Committee on Invalid Pensions)—to the Committee on War Claims.

By Mr. RHODES: Petition of J. M. Fulkerson et al., of Missouri, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

By Mr. RIVES: Petition of many citizens of New York and vicinity, for relief for heirs of victims of *General Slocum* disaster—to the Committee on Claims.

By Mr. RUPPERT: Petition of the Japanese and Korean Exclusion League, for the Chinese law as it is—to the Committee on Foreign Affairs.

Also, petition of the National Board of Trade, for Government forest reserves—to the Committee on Agriculture.

Also, petition of the International Association of House Painters and Decorators, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

Also, petition of the New York State Charities Association, for the pure food and drug bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the president of the University of Illinois, for an educational commission to China—to the Committee on Foreign Affairs.

Also, petition of the Buffalo Chamber of Commerce, for passage of the Gallinger bill—to the Committee on the Merchant Marine and Fisheries.

By Mr. RYAN: Petition of the Charities Aid Association of New York, for the pure-food bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the East Buffalo Live Stock Association, for extension of the time in which live stock may be kept in cars in transit—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Society of Master House Painters and Decorators, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

By Mr. SLAYDEN: Paper to accompany bill for relief of Cornelia Mitchell (previously referred to the Committee on Invalid Pensions)—to the Committee on Pensions.

By Mr. SNAPP: Petition of citizens of Illinois against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. TAYLOR of Ohio: Petition of Helen M. Harrington and 500 others, in support of bill (H. R. 14610) for an amendment to the pension laws—to the Committee on Invalid Pensions.

By Mr. VOLSTEAD: Petition of citizens of Minnesota, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

By Mr. WEEMS: Paper to accompany bill for relief of Theodore T. Bruce—to the Committee on Invalid Pensions.

---

## SENATE.

### WEDNESDAY, *March 21, 1906.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

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

The VICE-PRESIDENT. The Journal stands approved.

#### ENGAGEMENT AT MOUNT DAJO.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of War, transmitting additional information of an official character with reference to the recent engagement of American forces with the Moro outlaws on Mount Dajo; which, with the accompanying paper, was referred to the Committee on Military Affairs, and ordered to be printed.

#### PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a memorial of the Amalgamated Association of Street and Electric Railway Employees of America, of Detroit, Mich., remonstrating against the adoption of any amendment to the present Chinese-exclusion law; which was referred to the Committee on Immigration.

Mr. KITTREDGE presented a petition of the Federation of Women's Clubs of Fort Pierre, S. Dak., and a petition of the Federation of Women's Clubs of Sioux Falls, S. Dak., praying for an investigation into the industrial condition of the women of the country; which were referred to the Committee on Education and Labor.

Mr. HEYBURN presented a petition of sundry citizens of Moscow, Idaho, praying for the removal of the internal-revenue tax on denaturized alcohol; which was referred to the Committee on Finance.

Mr. KEAN presented a petition of the New Jersey Bankers' Association, of Jersey City, N. J., praying for the enactment of legislation providing for a negotiable bill of lading; which was referred to the Committee on Commerce.

He also presented a petition of the Reading Club of Woodbury, N. J., praying for an investigation of the industrial condition of the women of the country; which was referred to the Committee on Education and Labor.

Mr. GALLINGER presented a petition of the General Federation of Women's Clubs of Lebanon, N. H., praying that an appropriation be made for a scientific investigation into the industrial conditions of women in the United States; which was referred to the Committee on Education and Labor.

He also presented a petition of the congregation of the Garden Memorial Presbyterian Church, of Washington, D. C., praying for the enactment of legislation to protect the first day of the week as a day of rest in the District of Columbia; which was referred to the Committee on the District of Columbia.

He also presented a petition of the Department of the Potomac, Grand Army of the Republic, of Washington, D. C., praying for the enactment of legislation to provide a temporary home in the District of Columbia for ex-volunteer soldiers and sailors of the late wars; which was referred to the Committee on the District of Columbia.

He also presented the petition of John Henry Hammond, of New York City, N. Y., praying for the enactment of legislation to regulate the employment of child labor in the District of Columbia; which was referred to the Committee on the District of Columbia.

He also presented a petition of Giles Taintor, of Boston, Mass., praying for the enactment of legislation to amend the Revised Statutes of the United States relating to the extension of patents; which was referred to the Committee on Patents.

Mr. BURKETT presented a memorial of sundry citizens of Valentine, Nebr., remonstrating against the consolidation of third and fourth class mail matter; which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of Anthony Higgins and John M. Thurston, praying that an allowance be granted them as counsel in the impeachment proceedings of Charles Swayne; which was referred to the Committee on the Judiciary.

Mr. CULLOM presented a petition of the Manufacturers' Association of Chicago, Ill., and a petition of sundry citizens of Durand, Ill., praying for the enactment of legislation to remove the duty on denaturized alcohol; which were referred to the Committee on Finance.

He also presented memorials of the Business Men's Association of Bloomington, of sundry citizens of Bloomington and New Athens, in the State of Illinois, remonstrating against the enactment of legislation to consolidate third and fourth class mail matter, and also the passage of the so-called "parcels-post bill;" which were referred to the Committee on Post-Offices and Post-Roads.

He also presented memorials of sundry citizens of Mascoutah and Alton, in the State of Illinois, remonstrating against the repeal of the present Chinese-exclusion law; which were referred to the Committee on Immigration.

He also presented a petition of the Lake Seamen's Union of Chicago, Ill., praying for the enactment of legislation relating to the complement of crews of vessels; which was referred to the Committee on Commerce.

He also presented petitions of the Tuesday Club of Chicago; of the Woman's Club of Park Ridge; of the South Side Club, of Chicago; of the Woman's Club of Irving Park; of the Hull House Woman's Club, of Chicago; of the Fortnightly Club, of Galina; of the Woman's Club of Oregon; of the Aid and Loan Society Club, of Chicago; of the Woman's Club of Elgin; of the Every Wednesday Club, of Elgin, and of the Woman's Club of Bloomington, all in the State of Illinois, praying that an appropriation be made for a scientific investigation into the industrial conditions of women in the United States; which were referred to the Committee on Education and Labor.

Mr. SCOTT presented a petition of the Woman's Literary Club of Huntington, W. Va., praying for an investigation into the industrial conditions of women in the United States; which was referred to the Committee on Education and Labor.

#### ALASKA RAILROAD COMPANY.

Mr. TILLMAN. I present a memorial remonstrating against the passage of the bill (S. 191) to aid in the construction of a railroad and telegraph and telephone line in the district of Alaska. I ask that the memorial lie on the table and be printed in the RECORD.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

There being no objection, the memorial was ordered to lie on the table and be printed in the RECORD, as follows:

WASHINGTON, D. C., *March 20, 1906.*

*The honorable the Senate of the United States, Washington, D. C.:*

As one long interested in the development of the district of Alaska, and now extensively engaged in commercial, transportation, and other business in the district, I desire to protest against the passage of the bill (S. 191) entitled "A bill to aid in the construction of a railroad and telegraph and telephone line in the district of Alaska," for the following reasons:

First. This bill proposes that Congress incorporate the Alaska Railroad Company and grant it a blanket right of way from the Gulf of Alaska, at or near the head of Cordova Bay, to a point on the Yukon River within 2 miles of Eagle. In addition to this proposed railroad company, there are now four others, in one of which—the Copper River and Northwestern Railroad Company—I am interested, building or proposing to build the same field. These four companies have been duly incorporated under the laws of several States, have made or are making surveys of their proposed routes under the act of Congress approved May 14, 1898 (Appendix D, S. Doc. No. 142, 59th Cong., 1st sess.), granting a right of way through the lands of the United States in the district of Alaska. Some of these companies have completed more or less of the laying out and grading of the line or route by which they are to build, and at least one of them has definitely, with the approval of the Land Office and the Secretary of the Interior, located a considerable part of its permanent right of way. This proposed Alaska Railroad Company is the only company desiring to enter that particular field, asking of Congress special incorporation and special privileges in the shape of a right of way not taken under existing law. In view of the fact that four companies are now occupying or proposing to occupy the same field, an incorporation by Congress of any one is uncalled for and unnecessary. All of the other companies have been compelled to secure their incorporation under State laws, and are faithfully complying with the act of Congress referred to, and with the regulations of the Department of the Interior, found in the circular of the General Land Office of June 8, 1898, to secure their right of way. They have necessarily been to great expense of time, labor, and money in making and filing the surveys required by law, and ask only to be allowed to go ahead under existing law, and not be placed at a disadvantage in the same field by a road getting a special incorporation and special and extraordinary privileges and grants by Congress. In view of this progress already made without the aid of Congress, the only object this proposed corporation without an actual survey can have in asking for the great privilege of an incorporation and a right of way from Congress itself must be the money value of your indorsement of the whole scheme, including the personnel of the directory. With existing law granting ample opportunity and privilege of incorporation and right of way, Congress should not select one particular set of men and construct them into a corporation with higher powers and a higher position than is enjoyed by others.

The preamble setting forth the object of the bill states that it is to aid in the construction of a railroad in the district of Alaska. It is a mistake to say that such an act would encourage or aid railroad building in the district. On the contrary, it would in a measure kill all of the enterprises heretofore started and in course of accomplishment. The prestige of your indorsement of one particular company would dwarf all others in granting to that particular company all the fruits of what has been so carefully worked for by the others. If there is to be any respect to the act approved May 14, 1898, this proposed corporation should take its chances under that act, as all the rest of us have done.

AS TO THE BILL ITSELF.

First. On page 18, line 7, the bill confers a right of way from Cordova Bay to the Yukon River by the most eligible route that shall be determined by the company. No one else dare move until this company determines what it wants. It is a blanket right of way covering all the region.

On pages 21 and 22, section 2, the language of the bill follows closely the wording of the act extending homestead laws of Alaska, and grants to this proposed company not only 100 acres more than is given in the same act for "terminals," but also "mud flats or tide lands in front thereof."

Compare act of May 14, 1898 (Appendix D, S. Doc. 142, 59th Cong., 1st sess., p. 487): "*Provided*, That nothing in this section contained shall be construed as impairing in any degree the title of any State that may hereafter be erected out of said district, or any part thereof, or the right of such State to regulate the use thereof, nor the right of the United States to resume possession of such lands, it being declared that all such rights shall continue to be held by the United States in trust for the people of any State or States which may hereafter be erected out of said district."

If you give this proposed corporation the ownership of the "tide lands" you thereby repeal the act of 1898 to that extent.

The aforesaid act of 1898, section 3 (Appendix D, S. Doc. 142, p. 487, sec. 3350), declares that a railroad which passes through any canyon, pass, or defile shall not prevent any other railroad company from use and occupancy of said canyon, pass, or defile for the purposes of its road, in common with the road first located.

If you will compare the proposed bill, page 23, lines 17, 18, and 19, you will see that the bill changes the whole scope of this provision of existing law by the insertion of the words, line 18, page 23, "upon such terms and compensations as are just."

Therefore the right to the canyon, pass, or defile, which you have declared shall be held in common and enjoyed by all, is here given to one concern, and no one else may pass over therein except "upon such terms and compensation *as are just" to that concern.*

That is the second amendment to the act of 1898 proposed by the bill.

Another change in the existing law proposed by the bill in this section is the omission of the words "and all shippers shall be entitled to equal accommodations as to the movement of freight and without discrimination in form of any person or corporation." (Sec. 3350, Doc. 142, Appendix D, p. 488.)

On page 25 section 5 of the proposed bill gives the proposed corporation the right to file a preliminary plat of its proposed route, "and said *preliminary plat* shall, from the time of filing the same, have the effect to render all the lands upon which said preliminary plat and route shall pass subject to said right of way."

Which is to say, that "right of way" passes absolutely to the company on the mere filing of a paper, which can be prepared in the company's office without a survey or without a single official ever having been on the ground.

Section 3352, Appendix D, page 488, requires "the preliminary map of location;" then in twelve months "a map and profile of at least a 20-mile section of its road, as definitely fixed," "and upon the approval of the Secretary of the Interior * * * *thereafter* all such lands over which the right of way shall pass shall be disposed of subject to such right of way."

The supervision and control of the Secretary of the Interior is repealed by the proposed bill, the requirement of an actual survey of each 20 miles of road is abandoned, and the "right of way" is given away without even requiring the proposed company to produce evidence of its good faith.

The act referred to makes the completion of all railroads in the district mandatory in four years from the filing of the map of definite location, and on failure to complete within that time provides that the rights granted shall be forfeited.

The proposed bill extends the time for this proposed company to *eight years*, and the forfeiture clause reads thus: "The rights herein granted *may be forfeited* as to any *uncompleted portion by Congress.*"

This proposed company is to have twice as long as other companies in which to do its work, and an appeal to Congress for clemency in case of its failure to complete its road.

By section 6 it is provided "That if said Alaska Railroad Company shall not complete and put in operation at least 20 miles of its said railroad within three years from the passage of this act, all the lands granted by this act shall revert to the United States." That is to say, if the proposed corporation builds 20 miles of railroad in three years, its title to all the lands, coal, terminal, and otherwise, herein mentioned, vests absolutely in the corporation.

We have noted that this company (section 2 of the bill) is to receive 100 more acres of land than other companies in Alaska for a terminal, and "the mud flats or tide lands in front thereof," and now, by section 10, "in addition to the terminal lands hereinbefore granted for railroad purposes, there be, and is hereby, granted to said Alaska Railroad Company *2,560 acres* of public lands * * * together with the mud flats or tide lands in front thereof at its terminus at or near the head of Cordova Bay."

*Two thousand five hundred and sixty acres more!* and more "tide lands!"

This is a request for favoritism. The land laws have been extended to Alaska and opportunity is offered to this proposed company as well as others to avail itself of such laws. I can see no reason why they should be repealed for the benefit of this company, which, as yet, has no existence.

By section 11 of the proposed bill there is granted "to said Alaska Railroad Company one section of coal land in Alaska."

A section is defined to be 640 acres in the aggregate, and need not be confined to any shape—that is, it need not be 1 square mile of land.

This gift repeals the coal-land laws of the United States for the benefit of this proposed company; these laws are found on page 104, Document 142, heretofore referred to. I know no ground on which this proposed company can ask the repeal of the Revised Statutes of the United States on its behalf and for its sole benefit, for it has done no work, made no survey or other act to entitle it to the special benefits except to ask of Congress its consideration.

Other companies are mining coal in Alaska under the provisions of the acts of Congress which limit the locations of persons or associations to rectangular tracts containing 40, 80, or 160 acres, but it is proposed to give this proposed company by this bill four times as many acres in the aggregate as any other company may locate under existing law.

Not only this, but since a section need not be taken in a rectangular form, the limit to the amount of coal lands which may be taken under such a grant can hardly be estimated.

The Copper River and Northwestern Railroad starts at Valdez and goes over the Marshall Pass to the Copper River where it meets the right of way which the proposed bill would give to the Alaska Railroad Company. It has already completed and cleared all obstructions from a definite survey to this point of meeting and for some distance up the river. It has filed in the General Land Office a preliminary survey for that distance and a permanent survey for half the distance, the latter having been approved by the Land Office and the Secretary of the Interior.

It has built at Port Valdez docks and other improvements, and has graded its right of way from that point to Keystone Canyon, 12 miles; it has about completed a very difficult piece of rock work through this canyon, a distance of 4 miles, and is continuing this work along its right of way as fast as the inclement winter season will permit. The financial arrangement for the building of this road—The Copper River and Northwestern Railroad—has been fully made, and its completion is assured.

I am informed that The Copper River Railroad Company and the Alaska Pacific and Terminal Railroad Company have on file in the General Land Office preliminary surveys covering 130 miles of their proposed routes, which would also be covered by the right of way asked for in this bill, and are fully prepared, financially and otherwise, to build their roads. The Alaska Central Railroad Company has already built and in operation 45 miles of railroad under the general law and has asked for no special act of incorporation.

There is no evidence on file in the Land Office to show that the proposed company, asking for these special favors, has ever been over its route with instruments; it has made no survey or measurements, as shown by the testimony of its chief engineer before the Committee on Territories, House of Representatives, February 1, 1906, page 60, Hearings on Railroads in Alaska.

In conclusion, I wish to reiterate that this bill should not pass unless Congress desires to put a cloud upon the titles of all these companies already at work in this region, which will be a menace for eight years to all railroad building in the country.

Respectfully, D. H. JARVIS.

REPORTS OF COMMITTEES.

Mr. McCUMBER (for Mr. CARMACK), from the Committee on Pensions, to whom was referred the bill (S. 4247) granting an increase of pension to Carrick Rutherford, reported it with an amendment, and submitted a report thereon.

He also (for Mr. CARMACK), from the same committee, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 5434) granting an increase of pension to Hugh Green;

A bill (H. R. 3806) granting a pension to Eva L. Martin;

A bill (H. R. 11990) granting an increase of pension to Daniel M. Coffman;

A bill (H. R. 9705) granting a pension to George W. Robinson;

A bill (H. R. 15449) granting a pension to Rhoda Kennedy; and

A bill (H. R. 14078) granting an increase of pension to Catherine Summers.

Mr. McCUMBER (for Mr. GEARIN), from the Committee on Pensions, to whom was referred the bill (H. R. 8891) granting an increase of pension to Josephine Rogers, reported it with an amendment, and submitted a report thereon.

He also (for Mr. GEARIN), from the same committee, to whom was referred the bill (S. 2287) granting an increase of pension to James V. Pope, reported it with an amendment, and submitted a report thereon.

He also (for Mr. GEARIN), from the same committee, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (S. 2549) granting an increase of pension to George W. Boyles;

A bill (H. R. 7839) granting a pension to Ray E. Kline;

A bill (H. R. 8333) granting an increase of pension to John G. Honeywell;

A bill (H. R. 9087) granting an increase of pension to William Winn;

A bill (H. R. 5933) granting an increase of pension to Winnie Pittenger;

A bill (H. R. 7856) granting an increase of pension to Norman C. Potter;

A bill (H. R. 9898) granting an increase of pension to Abraham H. Miller;

A bill (H. R. 9904) granting an increase of pension to Neeta H. Marquis;

A bill (H. R. 11214) granting a pension to Isaac Baker;

A bill (H. R. 11209) granting an increase of pension to Thomas Griffith;

A bill (H. R. 11905) granting an increase of pension to Elizabeth E. Atkinson;

A bill (H. R. 12897) granting an increase of pension to Robert B. Malone;

A bill (H. R. 14646) granting an increase of pension to Ambrose R. Fisher;

A bill (H. R. 14077) granting an increase of pension to George W. Chesebro;

A bill (H. R. 14076) granting an increase of pension to William Sanders;

A bill (H. R. 13994) granting an increase of pension to Francis A. Barkis; and

A bill (H. R. 8339) granting a pension to Vienna Ward.

Mr. McCUMBER (for Mr. GEARIN), from the Committee on Pensions, to whom were referred the following bills, reported them severally with amendments, and submitted reports thereon:

A bill (S. 4797) granting an increase of pension to Jacob Franz; and

A bill (S. 230) granting an increase of pension to Alfred A. Woodin.

Mr. FULTON, from the Committee on Claims, to whom was referred the bill (S. 4725) to provide for the division of penalty recovered under the alien contract-labor law, reported it without amendment, and submited a report thereon.

Mr. CULLOM, from the Committee on Foreign Relations, reported an amendment proposing to appropriate $5,071.45 for the erection of a building for the United States consulate at Tahiti, Society Islands, intended to be proposed to the diplomatic and consular appropriation bill, and moved that it be referred to the Committee on Appropriations, and printed; which was agreed to.

He also, from the same committee, reported an amendment proposing to appropriate $250,000 for the purchase of a site and the erection of a building for the United States consulate at Shanghai, China, intended to be proposed to the diplomatic and consular appropriation bill, and moved that it be referred to the Committee on Appropriations, and printed; which was agreed to.

Mr. LODGE, from the Committee on Foreign Relations, to whom was referred the bill (S. 5131) incorporating the Archæological Institute of America, reported it without amendment.

HEARINGS BEFORE COMMITTEE ON INDIAN AFFAIRS.

Mr. KEAN, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the resolution submitted yesterday by Mr. CLAPP, reported it without amendment, and it was considered by unanimous consent and agreed to as follows:

*Resolved*, That the Committee on Indian Affairs be, and the same is hereby, authorized to employ a stenographer from time to time, as may be necessary, to report such hearings as may be had on bills or other matters pending before said committee, and to have the same printed for the use of the committee, and that such stenographer be paid out of the contingent fund of the Senate.

JOHN W. HALLEY.

Mr. McCUMBER. I move that the bill (S. 1250) granting an increase of pension to John W. Halley be taken from the Calendar and indefinitely postponed, on account of the death of the beneficiary of the bill.

The motion was agreed to.

NANCY G. BEASLEY.

Mr. McCUMBER. For the same cause, I move the indefinite postponement of the bill (S. 326) granting an increase of pension to Nancy G. Beasley.

The motion was agreed to.

PUBLIC LANDS IN ALABAMA.

Mr. HANSBROUGH. From the Committee on Public Lands I report back favorably without amendment the bill (H. R. 13194) to authorize the Secretary of the Interior to reclassify the public lands of Alabama. It is a small bill, and I ask unanimous consent for its present consideration.

The Secretary read the bill; and, there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration.

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

BILLS INTRODUCED.

Mr. TILLMAN introduced a bill (S. 5232) for the relief of the trustees of Three-Mile Creek Church of Christ, of Barnwell County, S. C.; which was read twice by its title, and referred to the Committee on Claims.

Mr. FULTON introduced a bill (S. 5233) granting an increase of pension to Edwin Elliott; which was read twice by its title, and referred to the Committee on Pensions.

Mr. FLINT introduced a bill (S. 5234) for a public building for the United States Geological Survey at Washington, D. C.; which was read twice by its title, and referred to the Committee in Public Buildings and Grounds.

Mr. McENERY introduced a bill (S. 5235) granting an increase of pension to James S. Roseberry; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 5236) for the relief of the heirs of Victor Faisons, deceased; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

Mr. BAILEY (by request) introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Claims:

A bill (S. 5237) for the relief of the estate of T. H. Goodloe, deceased;

A bill (S. 5238) for the relief of Elizabeth A. Baker;

A bill (S. 5239) for the relief of H. Polkinhorne; and

A bill (S. 5240) for the relief of the estate of George H. Giddings, deceased.

He also introduced a bill (S. 5241) for the relief of Mrs. James M. Jett; which was read twice by its title, and referred to the Committee on Claims.

Mr. WARNER introduced a bill (S. 5242) for the relief of Virginia K. Hahn and Mary E. Carroll, heirs of James Bridger, deceased; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

He also introduced a bill (S. 5243) for the erection of a public building at Clinton, Mo.; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Public Buildings and Grounds.

Mr. PILES introduced a bill (S. 5244) granting an increase of pension to Horace A. Gregory; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. KITTREDGE introduced a bill (S. 5245) to amend the Code of Law of the District of Columbia, approved March 3, 1901, as amended by the acts approved January 31 and June 30, 1902; which was read twice by its title, and referred to the Committee on Patents.

Mr. GALLINGER introduced a bill (S. 5246) to provide for the extension of Geneseo place, District of Columbia; which was read twice by its title, and, with the accompanying papers, referred to the Committee on the District of Columbia.

Mr. McCUMBER introduced a bill (S. 5247) granting an increase of pension to Jacob Wigel; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. CULLOM introduced the following bills; which were

severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 5248) granting an increase of pension to William Ramage;

A bill (S. 5249) granting an increase of pension to Adam P. Gay; and

A bill (S. 5250) granting an increase of pension to John Stockwell.

WITHDRAWAL OF PAPERS—JAMES A. HUMPHREYS.

On motion of Mr. LONG, it was

*Ordered*, That all the papers in the office of the Secretary of the Senate relating to the bill (S. 6729, Fifty-eighth Congress) for the relief of James A. Humphreys, be withdrawn, there having been no adverse report on said bill.

REGULATION OF RAILROAD RATES.

Mr. CULBERSON submitted an amendment intended to be proposed by him to the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission; which was ordered to lie on the table, and be printed.

AMENDMENTS TO BILLS.

Mr. PILES submitted an amendment authorizing the issuance of patents in fee simple to George Bowen and certain other allottees for lands heretofore allotted to them; and also removing the restriction upon the patent heretofore issued to Charles Sheestal, Swinomish allottee, etc., intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. KITTREDGE submitted an amendment proposing to appropriate $6,000 for laundry purposes and $3,500 for a water system for the asylum for insane Indians at Canton, S. Dak., intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. KITTREDGE (for Mr. CLAPP) submitted an amendment intended to be proposed by him to the bill (H. R. 8131) to prohibit the wearing of the uniform of the Army, Navy, Marine Corps, or Revenue Service of the United States, and so forth; which was referred to the Committee on Military Affairs, and ordered to be printed.

DEPARTMENTAL INFORMATION AFFECTING MARKETS.

Mr. CLARK of Wyoming. I ask leave, on behalf of the conference committee, to withdraw the conference report on the bill (H. R. 10129) to amend section 5501 of the Revised Statutes of the United States.

The VICE-PRESIDENT. The Senator from Wyoming asks permission to withdraw the conference report on House bill 10129. Without objection, leave is granted.

Mr. CLARK of Wyoming. I desire to say that following the suggestion made in the Senate yesterday a concurrent resolution will be prepared to remedy the defect. I trust I may be allowed to express the hope that at last we have a distinct precedent for the refusal of the Senate to concur in new legislation in a conference report; and I trust that in the future it will be exercised as strongly against measures that are less meritorious than the one which was presented by your committee yesterday.

FORTIFICATIONS APPROPRIATION BILL.

Mr. PERKINS. Mr. President, I gave notice yesterday that I would ask the Senate this morning to continue the consideration of House bill 14171, there being one amendment proposed by the committee not yet disposed of. The senior Senator from Virginia [Mr. DANIEL] desires to speak to that amendment. I notice that he is absent from his seat, and therefore I will ask that the bill may temporarily go over. He will probably be in during the day.

In the meantime I will take this occasion to submit a statement as to the floating dry dock *Dewey*, about which inquiry was made yesterday.

For the floating steel dry dock *Dewey*, appropriations were made as follows:

| | |
|---|---|
| Act of July 1, 1902 (Pulsifer comp., p. 380) | $200,000 |
| Act of March 3, 1903 (Pulsifer comp., p. 411) | 300,000 |
| Act of March 27, 1904 (Pulsifer comp., p. 442) | 725,000 |
| Total | 1,225,000 |

It was built after designs similar to those of the floating dry dock at New Orleans. It was constructed by the Maryland Steel Company at Sparrows Point, Md., on Chesapeake Bay, about 4 miles from Baltimore.

REGULATION OF RAILROAD RATES.

Mr. TILLMAN. Mr. President, I ask the Senate to proceed to the consideration of the unfinished business.

The VICE-PRESIDENT. The Senator from South Carolina moves that the Senate proceed to the consideration of the unfinished business, being House bill 12987.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 12987) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission.

Mr. BAILEY. Mr. President, several days ago I prepared two amendments to this bill which I thought would greatly improve it. I did not indulge the hope that those amendments would be entirely satisfactory, either in form or in substance, to all who agree with me upon the main question, because no Senator can prepare any important bill or amendment which will meet the approval of all Senators. The utmost that I expected was that those amendments would become a basis for conferences and suggestions among those who sincerely desire an efficient rate-regulation law, and that out of those conferences and suggestions we would evolve a proposition which would command our united support.

In accordance with that view, I refrained from offering the amendments in the open Senate, and I took care that they should not find their way into the public prints of the country, because I felt that all ought to be consulted before any definite line of action was proposed. My plan was to submit that amendment to my Democratic associates, and after I had received the benefit of their wisdom and their advice, then to pass it to the Republican friends of efficient rate regulation for such suggestions in the way of omissions or additions or modifications as they might see fit to make.

I perfectly understood that in refusing to make those amendments public I would give people an opportunity to misrepresent them, but that consideration could not deflect me from my course, and I would still deem it best to withhold them, except for a statement which was made yesterday by the Senator from Iowa [Mr. DOLLIVER], which appears in the New York Sun of this morning, and which, I am told, also appears in the Chicago Record-Herald of to-day.

The Senator from Iowa asked yesterday if he could see one of those amendments and it was cheerfully shown to him, without any thought, however, that he would consider himself at liberty to discuss it in the newspapers. I am sure that he made his statement without due reflection, because I know that he would not ask to see a paper, which the author of it considered private, and then discuss the contents of it for the public.

I waive all question of propriety, but the statement of the Senator from Iowa requires that I should now submit these amendments to the Senate in order that intelligent men throughout the country may see how widely the Senator from Iowa misunderstands their scope and meaning. He is quoted by the New York Sun as saying, in reference to one of these amendments:

> It will never do. It leads us into a worse morass than anything yet proposed.

Then he specifically objects to my standard of a "just compensation," and declares that "it is thoroughly preposterous to try to determine what would constitute a just compensation."

Mr. President, when the Senator from Iowa characterizes the standard of a just compensation as a preposterous one he assails the fundamental law of this land. He seems to have overlooked the fact that the identical words which I have used, and to which he objects, and which he characterizes as preposterous, are taken from the Constitution itself. If I have erred in proposing as the standard for the Commission a "just compensation" for the service, I have the satisfaction of knowing that I have erred in the company of the great and wise men who wrote and adopted the fifth amendment to the Constitution, and that I have erred in using words which have never before been criticised in the legislative or in the judicial history of this Republic.

I remind the Senator from Iowa that all the property which he holds to-day, all that I hold, and all that any American citizen holds is held under the single guaranty that it shall not be taken from him for a public use without a "just compensation." The Constitution does not say it shall not be taken without "a just, reasonable, and fairly remunerative" price. It does not attempt to guarantee the profit of an enterprise by saying that the price at which the public may use it shall be a "fairly remunerative one;" but, without reference to the cost, it says that when you take it you must allow a just compensation for it, and that is what I have provided in this amendment.

Mr. President, I do not believe there is a man in this Republic who, if you put the question to him straight, will say that he wants the railroads to serve him for less than a just compensation. Perhaps there are men who would like to make the rail-

roads serve them for no compensation at all, but they will not dare affront the common honesty of the people by saying so. Nor is there a railroad manager in all this land to-day who will admit that he wants the people who use his railroad to pay more than a just compensation for its use. Perhaps there are railroad managers who would like to take the entire consignment for the freight bill, but even that kind pay a tribute to honesty by claiming that all they want is a just compensation for their service.

Then, sir, if the shipper says he is willing to pay a just compensation, if the carrier says he only wants a just compensation, and if the Constitution says he shall have a just compensation, it looks to me like Congress can not go very far astray in saying that the Commission shall fix a rate which affords a just compensation.

The Senator from Iowa declares in this interview that my proposition did not take into consideration the subject of discriminations, which, after all, was the greatest evil.

The Senator from Iowa of course read the amendment hurriedly, and he doubtless did not compare it with the bill; and therefore it will probably surprise him when I tell him that there is not a line in the amendment which he read and to which he objects that changes the Hepburn bill in respect to discriminations in the least. It leaves that bill precisely as it found it in respect to discriminations.

Now, Mr. President, as to the amendment giving the carrier his day in court, we had not proceeded far enough with it to indicate the point at which it should be inserted in the bill. It was an expression to be considered and amended, if it was deemed necessary to change it. But in order that the country may see it precisely as the Senator from Iowa saw it, I intend to offer it without the change of a word and without the ordinary addition providing for the line of the bill at which it should be inserted.

The other amendment providing the standard had gone so far as to say where it should be inserted in the bill, and yet it, like the longer amendment, was tentative.

I submit them, Mr. President, and I submit them with the assurance to every sincere friend of this legislation that if he can provide a better one I will abandon mine and gladly join in the support of a better one. I have no pride of authorship, and I fervently thank God that I have never felt that petty jealousy which finds fault with all work except my own.

Mr. KNOX. I ask that the amendments may be read at the desk.

The VICE-PRESIDENT. The amendments submitted by the Senator from Texas will be read at the request of the Senator from Pennsylvania.

The SECRETARY. On page 10 of the bill, line 19, after the word "what," strike out all down to and including the word "prescribed," in line 5, on page 11, and insert the following:

A rate or charge which shall afford a just compensation to the carrier or carriers for the service or services to be performed, and a regulation or practice which shall be just and reasonable. The rate or charge, regulation, or practice so determined and prescribed shall be the only lawful rate or charge, regulation, or practice, and the carrier or carriers shall not thereafter demand or collect any other rate or charge or follow any other regulation or practice.

The VICE-PRESIDENT. The second proposed amendment will be read.

The Secretary read as follows:

Any carrier or person or corporation party to such complaint and dissatisfied with the rate or charge, regulation, or practice so established and prescribed may file a bill against the Commission in any circuit court of the United States for the district in which any portion of the line of the carrier or carriers may be located, alleging that such rate of charge will not afford a just compensation for the service or services to be performed, or that the regulation or practice is unjust and unreasonable, and if upon the hearing the court shall find that such rate or charge will not afford a just compensation for the service or services to be performed, or that the regulation or practice is unjust and unreasonable, it shall enjoin the enforcement of the same: *Provided, however*, That no rate or charge, regulation, or practice prescribed by the Commission shall be set aside or suspended by any preliminary or interlocutory decree or order of the court. Said proceeding shall have precedence over all other cases on the docket of a different character, and the court shall have power to make orders to secure the attendance of persons from any part of the United States, and the existing laws relative to evidence and proceedings under the act to regulate commerce shall be applicable. Either party to said proceeding shall have the right to appeal directly to the Supreme Court of the United States, and such appeal shall have precedence in said Supreme Court over all other cases of a different character pending therein.

Mr. DOLLIVER. Mr. President, I desire to occupy only a minute or two of the time of the Senate.

I need not say to my honorable friend from Texas that there is nobody in this Chamber who has a higher regard for him or a greater admiration for his abilities. I will add that I had no impression that there was any secrecy or anything of a confidential nature in these amendments. I had heard them freely discussed and talked of in the Senate for a long time. I have seen them discussed in the newspapers. Only a few days ago a very able lawyer in the State of Texas, which my friend so ably represents here, wrote me giving a rather particular account of what was in the mind of my honorable friend.

Mr. BAILEY. Mr. President——

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Texas?

Mr. DOLLIVER. Certainly.

Mr. BAILEY. Of course the Senator refers to Judge Cowan——

Mr. DOLLIVER. Yes.

Mr. BAILEY. With whom I have discussed this question on more than one occasion; but neither Judge Cowan nor anybody else outside of the Senate, so far as I know, ever saw this amendment which the Senator read yesterday. I will say to the Senator besides that I made but one copy of it here, because I felt that everybody was entitled to see it and criticise it before it was given to the public; and that copy the Senator from Louisiana had and showed to the Senator yesterday.

Mr. DOLLIVER. Mr. President, I am very sorry that I did not know the exact status of this amendment. I had heard it discussed so freely and had had it, in its substantial provisions, brought so repeatedly to my attention, that I confess I did not understand its secrecy, and can not understand now how a matter should be shown to everybody and its privacy preserved. I have not been able to accomplish that result even after a good deal of effort. On the whole, it is not sure that it would be a desirable thing, even if it could be accomplished. But I desire to disclaim any intention to embarrass and certainly any intention to disturb the feelings of my friend.

It is never pleasant to plead the privileges of a person who has been overtaken by the energy of the newspaper press. After a good many years in this Capitol, I have never had occasion to seriously complain of any report of anything I have said; but it is due to me, in view of what my honorable friend has said, to state that the conversation upon which the interview was based occurred yesterday evening as I was trying to get out of the door and occupied only the few moments of time. While I have not read the report or had my attention called to it, I see by the portion which my friend from Texas has read that, without going any further, it is rather a fragmentary and imperfect presentation of what I tried to say. My impression is that, although I would not be sure, the enterprising correspondent who interviewed me himself stated what the position of the Senator from Texas was, but my impression may be wrong about that. I certainly had in my mind no intention to betray any of the secrets of this Chamber.

My objection to the amendment was not one that need arouse any acrimonious spirit of controversy. As one Senator the other day, in a very able speech—I think the Senator from Texas [Mr. CULBERSON], the colleague of my friend—pointed out, there has been for many generations, both at common law and in the statutes of all English-speaking countries, one standard to which railway rates are to be referred test their lawfulness. That standard is embraced in the phrase "just and reasonable."

I confess more than a passing interest in the suggestion of the junior Senator from Texas, that that time-honored phrase should be abandoned—a phrase taken out of its surroundings in the Bill of Rights and put into the body of this law as a standard to govern the Interstate Commerce Commission. My objection to it is based altogether upon the fact that it is an impracticable standard. It is impossible for a commission or a court or a railroad or anybody else to tell in advance whether a rate is reasonably compensatory—that is to say, whether it affords a reasonable profit on the cost of the service.

Of course, there is very persuasive influence in the words of the Constitution, that "private property shall not be taken for public use without just compensation," but my honorable friend from Texas, I think, will not dispute the fact that there is at least a question whether that language refers to the service of a railroad in respect to a particular rate.

The property of a railroad that may not be taken for public use without just compensation can not be defined by the action of a commission in respect to a specific rate. It is well known to everybody that very many of the rates made by railways themselves do not pretend to afford a compensation for the service that is rendered in that particular case. Every railway schedule is full of sacrifice rates, made for the purpose of stimulating business in some other department. No great railway system pretends to make every rate which is in its schedule compensatory in any practical sense of the word. The great railway systems, which are continental in their scope, confessedly carry goods from one sea coast to the other, not on the basis of what is a just compensation for the service, but because

they must carry at that rate or not carry the goods at all. So that, as a practical proposition, it will be perceived that in departing from the old standard of "just and reasonable" and creating a new standard, a just compensation for a particular service, you contradict the whole scheme of railway rate making.

It must be considered that no railroad can know in advance, with certainty, whether a rate it fixes will be compensatory for that particular service. For that reason no commission could properly be charged with the duty of finding out what the cost of the service is in a particular case, and no court of justice has any facility to determine any such question.

I have been interested in reading a little book entitled "The Elements of Railway Economics," by Mr. W. M. Acworth, printed at Oxford, England, last year. Mr. Acworth is, in many respects, one of the most intelligent students of practical railway problems that there is in the world. He has been a lecturer in one of the great institutions of learning in England, and last spring had the kindness, while the Committee on Interstate Commerce was in session, to appear before that committee and bear very interesting and very valuable testimony. I desire to read from page 51 of that little book a statement of Mr. Acworth, which I believe will be verified by the practical experience of nearly everybody. He says:

> Once we have grasped these fundamental facts, we can promptly get rid of not a few popular fallacies as to the equitable basis of railway rates.

Mr. RAYNER. Will the Senator allow me?

The VICE-PRESIDENT. Does the Senator from Iowa yield to the Senator from Maryland?

Mr. DOLLIVER. Certainly.

Mr. RAYNER. I should be obliged to the Senator from Iowa if he would explain to the Senate what the court does under the Hepburn bill except to determine whether the railroad has received just compensation.

Mr. DOLLIVER. I will come to that in a minute.

Mr. RAYNER. That is the fifth amendment of the Constitution, as I understand it.

Mr. DOLLIVER. Mr. Acworth continues:

> Volumes have been written to show that railway rates ought to be based on cost of carriage. For two generations parliamentary committees and royal commissions have been implored to compel English railways to charge on this basis. Whether it is desirable that railway rates should be so based is a question to which we shall need to recur at a later stage. It is simpler to say at this point that such a basis is impossible, as no one knows, or can know, what the cost of carriage is.

Mr. BAILEY. Will the Senator from Iowa permit me to ask him a question?

Mr. DOLLIVER. Certainly.

Mr. BAILEY. Does the Senator not know that this eminent authority, from whom he reads, declares that the express business in this country is done by the Pullman Company?

Mr. DOLLIVER. I am not aware of that.

Mr. BAILEY. It is true.

Mr. DOLLIVER. I have read this book with some care, but I have not found that.

Mr. BAILEY. I think it is not in that book. I have not read that book.

Mr. DOLLIVER. I have heard that statement made as a jest at the expense of an English traveler, but I do not think it interferes with his general authority as a student of railway economics.

Mr. BAILEY. I think the Senator will find that Mr. Acworth says the express business in France is done by a company whose French name he gives, and in the United States it is done by the Pullman Company. I will ask the Senator from Ohio [Mr. FORAKER] to give us the benefit of his suggestion also.

Mr. FORAKER. I have no objection, if the Senator from Iowa will pardon me.

Mr. DOLLIVER. Certainly.

Mr. FORAKER. I will say to the Senator from Iowa that other writers on railway economics have advanced the same proposition, that because of the complexity of rate making it is impossible to tell what is a just compensation in the case of any particular rate standing by itself.

Mr. DOLLIVER. I have not finished. The writer then goes on to point out why it is impossible to take up a particular railroad rate and tell in advance whether it will afford compensation for the service involved in it or not.

Mr. Acworth adds:

> It comes, therefore, to this: That even if it were, which it is not, possible to say what it would cost to carry $x$ units of traffic, no one could so fix a rate as to obtain precisely the cost plus a determined percentage of profits, because the percentage of profit varies enormously according as the actual volume of traffic carried recedes on the one side or the other from the assumed volume $x$.

I will add to what my honorable friend from Ohio [Mr. FORAKER] has said, that numerous writers lay down the same proposition, and I believe there is no authority in the English language which does not concede that in the case of a particular rate it is impossible either for a railroad or for a commission or for a court to tell certainly in advance whether the compensation in that particular case will or will not produce a just compensation. The reason is that the human mind has no faculty that enables it to find out what the cost of carrying a particular article a particular distance is, such is the complexity of the railway system; and no system of statistics or accounting or expert investigation has ever fathomed the question which my honorable friend proposes to present to the Interstate Commerce Commission to the exclusion of all other considerations which affect the case.

I do not agree with the Senator from Texas that every railroad rate must afford a compensation for the particular service involved in it in order to avoid the prohibition of the fifth amendment of the Constitution of the United States to which he alludes. That amendment, as I understand it, guarantees the integrity of the railway property, and the question of just compensation would not arise unless a showing was made that, on the whole, this order of the Commission had so interfered with the earnings of the company as to invade the integrity of its property.

I do not believe that my honorable friend, who I am sure is earnest and sincere in his anxiety to secure railway rate legislation—and I will add that no man has contributed more to the argument in behalf of the people on this question than the Senator from Texas—will, upon reflection, put upon the Commission the task of doing an impossible thing. If he does that, I trust that he will leave the work of the Commission to stand as in some sense a finality in the matter.

Yesterday or the day before the Senator from Texas paid a magnificent tribute to the ability of an expert railway commission, composed of great business men, with experience and practical knowledge, and to their superior capacity, compared to our judges, to pass upon rate questions. Now, if it is his purpose to bring these railway rates to the test of whether the compensation is just in a particular case, I beg of him to leave the decision of the Commission to stand as the law governing that particular case.

I can not—and I used the word "morass" in that interview, hurried as it was, in no objectionable sense—I can not imagine a worse situation for the public or for the railroads than the proposition the Senator from Texas suggests. He puts upon the Commission the duty of solving an insoluble problem, and then passes their answer to the question over to the courts to determine whether the Commission has solved it correctly or not. It is to be feared that it will turn out a difficult and ineffective scheme.

I agree with my honorable friend that there ought to be a fair and full conference in this Chamber as to this matter. I have been greatly interested, so far, in the debate that has gone on here. It has illuminated this question from a variety of standpoints. There is no doubt that the debate will continue to throw light and interest upon this great problem; but in our anxiety to reach harmony and unity of action, I do not desire to lose sight of the main issue, and I do not intend to do so if I can help it.

There are two questions presented here, both of which can be defended. One of them has been presented by the Senator from Ohio [Mr. FORAKER], who proposes to take every railroad rate that is complained of directly into the court to be adjudicated; and the other has been presented by the bill which comes to us from the House of Representatives, which proposes to put these disputed railway rates before a great expert commission and charge them with the duty of investigating them and deciding them, taking into consideration every question that may properly enter into it, not only the cost of service, but every other question that may be properly involved in the formation of a railway rate. That proposition can be defended. But there is hovering here in the air of this Chamber a proposition which can not be successfully defended, and that is to create a great commission, with great salaries, and give them experience and learning and wisdom to discuss and to determine a practical question like the fixing of a railway rate—give that jurisdiction to the Commission, allow them to exercise it, and then solemnly transplant the entire controversy to be redetermined, rejudged, and redecided by a circuit court of the United States. That proposition, in my humble opinion, can not be defended. I do not deny that much can be said of a most persuasive character about it; but when people get down to a determination of this question, very few, in my judgment, will hold that the court ought to be made the ultimate arbiter in these railway disputes, for the very minute a man reaches the opinion that the court ought to be the ultimate arbiter, that

very minute he ought to go to the support of my honorable friend from Ohio, who has a proposition pending here to make the court the sole and original judge in these disputed questions.

I do not care, Mr. President, at this time to say anything further, except again to disclaim any intention of hurting the feelings of the Senator from Texas or disturbing the proprieties which ought to prevail here. I certainly have not done anything or said anything except with the most sincere good will toward the Senator from Texas.

Mr. BAILEY. The Senator from Iowa did not need to make that disclaimer, because I anticipated him in it and declared that I was satisfied his statement was made without understanding the situation as it appeared to us. I can not, however, accept the Senator's reasons for objecting to the amendment as readily as I accept his disclaimer. When the Senator says that for the court to determine what is a just compensation is an "insoluble problem," he declares, in effect, that every citizen in the United States holds every dollar's worth of his property subject to a rule which is not reducible to a reasonably certain human standard. If we accept his statement that it is impossible to determine what constitutes a just compensation, then every man within the jurisdiction of this Republic holds his property by an insecure and shifting tenure. If what the Senator has said is true, the railroad can file against him or me a bill to condemn the home where our children were born, to appropriate the farm which holds the ashes of our ancestors—can condemn and apply them to its use; and yet this test established by the Constitution for our protection is incapable of fair enforcement.

Let me tell the Senator that, after all, the only way in which to sustain the law authorizing the public to take any person's property—and under the law a railroad corporation is a person and entitled to the protection of its property rights—is by paying it a just compensation. If "a reasonable and fair compensation" does not mean at least as much as "a just compensation," then Congress would be without authority.

Mr. President, the Senator from Iowa does not understand this question as I do, because he spoke of a profit. It is immaterial to me whether a just compensation nets the railroad a profit or a loss. What the railroad is entitled to receive is a just compensation for the service; and the right of the railroad to receive it imposes upon the man who uses the railroad an obligation to pay a just compensation for the service. If the railroad company, through extravagance and mismanagement, can not so construct and operate its property as to serve the public for a just compensation, that is the loss of the people who built or buy the railroad. If the railroad company can construct it and operate it in such an economical way as to give good service for a just compensation and then have a profit, that is the good fortune or the good judgment of the men who construct, operate, and own the railroad.

When the railroad comes to condemn my property—and I derive much of my view upon this whole question from that original circumstance of the right and power of the railroad to take my property—when the railroad reaches my home and seeks to condemn it, what is the test? Not what I paid for the property, because if I bought it for less than it was worth the railroad is not entitled to the advantage of my bargain, and if I paid a foolish price for it, I can not shift to the railroad the burden of my mistake. It is competent for the railroad, or it is competent for me, to prove what I paid for it, but that is not conclusive. The test is, What is it worth? What is the market value of it, if it is a property which has a market value.

That there is a practical difficulty in reducing market values to an exactness every lawyer understands. How often is it that you summon from their homes and their pursuits a jury composed of twelve good and lawful men. You put them on oath to try the case; then you put the witnesses under oath to give the evidence upon which the jury must decide it; you put the judge under oath who delivers the law according to which they must apply the evidence; and yet all of these men, each alike striving to do his duty, will differ as to what is a just compensation for your property. How often have we known juries to compromise their verdicts in such a case. One man believes the property is worth a thousand dollars, another man believes it is worth $2,000, and between these two extremes there are perhaps ten other opinions; and yet, as sensible, honorable, just-minded men, charged to perform their duty, they arrive, not at the exact truth, because that is not required in the ordinary affairs of this world—it is not required because it is not attainable—but these men arrive at the truth as best they can, and probably render a verdnct assessing the value of the property or allowing the just compensation at $1,500. That is $500 less than the highest estimate and $500 above the lowest estimate; yet I have never heard it suggested that we ought to abolish the trial by jury in such cases because every man on the jury could not measure the recovery in exactly the same sum.

When the Commission comes to determine what is a just compensation for a service, I have no doubt that the several members of the Commission, just as several members of a jury, will differ as to the exact amount which ought to be allowed; but does the Senator from Iowa save us from that difficulty by prescribing a just and reasonable and a fairly remunerative rate? Will not the same learned and upright men differ among themselves as to what is just and reasonable and fairly remunerative? The Senator encounters the precise difficulty in one case that he does in the other.

Mr. DOLLIVER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Iowa?

Mr. BAILEY. Certainly.

Mr. DOLLIVER. If the Senator from Texas will observe, the test of the rate fixed by the Commission in the House bill is not the question whether the rate will be just and reasonable and fairly remunerative, but what, in the judgment of the Commission, would be a just, reasonable, and fairly remunerative rate. I observe that those words "in the judgment of the Commission" appear to be omitted in the amendment of my honorable friend.

Mr. BAILEY. And I omitted them deliberately to avoid a legal danger.

Mr. DOLLIVER. So that, under the amendment, the Commission is required to find what a just compensation is, and, for fear they will not do it accurately and correctly, the courts are given an appellate jurisdiction practically to review it.

Mr. BAILEY. I shall address myself to that question a little farther on, and I think I can make it plain that, if some such provision is not made or does not exist without the making of it, the bill would not be worth the paper on which it is written. You can not deprive a man in this country of the right of a trial in the courts for his property.

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Pennsylvania?

Mr. BAILEY. I do.

Mr. KNOX. The Senator from Iowa [Mr. DOLLIVER] stated in respect to that feature of the amendment offered by the Senator from Texas this morning, as well as that feature of the bill which I introduced some weeks ago, referring to the right of any party interested in the controversy to appeal to the courts, that that was a position which was wholly indefensible, and that anyone who stood for that had better accept the bill proposed by the Senator from Ohio [Mr. FORAKER] to give the courts jurisdiction of the matter in the first instance.

I intend later on to address myself to that proposition, but I should like the Senator from Texas when he comes to that point, as he says he will, to press upon the Senator from Iowa to know then what do these words mean in the Hepburn bill, if it is not intended that this controversy can be transferred to the courts? If I may be permitted to take the time——

Mr. BAILEY. Certainly.

Mr. KNOX. I read from page 14 of the bill, commencing at line 8:

> The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper, and the orders of the Commission shall take effect at the end of thirty days after notice thereof to the carriers directed to obey the same, unless—

Now, unless what?—

> unless such orders shall have been suspended or modified by the Commission or suspended or set aside by the order or decree of a court of competent jurisdiction.

And also, if you will permit me to finish, on page 17, reading from line 10:

> The venue of suits brought in any of the circuit courts of the United States—

Brought for what?—

> to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district, etc.

Now, in conclusion, I wish to say if there is anything in relation to this proposed rate legislation that is thoroughly misunderstood throughout the country it is this. You stop ten men on the street, and nine of them will tell you that there is a party here contending for the right to review the orders of the Commission in the court, and there is another party contending that the orders of the Commission shall be final. I say the real issue here is between this absolutely recognized, unrestricted jurisdiction of the circuit courts in the Hepburn bill and the restrictions proposed to be placed upon it both by the amendment of the Senator from Texas and the bill I had the honor to propose to the Senate.

Mr. BAILEY. Mr. President, I need not add anything to the very clear and excellent statement which the Senator from Pennsylvania has just made. When it is suggested to the friends of the Hepburn bill that a man can not be denied his day in court under the Constitution of this country, because to do so would be to deprive him of his property without due process of law, they tell us that the Hepburn bill recognizes his right to go into court. And then when we propose to limit the right which they recognize, they fill the air with indefinite suggestions that somebody is trying to confer too much power upon the judicial tribunals. What inconsistency!

I do not believe there is a lawyer in the Senate—certainly there is not a lawyer who ought to be in the Senate—who will contend that you can pass a law authorizing the public to take any person's property and deny the person whose property is taken a right to try the justness of the compensation in the court, because that would be taking property without due process of law.

When we say that, the proponents and the defenders of the Hepburn bill say they recognize every man's right to go to court. If so, then I ask, in the name of ordinary, every-day, common sense, why should grown men wrangle over the question as to whether they will leave the right to resort to the court understood or express it in plain words?

When the Senator from Iowa intimates that I am proposing to give the courts a larger jurisdiction than the Hepburn bill, I remind him that he is on record, with other distinguished Senators, as declaring that the courts have, independently of and beyond the power of Congress to deprive them of it, the right to interpose at any stage of the proceeding to prevent the Commission from fixing too low a charge at which the railway must transport our property. I challenge that statement of the law; but they are right, and if we can not abridge the power of the courts and we leave it without an effort to define it, it is not only as broad as the jurisdiction which Congress has given, but it supports the view maintained by some lawyers, that the court then possesses all the jurisdiction that Congress could give it over the subject. It is therefore true, absolutely true, that both the bill introduced by the Senator from Pennsylvania and the amendment which I have proposed limit the extent of judicial inquiry more than the Hepburn bill.

There is a difference between the provision of the Senator from Pennsylvania and my own. He recognizes the right to suspend by an interlocutory order of the court the rate fixed by the Commission, and I expressly deny that right. I think that is a difference of vast importance, but it is not one which I propose to discuss at this time.

Mr. KNOX. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Pennsylvania?

Mr. BAILEY. I do.

Mr. KNOX. I doubt whether the Senator from Texas meant exactly what he said. As I understood him, he said he denied the right of the courts to suspend the order. I do not understand that to be his proposition. I understand his proposition to be that it is within the power of Congress to deny the right of the court to suspend the order.

Mr. BAILEY. I used the word "deny" there in the sense that the bill deprives them of the right, and not in the sense that I deny their right to issue the injunction if not expressly forbidden to do so. I thank the Senator for calling my attention to that expression, because it might have left the same impression upon the mind of somebody else, though the word "deny" can be used, as he knows, with accuracy in either sense.

Mr. TILLMAN. Will the Senator yield to me for a question?

Mr. BAILEY. Certainly.

Mr. TILLMAN. I should like to have him give us the benefit of his opinion as a great lawyer as to how it can be possible to differentiate or separate the two classes of appeals. If the railroad goes into court upon the plea of unreasonableness or unjustness or unfairness, that is one thing. If the railroad goes into court upon the plea of confiscation, that is another thing.

Now, I am deeply concerned, and I hope every other Senator here is, that the roads shall not be permitted to get into court upon the plea of confiscation when they have no just reason for doing it, while I am perfectly willing for them to go there if they have an honest purpose in doing so.

As I understand the Senator's purpose in denying to the courts the right to suspend the order of the Commission, it is to allow them to litigate either proposition, but to give to the shipper the benefit of the doubt that the action of the Commission is just and reasonable, and that the courts shall not have the right to suspend the order until the Supreme Court shall have declared that the railroad has a valid reason to complain of the justness of the order.

I should like the Senator to point out, if he can—and no doubt he can, if anybody can—how we shall differentiate these two classes of cases on appeal.

Mr. BAILEY. The only possible way to protect the Commission and to protect the people against frivolous suits instituted in bad faith is to provide that the court can not set aside the rate until the question has been fully adjudicated. Of course, you can not look down into the heart of a suitor when making allegations that his lawful rights are impaired or about to be sacrificed and determine whether he acts in good faith or not. But the most you can do—and I will say to the Senator from South Carolina that that is one of the chief purposes of this limitation—the most you can do is to say that no court shall suspend the order until a final hearing, and thus no frivolous suit can do much harm.

Mr. TILLMAN. I just want to mention in this connection what the Senator mentioned yesterday, and that is that railroad officials do not seem to be very scrupulous about making oaths, as is illustrated by the letter from the gentleman in Florida, where, in an effort to get an injunction, some railroad official had sworn that the value of the property was five millions and something, and when he returned the same property for taxation swore it was worth only a million and a quarter or a million and a half. We must guard against the possibility of some railroad man doing some lying around here.

Mr. BAILEY. The railroads, like everybody else who must employ a great number of people, can always find somebody with an elastic conscience.

I had not any thought of discussing this question in any respect to-day, and I am not going to continue more than a moment, because at some other time I hope to present my views at length, but I want——

Mr. FULTON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Oregon?

Mr. BAILEY. Certainly.

Mr. FULTON. The Senator from Texas and the Senator from Pennsylvania have both made the statement that the amendments offered by each are restrictive of the right of review rather than an enlargement of that right. I confess my inability to understand that to be the case, and I want to ask the Senator from Texas if this is not the law: Where Congress, either directly or through a Commission, shall prescribe railroad rates, those rates will stand unless some specific provision be made for a review by the court, and they may not be assailed or attacked in court unless they amount to what we have become habituated to call "confiscatory," or noncompensatory to the degree that they amount to the taking of property without just compensation? Therefore if no provision be made in the bill for a review, no review can be had unless the rate fixed drops below the point where it will amount to that compensation which the carrier is entitled to receive for the use of its property.

The amendment offered by the Senator from Pennsylvania, as well as that offered by the Senator from Texas, proposes to enlarge that right of review and extend it to all orders, the Senator from Pennsylvania providing that security shall be given, the Senator from Texas prohibiting any injunction being issued under any circumstances to suspend an order of the Commission.

I beg pardon for taking so much time, but I have to take time in order to explain my position. It seems to me that the contention is incorrect that the amendments offered by the Senator from Pennsylvania and the Senator from Texas are restrictive of the right of review. They are an enlargement of the right of review; and it seems to me that can be demonstrated.

Mr. BAILEY. The Senator from Oregon will not so contend when he reads my amendment. The amendment limits the right of the court to an inquiry into the justice of the compensation or the reasonableness of the regulation. I want to say to the Senator, and I want to say it in the presence of every Senator, that if there was no constitutional provision I would never vote for a law that authorized one man to use another man's property without paying him a just compensation. I have no patience with this idea which would make one man serve another without giving him fair compensation for his service.

Mr. FULTON. If the Senator will allow me, I will say that I will join hands with him on that proposition, and I will never vote for such a law—that is, if I know it when I am doing it.

Mr. BAILEY. The Senator does not "know" when he said a moment ago that my amendment enlarges the power of the court. I suggest to the Senator that he read it.

Mr. FULTON. I may not understand the Senator's amendment. This is my proposition: That unless a provision be made

for a review, in the law or by some other statute, no review can be had by the court unless the rate established by the Commission amounts to confiscation or a taking of property without just compensation. Therefore, in view of the fact that we can not deny the railroads or the transportation lines the right of review or the right to appeal to the courts in a case where the order of the Commission would amount to a taking of their property without just compensation, to give them a right of review in cases other than that is certainly enlarging the right of review. The bill as it comes from the House and as reported by the committee does not deny them the right to go into court when their property is about to be confiscated. It could not deny them that right. We have no power to deny them that right. That is a right they have under the Constitution and we can not take it away from them; but that is the only right they have under the bill as it now stands. The Senator proposes, as I understand his amendment, to give them greater rights—that is, to grant them the right of review in every instance when dissatisfied with the order of the Commission. Consequently he must be enlarging the right of review.

Mr. BAILEY. The Senator does not understand it; that is all; and that is a sufficient reply at this time. The Senator, upon an examination of the bill and a comparison of it with the amendment I have offered, will concede what I say; but if, after he examines and compares the two, the Senator then insists upon the view he has here expressed, I will be glad to debate it with him.

Mr. FULTON. Will the Senator answer this question? Does the Senator think Congress could prohibit the right of review where the rates established were confiscatory in their character?

Mr. BAILEY. Mr. President, I do not like the word "review." You can not deny to any man in this country the right to protect his property by a trial in court. I prefer to consider it an original proceeding. The court has said that you can authorize courts to review what has been done by other tribunals; and, although you miscall it an appeal, it matters not what you call it, the real question is, What is the nature of the proceeding? I dislike the word "review," and I have objected to it throughout all this discussion.

My own opinion is that every fair-minded man in this country is willing for every other man to have a fair trial of his property rights. All I contend for—and that is the entire abridgement of that right which I propose—is that the court shall not suspend what has been done by the Commission until there has been a fair trial, and because I propose that, the Senator from Oregon and others say that I am proposing what the Constitution does not warrant. I am perfectly sure that the right to a trial, sacred as it is, only means that you must give a man his day in court; that is all. The amendment I have proposed does that, but I believe that until that day shall come, and until a full hearing shall have been had, it is perfectly competent for Congress to provide that the rate established by the Commission shall be the only lawful rate.

Mr. DANIEL. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Virginia?

Mr. BAILEY. Certainly.

Mr. DANIEL. Mr. President, I should like to make a brief statement while the Senator is upon this subject. It seems to be inevitable that a court can take jurisdiction of any act passed upon this subject and will deal with this matter after we leave it. That being the case, the great difficulty which seems to exist in the administration of the law is that of delay. These two facts, one of law and one of actuality, being true, and all desiring to provide a proper review or a writ of error or method for the court, has the Senator reflected upon the propriety or expediency of providing that after the Interstate Commerce Commission has heard the whole case, it might be taken, within thirty days or sixty days while the order is not yet in execution, to a court by a writ of certiorari, where then the court would have before it the whole evidence in the case before it acted?

I should like to ask, if the Senator has fully investigated that matter, whether he does not think that perhaps a writ of certiorari might be the most convenient and also the most expeditious method of getting a conclusion of the controversy?

Mr. BAILEY. As a matter of convenience, I think the Senator is correct, but I think there is a very serious question as to the right of a court to issue a writ of certiorari to a body like this Commission.

Mr. RAYNER. I will take the liberty of interrupting the Senator from Texas to call the attention of the Senator from Virginia——

Mr. DANIEL. I will say to the Senator from Texas that he will find abundant precedents for the use of the writ of certiorari in writs of review, both for bodies which are entirely juridical and for those which are, to use the expression of the writers, quasi juridical, or have to exercise powers juridical in their nature. It has been done in a great many cases and seems to supply the very order of procedure which might be best employed here. I will state to the Senator, as we are trying to arrive at the best result in this matter through our colloquies, that I think he will discover that the precedents are sufficient in that regard.

Mr. RAYNER. I should like to suggest——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Maryland?

Mr. BAILEY. I do.

Mr. RAYNER. I should like to suggest to the Senator from Virginia that the Supreme Court has said that you can not certiorari from a judicial tribunal to an administrative body. The Senator from Pennsylvania [Mr. KNOX] gave the case the other day, and I gave two cases with which I suppose the Senator from Texas is familiar. You can not get a writ of certiorari from a judicial tribunal to an administrative body.

Mr. DANIEL. It may be you can not now, but it does not follow that Congress may not create power by which it may be done. All that any person is entitled to is to a full remedy and the right to be heard, and the process by which that remedy may be issued is due process of law if Congress provides it without impinging upon the rights of anybody to a full and fair hearing.

Mr. BAILEY. The trouble about that is this: We confer upon this board a mere administrative power, in my opinion, and the writ of certiorari is intended to review an exercise of judicial power. I speak of the Commission as a board, and I provide that the individual can resort to the courts as well as the railroad; I also use the word "corporation" there to include municipal corporations. But whoever takes the matter into court does so by alleging that the board has transcended its power, and thus presents a judicial question.

I know that if there should be absolutely no word or line in this bill about going to the court, you could not keep the railroads out of the court, because they would simply refuse to obey the order, and then when you indicted the officials or sought a mandamus against the road or sought to recover a penalty and brought them into court, they would plead that your law was unconstitutional. You could not deprive them of that right, because if you once take them into court, they could have that question tried, and if you did not take them into court, they would simply disregard your law. The only process, in my judgment, just alike to the road and just alike to the people, is the one—I say it with all deference—which I have proposed.

But now, Mr. President, a word, and a word only, as between the just compensation I suggest and the language of the Hepburn bill——

Mr. PATTERSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Texas yield to the Senator from Colorado?

Mr. BAILEY. Certainly.

Mr. PATTERSON. I wish to make a suggestion to the Senator from Texas before he concludes, and if he prefers I will wait until he has concluded.

Mr. BAILEY. The Senator may proceed now.

Mr. PATTERSON. What I wish to call the attention of the Senator to is the trouble or troubles that Senators upon both sides have discovered in this attempted legislation: First, the extent to which a review will be allowed by a court. Next, as to whether or not there shall be interlocutory orders staying the operation of the finding of the Interstate Commerce Commission before the final determination by the court; and, in connection with that, the matter of delays that seem inseparable from court proceedings.

Now, why might not the matter be solved by transforming the Interstate Commerce Commission into an interstate-commerce court, eliminating the Commission, establishing a special court, as has been done in a great number of instances by Congress under the constitutional provision, and in the act constituting the interstate-commerce court, embrace practically every one of the provisions found in the interstate-commerce act and amendments thereto? Pretty nearly all the powers that are conferred upon the Interstate Commerce Commission may be said to be judicial powers. The Commission exists for the purpose of making investigations, for the purpose of determining questions of fact, to listen to the complaints of those who are injured in dealing with the railroad companies, and then to provide relief for the injured parties.

If we have the interstate-commerce court, there will be no room for interlocutory orders. If there is an appeal, then there will be nothing but an appeal; there will not be any original

proceeding. As the matter stands in the proposed act, in whatever form it may ultimately pass, when the side to a controversy that has the complaint to make enters the court the trial is de novo. It must be as though there had been no money expended by litigants upon either side before the Interstate Commerce Commission. The witnesses must be again subpœnaed, the books must be again examined, the lawyers must again be heard; and it is only after the long and the tedious trial which must be had when you first get into a court that there is room or standing for an appeal.

If the Interstate Commerce Commission can be transposed into a court, then there is no need nor is there room for an interlocutory order, for, of course, the rate must stand as it stood when you appear for the first time before the Interstate Commerce Commission, until there shall be an adjudication of the question that is presented by the aggrieved shipper or by whomsoever else may desire to enter a court. Then comes an appeal, an appeal under proper limitations, an appeal in which there will be no room for the interposition of an injunctive order. The appeal comes upon the record, and there is not even the necessity or the opportunity for a second trial.

It seems to me, Mr. President, that if this is within the bounds of possibility it should be the remedy, and it should afford a solution of the controversies and the grave troubles which are shown to exist by Senators upon either side of this question, all concurring that there are existing evils, that the evils must be remedied, and the only thing sought being a method of bringing relief to those who are suffering by reason of the evils. It does seem to me that the proposition is well worthy of consideration, and I can not see that there is any insuperable constitutional objection to the plan that I tentatively suggest.

Mr. TILLMAN. Mr. President, the Senator from Texas [Mr. BAILEY] has just been in receipt of news of the death of his father, which of course caused him to withdraw from the debate at this time.

Mr. HEYBURN. Mr. President, unless there is some one else who wishes to take the floor I want this morning merely to submit an inquiry to the minds of Senators as to whether or not the services of a public carrier necessarily in all cases constitutes that class of property which can not be taken under the fifth amendment to the Constitution. The services of an individual constitute private property. It is a question in my mind as to whether the services of a common carrier which operates under a franchise that is an implied contract to remain always subject to the regulation of the creator comes within the provisions of the fifth amendment to the Constitution to the same extent as the services of an individual. That is an inquiry which has been in my mind ever since this debate commenced, and I have been seeking for light upon it. I merely commend it to Senators for their legal considerations, because——

Mr. CLAPP. Will the Senator yield to me for a moment?

Mr. HEYBURN. Certainly.

Mr. CLAPP. I anticipate the Senator intends discussing that question. The great majority of all discussion grows out of a misunderstanding of the subject of difference which is being discussed. I should like to ask the Senator whether his proposition involves taking below the limit of a reasonable rate? Does he claim that below that rate it can be taken, or whether down to that rate there is an implied obligation on the carrier to carry at that rate, and consequently it can not be taken?

Mr. HEYBURN. My inquiry goes further than that. My mind is not troubled in drawing the line as to the profitable or unprofitable service of the carrier. I am not troubled about that.

Mr. CLAPP. I am not speaking of what is profitable or unprofitable. The courts say that carriers take their charters subject to the implied obligation to carry at a reasonable rate.

Mr. HEYBURN. Yes.

Mr. CLAPP. Now, it is the right of the shipper to have freight carried at that rate; and what I should like to ask the Senator is where he suggests that it is not properly within the protecting clause of the Constitution, whether he means below that rate it can be taken.

Mr. HEYBURN. I will, for the purpose of submitting this subject of inquiry, accept it upon the suggestion of the Senator from Minnesota as to whether, under the implied contract of the charter under which a man enters upon the duties of a common carrier, with the privileges that go with it, he is not subject to the control of the Government that creates him a common carrier, even to the extent of being put out of business, so far as his right to claim immunity from attack under the fifth amendment to the Constitution is concerned. He enters into a contract that he will do business with the public as long as the public will agree with him as to the terms upon which the business shall be transacted. But it is a question as to whether or not he obtains a charter unrepealable at the hands of the public to do business with them upon some terms within the protection of the fifth amendment to the Constitution, which says that private property shall not be taken for public purposes without just compensation. Of course the basis upon which all the arguments have rested is that he was entitled to continue in business, and he was entitled to be protected in continuing in business to the extent of making a profit.

Now, there is a question in my mind, and a very serious question, as to whether or not that is true. If it is not true, then all of this argument as to our power falls to the ground; it is just that much waste time; it is an academic discussion of the question. If that is not the class of property that is protected by the fifth amendment, then all of this argument as to whether or not we can keep the common carrier out of court or can compel him to go into court falls to the ground, because the right to appeal to the courts is based upon the charge that a constitutional right is being taken away from a common carrier. If the right to charge for his services so as to yield a certain profit is not a constitutional right and the profits for such services are intangible property, then there is nothing in the argument.

Mr. BACON. Will the Senator permit me to suggest to him that these franchises in nine cases out of ten, or probably in greater proportion, are not held under the Federal Government?

Mr. HEYBURN. I beg the Senator's pardon; my attention was distracted, and I did not just catch his question.

Mr. BACON. I venture to suggest to the Senator that in the application of the principle which he invokes, even if it is a correct one, there lies the fact that in nine cases out of ten the charters of the corporations, the rates of which this bill seeks to regulate, are under State authority and not under Federal authority; in other words, the authority which seeks to regulate is not the authority which has granted the franchise.

Mr. HEYBURN. My answer to that is that the State can not grant any charter that gives any charter party a right to do an interstate business except subject to revision by the Congress of the United States. Of course I am speaking only as to interstate commerce. States may create a public servant, a common carrier, but if he does more than local State business Congress can compel him as absolutely as though he were created by Congress.

Mr. BACON. If the Senator will pardon me, nobody disputes that proposition, but here is the point: As I understood the suggestion of the Senator, it is that corporations, holding their franchises as they do at the will of the sovereign, it is within the power of the sovereign which granted that franchise to limit or curtail or infringe upon it. I was simply taking the liberty of suggesting to the Senator, that being the principle, that the sovereign in the two cases is not the same. The sovereign which granted the charter is one, and the sovereign having, as it does undoubtedly, jurisdiction over interstate commerce, but having none over the franchise in this case, is the Federal sovereign and not the State sovereign.

Mr. HEYBURN. But still the sovereignty of the State that created the corporation or the carrier for local uses ceases at the State line, and by the courtesy of the Government is allowed to go into other States, or rather through States, to do business, and is subject to our control.

I would not maintain for a moment that any tangible property of a corporation or common carrier could be taken against the prohibition of the fifth amendment; but the question is whether or not a profit on the services, the performance of which are in a large measure optional at the hands of the common carrier, are that kind of property.

Mr. BACON. If the Senator will permit me again to interrupt him, if I do not obtrude——

Mr. HEYBURN. I am glad to be interrupted.

Mr. BACON. I understand the suggestion of the Senator to be that the right of a railroad chartered in one State to go into another State depends upon the authority given by the United States Government.

Mr. HEYBURN. No; it depends upon the authority given by the other State.

Mr. BACON. Of course; but I understood the Senator to state it the other way. I was about to refer him to the case——

Mr. HEYBURN. I think I will make myself plain in a moment.

Mr. BACON. In the case in 13 Peters of Earle *v.* The Bank of Augusta, the Senator will find that the Supreme Court lays down the doctrine very fully.

Mr. HEYBURN. I have that in mind. I will state what I intended to say. I perhaps expressed myself inadequately. The privilege of doing business in a State other than that of the creator is a matter of grace on the part of that State. Yet under the provision of the Constitution that we are considering Congress has power over interstate commerce. It does not matter who creates the agency, whether it is the corporation or

whether it is an individual, the control of interstate commerce is given to Congress by the Constitution; and so the question as to whether the corporation is the creature of one State or another becomes of minor importance. But the question is as to the character of property that is proposed to be taken as to whether it is that class of property which is protected by the fifth amendment. That is what I have in my mind.

As I was proceeding to say, of course we could not take any tangible property from such a corporation, because it bears an entirely different relation to that class of property which is recognized as property in the hands of any person, artificial or natural. The services of an individual are the individual property, held by the grace of nobody but himself; but the services of a public carrier belong to the public, subject to regulation by the public. The framers of the Constitution had that in mind when they gave Congress the power to control the performance of interstate commerce and duties of that character.

Now, if the suggestion has merit that profits on the services of a public carrier are not such property, then this discussion could be curtailed to the extent of eliminating all question of the power of the Congress to control this matter without giving the right of appeal to the courts, because it is only upon that ground, and that alone, that we are laboring with this question.

The suggestion is one that has been growing up out of the discussion of this case. I have no doubt that a careful examination of the decisions of the court would disclose a line of demarcation between the class of property as represented by personal services at the hands of the individual as distinguished from profits at the hands of the public carrier. It is one of those conclusions that are obvious. Here is a creature that owes a duty to the public, that is performing it by the grace of the public statute, and that is made subject to the control of the law. The Constitution did not undertake to say that Congress could regulate the services of an individual as to whether he operated in one place or another, but only the public carrier, who owes a duty to the public, who derives a benefit by reason of being a common carrier.

The obvious conclusion is that if he does not like the restrictions which the people, speaking through their statutes, place upon his business he can go out of business. He still has his property. We have not taken his property. He can sell it to some other person who is willing to go into business. We leave him with his property and his right to enjoy it, provided that he will enjoy it within the will of the people.

Mr. ALLISON. May I ask the Senator a question? Would not the person to whom this property is sold find himself subjected to the same public authority, and would he not be in the same difficulty? Is it not true that the value of a railroad is in its use? It might be sold, it is true, and the person who buys it must use it, and if he uses it under the restrictions and limitations suggested the property is of no value to him or to another corporation, because it could only be sold for use. The rails can not be taken up. The land taken for this use is not valuable for any other purpose of the corporation. So it seems to me that after all it must be very clear that compensation for the use of the railroad must be regarded as property, under the Constitution. I should think so.

Mr. HEYBURN. I think that is true, and I would distinguish between the term "use" and the wage which the railroad earns.

The Senator has to some extent taken a rather different position from that which I understood his colleague [Mr. DOLLIVER] to take, that this is a duty to be performed for a compensation. Based upon what? The value of the property or the value of the service? Much of the argument here on this question has been to the effect that the compensation was to be based upon the value of the property. I say the compensation should be based upon the value of services, and so does the Senator. I would agree heartily with a measure that would recognize that principle.

Mr. ALLISON. But I think that is rather a fine distinction. The value of the property depends upon the value of the service rendered or that can be rendered. If there were only one train of cars running from New York to Chicago on a four-track railway, the railway itself would be of very little value. But if there were a thousand cars running daily and the four tracks were in use, then the property would be valuable, and it would be compensation derived from that use which would make it valuable. I do not quite see the distinction.

Mr. HEYBURN. I think I can make that distinction plain to the Senator from Iowa. The distinction between the value of the service and the value of the property can be illustrated in this way. Of course, always when I speak of the value of the property I mean the claimed value of it, not the real value.

I will take a railroad that is overcapitalized, or that is extravagantly constructed, or that has incurred an indebtedness which was not warranted by law. The owners of the road will estimate the value of that property to be what it cost them. But it may have cost them four times as much as it should have cost them. Now, the value of the service is the cost of transporting a ton of commodity a given number of miles. It is represented by the cost of the structure of the road—that is, the honest cost of it—by the cost of the equipment of the road, and by the cost of the service—what you might call the labor—the expenditure required to operate the trains.

That is the cost of carrying a ton of freight; but if you base it upon the value of the property and allow the railroad company themselves to fix the value, it is a very different proposition. That question has got to enter into the consideration of every proposition which is submitted to the Interstate Commerce Commission under this bill. The Commission can not determine what is a fair and reasonable charge without, as a basis of their determination, ascertaining the cost. I do not mean the extravagant charges that are made against the corporation, but the real value of the investment. They have got to ascertain it in order, first, to determine how much would be a just compensation for the use of the money represented by the investment; and it is going to be quite an undertaking for them as to certain railroad companies I have in mind to ascertain what is the real investment.

Now, Mr. President, you have got to face the question as to whether these charges are to be based upon the cost of the service or whether they are to be based upon the claimed or real value of the property. It is a divisible question as to who shall ascertain and upon what basis shall be ascertained the value of the property. The Interstate Commerce Commission have got to fight that question out with the railroad companies, and then the courts will have to define the rights of the investors, the producers, shippers, and the railroad companies. We are laying out a big work for the Commission here, and we will need men of pretty large caliber to perform the duties that are to be vested in them under this measure should it be enacted into a law, because, in the first place, they have got to determine and establish some basis upon which to fix charges that shall be fair and reasonable, for the reason that the courts have never laid down a satisfactory rule. Take a railroad I have in my mind. It picked up $90,000,000 of bonded indebtedness of another railroad combination under the plea that they were going to retire these bonds, and incurred $90,000,000 indebtedness against their own line for the purpose of raising the money. They never retired the bonds of the road they purchased, and to-day there is on the market $180,000,000 of bonds representing $90,000,000 indebtedness, which you can readily understand. That is a transaction which passed between two of our leading railroad systems not very long since.

Now, what will the Interstate Commerce Commission do with that? In estimating what is a fair and reasonable charge will they consider that this road has cost $180,000,000 or will they say that the road is worth $80,000,000 or whatever it could be constructed for? Will they take that as a basis upon which to estimate profits or will they say, "We will not go beyond the record and inquire as to the indebtedness of the road on the face of its balance sheet?"

I think we will eventually have to come back to the proposition of considering the cost of transporting the passenger or the ton of freight. The junior Senator from Iowa [Mr. DOLLIVER] this morning said that would be a work of infinite detail and that it would perhaps be impossible. Well, it has been done in Germany, it has been done in France, it has been done in some of the States of this Union. Iowa did it. Iowa has a complete schedule of charges that were made up by a committee of the legislature or its instrument, fixing the charges in detail to every part of the State of Iowa and over every road in it. Of course it was a work of infinite detail; but it can be accomplished. I would not like to admit that the Interstate Commerce Commission can perform a public duty that the Senate is not capable of performing through its methods of doing business. It may be that we will have to go more into detail in regard to the establishment of rules by which our Commission shall be governed in determining this question.

But I did not rise to discuss that question at this time. I merely wanted to project the inquiry into the legal minds of the Senate as to whether or not the profits of a common carrier was a class of property that came within the prohibition of the fifth amendment to the Constitution. I am inclined to think it is not, because it is a class of property that may be either extended or withheld. It is entirely within the power of the common carrier, represented by the individual control that operates it, to withdraw from business. The Senator from Iowa [Mr. ALLISON] says some one else would have to do it. That is very true. I know of an instance, very familiar to the Senate,

where a railroad corporation that was not able to earn 1 per cent upon its fixed charges, including indebtedness, squeezed out $265,000,000 of its consolidated mortgage indebtedness and picked its property up on a basis of its real value and is paying dividends, and has never missed one since.

It may be, if Congress will so legislate, that these common carriers will be compelled to present an honest front to the public who patronize them; that they, too, will find a remedy, either through the hands of those who operate them now or through the means of wiser hands that will pick up the responsibility when they have failed.

Mr. TILLMAN. Mr. President, I suggest to the Senator from Idaho that if he will address himself to providing some remedy for this overcapitalization in the way of an amendment I, at least, will be very friendly toward it, and if it will accomplish its purpose, I certainly will vote for it. So I hope he will think it over seriously and give us the benefit of his study and investigation.

Mr. HEYBURN. Mr. President, at the last session of Congress and at the beginning of this Congress I introduced a measure that was calculated and that, in my judgment, is sufficient to meet the necessities of this occasion. It is doubtless receiving the careful consideration of the committee upon whose table it is now reposing.

Mr. TILLMAN. I would prefer the Senator not to dodge or to get around the question I put to him, or the request I made, by referring to something that he did last year or when Congress met; but, as we are legislating or attempting to legislate, having a bill here, let him prepare an amendment that will remedy the trouble which he sees and which everyone recognizes. I certainly will give it most careful consideration, and I am sure the Senate will; and if it will accomplish the purpose, I certainly will vote for it. But do not say that there is something somewhere, and that a committee of which I am a member is considering it. We have had a great many things to consider. It took us three months to get this bill before the Senate without an amendment on it. So I am afraid if you refer this idea of an amendment to remedy this trouble back to the Committee on Interstate Commerce we will never hear anything more from that committee. It has got to come into the Senate.

Mr. HEYBURN. Mr. President, I realize that it may be possible that the discussion of this question at this time might awaken some new train of thought in the minds of Senators which would prolong this discussion, but it seems to me that it is germane to the consideration of the whole question.

Mr. TILLMAN. I say it is entirely germane, and I hope the Senator will not confine his discussion to an academic treatment of it, but will give us a concrete proposition in the shape of an amendment, so that we can vote on it.

Mr. HEYBURN. Mr. President, I have an amendment on my desk, and I may have others subsequently, but this debate has not really proceeded to that point where it seems to me profitable to undertake the injection of that kind of amendment. It has been more of a general discussion by each member, sometimes with interruptions, but, as a rule, it has been what we might call—without any disrespect to those who have addressed the Senate on the subject—a set of formal addresses. In the period of general debate, if this bill shall reach that period, and I hope it will, when Senators will take an interest in and quick notice and apprehension of the views of each other—when that period comes, I think there will probably be a good many amendments suggested to this bill.

Mr. TILLMAN. There is no doubt about that; but unless the Senator will give us the benefit of his studies in the shape of an amendment which we can examine and debate when the time comes for this quick interchange of thought and action by voting, I am afraid that some of the valuable suggestions which he is making will be lost; and as we are discussing this very question of the justice or injustice, the reasonableness or the unreasonableness of rates—and I agree with the Senator that the question of capitalization or overcapitalization is one of the essential factors in that matter—I hope he will not back water, but that he will get ready to present his ideas in the shape of amendments.

Mr. HEYBURN. I do not think there is any question closer to my consideration of the bill of which the Senator from South Carolina has charge than that which I expressed when I first addressed the Senate to-day—that is, whether or not the services of a public carrier are the class of property contemplated by the fifth amendment of the Constitution. That is a question we have to decide in order to intelligently dispose of this bill.

Mr. PETTUS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Alabama?

Mr. HEYBURN. I do.

Mr. PETTUS. I merely wish to ask the Senator a question. I desire to ask him if the Commission were converted into a court, would there not be much more difficulty in delegating to a court the powers that this Commission now have than there would be in delegating them to a board without judicial power?

Mr. HEYBURN. That is a question evenly balanced. We can not delegate to a judicial tribunal administrative powers, nor can we delegate to an administrative tribunal judicial powers, except within the limitations of the Constitution.

Mr. PETTUS. Has such a thing ever been authorized?

Mr. HEYBURN. No; I think that is a matter for the legislative branch of the Government to dispose of. The Constitution says we may create other courts than those mentioned in the Constitution and confer such jurisdiction upon them as we see fit, within the general limitations of the Constitution.

Mr. PETTUS. How will the Senator get rid of that clause in the Constitution which says that one of these departments of the Government can not exercise the powers of another?

Mr. HEYBURN. I would not infringe on it. That is the easiest way to avoid the difficulty; but we can create minor courts, or other courts. We created the circuit courts and the district courts; we created all the United States courts, except the Supreme Court of the United States. The Constitution created that, but gave to Congress the power to create the other courts. The Constitution also says that we may confer such jurisdiction upon them as we see fit within the limitations, of course, of the general provisions of the Constitution, which define where judicial power shall rest and to what extent it may be extended.

There is much merit in the suggestion of the Senator from Colorado [Mr. PATTERSON] on that question of substituting a transportation court, or a court for transportation, for an interstate-commerce bureau or commission. In England, I believe, the court is denominated a transportation court, or a court of transportation; but, of course, England has not a constitution that delineates and defines the boundaries between concurrent jurisdictions. There the jurisdiction is all from the Crown.

But, Mr. President, I should like the Senator from South Carolina [Mr. TILLMAN] to understand, if I am correct, that the question which I have submitted, as to whether or not there is any constitutional prohibition or limitation upon us here, exists. That question exists; and it is before us, and we have got to take notice of it in determining this matter. It is not an academic question as applied to the measure under consideration at all; but it is a live question; and it has got to be disposed of, and it will be disposed of, whether we take notice of its disposition or not. It will be wrapped up and involved in anything we do in this matter, to be unwrapped by the courts.

Mr. TILLMAN. Does the Senator mean capitalization?

Mr. HEYBURN. No; I mean the question as to whether or not there is such a prohibition against our action as will affect the right of the railroads to hire themselves out to the public. Perhaps I have not succeeded in making myself plain enough for the Senator to comprehend just exactly what I mean; but that is the question that is behind every bit of discussion on the rate bill that has taken place here during the last week.

Mr. TILLMAN. If I understand the Senator at all, it is to the effect that the value of the service alone shall govern the compensation.

Mr. HEYBURN. That has nothing to do with the question of whether we can confiscate or take away the compensation for the services entirely, and, as I say, put the transportation companies out of business. They exist by our grace. I am not speaking of the justice of it. I have no sympathy with the confiscation of the property of anybody, whether it be individual or corporate, and I have no sympathy with those who inveigh against the railroads of the country. They have been the instruments of its civilization and its growth and progress; and to-day in the State that I represent we have, I believe, five separate railroad corporations of the country constructing railroads. We have no desire to array ourselves as the opponents or enemies of railroads, whether operating, constructed, or under construction; but I am speaking now of a principle of law involved in this legislation.

Mr. TILLMAN. Will the Senator kindly repeat it?

Mr. HEYBURN. The principle involved in this legislation is as to whether or not we are under any obligation to take notice of or anticipate the question of confiscation in dealing with rates—not what we may do in regulating freight rates. The Commission and the courts will deal with those questions in executing and applying the law. I am inclined to believe that it does not necessarily enter into the consideration of this ques-

tion by us at all, and that we should not be violating the fifth amendment to the Constitution of the United States in dealing with this question, even though we might pass beyond that into the realm of confiscation of profits dependent on economical management.

Mr. TILLMAN. Does the Senator think Congress would have the power to compel public carriers to transport persons and freight at a loss?

Mr. HEYBURN. No; you can not compel them to do that any more than they could compel you—I speak of Congress—to do it. We can not compel a man to work for us since the abolition of slavery in this country; but if we do accept his services, if he is a private individual, we do it by contract, and if he is a public servant it is because the law imposes a liability or duty upon him to do it. That is the difference.

There are two classes of services. A railroad company can be compelled to operate its trains so long as it holds itself out as a public carrier; but a railroad company can go out of business like anybody else. I saw 60 or 70 miles of track taken up by a railroad built into a country where it proved to be unprofitable; and it went out of business. In the case which went to the Supreme Court from the State of Washington, involving the question as to whether or not the inhabitants of a certain section of the Spokane suburbs could compel a railroad to operate its line, the question was thoroughly passed upon, and I do not know but the Senator from Washington may have had something to do with it. At least he is familiar with it. We know very well where the line is drawn; but there is nothing we can do to compel a public carrier to continue in business. It may sell its property to a successor, and the successor would take its place—that is all right—and take the belongings and conduct the business in the best way it could to meet the views of the public and perform the service within the limits of a fair and reasonable compensation.

I would not be understood as attacking public carriers or railroad corporations or transportation companies of any kind. My sympathies are with them. I believe in such legislation as will encourage that kind of enterprise; but I do not believe in turning the country over to them without that control necessary to compel them to deliver valuable services for the benefits that they derive from the public. My suggestion in regard to overcapitalization was merely incidental to that question.

Mr. PILES. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Washington?

Mr. HEYBURN. I do.

Mr. PILES. I do not know that I quite understand the Senator's position; but I understand him to contend that it is within the power of Congress to fix such a rate as will compel a railroad company to operate its trains, if it operates them at all, at a loss. Is that the question at issue to which the Senator refers?

Mr. HEYBURN. I do not think that correctly states my views. I did not intend so to express them. I intended to say that we were not compelled to take into consideration the question of the profit or loss of operating a railroad regardless of the manner of operation of such road; that we were not to guarantee profits to a reckless and wasteful management, but if we enacted a law here that resulted in a burden upon transportation companies, so long as that law existed they could either conform to it or go out of business. But I would not vote for any measure here that, in my judgment, would operate to compel a public carrier or transportation company to perform services without an adequate compensation—not for a moment would I give my support to such a measure.

Mr. NEWLANDS. Mr. President——

The VICE-PRESIDENT. Does the Senator from Idaho yield to the Senator from Nevada?

Mr. HEYBURN. Certainly.

Mr. NEWLANDS. Mr. President, I will state to the Senator from Idaho [Mr. HEYBURN] that the doctrine for which he contends was, as I understand, the doctrine that was declared in the case of Munn against Illinois. There the question was as to the right of the legislature to fix elevator charges, I believe. The Supreme Court laid down the rule that, wherever a person employed his property in a use in which the public had an interest, he granted the public an interest in the use, and must submit to regulation by the public. My recollection is that the Chief Justice in that case stated it was no objection to the doctrine that the regulation might result even in a deprivation of compensation, that the remedy of the party regulated was to abandon the use; but that so long as the use itself was maintained, the regulation would be maintained. That doctrine was subsequently very much modified, until recently, in the case of Ames against Smith, the court laid down the doctrine that, in fixing rates, regard must be had for a fair return on the value of the property; and that in determining that value the original cost, the cost of reproduction, the issues of stocks and bonds, etc., should be considered.

I think, if the Senator will look over the authorities, he will find that there has since been a gradual advance made by the Supreme Court to this position, which gives to the common carriers owning property affected by a public use the protection of the fifth amendment to the Constitution; a protection which was absolutely denied, according to my recollection, in the case of Munn against Illinois. As I remember, in that case the Chief Justice asserted that if there was legislation which accomplished an injustice upon a party who dedicated his property to the public use, the only remedy was at the polls. That would certainly be an impossible remedy in the case of common carriers and corporations engaged in the public service, for it is certainly impossible for them to carry any proposition at the polls, except perhaps by indirection.

Mr. HEYBURN. Yes, Mr. President, the Granger cases went to the extreme, and the pendulum swung too far back. The cases to which the Senator from Nevada refers involve the question, not of what the legislature could do, but what it should do. If a person accepts the services of a public carrier, he must make a fair return for prudent, honest, and economical service. In the cases referred to the services had been performed, and it was a question of a fair return for those services. But I was dealing with the question from the standpoint that the services were not yet performed and that the option was open. I merely wanted to suggest the inquiry because it will have to be taken into account.

The other questions, when they may properly be brought before the Senate, I shall take pleasure in discussing, as the Senator from South Carolina suggests, at more length and with more particularity, because I am strongly in sympathy with a provision, either in this bill or another, that will prevent a common carrier from demanding of the public compensation upon fictitious values.

Mr. TILLMAN. I hope the Senator will get it ready for this bill; I am afraid we will never get another.

Mr. HEYBURN. Well, I think the elements of it are in this bill, and it only needs elaborating a little. The House bill requires that the Interstate Commerce Commission shall inquire into values, and I think perhaps that that section of the bill—I do not recall the number of the section—particularized and elaborated a little might probably authorize the Interstate Commerce Commission to require such a statement; and upon that statement make such investigation as would determine the bona fides of the fixed charges that were the basis of the demand of the railroad or the transportation company for compensation. I think that might be done.

Mr. TILLMAN. Several Senators have notified me of their desire to speak on this bill. The Senator from Massachusetts [Mr. LODGE] will speak to-morrow, and the Senator from Wisconsin [Mr. SPOONER] was to have spoken to-day, but something has prevented him from coming here; I think he is ill perhaps. I therefore ask that the bill may be laid aside for the day, without losing its place as the unfinished business.

EXECUTIVE SESSION.

Mr. FORAKER. 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 one hour and thirty-five minutes spent in executive session the doors were reopened.

DEATH OF REPRESENTATIVE GEORGE R. PATTERSON.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, communicated to the Senate the intelligence of the death of Hon. GEORGE R. PATTERSON, late a Representative from the State of Pennsylvania, and transmitted resolutions of the House thereon.

The message also announced that the Speaker of the House had appointed Mr. SAMUEL, Mr. BARCHFELD, Mr. LILLEY, Mr. SCHNEEBELI, Mr. BUTLER, and Mr. KLINE, of Pennsylvania; Mr. LOUDENSLAGER, of New Jersey; Mr. PRINCE, of Illinois; Mr. FOSTER, of Vermont; Mr. ANDREWS, of New Mexico; Mr. BROUSSARD, of Louisiana; Mr. GOULDEN, of New York; Mr. PATTERSON, of North Carolina, and Mr. AIKEN, of South Carolina, members of the committee on the part of the House to attend the funeral.

The VICE-PRESIDENT. The Chair lays before the Senate resolutions from the House of Representatives, which will be read.

The Secretary read the resolutions, as follows:

IN THE HOUSE OF REPRESENTATIVES,
*March 21, 1906.*

*Resolved*, That the House has heard with profound sorrow of the death of Hon. GEORGE R. PATTERSON, a Representative from the State of Pennsylvania.

*Resolved*, That a committee of thirteen Members of the House, with such members of the Senate as may be joined, be apointed to attend the funeral.

*Resolved*, That the Sergeant-at-Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions, and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

*Resolved*, That the Clerk communicate these resolutions to the Senate, and transmit a copy thereof to the family of the deceased.

Mr. PENROSE. Mr. President, I present the resolutions which I send to the desk, and I ask unanimous consent for their immediate consideration.

The VICE-PRESIDENT. The resolutions submitted by the Senator from Pennsylvania will be read.

The Secretary read the resolutions, as follows:

*Resolved*, That the Senate has heard with profound sorrow the announcement of the death of Hon. GEORGE R. PATTERSON, late a Representative from the State of Pennsylvania.

*Resolved*, That a committee of six Senators be appointed by the Vice-President to join a committee appointed on the part of the House of Representatives to take order for superintending the funeral of the deceased.

*Resolved*, That the Senate communicate these resolutions to the House of Representatives.

The resolutions were considered by unanimous consent, and unanimously agreed to.

The VICE-PRESIDENT appointed, under the second resolution, as the committee on the part of the Senate to act in conjunction with the committee on the part of the House of Represenatives, Mr. PENROSE, Mr. KNOX, Mr. ALLEE, Mr. SCOTT, Mr. BACON, and Mr. DUBOIS.

Mr. PENROSE. Mr. President, I submit a further resolution, which I send to the desk.

The VICE-PRESIDENT. The resolution will be read.

The Secretary read the resolution, as follows:

*Resolved*, That as an additional mark of respect to the memory of the deceased, the Senate do now adjourn.

The resolution was considered by unanimous consent, and unanimously agreed to; and (at 4 o'clock and 8 minutes p. m) the Senate adjourned until to-morrow, Thursday, March 22, 1906, at 12 o'clock meridian.

---

## NOMINATIONS.

*Executive nominations received by the Senate March 21, 1906.*

### ASSOCIATE JUSTICE OF ARIZONA SUPREME COURT.

Fletcher M. Doan, of Arizona, to be associate justice of the supreme court of the Territory of Arizona. A reappointment, his term having expired January 20, 1906.

### PROMOTION IN THE NAVY.

Lieut. (Junior Grade) Joseph K. Taussig to be a lieutenant in the Navy from the 3d day of Ooctober, 1904, vice Lieut. Armistead Rust, promoted.

### PROMOTIONS IN THE ARMY.

*Medical Department.*

Lieut. Col. Edward B. Moseley, deputy surgeon-general, to be assistant surgeon-general with the rank of colonel from March 17, 1906, vice Hall, retired from active service.

Maj. Louis A. La Garde, surgeon, to be deputy surgeon-general with the rank of lieutenant-colonel from March 17, 1906, vice Moseley, promoted.

Capt. Paul F. Straub, assistant surgeon, to be surgeon with the rank of major from March 17, 1906, vice La Garde, promoted.

*Artillery Corps.*

Lieut. Col. John McClelland, Artillery Corps, to be colonel from March 16, 1906, vice Merrill, retired from active service.

### POSTMASTERS.

#### ARKANSAS.

Benjamin F. Campbell to be postmaster at Fayetteville, in the county of Washington and State of Arkansas, in place of Benjamin F. Campbell. Incumbent's commission expires April 22, 1906.

Fred C. Furth to be postmaster at Pine Bluff, in the county of Jefferson and State of Arkansas, in place of Fred C. Furth. Incumbent's commission expires March 24, 1906.

#### CALIFORNIA.

Samuel S. Johnston to be postmaster at National City, in the county of San Diego and State of California, in place of Samuel S. Johnston. Incumbent's commission expired January 13, 1906.

#### COLORADO.

Edward E. Eversole to be postmaster at Monte Vista, in the county of Rio Grande and State of Colorado, in place of Edward E. Eversole. Incumbent's commission expired March 14, 1906.

Frank M. Reardon to be postmaster at Victor, in the county of Teller and State of Colorado, in place of Frank M. Reardon. Incumbent's commission expired February 10, 1906.

#### FLORIDA.

Joshua Mizell to be postmaster at Punta Gorda, in the county of De Soto and State of Florida, in place of Joshua Mizell. Incumbent's commission expires March 25, 1906.

#### GEORGIA.

William E. Burch to be postmaster at Hawkinsville, in the county of Pulaski and State of Georgia, in place of William E. Burch. Incumbent's commission expires April 17, 1906.

#### ILLINOIS.

Ulysses S. G. Blakely to be postmaster at Plainfield, in the county of Will and State of Illinois, in place of Ulysses S. G. Blakely. Incumbent's commission expired December 12, 1905.

Lenthold C. Brown to be postmaster at Wheaton, in the county of Dupage and State of Illinois, in place of Lenthold C. Brown. Incumbent's commission expired January 13, 1906.

Jacob G. Reul to be postmaster at Mendota, in the county of La Salle and State of Illinois, in place of Albert W. McIntire, removed.

William C. Roodhouse to be postmaster at Roodhouse, in the county of Greene and State of Illinois, in place of William C. Roodhouse. Incumbent's commission expired January 13, 1906.

#### IOWA.

John G. Bardsley to be postmaster at Neola, in the county of Pottawattamie and State of Iowa, in place of George L. Wilkinson. Incumbent's commission expires April 10, 1906.

John R. Smull, jr., to be postmaster at Stuart, in the county of Guthrie and State of Iowa, in place of John R. Smull, jr. Incumbent's commission expired March 5, 1906.

#### KANSAS.

Harvey G. Lowrance to be postmaster at Thayer, in the county of Neosho and State of Kansas, in place of Harvey G. Lowrance. Incumbent's commission expires April 10, 1906.

William T. McElroy to be postmaster at Humboldt, in the county of Allen and State of Kansas, in place of William T. McElroy. Incumbent's commission expires April 10, 1906.

Edwin R. Smith to be postmaster at Mound City, in the county of Linn and State of Kansas, in place of Edwin R. Smith. Incumbent's commission expires April 2, 1906.

#### MASSACHUSETTS.

George A. Coolidge to be postmaster at Hudson, in the county of Middlesex and State of Massachusetts, in place of Henry S. Moore, resigned.

John F. Freese to be postmaster at East Walpole, in the county of Norfolk and State of Massachusetts, in place of John F. Freese. Incumbent's commission expired March 1, 1906.

Edwin M. Wheelock to be postmaster at Hopedale, in the county of Worcester and State of Massachusetts, in place of Edwin M. Wheelock. Incumbent's commission expired March 14, 1906.

Arthur P. Wright to be postmaster at East Pepperell, in the county of Middlesex and State of Massachusetts, in place of Arthur P. Wright. Incumbent's commission expired March 1, 1906.

#### MICHIGAN.

Charles W. Browne to be postmaster at Mason, in the county of Ingham and State of Michigan, in place of Charles W. Browne. Incumbent's commission expired March 19, 1906.

Frederick Kruger to be postmaster at St. Ignace, in the county of Mackinac and State of Michigan, in place of Frederick Kruger. Incumbent's commission expired March 5, 1906.

Daniel P. McMullen to be postmaster at Cheboygan, in the county of Cheboygan and State of Michigan, in place of Daniel P. McMullen. Incumbent's commission expired March 19, 1906.

Josiah C. Richardson to be postmaster at Jackson, in the county of Jackson and State of Michigan, in place of Oscar J. R. Hanna. Incumbent's commission expires April 10, 1906.

#### MINNESOTA.

Samuel Y. Gordon, jr., to be postmaster at Brown Valley, in the county of Traverse and State of Minnesota, in place of Samuel Y. Gordon, jr. Incumbent's commission expires April 5, 1906.

#### MISSISSIPPI.

Lizzie Baldwin to be postmaster at Canton, in the county of Madison and State of Mississippi, in place of Lizzie Baldwin. Incumbent's commission expires April 2, 1906.

#### MISSOURI.

Walter Tholburn to be postmaster at Webb City, in the county of Jasper and State of Missouri, in place of William H. Haughawout. Incumbent's commission expires May 8, 1906.

Clark Wix to be postmaster at Butler, in the county of Bates

and State of Missouri, in place of Adelbert O. Welton. Incumbent's commission expired January 22, 1906.

NEBRASKA.

Theodore C. Hacker to be postmaster at Red Cloud, in the county of Webster and State of Nebraska, in place of Theodore C. Hacker. Incumbent's commission expired March 14, 1906.

NEW HAMPSHIRE.

Luther H. Morrill to be postmaster at Tilton, in the county of Belknap and State of New Hampshire, in place of Luther H. Morrill. Incumbent's commission expires May 9, 1906.

Forrest W. Peavey to be postmaster at Wolfboro, in the county of Carroll and State of New Hampshire, in place of Forrest W. Peavey. Incumbent's commission expired January 29, 1906.

Osmon B. Warren to be postmaster at Rochester, in the county of Strafford and State of New Hampshire, in place of Osmon B. Warren. Incumbent's commission expires May 9, 1906.

NEW YORK.

Robert M. Skillen to be postmaster at Akron, in the county of Erie and State of New York, in place of Robert M. Skillen. Incumbent's commission expired March 14, 1906.

Alvin T. Smith to be postmaster at Worcester, in the county of Otsego and State of New York, in place of Henry H. Smith, deceased.

NORTH DAKOTA.

Andrew S. Ellingson to be postmaster at Northwood, in the county of Grand Forks and State of North Dakota, in place of Andrew S. Ellingson. Incumbent's commission expired January 20, 1906.

OKLAHOMA.

Aloise Hopkins to be postmaster at Cement, in the county of Caddo and Territory of Oklahoma. Office became Presidential January 1, 1906.

PENNSYLVANIA.

S. Clay Miller to be postmaster at Lancaster, in the county of Lancaster and State of Pennsylvania, in place of S. Clay Miller. Incumbent's commission expired February 8, 1905.

Charles Koch to be postmaster at Pitcairn, in the county of Allegheny and State of Pennsylvania, in place of Charles Koch. Incumbent's commission expired March 10, 1906.

Charles Seger to be postmaster at Emporium, in the county of Cameron and State of Pennsylvania, in place of Charles Seger. Incumbent's commission expires April 10, 1906.

RHODE ISLAND.

John W. Cass to be postmaster at Woonsocket, in the county of Providence and State of Rhode Island, in place of John W. Cass. Incumbent's commission expired March 1, 1906.

VIRGINIA.

J. Harvey Furr to be postmaster at Waynesboro, in the county of Augusta and State of Virginia, in place of James Craig. Incumbent's commission expired January 21, 1906.

WASHINGTON.

Charles H. Jones to be postmaster at Arlington, in the county of Snohomish and State of Washington, in place of Charles H. Jones. Incumbent's commission expires April 2, 1906.

WEST VIRGINIA.

Samuel E. Stafford to be postmaster at Elkhorn, in the county of McDowell and State of West Virginia, in place of Samuel E. Stafford. Incumbent's commission expires April 26, 1906.

WISCONSIN.

William J. Guetzloe to be postmaster at Kiel, in the county of Manitowoc and State of Wisconsin, in place of William J. Guetzloe. Incumbent's commission expired January 20, 1906.

## CONFIRMATIONS.

*Executive nominations confirmed by the Senate March 21, 1906.*

GOVERNOR OF ALASKA.

Wilford B. Hoggatt, of Juneau, Alaska, to be governor of Alaska.

REGISTERS OF LAND OFFICES.

Clarence W. Leininger, of California, to be register of the land office at Redding, Cal.

Louis J. Cohn, of Reno, Nev., to be register of the land office at Carson City, Nev.

RECEIVERS OF PUBLIC MONEYS.

Earl W. Tremont, of Manhattan, Nev., to be receiver of public moneys at Carson City, Nev.

Lloyd L. Carter, of California, to be receiver of public moneys at Redding, Cal.

POSTMASTERS.

ARIZONA.

Laura G. Crable to be postmaster at Tombstone, in the county of Cochise and State of Arizona.

CALIFORNIA.

T. E. Dimock to be postmaster at Lompoc, in the county of Santa Barbara and State of California.

Stephen F. Kelley to be postmaster at San Bernardino, in the county of San Bernardino and State of California.

IOWA.

E. H. Allison to be postmaster at Grundy Center, in the county of Grundy and State of Iowa.

Charles H. Anderson to be postmaster at Anamosa, in the county of Jones and State of Iowa.

Denton Camery to be postmaster at Toledo, in the county of Tama and State of Iowa.

Henry A. Perrin to be postmaster at Monroe, in the county of Jasper and State of Iowa.

William G. Power to be postmaster at Mount Vernon, in the county of Linn and State of Iowa.

Don W. Rathbun to be postmaster at Marion, in the county of Linn and State of Iowa.

John L. Waite to be postmaster at Burlington, in the county of Des Moines and State of Iowa.

KANSAS.

Andrew McClellan to be postmaster at Onaga, in the county of Pottawatomie and State of Kansas.

William H. McIntyre to be postmaster at Ashland, in the county of Clark and State of Kansas.

David W. Naill to be postmaster at Herington, in the county of Dickinson and State of Kansas.

Frank H. Roberts to be postmaster at Oskaloosa, in the county of Jefferson and State of Kansas.

LOUISIANA.

Frank C. Labit to be postmaster at Crowley, in the parish of Acadia and State of Louisiana.

MASSACHUSETTS.

Benjamin F. Martin to be postmaster at Marblehead, in the county of Essex and State of Massachusetts.

John W. Richardson to be postmaster at Winchester, in the county of Middlesex and State of Massachusetts.

Nathan H. Sears to be postmaster at Millbury, in the county of Worcester and State of Massachusetts.

Albert G. Thompson to be postmaster at Lowell, in the county of Middlesex and State of Massachusetts.

Luther Wait to be postmaster at Ipswich, in the county of Essex and State of Massachusetts.

MICHIGAN.

Elliott O. Bellows to be postmaster at Stanton, in the county of Montcalm and State of Michigan.

Fred A. Hutty to be postmaster at Grand Haven, in the county of Ottawa and State of Michigan.

Walter D. Sharp to be postmaster at Litchfield, in the county of Hillsdale and State of Michigan.

Aaron R. Wheeler to be postmaster in St. Louis, in the county of Gratiot and State of Michigan.

MONTANA.

George W. Irvin to be postmaster at Butte, in the county of Silver Bow and State of Montana.

Augusta C. Sheridan to be postmaster at Bigtimber, in the county of Sweet Grass and State of Montana.

NEBRASKA.

Percy A. Brundage to be postmaster at Tecumseh, in the county of Johnson and State of Nebraska.

NEVADA.

Dwight A. Dawson to be postmaster at Reno, in the county of Washoe and State of Nevada.

NEW HAMPSHIRE.

Walter H. Stickney to be postmaster at Epping, in the county of Rockingham and State of New Hampshire.

NEW JERSEY.

Chester A. Burt to be postmaster at Helmetta, in the county of Middlesex and State of New Jersey.

James D. Mackay to be postmaster at Lambertville, in the county of Hunterdon and State of New Jersey.

NORTH CAROLINA.

Mary Green to be postmaster at Warrenton, in the county of Warren and State of North Carolina.

OHIO.

Murray P. Brewer to be postmaster at Bowling Green, in the county of Wood and State of Ohio.

Frank Fortune to be postmaster at Jefferson, in the county of Ashtabula and State of Ohio.

SOUTH DAKOTA.

J. Melroy Staley to be postmaster at Clear Lake, in the county of Deuel and State of South Dakota.

TENNESSEE.

Archelaus M. Hughes to be postmaster at Columbia, in the county of Maury and State of Tennessee.

Charles S. Moss to be postmaster at Franklin, in the county of Williamson and State of Tennessee.

Alexander Ragan to be postmaster at Newport, in the county of Cocke and State of Tennessee.

Zeph Roby to be postmaster at Erin, in the county of Houston and State of Tennessee.

Albert L. Scott to be postmaster at Dickson, in the county of Dickson and State of Tennessee.

Harry Swaney to be postmaster at Gallatin, in the county of Sumner and State of Tennessee.

TEXAS.

Florence Burke to be postmaster at Elgin, in the county of Bastrop and State of Texas.

Thomas J. Darling to be postmaster at Temple, in the county of Bell and State of Texas.

Carlton A. Dickson to be postmaster at Cleburne, in the county of Johnson and State of Texas.

Edwin Fore to be postmaster at Pittsburg, in the county of Camp and State of Texas.

Charles J. Hostrasser to be postmaster at Hearne, in the county of Robertson and State of Texas.

Harry Martin to be postmaster at Bonham, in the county of Fannin and State of Texas.

WISCONSIN.

Edith E. Baker to be postmaster at Shell Lake, in the county of Washburn and State of Wisconsin.

Frank J. Boyle to be postmaster at South Milwaukee, in the county of Milwaukee and State of Wisconsin.

Matthew J. Connors to be postmaster at Hurley, in the county of Iron and State of Wisconsin.

Frank E. Riley to be postmaster at Two Rivers, in the county of Manitowoc and State of Wisconsin.

Joel L. Stewart to be postmaster at Clintonville, in the county of Waupaca and State of Wisconsin.

D. B. Gorham to be postmaster at Shawano, in the county of Shawano and State of Wisconsin, in place of D. B. Gorham. Incumbent's commission expired March 18, 1906.

## HOUSE OF REPRESENTATIVES.

### WEDNESDAY, *March 21, 1906.*

The House met at 12 o'clock noon.

The Chaplin, Rev. HENRY N. COUDEN, D. D., offered the following prayer:

Oh, Thou great Spirit, who hast been the inspiration of men to high and noble achievement, help us to realize that it is not what we get out of the world but what we put into the world that counts for righteousness. Inspire us, therefore, with high conceptions of right and duty, and help us to noble endeavors that we may leave the world a little better than we found it. Profoundly impressed by the sudden and unexpected death of one of the Members of this House, we are warned that we must work while it is yet day, for the night cometh when no man can work. God be with the bereaved family; give them that hope and confidence in Thee which will inspire them with lofty thoughts and bring them closer to Thee, and finally to that happy reunion beyond this land, where no death enters. Hear us in the name of Christ our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

LEAVES OF ABSENCE.

By unanimous consent, leave of absence was granted as follows:

To Mr. CLARK of Florida indefinitely, on account of important business.

To Mr. BENNETT of Kentucky for two weeks, on account of important business.

DEATH OF HON. GEORGE R. PATTERSON.

Mr. SAMUEL. Mr. Speaker, it is my sad duty to announce the death of my late colleague, Hon. GEORGE R. PATTERSON, a Representative from the Twelfth district, who died very suddenly and unexpectedly this morning. I offer the following resolutions.

The SPEAKER. The Clerk will report the resolutions.

The Clerk read as follows:

*Resolved*, That the House has heard with profound sorrow of the death of Hon. GEORGE R. PATTERSON, a Representative from the State of Pennsylvania.

*Resolved*, That a committee of thirteen Members of the House, with such members of the Senate as may be joined, be appointed to attend the funeral.

*Resolved*, That the Sergeant-at-Arms of the House be authorized and directed to take such steps as may be necessary for carrying out the provisions of these resolutions; and that the necessary expenses in connection therewith be paid out of the contingent fund of the House.

*Resolved*, That the Clerk communicate these resolutions to the Senate and transmit a copy thereof to the family of the deceased.

The SPEAKER. The question is on agreeing to the resolutions.

The question was taken; and the resolutions were unanimously agreed to.

The SPEAKER. The Chair appoints the following committee.

The Clerk read as follows:

Mr. SAMUEL, of Pennsylvania; Mr. BARCHFELD, of Pennsylvania; Mr. LILLEY, of Pennsylvania; Mr. SCHNEEBELI, of Pennsylvania; Mr. BUTLER, of Pennsylvania; Mr. KLINE, of Pennsylvania; Mr. LOUDENSLAGER, of New Jersey; Mr. PRINCE, of Illinois; Mr. ANDREWS, of New Mexico; Mr. BROUSSARD, of Louisiana; Mr. GOULDEN, of New York; Mr. PATTERSON, of North Carolina; Mr. AIKEN, of South Carolina.

The SPEAKER. The gentleman from Pennsylvania also offers the following resolution.

The Clerk read as follows:

*Resolved*, That as a further mark of respect to the memory of the deceased, this House do now adjourn.

The motion was agreed to; and accordingly (at 12 o'clock and 8 minutes p. m.) the House adjourned to meet to-morrow, at 12 o'clock noon.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. HAY, from the Committee on Military Affairs, to which was referred the House joint resolution (H. J. Res. 103) authorizing a commission to examine the battlefields around Petersburg, Va., and report whether it is advisable to establish a battlefield park, reported the same with amendment, accompanied by a report (No. 2469); which said joint resolution and report was referred to the House Calendar.

Mr. FRENCH, from the Committee on the Public Lands, to which was referred the bill of the Senate (S. 4862) allowing settlers with permanent improvements on the town sites of Heyburn and Rupert, in Idaho, to buy lots on which said improvements are located at an appraised price for cash, reported the same without amendment, accompanied by a report (No. 2471); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

## REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. PARKER, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 14928) for the relief of F. V. Walker, reported the same with amendment, accompanied by a report (No. 2468); which said bill and report were referred to the Private Calendar.

Mr. CUSHMAN, from the Committee on Private Land Claims, to which was referred the bill of the Senate (S. 538) for the relief of Charles T. Rader, reported the same without amendment, accompanied by a report (No. 2470); which said bill and report were referred to the Private Calendar.

## PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. BURKE of South Dakota: A bill (H. R. 17112) directing the Court of Claims to hear and determine the question of the restoration of the unpaid annuities of the Sisseton and Wahpeton bands of Sioux Indians—to the Committee on Indian Affairs.

Also, a bill (H. R. 17113) providing for the allotment and distribution of Indian tribal funds—to the Committee on Indian Affairs.

By Mr. DIXON of Montana: A bill (H. R. 17114) to provide for the disposition, under the public land laws, of the lands in the abandoned Fort Shaw Military Reservation, Mont.—to the Committee on the Public Lands.