the motion to set it aside.

To remove all doubt on the subject, however, in future cases we have adopted a general rule, which is promulgated as rule 36 of this court (see 139 U. S., 706), and which embraces, also, the power to admit the defendant to bail after the citation is served.

The rule thus referred to and adopted by the Supreme Court will be found in 139 United States, 706, and is as follows:

"1. An appeal or a writ of error from a circuit court or a district court direct to this court, in the cases provided for in sections 5 and 6 of the act entitled 'An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes,' approved March 3, 1891, may be allowed, in term time or in vacation, by any justice of this court, or by any circuit judge within his circuit, or by any district judge within his district, and the proper security be taken and the citation signed by him, and he may also grant a supersedeas and stay of execution or of proceedings pending such a writ of error or appeal."

It is further contended that the scope of the writs was too broad, in that, in the first place, they went beyond the orders of Judge Morrow, and, in the second place, that it was beyond the power of the court to require the receiver to restore the property taken by him. It is true that the orders first made by Judge Morrow did not in terms direct the receiver so to restore the property, but in each case that judge subsequently, and on the same day, made an order expressly approving the form of the writs requiring such restoration.

If it be conceded that the scope of the writs was too broad, it was not for the receiver to ignore their requirements and himself be the judge of that question, but his only proper remedy was a motion to modify the writs. While refusing to obey them he should not be heard to object to their scope. In 2 High on Injunctions, section 1416, it is said that "If defendant is in doubt as to the scope or extent of the injunction, he should not be left to disregard or violate it, with a view of testing such questions, but should apply to the court for a modification or construction of its order."

The same rule is applicable to a receiver. (See, also, Wells, Fargo & Co. *vs.* Oregon Railway and Navigation Company, 19 Fed. Rep., 20; Ullman *vs.* Ritter, 72 Fed. Rep., 1000, 1003; Maginnis *vs.* Parkhurst, 4 N. J. Eq. Rep., 433, 436.) But the point itself is, we think, untenable. In the leading case upon the subject, that of The State *vs.* Johnson, 13 Florida, 33, 48, it is said: "The allowance of a supersedeas does not, nor does the order in this case, 'undo' or reverse the order of the circuit judge. The order, following the intent and effect of the law, in terms directs a stay of all proceedings under the several orders appealed from, and suspends their operation.

"The power of the circuit court was suspended, and thereby the power of all the officers in that court, under its orders in question, became inoperative. They no longer had any duties to perform under such orders. The authority of the receiver to continue to act as such was made nugatory by the operation of the law. He had entered upon an office and commenced to act, when the office was suspended. The supersedeas as understood by us, and as seems to be understood by the courts, does of necessity retroact by suspending the life of the order appealed from; reaches back to that order and forbids action under it.

"It does not make unlawful an act done in pursuance of the order before the appeal was taken, but it forbids the court and its officers further to act. No new rights having been created, and the duties of the receiver being superseded, the bond standing in the place of the property in his hands, and he having been notified thereof by proper process, it was his duty to restore that which had come to his hands to the parties from whom it had been taken and withheld; for his authority to take, being inoperative by the suspension, his authority to hold was equally so, both being derived from the same order."

The case of State *vs.* Johnson has been several times approved. (Buckley *vs* Georgia, 71 Miss., 580; Farmers' Nat. Bank *vs.* Backus, 63 Minn., 115. See also Everett *vs.* State, 28 Md., 190; Freeman on Ex., 2 ed., sec. 271a, p. 876; High on Receivers, 3d ed., sec. 190, p. 164; 20 Am. and Eng. Ency. L., 110.)

In the last edition (Anderson's) of Beach on Receivers, page 129, section 117, it is said that "from the authorities and reason there may be legally deduced the following principles, which should govern questions concerning the subject of this section:

* * * * * * *

"2. If a receiver be appointed and takes possession of the property prior to the appeal and supersedeas, the consummation of the appeal with bond and supersedeas gives to the defendant the right to demand and have the property returned to him."

Finally, it is urged that the refusal of the receiver to obey the writs of supersedeas issued out of this court was based on the advice of his counsel that the writs were void. Such advice is never a justification of a contempt, but in proper cases may be considered in mitigation of the offense. (1 Beach on Injunctions, sec. 250; High on Injunctions, sec. 1427; Rogers *vs.* Pitt, 89 Fed. Rep., 424, and cases there cited.)

The circumstances attending the appointment of the receiver in these cases, however, and his conduct after as well as before the appointment, as shown by the record and evidence, so far from impressing us with the sincerity of the pretension that his refusal to obey the writs issued out of this court was based upon the advice of his counsel that they were void, satisfy us that it was intentional and deliberate, and in furtherance of the highhanded and grossly illegal proceedings initiated almost as soon as Judge Noyes and McKenzie had set foot on Alaskan territory at Nome, and which may be safely and fortunately said to have no parallel in the jurisprudence of this country.

And it speaks well for the good, sober sense of the people gathered on that remote and barren shore that they depended solely upon the courts for the correction of the wrongs thus perpetrated among and against them, which always may be depended upon to right, sooner or later, wrongs properly brought before them. And it is well, in these days of the rapid extension of our national domain, for all persons, whether residing in remote regions or nearer home, to remember that courts which respect themselves and have a due regard for the administration of justice and the maintenance of law and order, will never tolerate any disobedience of their lawful orders, writs, or judgments, wherever committed within their jurisdiction.

"It is inherent in the nature of judicial authority," said the supreme court of Florida in the case of State *vs.* Johnson, supra, "that every court may protect and maintain its jurisdiction under the law, and that it shall protect itself against all attempts to resist, or thwart, or overthrow its authority. Without the power to judge of its jurisdiction, it is practically without jurisdiction. Without the power to enforce its judgments, it has no judicial authority.

"That it be made the plaything of whomsoever may choose to deride its judgments or its process, and ignore its existence and its acts, because the opinions of the judges and the judgments of the court may not meet the approval of counsel upon the one side or the other of a controversy, or may not be in accordance with the opinions or the wishes of subordinate officers, can not be allowed without surrendering the judicial character and confessing the impotency of this department of the Government.

"Courts commit errors, and parties may suffer from the improvidence or corruption of their judges, yet the remedy for these is not in individual resistance or in a resort to private judgment. Every court will hear the appeals of those who conceive themselves to be wronged or threatened with injustice by the execution of its decrees. If its errors be made apparent, it will do justice to itself by dealing justice to parties without fear and without hesitation. There is no excuse for resistance of the orders of the courts in this country, where their doors are wide open and where every human being may be heard in the presence of the whole people."

In the refusal of the respondent, Alexander McKenzie, to obey the writs of supersedeas issued out of this court, as hereinbefore found and stated, it is now here considered and adjudged that he did commit contempts of this court, and for the said contempt so committed in the case entitled Tornanses *vs.* Melsing et al. it is now here ordered and adjudged that he, the said Alexander McKenzie, be imprisoned in the county jail of the county of Alameda, Cal., for a period of six months, and for the said contempt so committed in the case entitled Kjellman *vs.* Rogers that he be imprisoned in the jail of the said county for a like period of six months, making one year in all—the sentence imposed in the said last-mentioned case to commence immediately upon the completion of the term of imprisonment under the first sentence herein.

The marshal will execute this judgment forthwith.

United States circuit court of appeals for the Ninth circuit. John I. Tornanses, appellant, *vs.* L. F. Melsing et al., respondents; William A. Kjellman, appellant, *vs.* Henry Rogers, respondent. Filed February 12, 1901.

MODIFICATION OF JUDGMENT.

Based upon our understanding of the statement of counsel in two of the companion cases against the respondent McKenzie for alleged contempt of the process of this court that all of the pending cases against him had been, in so far as the parties thereto are concerned, settled, and that the respondent had restored to the parties from whom it had been taken the whole of the property in controversy, we so stated in the opinion delivered herein February 11.

The court is now informed that this is a mistake of fact in respect to the present cases, and that in these cases there has been no settlement as respects the parties, and there is no showing of the restoration by the receiver of the property in the above-entitled cases as required by the writs of supersedeas issued out of this court. The paragraph of the opinion of this court rendered February 11 in which the erroneous statement of fact was made will therefore be corrected, and the judgment entered in these cases at the same time will be, and hereby is, so modified as to direct that the respondent pay all the costs of the contempt proceedings herein, to be taxed by the court.

Mr. ALDRICH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Rhode Island?

Mr. STEWART. Yes.

Mr. ALDRICH. I desire to appeal to the Senator from Nevada to give some heed to the appeal which has been made to him by the Senator from Arkansas [Mr. JONES], that the public business may be proceeded with and that these extraneous private matters be not injected.

Mr. STEWART. That kind of an appeal does not weigh with me under the circumstances at all. Is it not a matter of public business that a whole country is tied up and robbed? That is public business. The miners who have gone up there have been robbed, and their property has been put into the hands of a receiver connected with the judge, and has been taken possession of and is being looted.

Mr. SHOUP. Regular order, Mr. President.

Mr. STEWART. Regular order, yes. This is regular order.

The more you hear about this matter the more you will want the regular order.

Mr. ALDRICH. The Senator must be aware that this matter can not be decided here, and that no public good can come from its discussion.

Mr. STEWART. The Senator must be aware that there is not going to be any whitewashing here, if I can prevent it.

Mr. ALDRICH. I am not attempting any whitewashing. I appeal to the Senator in the interest of public business.

Mr. STEWART. Why did you not appeal to the Senator from North Dakota [Mr. HANSBROUGH], who started this discussion?

Mr. ALDRICH. I would appeal to both Senators.

Mr. STEWART. Save your appeal for the other man.

Mr. ALDRICH. I would make an appeal to any Senator.

Mr. STEWART. Does the Senator want to appeal to me to conceal the infamy at Nome? Does he want to indorse that? Does he want to indorse the taking possession of a whole mining district?

Mr. SHOUP. Mr. President, if this controversy does not cease, we shall not be able to get through with the public business at this session.

The PRESIDING OFFICER. Does the Senator from Nevada yield to the Senator from Idaho?

Mr. STEWART. No.

Mr. SHOUP. I wish——

The PRESIDING OFFICER. The Senator from Nevada refuses to yield to the Senator from Idaho.

Mr. STEWART. I will not be taken off my feet. I would have finished long ere this if I had not been interfered with.

The PRESIDING OFFICER. The Senator from Nevada refuses to yield.

Mr. STEWART. I read from the statement of a gentleman who was sent up to Alaska as census supervisor, and who is a man of reputation and character. He knows the situation well, having been one of the victims of the court at Nome. His name is Samuel C. Dunham:

On January 15, 1900, Dunham and three companions, C. Y. Malmquist and William and Nicolay Hunter, located four beach claims at the mouth of Daniels Creek, which empties into Bering Sea at Topkuk, about 60 miles east of Nome. They found 80 cents to the pan on the surface. In locating across the mouth of Daniels Creek they discovered that a creek claim had been located there on the 12th day of December preceding, and to avoid any conflict as to the overlapping of the claims at the mouth of the creek they purchased the creek claim from George Ryan, the original locator. Dunham and his associates immediately organized a company under the name of the Black Chief Mining Company, and proceeded to develop the property. In April news of the strike reached Nome and a large number of men stampeded to Topkuk and "jumped" the beach in front of the company's property. It is estimated by the banks at Nome that $600,000 was rocked out of the beach by the "jumpers" in sixty days, and it is undoubtedly the richest piece of beach ever discovered. This led to litigation, and the case was under consideration in the United States commissioner's court at the time of the arrival of Judge Noyes in Nome. Dunham's statement is addressed to Congress, and, in part, is as follows:

On July 6, 1900, P. C. and John J. O'Donnell "jumped" the Ryan claim, which had been purchased in April by the original locators of the beach at the mouth of Daniels Creek. In the latter part of July the O'Donnells, at the instigation of lawyers intimately associated with certain court officials, brought suit against the Black Chief Mining Company for an injunction and the appointment of a receiver. The application was supported by an affidavit from George Ryan that when he located No. 1 Daniels Creek on December 12, 1899, he did not make a discovery of gold thereon nor properly stake the claim. The O'Donnells made affidavit that when they located on July 6 the ground was unoccupied, although it was a matter of common notoriety that the Black Chief Mining Company was in possession at that date and had been for five months.

Upon the hearing of the motion for the appointment of a receiver the Black Chief Mining Company interposed vigorous opposition, on what seemed to be well-established grounds of law and equity, to the appointment of a receiver. It contended that no court had the power to compel the development of a placer mining claim; that the sole province of a receiver being the preservation of property, or its rents and profits, the court was precluded on the showing made from appointing a receiver in this case.

A receiver was appointed, however, on August 13. One William B. Cameron, of North Dakota, a personal friend of Alexander McKenzie, was selected by Mr. McKenzie as receiver, and was invested by the court with possession and control of the property, with instructions to work the same and retain possession of the gold which he extracted. His bond was fixed at $10,000. He at once proceeded to the claims of the company with an enormous amount of machinery and supplies, marked "Alexander McKenzie, Nome, via Seattle."

He also took with him 38 so-called miners, 2 cooks, a number of horses, and a complete equipment for extensive operations on an extravagant scale. He refused to use the machinery belonging to the company, which had been placed upon the ground at a cost of $6,000 and was lying idle pending the action of the court, would not employ any of the five or six men who were working for the company, and refused to permit a representative of the company to be present at the first 5 clean-ups. The court subsequently issued an order permitting a representative of the company to be present at clean-ups. A charge of $29,000 was made against the property for the machinery sold to the receiver by McKenzie. A man by the name of McCormack, who was the general manager of the Alaska Gold Mining Company, of which McKenzie was president, was selected as foreman, and proceeded to work the property.

Affidavits were presented to the court by the company alleging that the receiver was working the property in a most extravagant and unskillful manner, and a motion was made for his discharge. The hearing upon this motion was delayed two weeks by dilatory motions submitted by plaintiff's counsel. At the hearing the company offered, if the court would reinvest it with possession and control of its property, to give a bond in double the amount that had been required of the receiver, or in any other amount the court might require, up to $200,000, and agreed to work the mines in an economical and minerlike manner and report to the court as might be required.

It furthermore offered to mine the property and turn into the court all the gold that it might extract therefrom, and, in case plaintiffs should win the case, turn all the gold which had been taken from the mine over to the plaintiffs and make no claim for the expense of extracting it. It was confidently believed that no objection could be made to that proposition. As a matter of fact, the plaintiffs vehemently resisted and denounced the proposition as "an exhibition of cheek and unmitigated gall," and the court, in ruling against the motion, remarked that he considered the proposition "impertinent, being a reflection on an officer of the court and having no foundation in law or precedent."

In September last the receiver appeared in Nome and applied to the court for an order to permit him to convert the gold taken from the claim into currency to enable him to pay current expenses. The name of A. K. Wheeler appears as the attorney of record in this matter. Mr. Wheeler was at that time and for some months afterwards the private secretary of the judge of the district court at Nome. He has recently been appointed deputy United States district attorney for Nome.

At an early stage of the controversy over the possession of the Topkuk claims Mr. Wheeler assured two members of the Black Chief Mining Company that the matter could be settled within twenty-four hours to the entire satisfaction of the company for a half interest in its properties. The "fee" was considered excessive and the proposition received unfavorable consideration. Mr. Wheeler then withdrew from the room for a few minutes, and on his return asked whether the members of the company considered a three-tenths interest an exorbitant fee. The members of the company replied that inasmuch as the company owned the property, they considered the fee excessive. The negotiations then closed.

The net results of the first season's operation of the Black Chief Mining Company's claims at Topkuk are about as follows: The four claims at the mouth of Daniels Creek, located by Malmquist, the Hunters, and Dunham, have produced approximately $800,000. Of this vast sum the rockermen secured about $600,000 and the receiver extracted the balance, while the Black Chief Mining Company has paid $35,000 for expenses and cost of litigation to date, without receiving a dollar as a company from the proceeds of the claims.

Three individual members of the company were "permitted" to work on the beach by the "jumpers," and washed out about $15,000. The writer of this statement paid his assessment for expenses, partly in cash and partly in notes of hand, which are approaching maturity with appalling rapidity. The only substantial return he has ever received for his hard, cold, pioneer work of last winter is the 80 cents washed from that first pan at Topkuk. Under the present administration of the mining laws at Nome the worst calamity that can befall a man is to discover a rich claim, and the richer the claim the greater the calamity.

After the injunction was granted several hundred thousand dollars were taken out.

Mr. LINDSAY. But we can not dissolve an injunction.

Mr. STEWART. No; but you can dissolve the judge. I shall not speak further on this subject at present, and yield to the Senator having the Army bill in charge.

Mr. PETTIGREW. Mr. President——

Mr. SHOUP. I want to appeal to Senators on the other side of the Chamber to ascertain if they are prepared to agree upon an hour when general debate shall terminate and when we can commence voting on the pending amendments and amendments to be introduced. I should be very glad indeed to fix any hour, if it be agreeable to Senators.

Mr. TELLER. The Senator from Idaho knows that can not be done to-night, and it is not worth while to waste time in making such an appeal.

Mr. SHOUP. Is the Senator willing to agree upon an hour when the voting may begin?

Mr. TELLER. No, I am not now; and the Senator knew that we were not willing to do so when he made that request.

Mr. SHOUP. Is this discussion to go on interminably?

Mr. TELLER. The Senator will be in order I think if he takes his seat.

Mr. SHOUP. We certainly have some rights that ought to be observed; and we have been discussing this bill for a number of days. It does seem to me that the other side of the Chamber should make some concession to us and agree upon some time when we can have a vote on the Army appropriation bill.

Mr. TILLMAN. I suggest to the Senator that he call up the Army bill, and let us proceed to discuss that. We have wasted two hours of precious time here to-night.

Mr. PETTIGREW. Mr. President——

Mr. SHOUP. I have done my best and have been trying to facilitate the progress of the bill all evening.

The PRESIDING OFFICER. The Senator from South Dakota [Mr. PETTIGREW] has been recognized.

Mr. SHOUP. I have been trying for the entire evening to proceed with the Army appropriation bill.

Mr. TILLMAN. You can take it up by a vote of the Senate.

Mr. PETTIGREW. I believe I have the floor, Mr. President.

The PRESIDING OFFICER. The Chair understood that the Senator from Idaho [Mr. SHOUP] had concluded his remarks, and the Chair recognized the Senator from South Dakota [Mr. PETTIGREW]. If the Senator from South Dakota has not yielded the floor, the Chair will, of course, recognize him.

Mr. SHOUP. I ask the Senators to agree upon some time to-morrow for a vote on the bill.

Mr. TELLER. The Senator knows that is just wasting time. He knows that nobody, to-night, is going to agree to fix a time for voting on this bill.

Mr. PETTIGREW. Mr. President——

Mr. SHOUP. Does the Senator from South Dakota want to speak on the bill?

Mr. PETTIGREW. Yes.

Mr. SHOUP. Very well. If the Senator rises to speak, I will yield the floor.

Mr. PETTIGREW. Mr. President, I deeply regret that the controversy with regard to Judge Noyes has been brought into this Chamber.

Mr. SHOUP. And on an appropriation bill, at that.

Mr. PETTIGREW. Under the pretext of an amendment to furnish a judiciary for the Philippine Islands the Senator from Nevada [Mr. STEWART] has brought this controversy into this Chamber. It does not belong here; and yet I feel I should not be doing my duty if I allowed the statement as made to go unchallenged.

I have known Judge Noyes for more than twenty years. In the early days of the Territory of Dakota Judge Noyes was a resident of that Territory. He was a graduate of the law school of the State University of Wisconsin. He was known in Dakota as a capable and an honest man. He went from Dakota to Minneapolis, where he built up an excellent practice and stood well among his fellow-lawyers and his fellow-citizens. He was appointed to the position of judge for Alaska on the recommendation of the late Senator Davis, and I believe he is the peer of any man who sits upon the bench in any State or Territory in the Union.

There was a controversy about mining claims at Nome. There were disputes as to titles. Some speculators from San Francisco had gone there and got possession, and their possession was disputed by the miners, who claimed that they also owned those mining claims. They were placer claims, and the speculators—men of enormous wealth—were taking out gold. Judge Noyes appointed Alexander McKenzie as receiver. Mr. McKenzie was also a resident of North Dakota, and he has been a resident of Dakota for the last twenty-five years. He is a man of character, ability, and wealth. He is abundantly able to respond in damages to any judgment that can be gotten against him. As receiver he took possession of these claims and took out $225,000 in gold, and deposited it, under the order of the judge, in a safety-deposit vault at Nome.

These wealthy claimants went to San Francisco, and, on ex parte affidavits, made by men who I believe committed perjury, procured an order for McKenzie to turn over the property to a man named by the court in San Francisco. The bond that was required, as I am informed, was $35,000. The order, as I understand it, did not require the delivery of the gold dust. The inadequacy of the bond, $35,000, to receive $225,000 of gold dust is apparent to anybody.

McKenzie refused to deliver the gold dust, but he did deliver the mines. Thereupon the court at San Francisco issued an order for his arrest for contempt, and they took McKenzie to San Francisco and convicted him of contempt, and sentenced him to imprisonment for one year, a proceeding unheard-of, it seems to me, in the history of jurisprudence of any civilized country on the face of the earth, and without a trial, without a jury, he to-day is in jail in San Francisco for contempt, sentenced to one year's imprisonment. It is a proceeding, I say, that ought to bring the court in San Francisco into contempt on the part of every honest man everywhere. It is a proceeding that ought to receive the attention of the judicial authorities in this country. The case on habeas corpus has come to the Supreme Court of the United States, and is to be argued there in a few days.

I say, under these circumstances, this case should not have been brought in here. Mr. McKenzie has not replied. The papers have been filled with the perjured affidavits of the men who have been trying to buy Judge Noyes. This gang of highwaymen from San Francisco, who have filled the newspapers, have tried this case in public everywhere and apparently at enormous expense to them, while the other parties have not been heard. Now it is brought into this presence, and a further effort is made to blacken the character of these men.

I tell you, Mr. President, the characters of Alexander McKenzie and Judge Noyes, among the people who personally know them, can not be destroyed by any such proceeding as this, no matter what a court may say which sends a man to jail for a year for contempt.

Further than that, in this very opinion of the court there is a clause which condemns the court, in my opinion. The court say:

> And it speaks well for the good, sober sense of the people gathered on that remote and barren shore that they depended solely upon the courts for the correction of the wrongs thus perpetrated amongst and against them, which always may be depended upon to right, sooner or later, wrongs properly brought before them.

What kind of a court is it that intimates that if they were there they would have resorted to violence, that they would have used the rope or shot the judge? I, too, entertain a strong feeling of contempt myself for a court pretending to be a judicial tribunal that will put in their opinion such language as that. It destroys the opinion, so far as I am concerned.

I care to say nothing more about this matter now. I am sorry it has been brought in here. It should not have got in; but I do not propose to have these men's characters blackened in my presence without stating my opinion with regard to the matter and facts which I know.

The PRESIDING OFFICER. The question is on the amendment of the Senator from Missouri [Mr. VEST].

Mr. TURNER. Mr. President, now that we have concluded the impeachment of Judge Noyes, I will address myself briefly to the amendment to the Army appropriation bill offered by the senior Senator from Wisconsin [Mr. SPOONER]. I ask that the amendment may be read.

The PRESIDING OFFICER (Mr. BEVERIDGE in the chair). The Secretary will read the amendment.

The SECRETARY. On page 39, after line 15, it is proposed to add the following:

> Until a permanent government shall have been established in said archipelago full reports shall be made to Congress, on or before the first day of each regular session, of all legislative acts and proceedings of the temporary government instituted under the provisions hereof, and full reports of the acts and doings of said government and as to the condition of the archipelago and its people shall be made to the President, including all information which may be useful to the Congress in providing for a more permanent government.

Mr. TURNER. Mr. President, I do not know that I can add anything of value to what has already been said with so much eloquence and force by the Senator from Alabama [Mr. MORGAN] and other Senators who have preceded me in this discussion, but I regard the question presented by the amendment of the Senator from Wisconsin [Mr. SPOONER] as the gravest question of power and policy that has ever been presented to Congress; and I have felt that the matter ought not to proceed to a vote without being discussed from every point of view which may possibly affect the views of Senators.

I do not believe, and shall not assume, that Senators on either side of the Chamber are so blinded by political feelings that they can not calmly and dispassionately consider a great question of this kind, involving the very structure of the Government itself, even though they have it presented in the shape of a proposal which has behind it the authority of the political party to which they belong. Therefore, in what I say to-night I want to address myself without partisan bias or feeling to the questions growing out of this proposition of the Senator from Wisconsin, with a view of seeing whether it is or is not a proposition which the Congress of the United States, as the lawmaking power and as one of the custodians of the Constitution, can afford to put upon the statute books of the nation. Being so grave and presenting such momentous questions, I want to say that I think it is unfortunate that the proposition is brought into the Senate at this stage of its session.

We are now, I believe, within six days of the termination of the session, and the more important of the appropriation bills are still pending, unconsidered and undetermined. Many Senators are deeply interested in having those appropriation bills passed, and many Senators, I believe, who would like to have discussed this question, not from a partisan standpoint, but from a patriotic standpoint, have been induced to refrain from doing so by the fear that the usual and ordinary discussion which such a measure as this at other times would provoke might defeat some one or other of those appropriation bills.

For myself, if I thought that I could add any light to the discussion, I should not feel justified in permitting a consideration of that kind to hold me chained in my seat; and in view of the extraordinary attitude of the majority in presenting this measure at this late hour to the Senate I do not hesitate to say if I had the physical ability and the mental fertility to discuss this proposition at such length that the majority would be compelled to let it go, in order that the ordinary business of the country might be transacted, I should discuss it at that length. But I have not either the physical or the mental power to do so; and my only purpose in rising here to-night is to present as succinctly and compactly as I can the reasons which seem to me to make it inadvisable that the measure proposed by the Senator from Wisconsin should be enacted into law.

Mr. President, as I have said, this measure presents both a question of power and a question of policy; and the question of power which it presents is whether or not the Congress of the United States, having been delegated with the power to legislate for the government of the Territories, may itself delegate that power to the President of the United States. That this proposed amendment has that effect seems to me to be too plain and clear almost to need to be sustained by argument, because a reading of the amendment itself will at once carry the conviction to any ordinary mind that that is the effect which it has. It reads:

> All military, civil, and judicial powers necessary to govern the Philippine Islands, acquired from Spain by the treaties concluded at Paris on the 10th day of December, 1898, and at Washington on the 7th day of November, 1900, shall, until otherwise provided by Congress, be vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct.

"All military, civil, and judicial powers." "Judicial power" logically is included under the term "civil," because, as used by

the lexicographers, both legal and otherwise, the term "civil," as applied to government, is opposed to military or to ecclesiastical. It embraces the whole domain of power exercised in the functions of civil government in civilized communities. So when it is proposed in a law that all civil power shall be exercised by certain persons the proposition logically is that all legislative, executive, and judicial power shall be lodged in those functionaries. As if to make this proposition plain beyond any question, the unscientific arrangement is here employed of adding, ex industria, the term "judicial" to the term "civil power." So that we have here a proposition to repose in such functionaries as the President may appoint every vestige of power which may be employed in civil government. It expressly designated that all military, civil, and judicial powers shall be vested in the functionaries who shall be designated by the President, to be exercised in such manner as the President shall direct.

Mr. President, the power to legislate for the Territories has been most generally, I believe, predicated on the second clause of section 3, Article IV, of the Constitution, which reads:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

I am aware that the power has been implied from other clauses of the Constitution, but the Supreme Court in most of the cases have predicated the power of Congress to legislate for the government of the Territories upon the clause of the Constitution to which I have referred.

Mr. President, upon the question as to the extent to which Congress may legislate for the Territories and the limitations upon its power of legislation, I believe the true doctrine to be that Congress is limited by all the clauses of the Constitution in favor of individual rights and personal liberty, but that it may legislate as generally as it pleases concerning the political institutions of the Territories of the United States. It may make those political institutions as general as it pleases or it may enter into as many details as it pleases. It may found those institutions upon the suffrage of the people of the Territories or may vest in the President of the United States or in some other competent authority the right to appoint all the functionaries necessary to carry on the institutions which it shall provide. But it can not delegate to anybody the power to decide and determine what those institutions shall be, because the power to determine that is reposed in it itself by the Constitution of the United States, and it has no right to shirk the execution of that power by saying that some other functionary or department of the Government of the United States shall exercise it.

Every Senator, of course, knows that there are three separate, coordinate departments of the Government; that no one of them can trench upon the powers of the other, and it is a corollary of that proposition that no one of them can decline to exercise the power which of right belongs to it and to devolve that power on some other department of the Government. This has been declared, I believe, by every court of last resort in the United States, by the supreme courts of all the States of the Union, and by the judges of the Supreme Court of the United States. I will refer, in this connection, to what the judges of the Supreme Court of the United States have said upon the subject, not with a view of informing the members of the Senate, because I am aware that they are acquainted with these cases, but for the purpose of exhibiting the manner in which the great men who have graced the Supreme Bench of the United States have considered questions of this kind when presented to them, in the hope that their examples may influence Senators to consider this grave proposition in the way and the manner in which it ought to be considered, and to determine it in the way and in the manner in which it ought to be determined. It is too grave and important a matter to be determined from partisan considerations.

Mr. President, very early in the history of the Government Congress, in providing pensions for the survivors of the Revolutionary war, undertook to devolve upon the courts of the United States the duty of passing upon certain contested pension cases, and after their determination had been made, undertook to permit the matter to be brought before the Secretary of War, and to leave to him the determination whether or not to carry out the findings of the judges. The law came before the several courts of the United States for enforcement, and I believe that all of those courts, each one of them with one or more of the judges of the Supreme Court sitting, declined to administer the law on the ground that it was a plain invasion of the judicial functions. The holding was that the Government was composed of three separate and distinct coordinate departments, and that as no department could abdicate the performance of duties devolved upon it, neither could it devolve upon another a duty not appropriate to the functions of the officers of that particular department. The determination of the judges is found in 2 Dallas, as a note to the Hayburn case, reported on page 8 of 2 Dallas. The matter came up before the circuit court for the district of New York, with Jay, Chief Justice of the Supreme Court; Cushing, justice of the Supreme Court, and Duane, district judge, sitting upon the bench; and those judges unanimously reached this conclusion:

> That by the Constitution of the United States the Government thereof is divided into three distinct and independent branches, and that it is the duty of each to abstain from and to oppose encroachments on either.
>
> That neither the legislative nor the executive branches can, constitutionally, assign to the judicial any duties but such as are properly judicial and to be performed in a judicial manner.
>
> That the duties assigned to the circuit courts by this act are not of that description, and that the act itself does not appear to contemplate them as such, inasmuch as it subjects the decisions of these courts, made pursuant to those duties, first to the consideration and suspension of the Secretary at War and then to the revision of the Legislature, whereas by the Constitution neither the Secretary at War nor any other executive officer, nor even the Legislature, are authorized to sit as a court of errors on the judicial acts or opinions of this court.

The matter next came before the circuit court for the district of Pennsylvania, with Wilson and Blair, justices of the supreme court, on the bench, along with Peters, district judge; and those eminent judges, in a letter to the President of the United States declining to exercise the power attempted to be conferred upon them, reached this conclusion:

> To you it officially belongs to "take care that the laws" of the United States "be faithfully executed." Before you, therefore, we think it our duty to lay the sentiments which, on a late painful occasion, governed us with regard to an act passed by the Legislature of the Union.
>
> The people of the United States have vested in Congress all legislative powers "granted in the Constitution."
>
> They have vested in one Supreme Court, and in such inferior courts as the Congress shall establish, "the judicial power of the United States."
>
> It is worthy of remark that in Congress the whole legislative power of the United States is not vested. An important part of that power was exercised by the people themselves when they "ordained and established the Constitution."
>
> This Constitution is "the supreme law of the land." This supreme law "all judicial officers of the United States are bound, by oath or affirmation, to support."
>
> It is a principle important to freedom that in government the judicial should be distinct from and independent of the legislative department. To this important principle the people of the United States, in forming their Constitution, have manifested the highest regard.
>
> They have placed their judicial power not in Congress, but in "courts." They have ordained that the "judges of those courts shall hold their offices during good behavior;" and that "during their continuance in office their salaries shall not be diminished."
>
> Congress have lately passed an act to regulate, among other things, "the claims to invalid pensions."
>
> Upon due consideration we have been unanimously of opinion that under this act the circuit court held for the Pennsylvania district could not proceed—
>
> First. Because the business directed by this act is not of a judicial nature. It forms no part of the power invested by the Constitution in the courts of the United States. The circuit court must consequently have proceeded without constitutional authority.
>
> Second. Because if upon that business the court had proceeded, its judgments—for its opinions are its judgments—might, under the same act, have been revised and controlled by the legislature and by an officer in the executive department. Such revision and control we deemed radically inconsistent with the independence of that judicial power which is vested in the courts, and consequently with that important principle which is so strictly observed by the Constitution of the United States.

And finally the matter came before the circuit court of the district of North Carolina, Iredell, justice of the supreme court, sitting upon the bench along with Sitgreaves, district judge. The power attempted to be conferred was again declined, and the judges, in a letter to the President, set forth their reasons, as follows:

> We, the judges now attending at the circuit court of the United States for the district of North Carolina, conceive it our duty to lay before you some important observations which have occurred to us in the consideration of an act of Congress lately passed, entitled "An act to provide for the settlement of the claims of widows and orphans barred by the limitations heretofore established, and to regulate the claims to invalid pensions."
>
> We beg leave to premise, that it is as much inclination as it is our duty to receive with all possible respect every act of the Legislature, and that we never can find ourselves in a more painful situation than to be obliged to object to the execution of any, more especially to the execution of one founded on the purest principles of humanity and justice, which the act in question undoubtedly is. But however lamentable a difference in opinion really may be, or with whatever difficulty we may have formed an opinion, we are under the indispensable necessity of acting according to the best dictates of our own judgment, after duly weighing every consideration that can occur to us; which we have done on the present occasion.
>
> The extreme importance of the case, and our desire of being explicit beyond the danger of being misunderstood, will, we hope, justify us in stating our observations in a systematic manner. We therefore, sir, submit to you the following:
>
> 1. That the legislative, executive, and judicial departments are each formed in a separate and independent manner, and that the ultimate basis of each is the Constitution only, within the limits of which each department can alone justify any act of authority.
>
> 2. That the Legislature, among other important powers, unquestionably possess that of establishing courts in such a manner as, to their wisdom, shall appear best limited by the terms of the Constitution only, and to whatever extent that power may be exercised, or however severe the duty they may think proper to require, the judges, when appointed in virtue of any such establishment, owe implicit and unreserved obedience to it.
>
> 3. That at the same time such courts can not be warranted, as we conceive, by virtue of that part of the Constitution delegating judicial power, for the exercise of which any act of the legislature is provided in exercising, ever under the authority of another act, any power not in its nature judicial, or if judicial, not provided for upon the terms the Constitution requires.

So that the great judges of this early day, in virtue of the principle to which I appeal here against the amendment of the Senator from Wisconsin, that each Department of the Government is

separate and distinct and that their powers can not be confused or mingled, declined to exercise a power which they held was not strictly judicial, putting it upon the ground in their solemn letters to the President of the United States that to do so would be a breach of the Constitution itself and an endangering of that great instrument upon the maintenance of which the rights and the liberties of the people of this country are dependent.

Mr. President, this identical matter came before the court again as related by Judge Taney in a note in the Ferreira case, reported in 13 Howard, at page 52. For the purpose of exhibiting in consecutive form what the Supreme Court have thought and said upon the subject, I will call the attention of the Senate to this note by Judge Taney. The question was incidentally called in question in the Ferreira case, but the court avoided it in that case by holding that the duty conferred upon them by the act of Congress was not in their capacity as judges but was one that they might execute, if they chose to do so as commissioners, and it was by way of explanation of the grounds of that decision and of the prior decision in the Hayburn case, that Judge Taney appended his note. Judge Taney says in that note:

Since the foregoing opinion was delivered the attention of the court has been drawn to the case of the United States *vs.* Yale Todd. which arose under the act of 1792 and was decided in the Supreme Court February 17, 1794. There was no official reporter at that time, and this case has not been printed. It shows the opinion of the court upon a question which was left in doubt by the opinions of the different judges, stated in the note to Hayburn's case; and as the subject is one of much interest, and concerns the nature and extent of judicial power, the substance of the decision in Yale Todd's case is inserted here in order that it may not be overlooked if similar questions should hereafter arise.

Without reading in full what Judge Taney here says concerning the Yale-Todd case, I will read the conclusions which he arrived at as the state of the law, as follows:

The result of the opinions expressed by the judges of the Supreme Court of that day in the note to Hayburn's case and in the case of the United States *vs.* Todd is this:

1. That the power proposed to be conferred on the circuit courts of the United States by the act of 1792 was not judicial power within the meaning of the Constitution, and was, therefore, unconstitutional, and could not lawfully be exercised by the courts.

2. That as the act of Congress intended to confer the power on the courts as a judicial function, it could not be construed as an authority to the judges composing the court to exercise the power out of court in the character of commissioners.

3. That money paid under a certificate from persons not authorized by law to give it might be recovered back by the United States.

The case of Todd was docketed by consent in the Supreme Court, and the court appears to have been of opinion that the act of Congress of 1793, directing the Secretary of War and Attorney-General to take their opinion upon the question, gave them original jurisdiction. In the early days of the Government the right of Congress to give original jurisdiction to the Supreme Court in cases not enumerated in the Constitution was maintained by many jurists and seems to have been entertained by the learned judges who decided Todd's case. But discussion and more mature examination has settled the question otherwise, and it has long been the established doctrine, and we believe now assented to by all who have examined the subject, that the original jurisdiction of this court is confined to the cases specified in the Constitution and that Congress can not enlarge it. In all other cases its power must be appellate.

This note of Judge Taney, I may say in passing, is apropos in connection with the discussion which occurred here this evening concerning the amendment proposed by the Senator from Alabama [Mr. MORGAN], vesting in the Supreme Court of the United States jurisdiction to hear and determine questions certified up to it by a commission. If the power there sought to be conferred were appellate power, then the question must come from a court for the Supreme Court to have any jurisdiction. If it be original power, then they have it only in the cases specified by Judge Taney. But to pass on.

I believe that the principles laid down by those eminent judges in these cases to which I have called the attention of the Senate have always been respected by the Congress of the United States, because in all the litigation before the Supreme Court of the United States I have been able to find only one case in which any question concerning the delegation of legislative power or the vesting in one department of Government of a power not belonging to it came before that great court for consideration, and that was in the Chapman contempt case, decided, I believe, in the 164th United States, in which the court held that the conferring upon the courts by Congress of power to punish for contempt committed against Congress was not a delegation of the power belonging to Congress to itself punish for contempt, but was the creation of a separate and additional offense which might be punished as an offense against the laws of the country, Congress still retaining the power itself to punish for contempt.

Now, the law being thus and thus plainly established and determined, so plainly, as I stated before, that it was not necessary to read these cases to the Senate for its information, but rather as examples, which I hoped might induce Senators to emulate the action of the courts, let us look at the proposed amendment to which I am addressing my remarks and see if it does not logically have the effect of devolving upon the President of the United States power which should be exercised by Congress alone. The Constitution vests in Congress the right and the power and the duty, in the language of section 3 of Article IV—

To dispose of and make all needful rules and regulations respecting the Territory or other property belonging to the United States.

Does this amendment propose any rule respecting the government of the territory included in the Philippine Islands, which are now a part of the territories of the United States? Does it provide any rule of action by which any citizen living in that far-off territory desiring to found rights either of person or property on it could turn and there find an exposition of his rights? Manifestly not. It does not undertake to do anything of that kind, but in a cowardly manner undertakes to shirk that duty and to cast it upon the shoulders of the President of the United States, and to compel the citizens or inhabitants of those islands, when their rights may be called in question, not to turn to an act of Congress to see what those rights are, but to turn to the decrees, the rules, and the regulations which may be established by the President of the United States or by the officers appointed by him for that purpose.

Since all civil power as applied to government involves all power of every character and description which is not military or ecclesiastical, and since we have no ecclesiastical power under our system, civil power involves all power that is not military. The persons who may be appointed by the President of the United States are to be vested with all civil power, and, as stated before, that involves legislative, executive, and judicial powers. There is no difficulty in devolving each one of those powers upon appropriate officers by the enactments of Congress. That is not the delegation of legislative power within the sense of the Constitution. To erect a government there composed of executive officers and judicial officers and legislative officers, however the personality of those officers may be arrived at, however their personality may be determined, is not a delegation of such power. It is not a delegation of legislative power to create officers for the government of a Territory and to devolve upon them the right to execute either legislative or executive or judicial powers; but it is a delegation of power when, instead of determining for ourselves what those officers shall be and what their powers shall be, we say that the President of the United States shall do all that.

Mr. President, under the terms of this amendment the President of the United States is to be called on in the first instance to determine what the form of government shall be. He must determine what form the executive in this territory shall take. He must determine what form the legislative branch of that government, if there be one, shall take, and he must determine what shall be the form of the judicial power in that territory.

This is the power which the Supreme Court of the United States has said over and over again is committed by the Constitution to Congress, and concerning which it acts without any constitutional restraints whatever. In dealing with private rights, in dealing with life, liberty, and property, as I read the decisions of the Supreme Court, Congress and the President and every branch of this Government, either in the States or in the Territories, are bound by the limitations of the Constitution. But in determining the character of the political institutions of Territories the power of Congress is supreme and unlimited, and the first thing Congress always addresses itself to, and that it ought always to address itself to when new territories have been acquired by the Government of the United States, is, What is the form of the political institutions which that Territory shall have and enjoy?

Now, if there is any one thing in the world that is settled in this Government, it is that this power belongs exclusively to Congress, and that it is conferred by the section of the Constitution to which I have referred. Does this amendment undertake to execute that power? Does it define anything? Is not the President at perfect liberty under this amendment to establish any political institutions in those islands that he pleases absolutely without limitation either by the Constitution or by the laws of Congress?

How can the President of the United States, knowing that the duty is devolved upon Congress to determine these matters for itself, under his oath to support the Constitution of the United States, accept such delegated power at the hands of Congress, and how can Senators and Representatives, who are acting under their oaths to support and maintain the Constitution, undertake to shake off from their shoulders and to devolve upon the shoulders of another a power which belongs exclusively to them, and which their duty under their oaths of office requires them to address themselves to?

That is the question of power which is presented in this amendment of the Senator from Wisconsin, and it is one upon which I think I have a right to invoke the careful, conscientious, and patriotic consideration of Senators without reference to the particular party to which they may happen to belong. And I may do so all the more hopefully, because if the amendments which have been offered here, and which I understand have been accepted by the committee, shall be adopted, then this power proposed to be

conferred upon the President does not go one iota beyond the power which he already exercises as Commander in Chief of the Armies and the Navies of the United States.

The Constitution and the laws are silent in the midst of war—inter arma silent leges. The discretion of the Commander in Chief is the sole and only law in territory which is affected by war. So all power, military and civil—because civil power is still exercised for the protection of persons and property even in a country which is devastated by war—so long as war proceeds in the Philippine Islands, is already now vested in the President of the United States or in such commanders as he may designate to carry on war there on behalf of the United States.

I apprehend that the only object in proposing the amendment of the Senator from Wisconsin originally was to meet the recommendation of the commission to the Philippine Islands appointed by the President under his war power, a recommendation that, in order that the resources of those islands might be exploited and utilized for the benefit of the people of the United States, a form of civil government should be established under which rights to the mines and timbers and lands of that country could be acquired, and under which rights, privileges, and franchises might be granted to which a termination would not be put when the war had ceased, the commission thinking and stating that privileges and franchises of a limited character, such as might be granted by military government, would not be sufficient to tempt the ordinary capitalist to that far-off country for the purpose of investing his money.

Those recommendations were referred to on yesterday by the Senator from Massachusetts [Mr. HOAR] and the Senator from South Carolina [Mr. TILLMAN], and they are in these words. On page 34 of the report of that commission we find this recommendation:

It is thought that a system of laws of public lands can be inaugurated without waiting until the survey is completed. The commission has received a sufficient number of applications for the purchase of public land to know that large amounts of American capital are only awaiting the opportunity to invest in the rich agricultural field which may here be developed. In view of the decision that the military government has no power to part with the public land belonging to the United States, and that the power rests alone in Congress, it becomes very essential, to assist the development of these islands and their prosperity, that Congressional authority be vested in the government of the islands to adopt a proper public-land system, and to sell the land upon proper terms. There should, of course, be restrictions preventing the acquisition of too large quantities by any individual or corporation, but those restrictions should only be imposed after giving due weight to the circumstances that capital can not be secured for the development of the island unless the investment may be sufficiently great to justify the expenditure of large amounts for expensive machinery and equipments. Especially is this true in the cultivation of sugar land.

* * * * * * *

Restricted powers of a military government referred to in discussing the public lands are also painfully apparent in respect to mining claims and the organization of railroad, banking, and other corporations, and the granting of franchises generally. It is necessary that there be somebody or officer vested with legislative authority to pass laws which shall afford opportunity to capital to make investment here. This is the true and most lasting method of pacification.

And in a special communication to the Secretary of War the commission make this recommendation:

If you approve, ask transmission to proper Senators and Representatives of following: Passage of Spooner bill at present session greatly needed to secure best result from improving conditions. Until its passage no purely central civil government can be established, no public franchises of any kind granted, and no substantial investment of private capital in internal improvements possible.

And further on:

Sale of public lands and allowance of mining claims impossible until Spooner bill. Hundreds of American miners on ground awaiting law to perfect claims. More coming. Good element in pacification. Urgently recommend amendment Spooner bill so that its operation be not postponed until complete suppression of all insurrection, but only until in President's judgment civil government may be safely established.

I say, Mr. President, it seems apparent that these recommendations of the Philippine commission constitute the sole reason for the presentation here at this time of the amendment of the Senator from Wisconsin. The fact that there was no power in those islands which could dispose of the lands and the mines in that country, or which could grant franchises that would extend beyond the period of the duration of the war, to which attention was called by the commission, and the urgent recommendation of the commission that some authority be created which might dispose of the lands and the mines and grant franchises, are the reasons, and the sole reasons, for the offering of this amendment at this time, because those are the only objects to be accomplished by the passage of this amendment which can not be accomplished now by the President of the United States as Commander in Chief of our Armies.

Now, then, it has seemed so manifestly improper that the wealth of these islands should be exploited by Americans for the benefit of Americans at a time prior to the establishment of a representative government there, under which the people of those islands might acquire, or at least have an opportunity of acquiring, for themselves some of these valuable rights and properties and franchises that it has been found necessary to agree to amendments which will take off from this measure the right to sell the lands or to grant franchises which will extend for more than one year after the establishment of permanent government, in order to secure the united support even of the other side of the Chamber. So, I say, that with the legislation thus limited, the President will have no more power after the passage of this measure than he has at the present time as Commander in Chief of the Armies and Navy of the United States.

In the exercise of this great power, however, as Commander in Chief he is proceeding upon safe and constitutional grounds, and grounds to which no man of any political party can take any valid objection, whereas if we clothe him with the same large power in aid of the establishment of civil government we trench upon the Constitution, for we undertake to devolve upon him a duty which belongs alone and exclusively to ourselves.

Mr. President, we undertake to devolve upon him a duty in the Philippine Islands which is as great if not greater than that devolved upon any civilized ruler in the world. I do not know whether there are any limitations upon the power of the Czar of Russia to ordain by edict institutions, to make laws, to establish courts, to define offenses, to fix the rights of persons and property, to establish codes of civil and criminal procedure, and to determine what acts shall constitute crimes, and what trespasses shall entitle one to redress in the courts. I do not know but that the Czar of Russia has power without limitation in the government of Russia to perform these acts.

But if he has, so will the President of the United States have, if we pass the enactment proposed by the Senator from Wisconsin. We clothe him here, or attempt to clothe him, and will clothe him, if this act have any validity, with all of the powers supposed to belong to the Czar of Russia, the only ruler of a civilized people on the face of the globe who will possess any power at all comparable to the enormous power which it is here proposed to vest in the President of the United States.

I want to call the attention of the Senate to Webster's definition of the word "civil," as applied to government:

CIVIL.

1. Pertaining to a city or State, or to a citizen in his relations to his fellow-citizens or to the State; within the city or State.

2. Subject to government; reduced to order; civilized; not barbarous; said of the community.

England was very rude and barbarous; for it is but even the other day since England grew civil.—*Spenser.*

3. Performing the duties of a citizen; obedient to government; said of an individual.

Civil men come nearer the saints of God than others; they come within a step or two of heaven.—*Preston.*

4. Having the manners of one dwelling in a city, as opposed to those of savages or rustics; polite; courteous; complaisant: affable.

A civil man now is one observant of slight external courtesies in the mutual intercourse between man and man; a civil man once was one who fulfilled all the duties and obligations flowing from his position as a "civis" and his relations to the other members of that "civitas."—*Trench.*

5. Pertaining to civic life and affairs, in distinction from military, ecclesiastical, or official state.

6. Relating to rights and remedies sought by action or suit distinct from criminal proceedings.

In the sense in which the word "civil" is used in this amendment of the Senator from Wisconsin, it pertains to the State and to the relations of the citizens of the State, toward the Government, and toward their fellow-citizens. I find in the law dictionaries this definition of the word "civil:"

Pertaining to a city or State, or to a citizen in his relations to his fellow-citizens or to the State, as civil rights, civil government. Pertaining to an organized community; reduced to order; subject to government, as civil society.

Abbott defines the word thus:

The word has a variety of applications; but in almost all one may readily trace the idea of the character, privileges, or peculiarities of the ancient citizen. Thus it is now used in opposition to what is military; again, in contrast with barbarous, uncivilized, or rustic; and in turn as the opposite of that which is ecclesiastical or priestly; and it may designate that which is for the individual in distinction from the government. But in all these uses it presents the citizen as the standard with which the other is compared.

Mr. President, the terms employed in this amendment are sufficiently broad to embrace all power. The term "civil power," used without limitation or qualification, means all power, every power, legislative, executive, and judicial.

Can there be any doubt, then, that the officers to be appointed by the President are to have conferred upon them by virtue of this proposed enactment every power pertaining to government, every power that the three coordinate departments of the Government acting conjointly could exercise within the limits of the States of the United States of America? Can there be any doubt that the President in the first instance is to determine what officers shall be there, upon whom shall be devolved the legislative power, upon whom shall be devolved the executive power, upon whom shall be devolved the judicial power? Can there be any doubt that these officers, acting under the direction of the President, can determine and establish every other matter which the Congress of the United States, in its discretion, might determine and establish for the government of those territories; that they can fix personal and individual and property rights, establish codes of civil and criminal procedure, prescribe forms of judgment and process, define offenses—

in short, do everything from the function of legislation, which might be and ought to be exercised by Congress, down to that of judgment and execution, which can only be exercised by officers established by Congress?

Mr. President, I do not know how any Senator is going to reach the conclusion that he is performing the duty devolved upon him by the Constitution of the United States when he consents to legislation which devolves upon the President of the United States and the appointees of the President of the United States this power which so clearly and conclusively belongs to Congress and which it can not shift upon the shoulders of anybody else. I am aware that this amendment is copied from the act providing for the taking over of the Louisiana territory and establishing the rights and the authority of the United States in that territory, and that it is supposed to be identical with that act, but it is essentially different from that act.

This act provides that all powers shall reside in and be executed by such officers as the President of the United States shall appoint. The Louisiana act provided that the power then exercised by the officers of the Louisiana territory should be executed by such officers as the President of the United States might direct and in such manner as he might direct. There is a very plain and radical and marked distinction between the two enactments. We derived the Louisiana territory after government had been established there, after laws had been established there, which laws were being executed by executive and judicial officers in that territory. The offices themselves were already established, the laws were already established, and the act merely provided in effect that the duties of those offices should be performed by the persons who should be appointed by the President of the United States.

Now, let us see if that is not the true reading of that act, and if that act is not as wide asunder as the poles from this legislation which it is proposed to adopt and to apply to the people of the Philippine Islands. I read section 2 of the act of October 31, 1803:

SEC. 2. *And be it further enacted*, That until the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress, all the military, civil, and judicial powers exercised by the officers of the existing government of the same shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property, and religion.

"All the military, civil, and judicial powers exercised by the officers of the existing government," the existing officers and the existing powers. There was no delegation of legislative power here; no general power conferred upon the President of the United States to establish such institutions as he pleased, to appoint such officers as he pleased, to devolve upon them such powers as he pleased, but simply a power to appoint officers there who were to exercise the certain and defined military, civil, and judicial powers then exercised by the officers of the Louisiana territory.

Mr. HEITFELD. Mr. President, I move that the Senate adjourn.

Mr. HANSBROUGH. Will the Senator withdraw that motion long enough to allow me to ask for an order of the Senate?

Mr. WOLCOTT. I call for the regular order.

The PRESIDING OFFICER. The Senator from Idaho moves that the Senate do now adjourn.

Mr. ALDRICH and Mr. SHOUP called for the yeas and nays, and they were so ordered.

Mr. CARTER. I hope the Senator from Idaho will withdraw the motion.

Mr. HEITFELD. The Senator from Washington prefers to go on to-morrow.

The PRESIDING OFFICER. The Secretary will call the roll on the motion of the Senator from Idaho that the Senate do now adjourn.

The Secretary proceeded to call the roll.

Mr. NELSON (when his name was called). I have a general pair with the junior Senator from Missouri [Mr. VEST]. I will transfer that pair to the Senator from Kansas [Mr. BAKER] and vote. I vote "nay."

The roll call was concluded.

Mr. MALLORY. I have a general pair with the senior Senator from Vermont [Mr. PROCTOR]. I do not see him present and I withhold my vote.

Mr. HEITFELD (after having voted in the affirmative). I am paired with the senior Senator from New York [Mr. PLATT], and I withdraw my vote.

The result was announced—yeas 6, nays 47; as follows:

YEAS—6.

Allen,	Culberson,	Pettus,	Turley.
Bate,	Harris,		

NAYS—47.

Aldrich,	Beveridge,	Clark,	Dillingham,
Allison,	Butler,	Cockrell,	Dolliver,
Bard,	Carter,	Cullom,	Fairbanks,
Berry,	Chandler,	Deboe,	Foraker,
Foster,	Lindsay,	Pettigrew,	Taliaferro,
Gallinger,	Lodge,	Platt, Conn.	Teller,
Hale,	McComas,	Quarles,	Thurston,
Hanna,	McMillan,	Rawlins,	Tillman,
Hansbrough,	Martin,	Sewell,	Warren,
Hawley,	Mason,	Shoup,	Wetmore,
Jones, Ark.	Nelson,	Spooner,	Wolcott.
Kean,	Penrose,	Stewart,	

NOT VOTING—35.

Bacon,	Elkins,	McCumber,	Proctor,
Baker,	Frye,	McEnery,	Quay,
Burrows,	Heitfeld,	McLaurin,	Scott,
Caffery,	Hoar,	Mallory,	Simon,
Chilton,	Jones, Nev.	Money,	Sullivan,
Clapp,	Kearns,	Morgan,	Turner,
Clay,	Kenney,	Perkins,	Vest,
Daniel,	Kyle,	Platt, N. Y.	Wellington.
Depew,	McBride,	Pritchard,	

So the Senate refused to adjourn.

Mr. ALDRICH. That the session to-night may not be unduly prolonged, and that the public business may proceed, in view of the very few remaining hours of this session, I appeal to the Senators upon the other side of the Chamber to allow a time to be fixed for a vote upon this bill and on all pending amendments to-morrow at 2 o'clock.

Mr. JONES of Arkansas. Mr. President, I know of two or three Senators on this side who desire to make speeches. I think they are not willing that a definite hour shall be fixed for voting. My own opinion is that there will be no doubt about getting a vote at a reasonable hour to-morrow if we go on with business, keep this bill before the Senate, and not undertake on both sides of the Chamber to bring in outside matters and get up wrangles here that have no connection whatever with the Army appropriation bill.

I doubt if Senators on this side would be quite willing now to fix an hour to vote—in fact, I know that they would not, because some of them have so expressed themselves—but I believe we can get a vote at a reasonable hour.

Mr. HALE. I believe that the statement of the Senator from Arkansas is not made with any assurance——

Mr. JONES of Arkansas. No, it is not.

Mr. HALE. But I think the statement of the Senator ought to be entirely satisfactory, and that we may adjourn to-night with the idea that we shall have a vote some time to-morrow.

Mr. ALDRICH. I myself think that the statement of the Senator from Arkansas is reasonable. I hope the Senator in charge of the bill will call it up immediately after the routine morning business to-morrow, to the exclusion of all other business.

Mr. CHANDLER. And we shall adjourn to-night after the Senator from Washington concludes his speech.

Mr. TELLER. If I can get the floor——

The PRESIDING OFFICER. The Senator from Colorado has the floor.

Mr. TELLER. When the Army bill was before the Senate we fixed a time to vote. I was anxious to make some remarks on that bill. I had not spent any time in discussing it. I found that Senators, particularly those who favored the proposition of the bill, had gone to the desk and put down their names to speak, and I and others who desired to speak on it were crowded out during the day. I said then that I would not agree to fix another hour for a vote. I did change my opinion on that on another occasion, and I presume I may do so now, but I think we are entitled to have time to discuss this proposition fairly. I myself should like to take about thirty minutes. I think I can get through in that time, but I do not like to be shut out again on this bill as I was shut out on the other.

Mr. HAWLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Colorado yield to the Senator from Connecticut?

Mr. HAWLEY. I should like to give a notice.

Mr. TELLER. I yield to the Senator for that purpose.

Mr. HAWLEY. I wish to ask a brief executive session, to take, perhaps, not more than five or six minutes. There is quite a lot of business on the desk and on the Calendar which should be attended to.

Mr. TELLER. I want to say one other word. If the Senate is willing to hear me, I am willing to make my speech at any time between this and daylight.

Several SENATORS. No! No!

Mr. SHOUP. There is no desire on the part of Senators on this side of the Chamber that any Senator should be put to any hardship in making a speech. I wish to give reasonable time to the Senator from Colorado [Mr. TELLER] or to any other Senator on the other side of this proposition who may desire to make remarks on the pending bill. I believe that the statement made by the Senator from Arkansas [Mr. JONES] and the Senator from Rhode Island [Mr. ALDRICH], that some time to-morrow we shall reach a vote on this bill and all pending amendment is entirely satisfactory. I do not wish to press the Senator from Colorado or any other Senator to-night into making any long speech, nor to do

any injustice in any way. Hence I accede to the suggestion made by the Senator from Arkansas.

Mr. ALDRICH. Mr. President, I think there is no disposition, so far as we are concerned on this side of the Chamber, to prolong this session so as to compel the Senator from Colorado [Mr. TELLER] to speak to-night, and whenever the Senator from Washington [Mr. TURNER] concludes his remarks, I think the Senate will adjourn.

The PRESIDING OFFICER. The Senator from Washington has the floor.

Mr. TURNER. Mr. President——

Mr. DILLINGHAM. Will the Senator allow me to present a report?

Several SENATORS. No, no! Regular order!

Mr. HALE. I call for the regular order, on which the Senator from Washington [Mr. TURNER] has the floor.

The PRESIDENT pro tempore. The regular order is before the Senate, and the Senator from Washington is entitled to the floor.

Mr. JONES of Arkansas. It is now ten minutes past 11 o'clock, and it seems to me it would be but reasonable for the Senator in charge of this bill to consent to an adjournment.

Mr. CHANDLER. Is the Senator from Washington unwilling to go on to-night?

Mr. JONES of Arkansas. I understand the Senator from Washington prefers to go on with his remarks to-morrow.

Mr. SHOUP. If the chairman of the Committee on Military Affairs has no objection to that arrangement, I shall not object.

Mr. PETTIGREW. I do not understand that there has been any unanimous consent asked for or given that the vote on this bill shall be taken to-morrow and that we shall not be allowed an opportunity to debate this proposed legislation. I think we ought to debate it for the next week. I do not believe that the minority in this body ought to consent to granting the President of the United States imperial power without a debate which extends over far more time than there is in this session of Congress.

This matter has only been perfected to-day. I do not feel physically able to continue the debate alone, neither do I think it would be proper for me to do so; but I do think this question ought to be debated, and debated thoroughly, no matter what the consequences may be in regard to an extra session.

EXECUTIVE SESSION.

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

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After twenty minutes spent in executive session the doors were reopened and (at 11 o'clock and 35 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, February 27, 1901, at 11 o'clock a. m.

NOMINATIONS.

Executive nominations received by the Senate February 26, 1901.

SURVEYOR-GENERAL.

Edward H. Anderson, of Weber County, Utah, to be surveyor-general of Utah, vice Jacob B. Blair, deceased.

CONSUL.

John H. Fesler, of Colorado, to be consul of the United States at Amoy, China, vice Anson Burlingame Johnson, resigned.

APPOINTMENT IN THE ARMY.

Capt. William Crozier, Ordnance Department. to be professor of natural and experimental philosophy at the Military Academy, February 23, 1901, vice Michie, deceased.

APPOINTMENT IN THE VOLUNTEER ARMY—FORTIETH INFANTRY.

To be second lieutenant.

First Sergt. Thomas F. Loudon, Company F, Fortieth Infantry, United States Volunteers, February 23, 1901, vice Mitchell, promoted.

PROMOTIONS IN THE MARINE CORPS.

To be captains.

George C. Thorpe,
Charles S. Hill,
Robert M. Gilson,
Frederic L. Bradman,
George C. Reid,
Robert H. Dunlap,
Randolph C. Berkeley,
Charles G. Andresen,
Charles S. Hatch,
Hiram I. Bearss, and
Robert F. Wynne.

To be first lieutenants.

Wirt McCreary,
Wade L. Jolly,
John N. Wright,
Stephen Elliott,
James McE. Huey,
Rush R. Wallace, jr.,
Samuel A. W. Patterson, and
William C. Harllee.

To be captain.

First Lieut. Smedley D. Butler, to be a captain in the United States Marine Corps, from the 23d day of July, 1900, to fill a vacancy existing in that grade.

To be first lieutenant.

Second Lieut. Frank E. Evans, to be a first lieutenant in the United States Marine Corps, from the 23d day of July, 1900, to fill a vacancy existing in that grade.

CONFIRMATIONS.

Executive nominations confirmed by the Senate February 26, 1901.

APPOINTMENTS IN THE VOLUNTEER ARMY.

TWENTY-EIGHTH INFANTRY.

Sergt. Louis E. Shucker, Company E, Twenty-eighth Infantry, to be second lieutenant, February 12, 1901.

FORTY-THIRD INFANTRY.

Com. Sergt. William O. Trenor, Forty-third Infantry, to be second lieutenant, February 12, 1901.

FORTY-FOURTH INFANTRY.

Q. M. Sergt. John A. Bassett, Forty-fourth Infantry, to be second lieutenant, February 12, 1901.

FORTY-SEVENTH INFANTRY.

Sergt. William E. Roberts, Company H, Forty-seventh Infantry, to be second lieutenant, February 12, 1901.

TO BE ASSISTANT SURGEONS OF VOLUNTEERS WITH THE RANK OF CAPTAIN.

Isaac W. Brewer, of Kansas (captain and assistant surgeon Thirty-sixth Infantry, United States Volunteers), February 12, 1901.

Ernest H. Wheeler, of Maine (late assistant surgeon First Maine Volunteer Infantry), February 12, 1901.

APPOINTMENTS IN THE ARMY.

MEDICAL DEPARTMENT.

To be assistant surgeons with the rank of first lieutenant.

John Dixon Yost, of Massachusetts (acting assistant surgeon, United States Army), February 11, 1901.

Charles Ransom Reynolds, of New York (acting assistant surgeon, United States Army), February 11, 1901.

Paul C. Hutton, of North Carolina (acting assistant surgeon, United States Army), February 11, 1901.

Frederick Allport Dale, of Pennsylvania (acting assistant surgeon, United States Army), February 11, 1901.

William Miller Roberts, of Maryland (acting assistant surgeon, United States Army), February 11, 1901.

Charles William Farr, of New York (acting assistant surgeon, United States Army), February 11, 1901.

PROMOTIONS IN THE ARMY.

QUARTERMASTER'S DEPARTMENT.

To be quartermasters with the rank of major.

Capt. John B. Bellinger, assistant quartermaster, February 2, 1901.

CAVALRY ARM.

To be majors.

Capt. James B. Hickey, Eighth Cavalry, February 2, 1901.
Capt. Edward J. McClernand, Second Cavalry, February 2, 1901.
Capt. Levi P. Hunt, Tenth Cavalry. February 2, 1901.
Capt. Cunliffe H. Murray, Fourth Cavalry, February 2, 1901.
Capt. Charles A. Varnum, Seventh Cavalry, February 2, 1901.

QUARTERMASTER'S DEPARTMENT.

To be quartermasters with the rank of major.

Capt. Robert R. Stevens, assistant quartermaster, February 2, 1901.

Capt. Frederick G. Hodgson, assistant quartermaster, February 2, 1901.

PROMOTIONS IN THE NAVY.

Lieut. Commander Theodoric Porter, to be a commander in the Navy from the 29th day of January, 1901.

Capt. Robley D. Evans, to be advanced five numbers in rank, and to be a rear-admiral in the Navy, from the 11th day of February, 1901, to take rank next after Rear-Admiral Charles S. Cotton.

Capt. Henry C. Taylor, to be advanced five numbers in rank, and to be a rear-admiral in the Navy, from the 11th day of February, 1901, to take rank next after Rear-Admiral John J. Read.

Capt. Francis A. Cook, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Capt. William C. Wise.

Capt. Charles E. Clark, to be advanced six numbers in rank from the 11th day of February, 1901, to take rank next after Capt. Francis A. Cook when advanced.

Capt. Charles D. Sigsbee, to be advanced three numbers in rank from the 11th day of February, 1901, to take rank on the list of captains next after George W. Melville, rear-admiral while Chief of the Bureau of Steam Engineering.

Capt. French E. Chadwick, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Capt. Benjamin P. Lamberton.

Capt. John J. Hunker, to be advanced three numbers in rank from the 11th day of February, 1901, to take rank next after Capt. Charles S. Sperry.

Commander Chapman C. Todd, to be advanced three numbers in rank from the 11th day of February, 1901, and to be at the head of the list of commanders.

Commander William T. Swinburne, to be advanced two numbers in rank from the 11th day of February, 1901, to take rank next after Commander Henry N. Manney.

Commander John D. Ford, to be advanced three numbers in rank from the 11th day of February, 1901, to take rank next after Commander Henry B. Mansfield.

Commander Alexander B. Bates, to be advanced three numbers in rank from the 11th day of February, 1901, to take rank next after Commander Leavitt C. Logan.

Commander Robert W. Milligan, to be advanced three numbers in rank from the 11th day of February, 1901, to take rank next after Commander Charles O. Allibone.

Commander Richard Inch, to be advanced three numbers in rank from the 11th day of February, 1901, to take rank next after Commander Edward D. Taussig.

Commander Charles W. Rae, to be advanced three numbers in rank, from the 11th day of February, 1901, to take rank next after Commander George W. Baird.

Commander Adolph Marix, to be advanced two numbers in rank, from the 11th day of February, 1901, to take rank next after Commander George H. Kearny.

Commander Raymond P. Rodgers, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander Adolph Marix when advanced.

Commander Seaton Schroeder, to be advanced three numbers in rank, from the 11th day of February, 1901, to take rank next after Commander Royal R. Ingersoll.

Commander Richard Wainwright, to be advanced ten numbers in rank, from the 11th day of February, 1901, to take rank next after Commander Duncan Kennedy.

Commander John A. Rodgers, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander Edwin K. Moore.

Commander James K. Cogswell, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander James D. Adams.

Commander Frederic Singer, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander James K. Cogswell when advanced.

Commander William P. Potter, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander Ebenezer S. Prime.

Commander Giles B. Harber, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander Nathan E. Niles.

Commander John B. Briggs, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander Giles B. Harber when advanced.

Commander Newton E. Mason, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander John B. Briggs when advanced.

Commander George P. Colvocoresses, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander John C. Wilson.

Commander John A. Norris, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Commander Richard G. Davenport.

Lieut. Commander Warner B. Bayley, to be advanced two numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander Kossuth Niles.

Lieut. Commander Edward M. Hughes, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander Albert F. Dixon.

Lieut. Commander Corwin P. Rees, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander George L. Dyer.

Lieut. Commander Albert C. Dillingham, to be advanced two numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander Hugo Osterhaus.

Lieut. Commander Aaron Ward, to be advanced two numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander Jacob J. Hunker.

Lieut. Commander Lucien Young, to be advanced three numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander Edward F. Qualtrough.

Lieut. Commander George B. Ransom, to be advanced three numbers in rank, from the 11th day February, 1901, to take rank next after Lieut. Commander John C. Colwell.

Lieut. Commander James M. Helm, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander Henry T. Cleaver.

Lieut. Commander Cameron McR. Winslow, to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander Albert B. Willits.

Lieut. Commander Alexander Sharp, jr., to be advanced five numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander William G. Cutler.

Lieut. Commander Frank H. Bailey, to be advanced three numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. Commander Wythe M. Parks.

Lieut. Commander Benjamin Tappan, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. Commander John T. Newton.

Lieut. Commander Reynold T. Hall, to be advanced three numbers in rank, from the 11th day of February, 1901, to take rank next after Lieut. Commander William S. Hogg.

Lieut. George W. McElroy, to be advanced three numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. Roy C. Smith.

Lieut. Harry McL. P. Huse, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. William L. Rodgers.

Lieut. Carl W. Jungen, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. John Hood.

Lieut. Charles H. Harlow, to be advanced two numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. Charles C. Marsh.

Lieut. John L. Purcell, to be advanced two numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. George R. Salisbury.

Lieut. Edwin A. Anderson, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. William B. Whittelsey.

Lieut. Victor Blue, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. Ford H. Brown.

Lieut. Thomas P. Magruder, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. Benjamin F. Hutchison.

Lieut. Cleland N. Offley, to be advanced four numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. George B. Bradshaw.

Lieut. William H. Buck, to be advanced eight numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. Warren J. Terhune.

Lieut. Harry H. Caldwell, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. John H. Rowen.

Lieut. (Junior Grade) Henry H. Ward, to be advanced ten numbers in rank and to be a lieutenant from the 11th day of February, 1901, to take rank next after Lieut. Patrick W. Hourigan.

Lieut. (Junior Grade) Walter S. Crosley, to be advanced two numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. (Junior Grade) Edward H. Campbell.

Lieut. (Junior Grade) Andre M. Proctor, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. (Junior Grade) Frank B. Upham.

Lieut. (Junior Grade) William P. Scott, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. (Junior Grade) Ernest L. Bennett.

Lieut. (Junior Grade) Joseph M. Reeves, to be advanced four numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. (Junior Grade) William P. Scott when advanced.

Lieut. (Junior Grade) Frank Lyon, to be advanced four numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. (Junior Grade) Leland F. James.

Lieut. (Junior Grade) James P. Morton, to be advanced four numbers in rank from the 11th day of February, 1901, to take rank next after Lieut. (Junior Grade) Charles K. Mallory.

Ensign William R. White, to be advanced five numbers in rank from the 11th day of February, 1901, to take rank next after Ensign Alfred W. Pressey.

Paymaster William W. Galt, to be advanced one number in rank from the 11th day of February, 1901, and to take rank next after Paymaster Charles W. Littlefield.

Naval Constructor Richmond P. Hobson, to be advanced ten numbers in rank from the 11th day of February, 1901, and to be a naval constructor with the rank of captain, to take rank next after Naval Constructor Joseph H. Linnard.

Rear-Admiral James Entwistle, retired, to be advanced two numbers in rank, on the retired list, from the 11th day of February, 1901, to take rank next after Rear-Admiral Nicoll Ludlow, retired.

Chief Engineer Charles J. MacConnell, retired, to be advanced one number in rank, on the retired list, from the 11th day of February, 1901, to take rank at the head of chief engineers, on the retired list, holding the rank of captain, retired in accordance with the provisions of section 1453 of the Revised Statutes.

Capt. John L. Hannum, retired, to be advanced two numbers in rank, on the retired list, from the 11th day of February, 1901, to take rank next after Capt. Henry B. Seely, retired.

Capt. George Cowie, retired, to be advanced three numbers in rank, on the retired list, to take rank next after Capt. John R. Bartlett, retired.

PROMOTIONS IN THE MARINE CORPS.

Capt. Charles L. McCawley, to be a major in the Marine Corps, by brevet, from the 11th day of June, 1898, for distinguished conduct and public service in the presence of the enemy at Guantanamo, Cuba.

Capt. Allan C. Kelton, to be a major in the Marine Corps, by brevet, from the 11th day of June, 1898, for distinguished conduct and public service in the presence of the enemy at Guantanamo, Cuba.

First Lieut. James E. Mahoney, to be a captain in the Marine Corps, by brevet, from the 11th day of June, 1898, for distinguished conduct and public service in the presence of the enemy at Guantanamo, Cuba.

First Lieut. Herbert L. Draper, to be a captain in the Marine Corps, by brevet, from the 11th day of June, 1898, for distinguished conduct and public service in the presence of the enemy at Guantanamo, Cuba.

First Lieut. Charles G. Long, to be a captain in the Marine Corps, by brevet, from the 11th day of June, 1898, for distinguished conduct and public service in the presence of the enemy at Guantanamo, Cuba.

First Lieut. Albert S. McLemore, to be a captain in the Marine Corps, by brevet, from the 11th day of June, 1898, for distinguished conduct and public service in the presence of the enemy at Guantanamo, Cuba.

First Lieut. William N. McKelvy, to be a captain in the Marine Corps, by brevet, from the 11th day of June, 1898, for distinguished conduct and public service in the presence of the enemy at Guantanamo, Cuba.

Second Lieut. Melville J. Shaw, to be a first lieutenant in the Marine Corps, by brevet, from the 11th day of June, 1898, for distinguished conduct and public service in the presence of the enemy at Guantanamo, Cuba.

REGISTER OF THE LAND OFFICE.

Daniel B. McCann, of Great Falls, Mont., to be register of the land office at Rampart City, Alaska.

RECEIVER OF PUBLIC MONEYS.

Benjamin K. Kimberly, of Salem, Colo., to be receiver of public moneys at Denver, Colo.

POSTMASTERS.

George H. Morgan, to be postmaster at Newton Center, Middlesex County, Mass.

John K. Fancher, to be postmaster at Dodge Center, in the county of Dodge and State of Minnesota.

HOUSE OF REPRESENTATIVES.

TUESDAY, *February 26, 1901.*

The House met at 12 o'clock m. Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

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

SUITS BROUGHT BY STATES RELATIVE TO SCHOOL LANDS.

The SPEAKER. The Chair lays before the House the following privileged matter.

The Clerk read as follows:

A bill (S. 5978) authorizing the Secretary of the Interior to appear in suits brought by States relative to school lands.

Be it enacted, etc., That in any suit heretofore or hereafter instituted in the Supreme Court of the United States to determine the right of a State to what are commonly known as school lands within any Indian reservation or any Indian cession where an Indian tribe claims any right to or interest in the lands in controversy, or in the disposition thereof by the United States, the right of such State may be fully tested and determined without making the Indian tribe, or any portion thereof, a party to the suit if the Secretary of the Interior is made a party thereto; and the duty of representing and defending the right or interest of the Indian tribe, or any portion thereof, in the matter shall devolve upon such Secretary.

The SPEAKER. The question is on the third reading of the Senate bill.

The bill was ordered to be read a third time; and it was accordingly read the third time, and passed.

The SPEAKER. Without objection, the House bill similar to that, being House bill 14191, will lie on the table.

There was no objection; and it was so ordered.

On motion of Mr. MCCLEARY, a motion to reconsider the vote by which the bill was passed was laid on the table.

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

Mr. MOODY of Massachusetts. Mr. Speaker, I ask unanimous consent for the present consideration of the resolution which I send to the desk.

The Clerk read as follows:

Resolved by the House of Representatives (the Senate concurring), That the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12291) making appropriations for legislative, executive, and judicial expenses are authorized to include in their report such alterations, changes, and recommendations as they may deem proper with reference to so much of the text of said bill as relates to the officers and employees of the House of Representatives.

The SPEAKER. Is there objection?

Mr. RICHARDSON of Tennessee. Mr. Speaker——

Mr. BAILEY of Texas. I will state to the gentleman from Tennessee that this is acceptable.

There was no objection.

The question was taken; and the resolution was agreed to.

On motion of Mr. MOODY of Massachusetts, a motion to reconsider the vote by which the resolution was passed was laid on the table.

RUSSIAN SUGARS.

Mr. PAYNE. Mr. Speaker, I report back from the Committee on Ways and Means the following resolution:

The Clerk read as follows:

The Committee on Ways and Means, to whom was referred House resolution 422, having duly considered the same, report the same back to the House adversely and with the recommendation that the said resolution lie on the table.

The resolution was read, as follows:

House resolution No. 422.

Resolved, That the Secretary of the Treasury be, and he hereby is, requested to furnish the House of Representatives, if not incompatible with public policy, with copies of all letters to him from persons, firms, companies, or corporations, and all letters from him to them or any of them, together with all reports, decisions, and examinations, with his reasons for same, and all other data, facts, and information in any way relating to the imposition of a tax or countervailing duty on Russian sugars imported to this country, and what action Russia has taken in regard thereto by way of retaliation.

Mr. PAYNE. Mr. Speaker, I move that the resolution and report do lie on the table.

Mr. RICHARDSON of Tennessee. A parliamentary inquiry.

Mr. SULZER. Mr. Speaker——

The SPEAKER. The gentleman will state his parliamentary inquiry.

Mr. RICHARDSON of Tennessee. I believe the gentleman did not submit any report——

Mr. PAYNE. Oh, yes; the report was read.

Mr. RICHARDSON of Tennessee (continuing). Except a mere recommendation made by the committee.

Mr. SULZER. Then, Mr. Speaker, under the circumstances I desire to ask if this resolution introduced by me is not debatable?

The SPEAKER. A motion to lie on the table is not debatable.

Mr. SULZER. Mr. Speaker——

The SPEAKER. For what purpose does the gentleman rise?

Mr. SULZER. I would like to ask the gentleman from New York if he will give me a moment? I introduced the resolution, and should have five minutes to explain it. I ask for a little time.

Mr. PAYNE. I certainly object, and call for the regular order.

Mr. SULZER. A parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. SULZER. Do I understand the Chair to hold that the report of the Committee on Ways and Means on this resolution introduced by me is not debatable?

The SPEAKER. It is not, because this report—and the motion is that it lay on the table. A motion to lie on the table is not debatable.

Mr. SULZER. I appeal to my friend from New York to yield three minutes to me. [Cries of "Regular order!"]

The SPEAKER. The question is on agreeing to the report.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. SULZER. Division.

The question was taken; and on a division (demanded by Mr. SULZER) there were—ayes 73, noes 63.

Mr. SULZER. The yeas and nays, Mr. Speaker.

The SPEAKER. The gentleman from New York demands the yeas and nays. [After counting.] Fourteen gentlemen rising, not a sufficient number. The yeas and nays are denied, and the motion to lie on the table is agreed to.