Locomotive Firemen; Brotherhood of Locomotive Firemen of Huron, S. Dak., and engineers of Dakota Division of Chicago and Northwestern Railway, against antipass amendment to rate bill—to the Committee on Interstate and Foreign Commerce.

By Mr. BURTON of Ohio: Petition of Frank L. Willcutt, for amendment to post-office laws making legal all paid newspaper subscriptions—to the Committee on the Post-Office and Post-Roads.

Also, petition of H. L. Ambler et al., against Mr. Perkins's amendment to section 2 of Senate Army dental bill—to the Committee on Military Affairs.

By Mr. CHANEY: Petition of Davis County Medical Society, of Washington, Ind., for passage of the pure-food bill—to the Committee on Interstate and Foreign Commerce.

By Mr. DAWSON: Petition of German-American Alliance, favoring a commission to study the question of immigration—to the Committee on Immigration and Naturalization.

By Mr. ESCH: Petition of American Manufacturers' Company, American Folding Bed Company, American Parlor Furniture Company, Crocker Chair Company, Dillingham Manufacturing Company, Excelsior Wrapper Company, C. B. Freyberg Lumber Company, Frosts Veneer Seating Company, Gaston Toy Company, J. M. Kohler Sons Company, Northern Furniture Company, Phoenix Chair Company, Ross-Sellinger Company, Sheboygan Chair Company, Sheboygan Novelty Works, Sheboygan Knitting Company, J. J. Vollroth Manufacturing Company, M. Winter Lumber Company, and Sheboygan Light, Power, and Railway Company, against eight-hour law—to the Committee on Rules.

Also, petition of National German-American Alliance, for installation of commission to study and suggest best method of distribution of immigrants—to the Committee on Immigration and Naturalization.

By Mr. GAINES of West Virginia: Petition of J. B. Duke and 54 others, of Thurmond, W. Va., against antipass amendment to rate bill—to the Committee on Interstate and Foreign Commerce.

By Mr. GROSVENOR: Protests of business men and manufacturers of Boston, Mass.; Menominee, Mich.; Peacedale, R. I., and Allegheny, Pa., against passage of so-called "Gomper's eight-hour bill"—to the Committee on Rules.

Also, petition of Grieb Rubber Company, of Trenton, N. J.; I. Stephenson Company, of Escanaba, Mich., and Ostrander Fire Brick Company, of Troy, N. Y., against the eight-hour bill—to the Committee on Rules.

By Mr. HINSHAW: Paper to accompany bill for relief of Garrett V. D. Hageman—to the Committee on Invalid Pensions.

By Mr. HUFF: Resolution of Chamber of Commerce of Pittsburg, Pa., for continuance of investigation of fuels and structural materials by the Geological Survey Bureau, of Washington, D. C., and requesting that laboratories be located in Pittsburg, Pa.—to the Committee on Appropriations.

By Mr. KINKAID: Petition of Elmer Lowe, of Alliance, Nebr., president of Stock Growers' Association, for meat inspection, expenses of same to be paid by the Government—to the Committee on Agriculture.

Also, petition of citizens and bankers of Kearney and O'Neill, Nebr., urging inspection of meat products—to the Committee on Agriculture.

Also, petition of railway employees, against adoption of antipass amendment to railway rate bill—to the Committee on Interstate and Foreign Commerce.

By Mr. LINDSAY: Petition of Braun & Fitts, for an investigation into the methods of "renovated butter factories" and centralizing plants for production of so-called "creamery butter"—to the Committee on Agriculture.

By Mr. LORIMER: Petition of G. A. Destafano, against the Gardner immigration-restriction bill—to the Committee on Rules.

By Mr. RYAN: Paper to accompany bill for relief of Kate Wright and John A. Smith—to the Committee on Invalid Pensions.

Also, petitions of Brotherhood of Railroad Trainmen, Lodges Nos. 187 and 572; Brotherhood of Locomotive Engineers, Lodge No. 421; Brotherhood of Locomotive Firemen, Lodge No. 472, and Order of Railway Conductors, Division No. 2, protesting against passage of antipass amendment to the rate bill—to the Committee on Interstate and Foreign Commerce.

By Mr. SMITH of Maryland: Petition of A. H. Owens & Bro., of Perryville, Md., asking an amendment to pure-food bill—to the Committee on Interstate and Foreign Commerce.

By Mr. STERLING: Papers to accompany bill (H. R. 20064) granting an increase of pension to William C. Arnold—to the Committee on Invalid Pensions.

By Mr. SULZER: Petition of State legislative board of Brotherhood of Locomotive Engineers, of the State of New York, opposing repeal of Chinese-exclusion act—to the Committee on Foreign Affairs.

Also, petition of Brann & Filts, of Chicago, Ill., asking a correction of abuses in the manufacture and handling of butter and cheese—to the Committee on Agriculture.

By Mr. WOOD of New Jersey: Petition of Col. W. A. Roebling Division, No. 373, Brotherhood of Locomotive Engineers, against antipass amendment to rate bill—to the Committee on Interstate and Foreign Commerce.

SENATE.

MONDAY, *June 11, 1906.*

Prayer by Rev. CHARLES CUTHBERT HALL, D. D., of the city of New York.

The Secretary proceeded to read the Journal of the proceedings of Saturday last, when, on request of Mr. HALE, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

TRADE CONDITIONS IN CHINA.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of Commerce and Labor, transmitting, pursuant to law, reports on the trade conditions in China by Special Agents Harry R. Burrill and Raymond S. Crist; which, with the accompanying reports, was ordered to lie on the table and be printed.

TRADE CONDITIONS IN JAPAN AND KOREA.

The VICE-PRESIDENT laid before the Senate a communication from the Secretary of Commerce and Labor, transmitting, pursuant to law, reports on trade conditions in Japan and Korea by Special Agent Raymond S. Crist; which, with the accompanying reports, was ordered to lie on the table and be printed.

SENATOR FROM MARYLAND.

Mr. RAYNER. Mr. President, I present the credentials of Hon. William Pinkney Whyte, of Maryland, appointed by the governor of that State successor to the late Senator Gorman for his unexpired term and until the meeting of the next general assembly of Maryland. I ask that the credentials be read, and that Mr. Whyte be qualified.

The VICE-PRESIDENT. The Secretary will read the credentials.

The credentials of William Pinkney Whyte, appointed by the governor of the State of Maryland a Senator from that State to fill, until the next meeting of the legislature thereof, the vacancy occasioned by the death of Arthur Pue Gorman in the term ending March 3, 1909, were read and ordered to be filed.

The VICE-PRESIDENT. The Senator appointed will appear at the Vice-President's desk and take the oath of office.

Mr. Whyte was escorted to the Vice-President's desk by Mr. RAYNER; and the oath prescribed by law having been administered to him, he took his seat in the Senate.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed a bill (H. R. 19144) granting an increase of pension to Sarah Louisa Sheppard; in which it requested the concurrence of the Senate.

The message also announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 18024) for the control and regulation of the waters of Niagara River, for the preservation of Niagara Falls, and for other purposes; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. BURTON, Mr. BISHOP, and Mr. LESTER managers at the conference on the part of the House.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 19681) to survey and allot the lands embraced within the limits of the Blackfeet Indian Reservation, in the State of Montana, and to open the surplus lands to settlement; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. SHERMAN, Mr. CURTIS, and Mr. ZENOR managers at the conference on the part of the House.

ENROLLED BILLS SIGNED.

The message also announced that the Speaker of the House had signed the following enrolled bills and joint resolutions; and they were thereupon signed by the Vice-President:

H. R. 3005. An act granting an increase of pension to Jacob C. Shafer;

H. R. 10395. An act granting an increase of pension to Stephen Cundiff;

H. R. 13828. An act granting an increase of pension to John M. Carroll;

H. R. 14604. An act forbidding the importation, exportation, or carriage in interstate commerce of falsely or spuriously stamped articles of merchandise made of gold or silver or their alloys, and for other purposes;

H. R. 15692. An act granting a pension to Frank M. Dooley;

H. R. 16878. An act granting an increase of pension to James B. Adams;

H. R. 16946. An act releasing the right, title, and interest of the United States to the piece or parcel of land known as the "Cuartel lot" to the city of Monterey, Cal.;

H. R. 17455. An act permitting the building of a dam across the Mississippi River at or near the village of Clearwater, Wright County, Minn.;

H. R. 18116. An act granting an increase of pension to Green Evans;

H. R. 18135. An act granting an increase of pension to Benedict Sutter;

H. R. 18561. An act granting an increase of pension to Jonathan Skeans;

H. J. Res. 118. Joint resolution accepting the recession by the State of California of the Yosemite Valley grant and the Mariposa Big Tree Grove, and including the same, together with fractional sections 5 and 6, township 5 south, range 22 east, Mount Diablo meridian, California, within the metes and bounds of the Yosemite National Park, and changing the boundaries thereof;

H. J. Res. 162. Joint resolution authorizing the construction and maintenance of wharves, piers, and other structures in Lake Michigan adjoining certain lands in Lake County, Ind.;

H. J. Res. 166. Joint resolution providing for payment for dredging the channel and anchorage basin between Ship Island Harbor and Gulfport, Miss., and for other purposes; and

H. J. Res. 170. Joint resolution to supply a deficiency in the appropriation for assistant custodians and janitors of public buildings.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of the National Woman's Christian Temperance Union of Evanston, Ill., praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

He also presented a petition of the Baptist Woman's Missionary Union of the District of Columbia, praying for an investigation into the existing conditions in the Kongo Free State; which was referred to the Committee on Foreign Relations.

He also presented a petition of the Illinois State Dental Society, of Chicago, Ill., praying for the establishment of a corps of dental surgeons in the United States Army; which was referred to the Committee on Military Affairs.

Mr. FORAKER. In behalf of my colleague [Mr. DICK], who is unavoidably absent in the discharge of duties elsewhere, I present memorials of sundry railroad employees of Middleport, Cleveland, Youngstown, Zanesville, Ashtabula, Tiffin, Medina, Dennison, and Painesville, all in the State of Ohio, remonstrating against the adoption of a certain amendment to the so-called "railroad rate bill" to prohibit the issuance of passes to railroad employees and their families. I move that the memorials lie on the table.

The motion was agreed to.

Mr. DILLINGHAM. In behalf of my colleague [Mr. PROCTOR], who is necessarily absent, I present memorials of sundry railroad employees of Windsor, Newport, Harwick, Rutland, and Bellows Falls, all in the State of Vermont, remonstrating against the adoption of a certain amendment to the so-called "railroad rate bill" to prohibit the issuance of passes to railroad employees and their families. I move that the memorials lie on the table.

The motion was agreed to.

Mr. PENROSE presented a petition of the Chester Clearing House, of Chester, Pa., and a petition of the Clearing House Association of Wilkes-Barre, Pa., praying for the enactment of legislation permitting national banks to loan 10 per cent of their capital and surplus to an individual borrower; which were referred to the Committee on Finance.

He also presented a petition of the Union City Chair Company, of Union City, Pa., praying for the enactment of legislation to impose a stamp tax of 25 per cent ad valorem on all goods made or partly made in prisons and sold in competition with the product of free labor; which was referred to the Committee on Finance.

Mr. DRYDEN presented the petition of R. J. Caldwell, of New York City, N. Y., praying for the adoption of the so-called "Beveridge meat-inspection amendment" to the agricultural appropriation bill; which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Board of Trade of Newark, N. J., praying for the passage of the so-called "Philippine tariff bill;" which was referred to the Committee on the Philippines.

Mr. BEVERIDGE presented a memorial of Local Division No. 373, Brotherhood of Locomotive Engineers, of Trenton, N. J., and a memorial of New Jersey Division, No. 294, Order of Railway Conductors, of Trenton, N. J., remonstrating against the adoption of a certain amendment to the so-called "railroad rate bill" to prohibit the issuance of passes to railroad employees and their families; which were ordered to lie on the table.

He also presented memorials of sundry railroad employees of Michigan City, Seymour, Indianapolis, Ashley, Janesville, Peru, Elkhart, Bedford, Jefferson, Lafayette, Huntington, Evansville, Logansport, Washington, Tipton, Garrett, Vincennes, and Richmond, all in the State of Indiana, and of Pittsburg, Pa., remonstrating against the adoption of a certain amendment to the so-called "railroad rate bill" prohibiting the issuance of passes to railroad employees and their families; which were ordered to lie on the table.

SENATOR FROM UTAH.

Mr. BURROWS. From the Committee on Privileges and Elections, I submit a report with an accompanying resolution. I ask that the resolution be read and placed on the Calendar.

The VICE-PRESIDENT. The resolution reported by the Senator from Michigan from the Committee on Privileges and Elections will be read.

The Secretary read as follows:

Resolved, That REED SMOOT is not entitled to a seat as a Senator of the United States from the State of Utah.

Mr. BURROWS. I ask that the resolution be placed on the Calendar, and I also ask that the hearings in the case be printed as a document for the use of the Senate.

The VICE-PRESIDENT. The resolution will be placed on the Calendar. The Senator from Michigan requests that the testimony taken at the hearings in this matter be printed as a document. Without objection, it is so ordered.

Mr. BURROWS. I also ask that 10,000 copies of the report and the views of the minority which are to be presented be printed, 3,000 for the use of the committee, and the balance for the use of the Senate.

The VICE-PRESIDENT. The Senator from Michigan requests that 10,000 copies of the report of the committee with the views of the minority be printed, 3,000 for the use of the committee, and the residue for the use of the Senate.

Mr. FORAKER. I do not understand that the request of the Senator is that the majority and the minority reports shall be printed as one document.

Mr. BURROWS. Oh, no.

Mr. FORAKER. I suggest that they be printed as separate documents.

The VICE-PRESIDENT. Without objection, it is so ordered. Is there objection to the request made by the Senator from Michigan, that 10,000 copies of the reports be printed as separate documents? The Chair hears none, and it is so ordered.

Mr. FORAKER. On behalf of a minority of the members of the Committee on Privileges and Elections, who dissented from the resolution reported by the majority, I submit a report as their views, and ask that it may be printed.

The VICE-PRESIDENT. The Senator from Ohio submits a minority report on the same subject.

Mr. FORAKER. May I inquire, will these reports be printed, without an order, in the RECORD? They are somewhat extended.

The VICE-PRESIDENT. They will not.

Mr. FORAKER. I think all Senators will want to see them, and I request that they may be printed in the RECORD.

The VICE-PRESIDENT. The Senator from Ohio asks unanimous consent that the reports just made be printed in the RECORD.

Mr. BURROWS. I hope there will be no objection to that request.

The VICE-PRESIDENT. The Chair hears none, and it is so ordered.

The reports are as follows:

[Senate Report No. 4253, part 1, Fifty-ninth Congress, first session.]

Mr. BURROWS, from the Committee on Privileges and Elections, submitted the following report:

The Committee on Privileges and Elections, who were charged by

the Senate with the duty of investigating the right and title of REED SMOOT to a seat in the Senate as a Senator from the State of Utah, respectfully submit the following report:

On the 23d day of February, 1903, the credentials of REED SMOOT as a Senator of the United States from the State of Utah were presented to the Senate. On the same day and at the same hour there was also presented and placed on file a protest from certain citizens of Utah, praying for an investigation into the right of Mr. SMOOT to the seat to which he claimed to have been elected.

Subsequently, and on the 5th day of March, 1903, Mr. SMOOT took the oath of office as Senator from Utah. At the same time the attention of the Senate was, in behalf of the Committee on Privileges and Elections, called to the method of procedure in cases like that of Mr. SMOOT. It was then stated, without question on the part of any member of the Senate, that in cases where the credentials of a Senator consist of "a certificate of his due election from the executive of his State, he is entitled to be sworn in, and that all questions relating to his qualifications should be postponed and acted upon by the Senate afterwards." Under this rule the credentials of Mr. SMOOT, with the protest against his right to a seat in the Senate, were referred to the Committee on Privileges and Elections under a resolution adopted by the Senate January 27, 1904, directing the committee to investigate the right and title of Mr. SMOOT to a seat in the Senate as Senator from the State of Utah.

The resolution is as follows:

"*Resolved*, That the Committee on Privileges and Elections of the Senate, or any subcommittee thereof, be authorized and directed to investigate the right and title of REED SMOOT to a seat in the Senate as Senator from the State of Utah; and said committee, or any subcommittee thereof, is authorized to sit during the sessions of the Senate, to employ a stenographer, to send for persons and papers, and to administer oaths; and that the expense of the inquiry shall be paid from the contingent fund of the Senate upon vouchers to be approved by the chairman of the committee."

THE PROTEST AGAINST THE SEATING OF MR. SMOOT.

The protest before referred to against the seating of Mr. SMOOT as a Senator from the State of Utah is stated in such protest to be "upon the ground and for the reason that he is one of a self-perpetuating body of fifteen men who, constituting the ruling authorities of the Church of Jesus Christ of Latter-Day Saints, or 'Mormon Church,' claim, and by their followers are accorded the right to claim, supreme authority, divinely sanctioned, to shape the belief and control the conduct of those under them in all matters whatsoever, civil and religious, temporal and spiritual, and who thus uniting in themselves authority in church and state do so exercise the same as to inculcate and encourage a belief in polygamy and polygamous cohabitation; who countenance and connive at violations of the State law prohibiting the same, regardless of pledges made for the purpose of obtaining statehood and of covenants made with the people of the United States, and who by all the means in their power protect and honor those who, with themselves, violate the laws of the land and are guilty of practices destructive of the family and of the home."

In support of this protest the protestants make certain charges and assertions, the substance of which is as follows:

1. The Mormon priesthood, according to the doctrines of that church, is vested with supreme authority in all things spiritual and temporal.

2. The first presidency and twelve apostles (said REED SMOOT being one of said twelve apostles) are supreme in the exercise of the authority of the Mormon Church in all things temporal and spiritual. In support of this second proposition instances are given of the interference of the first presidency and twelve apostles in the political affairs of the State of Utah, and quotations at length are given from the declarations of officials in the Mormon Church regarding the authority of the leaders in said church to dictate to the membership thereof concerning the political action of said members.

3 and 4. That the first presidency and twelve apostles of the Mormon Church have not abandoned the principles and practice of political dictation; neither have they abandoned their belief in polygamy and polygamous cohabitation.

5. That the first presidency and twelve apostles (of whom REED SMOOT is one) also practice or connive at and encourage the practice of polygamy, and have without protest or objection permitted those who held legislative offices by their will and consent to attempt to nullify enactments against polygamous cohabitation.

6. That the supreme authorities of the Mormon Church, namely, the first presidency and twelve apostles (of whom Mr. SMOOT is one), not only connive at violations of the law against polygamy and polygamous cohabitation, but protect and honor the violators of such laws.

The protest further asserts that the leaders of the Mormon Church (of whom Mr. SMOOT is one) are solemnly banded together against the people of the United States in the endeavor of said leaders to baffle the designs and frustrate the attempts of the Government to eradicate polygamy and polygamous cohabitation.

The protest further charges that the conduct and practices of the first presidency and twelve apostles (of whom Mr. SMOOT is one) are well known to be, first, contrary to the public sentiment of the civilized world; second, contrary to express pledges which were given by the leaders of the Mormon Church in procuring amnesty; third, contrary to the express conditions upon which the escheated property of the Mormon Church was returned; fourth, contrary to the pledges given by the representatives of that church in their plea for statehood; fifth, contrary to the pledges required in the enabling act and given in the State constitution of Utah; sixth, contrary to a provision in the constitution of Utah providing that "there shall be no union of church and state, nor shall any church dominate the State or interfere with its functions," and seventh, contrary to law. The protest concludes by asking that the Senate make inquiry touching the matters stated in said protest.

This protest is followed by certain charges made by one John L. Leilich under oath, which are in the main of the same tenor and effect as the charges made in the protest, with the additional charge that Mr. SMOOT is a polygamist, having a legal wife and a plural wife, and the further charge that Mr. SMOOT has, as an apostle of the Mormon Church, taken an oath "of such a nature and character as that he is thereby disqualified from taking the oath of office required of a United States Senator."

ANSWER OF MR. SMOOT.

To the statements made in the protest and the charges by Mr. Leilich Mr. SMOOT made answer, which answer is in the nature of a demurrer to all the charges contained in the protest and to the charges made by Mr. Leilich, except two, namely, that Mr. SMOOT is a polygamist and that he is bound by some oath or obligation which is inconsistent with the oath taken by him as a Senator. Both these charges he denies, and further denies, specifically and categorically, the charges made in the protest and by Mr. Leilich.

AUTHORITY OF THE SENATE AND NATURE OF THE INVESTIGATION.

Before proceeding to an examination of the protest and answer and the testimony taken by the committee, it may be well to examine, briefly, the authority of the Senate in the premises and the nature and scope of the investigation.

The Constitution provides (art. 1, sec. 5, par. 1) that "Each House shall be the judge of the elections, returns, and qualifications of its own members." It is now well established by the decisions of the Senate in a number of cases that, in order to be a fit representative of a sovereign State of the Union in the Senate of the United States, one must be in all respects obedient to the Constitution and laws of the United States and of the State from which he comes, and must also be desirous of the welfare of his country and in hearty accord and sympathy with its Government and institutions. If he does not possess these qualifications, if his conduct has been such as to be prejudicial to the welfare of society, of the nation, or its Government, he is regarded as being unfit to perform the important and confidential duties of a Senator, and may be deprived of a seat in the Senate, although he may have done no act of which a court of justice could take cognizance. Thus William Blount, a Senator from the State of Tennessee, was, in the year 1797, deprived of his seat in the Senate for conduct "inconsistent with his public trust and duty as a Senator." His offense consisted in the writing of a letter to one Carey, an official interpreter to the Cherokee Nation, the conduct of Mr. Blount in writing said letter being characterized by the committee of investigation in that case as follows:

"The plan hinted at in this extraordinary letter to be executed under the auspices of the British is so capable of different constructions and conjectures that your committee at present forbear giving any decided opinion respecting it, except that to Mr. Blount's own mind it appeared to be inconsistent with the interests of the United States and of Spain, and he was therefore anxious to conceal it from both. But when they consider his attempts to seduce Carey from his duty as a faithful interpreter and to employ him as an engine to alienate the affections and confidence of the Indians from the public officers of the United States residing among them; the measures he has proposed to excite a temper which must produce the recall or expulsion of our superintendent from the Creek Nation; his insidious advice tending to the advancement of his own popularity and consequence, at the expense and hazard of the good opinion which the Indians entertain of this Government and of the treaties subsisting between us and them, your committee have no doubt that Mr. Blount's conduct has been inconsistent with his public duty, renders him unworthy of a further continuance of his present public trust in this body, and amounts to a high misdemeanor."

The vote on the expulsion of Mr. Blount resulted as follows: Yeas, 25, nays, 1. (Senate Election Cases, 3d ed., pp. 929–933.)

In the year 1807, John Smith, a Senator from the State of Ohio, was accused of being associated with Aaron Burr in a conspiracy "against the peace and prosperity" of the United States. In the report of the committee—of which John Quincy Adams was chairman—appointed to investigate the case the committee say:

"In examining the question whether these forms of judicial proceedings or the rules of judicial evidence ought to be applied to the exercise of that censorial authority which the Senate of the United States possesses over the conduct of its members, let us assume as the test of their application either the dictates of unfettered reason, the letter and spirit of the Constitution, or precedents, domestic or foreign, and your committee believe that the result will be the same—that the power of expelling a member must, in its nature, be discretionary, and in its exercise always more summary than the tardy process of judicial tribunals.

"The power of expelling a member for misconduct results on the principles of common sense, from the interest of the nation that the high trust of legislation should be invested in pure hands. When the trust is elective it is not to be presumed that the constituent body will commit the deposit to the keeping of worthless characters. But when a man whom his fellow-citizens have honored with their confidence on the pledge of his spotless reputation has degraded himself by commission of infamous crimes, which become suddenly and unexpectedly revealed to the world, defective indeed would be that institution which should be impotent to discard from its bosom the contagion of such a member, which should have no remedy of amputation to apply until the poison had reached the heart.

"The question upon the trial of a criminal cause before the courts of common law is not between guilt and innocence, but between guilt and the possibility of innocence. If a doubt can possibly be raised, either by the ingenuity of the party or of his counsel, or by the operation of general rules in their unforeseen application to particular cases, that doubt must be decisive for acquital, and the verdict of not guilty perhaps in nine cases out of ten means no more than that the guilt of the party has not been demonstrated in the precise, specific, and narrow forms prescribed by law. The humane spirit of the laws multiplies the barriers for the protection of innocence and freely admits that these barriers may be abused for the shelter of guilt. It avows a strong partiality favorable to the person upon trial and acknowledges the preference that ten guilty should escape rather than that one innocent should suffer. The interest of the public that a particular crime should be punished is but as one to ten compared with the interest of the party that innocence should be spared. Acquittal only restores the party to the common rights of every other citizen; it restores him to no public trust; it invests him with no public confidence; it substitutes the sentence of mercy for the doom of justice, and to the eyes of impartial reason in the great majority of cases must be considered rather as a pardon than a justification.

"But when a member of a legislative body lies under the imputation of aggravated offenses and the determination upon his cause can operate only to remove him from a station of extensive powers and important trust, this disproportion between the interest of the public and the interest of the individual disappears; if any disproportion exists, it is of an opposite kind. It is not better that ten traitors should be members of this Senate than that one innocent man should suffer expulsion. In either case, no doubt, the evil would be great. But in the former it would strike at the vitals of the nations; in the latter it might, though deeply to be lamented, only be the calamity of an individual."

The resolution reported by the said committee declaring "That John Smith, a Senator from the State of Ohio, by his participation in the conspiracy of Aaron Burr against the peace, union, and liberties of the people of the United States, has been guilty of conduct incompatible with his duty and station as a Senator of the United States, and that he be therefore, and hereby is, expelled from the Senate of the United States," received nineteen affirmative votes to ten in the negative. (Senate Election Cases, 3d ed., pp. 934–948.)

In 1862 Jesse D. Bright was expelled from the Senate for writing a letter to Jefferson Davis, "president of the Confederation of States," in March, 1861, introducing one Thomas B. Lincoln, who wished to dispose of an improvement in firearms. Some at least of the Senators who voted for Mr. Bright's expulsion asserted in effect that they did not claim that Mr. Bright had been guilty of treason, misprision of treason, or any other offense against the laws of this country. He was deprived of his seat in the Senate because it was believed that his desires and conduct were opposed to the welfare and interests of the nation.

In the course of the debate upon the question of expelling Mr. Bright Mr. Sumner used the following language:

"* * * But the question may be properly asked if this inquiry is to be conducted as in a court of justice, under all the restrictions and technical rules of judicial proceedings? Clearly not. Under the Constitution the Senate, in a case like the present, is the absolute judge, free to exercise its power according to its own enlightened discretion. It may justly declare a Senator unworthy of a seat in this body on evidence defective in form, or on evidence even which does not constitute positive crime. * * * It is obvious that the Senate may act on any evidence which shall be satisfactory to show that one of its members is unworthy of his seat without bringing it to the test of any rules of law. It is true that the good name of the individual is in question; but so also is the good name of the Senate, not forgetting also the welfare of the country; and if there are generous presumptions of personal innocence, so also are there irresistible instincts of self-defense which compel us to act vigorously, not only to preserve the good name of the Senate, but also to preserve the country." (Congressional Globe, 2d sess. 37th Cong., pt. 1, pp. 412, 413, 414.)

In the same debate Mr. Davis, of Kentucky, said:

"* * * But what is the law? We are not sitting as a court trying the honorable Senator. There are some gentlemen, able men, very able men, men of enlarged patriotism, of eminent public and private virtue that have pursued the profession of the law so long, either as practitioners, counselors and solicitors, or as judges, that their minds have become too contracted for enlarged statesmanship and the great principles of policy and moral justice, upon which governments ought to be administered, and upon which alone they can be wisely administered. They have dwarfed their minds to such an extent that they can not reason upon the expansive principle and sentiment and consideration that ought to guide and control the largest and wisest statesmanship.

"There is no law which defines any particular class of offenses that shall be sufficient to expel a Senator from his seat. The common law does not. There is no statute law that does. There are no rules of evidence establishing technical rules of testimony that are to guide and control and govern this body in getting its lights and reaching its conclusions when a Senator is thus on trial. The general rule and principle of law and of reason and common sense is that whatever disqualifies a member of the Senate from the proper discharge of his duties, whatever it may be, is sufficient, and ought to be held sufficient, for his expulsion, and whatever evidence satisfies the mind reasonably and according to moral certainty and truth of the existence of that cause is sufficient evidence without resorting to the technical rules of testimony upon which to convict him. That is the law of this country. It is the law of England. It is the law of Parliament. I will read from Story's Commentaries on the Constitution, section 836, a short paragraph:

"'* * * In July, 1797, William Blount was expelled from the Senate for a high misdemeanor entirely inconsistent with his public trust and duty as a Senator. The offense charged against him was an attempt to seduce an American agent among the Indians from his duty and to alienate the affections and confidence of the Indians from the public authorities of the United States, and a negotiation for services in behalf of the British Government among the Indians. It was not a statutable offense; nor was it committed in his official character; nor was it committed during the session of Congress, nor at the seat of government. Yet, by an almost unanimous vote [25 yeas to 1 nay] he was expelled from that body and he was afterwards impeached (as has already been stated) for this, among other charges. It seems, therefore, to be settled by the Senate, upon full deliberation, that expulsion may be for any misdemeanor which, though not punished by any statute, is inconsistent with the trust and duty of a Senator.'

"There is the touchstone. Any conduct, any opinions, any line of action as a Senator which is inconsistent with the duty of a Senator, is a sufficient cause for his expulsion and ought to be the rule of reason and of common sense. * * * The principle deduced from the authorities is this: There is no common law, no statutory law, there is no parliamentary law that binds the Senate to any particular definition of crime or offense in acting in this or any other case of the kind. On the contrary, as these authorities establish, it is a matter coming within the discretion of the tribunal trying the Senator." (Congressional Globe, 2d sess. 37th Cong., pt. 1, pp. 434, 435.)

In the progress of the debate Mr. McDougall said:

"* * * It is no question of law. We have not asked whether the Senator from Indiana is guilty or not guilty. We have to judge him in our best judgment, and by that we try him; and we say yea or nay, as we think, whether he be a true man or not to sit in the Federal councils to conduct the affairs of the United States." (Congressional Globe, 2d sess. 37th Cong., pt. 1, p. 655.)

To the same effect were the remarks made in the course of the same debate by Mr. Lane, Mr. Howe, Mr. Johnson, and Mr. Browning. (Congressional Globe, 2d sess. 37th Cong., pt. 1, pp. 417, 418, 560, 584, 623, 624.)

In the year 1867 Philip F. Thomas was denied a seat in the Senate of the United States, to which he had been duly elected, for the reason that he had resigned his seat in the Cabinet of President Buchanan on account of his disagreement with the policy of the President in endeavoring to relieve the garrison of the forts in Charleston Harbor, and also because Mr. Thomas had given to his son, who was about to enter the service of the Confederate States, a sum of money, not to assist the son in going to the camp of the Confederate forces, but "that in case he was imprisoned or suffering he might have a sum of money with him." There was no well-founded claim that Mr. Thomas had been guilty of any act or conduct of which any court would take cognizance; the most that was claimed was that his conduct was such as to give "aid, countenance, and encouragement to persons engaged in armed hostility to the United States." (Senate Election Cases, 3d ed., pp. 333–339.)

In the British Parliament the same principle has been recognized in a number of cases and is now fully established.

In the year 1812 Benjamin Walsh was expelled from the House of Commons as "unworthy and unfit to continue a member of this House," on account of said Walsh having been guilty of "gross fraud and notorious breach of trust," although his offense was one "not amounting to felony." (67 Commons Journal, 175–176.) In that case the chancellor of the exchequer said:

"He could not think that because an act of Parliament did not make a moral crime a legal one the House of Commons should be prevented from taking cognizance of it." (Hansard's Parliamentary Debates, first series, vol. 21, p. 1199.)

In the year 1814 Sir Thomas Cochrane was expelled from the House of Commons for being concerned in a conspiracy to spread the false report that the French army had been defeated, Napolean killed, and that the allied sovereigns were in Paris, the object to be attained by such false report being "to occasion a temporary rise and increase in the prices of the public Government funds," to the injury of those who should purchase such funds "during such last-mentioned temporary rise and increase in the prices thereof." (69 Commons Journal, 427–433.)

THE PROTESTANTS.

The main protest in this case was signed by eighteen reputable citizens of the State of Utah. One of the signers, Dr. W. M. Paden, is the pastor of one of the leading Protestant churches of Salt Lake City and a graduate of Princeton University; another, Mr. P. L. Williams, is the general counsel of a railroad in Utah and the Western States; another, Mr. E. W. Wilson, is the cashier of a national bank in Salt Lake City; another, Mr. C. C. Goodwin, the editor of one of the leading papers of that city; another, Mr. W. S. Neldin, the president of a wholesale drug company doing business not only in Utah, but in other of the Western States; another, Mr. Ezra Thompson, a gentleman who has held the office of mayor of Salt Lake City for two terms; another, Mr. J. J. Corwin, a man engaged in real estate, who has been a resident of Utah for about sixteen years; five others, Mr. George R. Hancock, Mr. W. M. Ferry, Mr. Harry C. Hill, Hon. C. E. Allen, and Mr. H. G. McMillan, are men holding positions in the mining industry of Utah. Mr. Allen was the first Representative in Congress from the State of Utah. Another of the signers of the protest, Mr. G. H. Lewis, was formerly assistant United States attorney and is now master in chancery of the United States circuit court. Rev. Abiel Leonard was, up to the time of his death, which occurred in November, 1903, the bishop of the diocese of Utah of the Protestant Episcopal Church. From the standing and character of the signers, it is evident that the protest is not the offspring of suspicion or prejudice, but that such protest emanates from men of such character and respectability as to be entitled to serious and careful consideration and the facts therein stated to be worthy of investigation by the Senate.

As regards the charge that Mr. SMOOT has a plural wife, this fact, if proved, is conceded by Mr. SMOOT and his counsel to be sufficient to disqualify him from holding a seat in the Senate. But this accusation seems to have been made by Mr. Leilich, unadvisedly and on his own responsibility, and without any sufficient evidence in support of the same. This charge is not made in the main protest, and counsel for the protestants at the outset of the investigation very frankly admitted that they had no proof to offer in support of this allegation.

ENCOURAGEMENT OF POLYGAMY AND POLYGAMOUS COHABITATION BY THE MORMON AUTHORITIES.

The first reason assigned by the protestants why Mr. SMOOT is not entitled to a seat in the Senate is, in effect, that he belongs to a self-perpetuating body of fifteen men who constitute the ruling authorities of the Church of Latter-Day Saints, or "Mormon Church," so called; that this ruling body of the church both claims and exercises the right of shaping the belief and controlling the conduct of the members of that church in all matters whatsoever, civil and religious, temporal and spiritual. It is then alleged that this self-perpetuating body of fifteen men, of whom Mr. SMOOT is one, uniting in themselves authority in both church and state, so exercise this authority as to encourage a belief in polygamy as a divine institution and by both precept and example encourage among their followers the practice of polygamy and polygamous cohabitation.

That the first presidency and twelve apostles of the Mormon Church are a self-perpetuating body of fifteen men seems to be well established by the testimony of the one most competent to speak upon that subject, the president of the Church of Latter-Day Saints, Mr. Joseph F. Smith, who testifies, as will be seen on pages 91 and 92 of volume 1 of the printed copy of the proceedings in the investigation, that vacancies occurring in the number of the twelve apostles are filled by the apostles themselves, with the consent and approval of the first presidency.

The testimony of Mr. Smith is as follows:

"Senator MCCOMAS. And the twelve apostles were then first named?

"Mr. SMITH. Yes, sir.

"Senator MCCOMAS. When vacancies occurred thereafter, by what body were the vacancies in the twelve apostles filled?

"Mr. SMITH. Perhaps I may say in this way: Chosen by the body, the twelve themselves, by and with the consent and approval of the first presidency.

"Senator HOAR. Was there a revelation in regard to each of them?

"Mr. SMITH. No, sir; not in regard to each of them. Do you mean in the beginning?

"Senator HOAR. I understand you to say that the original twelve apostles were selected by revelation?

"Mr. SMITH. Yes, sir; that is right.

"Senator HOAR. Is there any revelation in regard to the subsequent ones?

"Mr. SMITH. No, sir: it has been the choice of the body.

"Senator MCCOMAS. Then the apostles are perpetuated in succession by their own act and the approval of the first presidency?

"Mr. SMITH. That is right."

To the same effect is the testimony of Francis M. Lyman.

It further appears that any one of the twelve apostles may be removed by his fellow-apostles without consulting the members of the church in general. It is also in proof that the first presidency and twelve apostles govern the church by means of so-called "revelations

from God," which revelations are given to the membership of the church as emanating from divine authority. It is also shown that those members of the Mormon Church who refuse to obey the revelations so communicated by the priesthood thereby become out of harmony with the church and are thus practically excluded from the blessings, benefits, and privileges of membership in the church.

It is also well established by the testimony that the members of the Mormon Church are governed in all things by the first presidency and twelve apostles. That this authority is extended to the membership through a series and succession of subordinate officials, consisting of presidents of seventies, presiding bishops, elders, presidents of stakes, bishops, and other officials. That one of the chief requirements by the leaders of the church is that members shall take counsel of their religious superiors in all things whatsoever, whether civil or religious, temporal or spiritual. That the failure to receive and obey counsel in any of these matters subjects the one who refuses to the discipline of the church. That this discipline is administered in the first instance by the subordinate officials, subject to the right to appeal to the higher officials of the church, and ultimately to the first president and twelve apostles. These rules, enforced, as they are, by the discipline of the Mormon Church, constitute the first president and twelve apostles a hierarchy, a body of men at the head of a religious organization governing their followers with absolute and unquestioned authority in all things relating to temporal and political as well as to spiritual affairs.

The testimony taken before the committee also shows beyond a reasonable doubt that this authority of the first presidency and twelve apostles is so exercised over the members of the Mormon Church as to inculcate a belief in the divine origin of polygamy and its rightfulness as a practice, and also to encourage the membership of that church in the practice of polygamy and polygamous cohabitation. While this is denied on the part of the officials of the church, the truthfulness of the claim of the protestants in this regard is shown by a great number of facts and circumstances, no one of which is perhaps conclusive in itself, but when taken together form a volume of testimony so cogent and convincing as to leave no reasonable doubt in the mind that the truth is as stated by the protestants. It is proved without denial that the Book of Doctrine and Covenants, one of the leading authorities of the Mormon Church, and still circulated by that church as a book equal in authority to the Bible and the Book of Mormon, contains the revelation regarding polygamy, of which the following is a part:

"61. And again, as pertaining to the law of the priesthood: If any man espouse a virgin and desires to espouse another and the first give her consent, and if he espouse the second, and they are virgins and have vowed to no other man, then he is justified—he can not commit adultery, for they are given unto him; for he can not commit adultery with that that belongeth to him and to no one else.

"62. And if he have ten virgins given unto him by this law he can not commit adultery, for they belong to him and they are given unto him; therefore is he justified.

"63. But if one or either of the ten virgins, after she is espoused, shall be with another man she has committed adultery and shall be destroyed, for they are given unto him to multiply and replenish the earth, according to my commandment, and to fulfill the promise which was given by my Father before the foundation of the world; and for their exaltation in the eternal worlds, that they may bear the souls of men; for herein is the work of my Father continued, that he may be glorified.

"64. And again, verily, verily, I say unto you, if any man hath a wife who holds the keys of this power and he teaches unto her the law of my priesthood, as pertaining these things, then shall she believe and administer unto him or she shall be destroyed, said the Lord your God, for I will destroy her; for I will mangify my name upon all those who receive and abide in my law.

"65. Therefore, it shall be lawful in me, if she receives not this law for him to receive all things whatsoever I, the Lord his God, will give unto him, because she did not minister unto him according to my word; and she then becomes the transgressor; and he is exempt from the law of Sarah who ministered unto Abraham according to the law when I commanded Abraham to take Hager to wife."

It is also shown that numerous other publications of the Mormon Church are still circulated among the members of that church with the knowledge and by the authority of the church officials, which contain arguments in favor of polygamy. The Book of Doctrine and Covenants is not only still put forth to the members of the church as authoritative in all respects, but the first presidency and twelve apostles have never incorporated therein the manifesto forbidding the practice of polygamy and polygamous cohabitation, nor have they at any time or in any way qualified the reputed revelation to Joseph Smith regarding polygamy. And this Book of Doctrine and Covenants, containing the polygamic revelation is regarded by Mormons as being of higher authority than the manifesto suspending polygamy.

Bearing in mind the authority of the first presidency and twelve apostles over the whole body of the Mormon Church, it is very evident that if polygamy were discountenanced by the leaders of that church it would very soon be a thing of the past among the members of that church. On the contrary, it appears that since the admission of Utah into the Union as a State the authorities of the Mormon Church have countenanced and encouraged the commission of the crime of polygamy instead of preventing it, as they could easily have done.

A sufficient number of specific instances of the taking of plural wives since the "manifesto of 1890," so called, have been shown by the testimony as having taken place among officials of the Mormon Church to demonstrate the fact that the leaders in this church, the first presidency and the twelve apostles, connive at the practice of taking plural wives, and have done so ever since the manifesto was issued which purported to put an end to the practice. It has been shown by the testimony, so clearly as to leave no doubt of the fact, that as late as 1896 one Lillian Hamlin became the plural wife of Abraham H. Cannon, who was then an apostle of the Mormon Church. This is shown by the proof of these facts:

Down to the year 1895 Lillian Hamlin was a single woman. In 1896 she received attentions from Abraham H. Cannon, these attentions being of a character to indicate that there was more than a friendly relation existing between the two. In June, 1896, Abraham H. Cannon informed his plural wife that he was going to California with Joseph F. Smith and Lillian Hamlin to be married to Lillian Hamlin at some place outside the United States. While in California Joseph F. Smith went with Abraham H. Cannon and Lillian Hamlin from Los Angeles to Catalina Island. After the return of the party to Los Angeles, Abraham H. Cannon and Lillian Hamlin lived together as husband and wife. Returning to Salt Lake City, Abraham H. Cannon told his plural wife that he had been married to Lillian Hamlin. From that time it was generally reputed in the community and understood by the families of both Abraham H. Cannon and Lillian Hamlin that a marriage had taken place between them; that they had been married on the high seas by Joseph F. Smith. Lillian Hamlin assumed the name of Cannon, and a child to which she afterwards gave birth bears the name of Cannon and inherited a share of the estate of Abraham H. Cannon. The prominence of Abraham H. Cannon in the church, the publicity given to the fact of his taking Lillian Hamlin as a plural wife, render it practically impossible that this should have been done without the knowledge, the consent, and the connivance of the headship of that church.

George Teasdale, another apostle of the Morman Church, contracted a plural marriage with Marion Scholes since the manifesto of 1890. The president of the Morman Church endeavors to excuse this act upon the pretext that the first marriage of George Teasdale was not a legal marriage, but the testimony taken from the divorce proceedings which separated George Teasdale from his lawful wife wholly controverts this assertion on the part of President Smith.

It is also in evidence that Walter Steed, a prominent Mormon, contracted a plural marriage after the manifesto of 1890. Charles E. Merrill, a bishop of the Mormon Church, took a plural wife in 1891, more than a year after the issuing of the manifesto. The ceremony uniting said Merrill to his plural wife was performed by his father, who was then and until the time of his death an apostle in the Mormon Church. It is also shown that John W. Taylor, another apostle of the Mormon Church, has been married to two plural wives since the issuing of the so-called manifesto.

Matthias F. Cowley, another of the twelve apostles, has also taken one or more plural wives since the manifesto. While the proof that Apostles Taylor and Cowley have married plural wives since the manifesto may not be so free from all possible doubt as is the proof in the case of Abraham Cannon, the fact that the proofs presented to the committee showing such marriages by Taylor and Cannon stand wholly uncontroverted, and the further fact that Apostles Taylor and Cowley, instead of appearing before the committee and denying the allegation, evade service of process issued by the committee for their appearance, and refuse to appear after being requested to do so, warrant the conclusion that the allegation is true and that said Taylor and Cowley have taken plural wives since the manifesto.

While the fact does not appear from any sworn testimony in the case, it is a matter of common report that Taylor and Cowley have recently been dropped from the list of apostles. But this fact in no way counteracts the influence of the Mormon leaders in their encouragement of polygamy. When Taylor and Cowley took their more recent plural wives they were numbered among the apostles in good standing. The fact that they had taken plural wives since the manifesto was well known to their associates for months and years. But they were continued as apostles, and no action was taken in the case of either until the facts were revealed to the world by this investigation. And it is worthy of note that these apostles have not been complained of or brought to trial before the church courts for disobeying the manifesto, nor have they been deprived of their offices or honors in the church (as was done in the case of Moses Thatcher for a political offense), but they are still members of the church in good standing, each still holds the office of an elder in the church, and each is still a member of the high priesthood of the church.

The dropping of Taylor and Cowley from the quorum of the twelve apostles was so evidently done for popular effect that the act merits no consideration whatever, except as an admission by the first presidency and twelve apostles that Apostles Taylor and Cowley have each taken one or more plural wives since the manifesto.

It is also proved that about the year 1896 James Francis Johnson was married to a plural wife, Clara Mabel Barber, the ceremony in this instance being performed by an apostle of the Mormon Church. To these cases must be added that of Marriner W. Merrill, another apostle; J. M. Tanner, superintendent of church schools; Benjamin Cluff, jr., president of Brigham Young University; Thomas Chamberlain, counselor to the president of a stake; Bishop Rathall, John Silver, Winslow Farr, Heber Benion, Samuel S. Newton, a man named Okey, who contracted a plural marriage with Ovena Jorgensen in the year 1897, and Morris Michelson about the year 1902. In the case of Benjamin Cluff, jr., before referred to, the polygamous marriage was tacitly sanctioned by President Joseph F. Smith when he "referred to Sister Cluff and the work she had been doing among the children in Colonia Diaz, Mexico."

It is morally impossible that all these violations of the laws of the State of Utah by the contracting of plural marriages could have been committed without the knowledge of the first presidency and the twelve apostles of the Mormon Church. In two of the above cases, that of George Teasdale and that of Benjamin Cluff, jr., the fact of the plural marriage was directly communicated to the president of the church, Joseph F. Smith, and in the other cases, with the possible exception of James Francis Johnson, the fact of a plural marriage having been celebrated was so well known throughout the community that it is not conceivable that such marriages would not have been called to the attention of the leaders of the church. Indeed, there was no denial on the part of the first president or any one of the twelve apostles that they learned of the fact that plural marriages were being contracted by officials of the Mormon Church and that no attention was paid to the matter. The excuse given by them was that it was not their duty to interfere in such matters; that the law furnished a remedy. Furthermore, it was shown by the testimony of one of the twelve apostles and of other witnesses that "under the established law of the church no person could secure a plural wife except by consent of the president of the church."

SUPPRESSION OF TESTIMONY BY MORMON LEADERS.

It is a fact of no little significance in itself, bearing on the question whether polygamous marriages have been recently contracted in Utah by the connivance of the first presidency and twelve apostles of the Mormon Church, that the authorities of said church have endeavored to suppress, and have succeeded in suppressing, a great deal of testimony by which the fact of plural marriages contracted by those who were high in the councils of the church might have been established beyond the shadow of a doubt. Before the investigation had begun it was well known in Salt Lake City that it was expected to show on the part of the protestants that Apostles George Teasdale, John W. Taylor, and M. F. Cowley, and also Prof. J. M. Tanner, Samuel Newton, and others, who were all high officials of the Mormon Church, had recently taken plural wives, and that in 1896 Lillian Hamlin was sealed to Apostle Abraham H. Cannon as a plural wife by one of the first presidency and twelve apostles of the Mormon Church. All, or nearly all, of these persons except Abraham H. Cannon, who was deceased, were

then within reach of service of process from the committee. But shortly before the investigation began all these witnesses went out of the country.

Subpœnas were issued for each one of the witnesses named, but in the case of Samuel Newton only could the process of the committee be served. Mr. Newton refused to obey the order of the committee, alleging no reason or excuse for not appearing. It is shown that John W. Taylor was sent out of the country by Joseph F. Smith on a real or pretended mission for the church. And it is undeniably true that not only the apostles, but also all other officials of the Mormon Church, are at all times subject to the orders of the governing authorities of the church.

It would be nothing short of self-stultification for one to believe that all these most important witnesses chanced to leave the United States at about the same time and without reference to the investigation. All the facts and circumstances surrounding the transaction point to the conclusion that every one of the witnesses named left the country at the instance of the rulers of the Mormon Church and to avoid testifying before the committee. It is, furthermore, a fact which can not be questioned that every one of these witnesses is under the direction and control of the first presidency and twelve apostles of the Mormon Church. Had those officials seen fit to direct the witnesses named to return to the United States and give their testimony before the committee, they would have been obliged to do so. The reason why the said witnesses left the country and have refused to come before the committee is easy to understand, in view of the testimony showing the contracting of plural marriages by prominent officials of the Mormon Church within the past few years.

It was claimed by the protestants that the records kept in the Mormon temple at Salt Lake City and Logan would disclose the fact that plural marriages have been contracted in Utah since the manifesto with the sanction of the officials of the church. A witness who was required to bring the records in the temple at Salt Lake City refused to do so after consulting with President Smith. It is claimed by counsel for Mr. SMOOT that this witness was not mentally competent to testify; but his testimony may be searched in vain for any internal evidence of such incompetency, and there was nothing in the appearance of the witness when testifying to suggest to the committee that he was not as competent to testify as any witness who was examined during the course of the investigation.

The witness who was required to bring the records kept in the temple at Logan excused himself from attending on the plea of ill health. But the important part of the mandate of the committee—the production of the records—was not obeyed by sending the records, which could easily have been done.

In the case of other witnesses who were believed to have contracted plural marriages since the year 1890 all sorts of shifts, tricks, and evasions were resorted to in order to avoid service of a subpœna to appear before the committee and testify.

These instances of the suppression of testimony by the direct order or tacit consent of the ruling authorities of the Mormon Church warrant the committee in believing that the suppressed testimony would, if produced, strongly corroborate the testimony which was given, showing that those who direct the affairs of the Mormon Church countenance and encourage polygamous marriages, as well as polygamous cohabitation, and that the allegations of the protestants in that regard are true.

MORMON OFFICIALS LIVING IN POLYGAMOUS COHABITATION.

Aside from this it was shown by the testimony, and in such a way that the fact could not possibly be controverted, that a majority of those who give the law to the Mormon Church are now, and have been for years, living in open, notorious, and shameless polygamous cohabitation. The list of those who are thus guilty of violating the laws of the State and the rules of public decency is headed by Joseph F. Smith, the first president, "prophet, seer, and revelator" of the Mormon Church, who testified in regard to that subject as follows:

"Mr. TAYLOR. Is the cohabitation with one who is claimed to be a plural wife a violation of the law of the church as well as of the law of the land?

"Mr. SMITH. That was the case, and is the case even to-day.

"Mr. TAYLOR. What was the case, what you are about to say?

"Mr. SMITH. That it is contrary to the rule of the church, and contrary as well to the law of the land, for a man to cohabit with his wives. * * * I have cohabited with my wives; not openly—that is, not in a manner that I thought would be offensive to my neighbors—but I acknowledged them. I have visited them. They have borne me children since 1890, and I have done it, knowing the responsibility and knowing that I was amenable to the law.

"Mr. TAYLOR. In 1892, Mr. Smith, how many wives did you have?

"Mr. SMITH. In 1892?

"Mr. TAYLOR. Yes.

"Mr. SMITH. I had five. * * *

"Mr. TAYLOR. My question is, How many children have been born to him by these wives since 1890?

"Mr. SMITH. I had eleven children born since 1890.

"Mr. TAYLOR. Those are all the children that have been born to you since 1890?

"Mr. SMITH. Yes, sir; those are all.

"Mr. TAYLOR. Were those children by all of your wives; that is, did all of your wives bear children?

"Mr. SMITH. All of my wives bore children.

"Mr. TAYLOR. Since 1890?

"Mr. SMITH. That is correct.

"The CHAIRMAN. I understand since 1890?

"Mr. SMITH. Since 1890. I said that I have had born to me eleven children since 1890, each of my wives being the mother of from one to two of those children. * * *

"The CHAIRMAN. Mr. Smith, I will not press it, but I will ask you if you have any objection to stating how many children you have in all.

"Mr. SMITH. Altogether?

"The CHAIRMAN. Yes.

"Mr. SMITH. I have had born to me, sir, forty-two children—twenty-one boys and twenty-one girls—and I am proud of every one of them. * * *

"The CHAIRMAN. Do you obey the law in having five wives at this time and having them bear to you eleven children since the manifesto of 1890?

"Mr. SMITH. Mr. Chairman, I have not claimed that in that case I have obeyed the law of the land.

"The CHAIRMAN. That is all.

"Mr. SMITH. I do not claim so, and, as I said before, that I prefer to stand my chances against the law." (Vol. I, pp. 129, 133, 148, 197, 382.)

The list also includes George Teasdale, an apostle; John W. Taylor, an apostle; John Henry Smith, an apostle; Marriner W. Merrill, also an apostle; Heber J. Grant, an apostle; M. F. Cowley, an apostle; Charles W. Penrose, an apostle, and Francis M. Lyman, who is not only an apostle, but the probable successor of Joseph F. Smith as president of the church. Thus it appears that the first president and eight of the twelve apostles, a considerable majority of the ruling authorities of the Mormon Church, are noted polygamists.

In addition to these, the list includes Brigham H. Roberts, who is one of the presidents of seventies and a leading official of the church; J. M. Tanner, superintendent of the church schools; Andrew Jenson, assistant historian of the church; Thomas H. Merrill, a bishop of the church; Alma Merrill, one of the presidency of a church stake; Angus M. Cannon, patriarch of the Mormon Church; a man named Greenwald, who is at the head of a church school; George Reynolds, one of the first seven presidents of seventies and first assistant superintendent of Sunday schools of the world; George H. Brimhall, president of Brigham Young University, and Joseph Hickman, teacher in Brigham Young University. All the officials named were appointed, either directly or indirectly, by the first presidency and twelve apostles; and in the case of J. M. Tanner his appointment to his present office was made after he had been compelled to resign his position as president of the agricultural college because of the fact that he was a polygamist.

These facts abundantly justify the assertion made in the protest that "the supreme authorities in the church, of whom Senator-elect REED SMOOT is one, to wit, the first presidency and twelve apostles, not only connive at violation of, but protect and honor the violators of the laws against polygamy and polygamous cohabitation."

It will be seen by the foregoing that not only do the first presidency and twelve apostles encourage polygamy by precept and teaching, but that a majority of the members of that body of rulers of the Mormon people give the practice of polygamy still further and greater encouragement by living the lives of polygamists, and this openly and in the sight of all their followers in the Mormon Church. It can not be doubted that this method of encouraging polygamy is much more efficacious than the teaching of that crime by means of the writings and publications of the leaders of the church, and this upon the familiar principle that "actions speak louder than words."

And not only do the president and a majority of the twelve apostles of the Mormon Church practice polygamy, but in the case of each and every one guilty of this crime who testified before the committee the determination was expressed openly and defiantly to continue the commission of this crime without regard to the mandates of the law or the prohibition contained in the manifesto. And it is in evidence that the said first president, addressing a large concourse of the members of the Mormon Church at the tabernacle in Salt Lake City in the month of June, 1904, declared that if he were to discontinue the polygamous relation with his plural wives he should be forever damned, and forever deprived of the companionship of God and those most dear to him throughout eternity. Thus it appears that the "prophet, seer, and revelator" of the Mormon Church pronounces a decree of eternal condemnation throughout all eternity upon all members of the Mormon Church who, having taken plural wives, fail to continue the polygamous relation. So that the testimony upon that subject, taken as a whole, can leave no doubt upon any reasonable mind that the allegations in the protest are true, and that those who are in authority in the Mormon Church, of whom Mr. SMOOT is one, are encouraging the practice of polygamy among the members of that church, and that polygamy is being practiced to such an extent as to call for the severest condemnation in all legitimate ways.

THE MANIFESTO A DECEPTION.

Against these facts the authorities of the Mormon Church urge that in the year 1890 what is generally termed "a manifesto" was issued by the first presidency of that church, suspending the practice of polygamy among the members of that church. It may be said in the first place that this manifesto misstates the facts in regard to the solemnization of plural marriages within a short period preceding the issuing of the manifesto. It now appears that in a number of instances plural marriages had been solemnized in the Mormon Church, and, in the case of those high in authority in that church, within a very few months preceding the issuing of the manifesto.

It is also observable that this manifesto in no way declares the principle of polygamy to be wrong or abrogates it as a doctrine of the Mormon Church, but simply suspends the practice of polygamy to be resumed at some more convenient season, either with or without another revelation. It is now claimed by the first president and other prominent officials of the Mormon Church that the manifesto was not a revelation, but was, at the most, an inspired document, designed "to meet the hard conditions then confronting" those who were practicing polygamy and polygamous cohabitation, leaving what the Mormon leaders are pleased to term "the principle of plural marriage" as much a tenet of their faith and rule of practice when possible, as it was before the manifesto was issued. Upon that subject Joseph F. Smith testified as follows:

"Mr. TAYLOR. The revelation which Wilford Woodruff received in consequence of which the command to take plural wives was suspended did not, as you understand, change the divine view of plural marriage, did it?

"Mr. TAYLOR. It did not change your belief at all?

"Mr. TAYLOR. It did not change your belief?

"Mr. SMITH. Not at all, sir.

"Mr. TAYLOR. You continued to believe that plural marriages were right?

"Mr. SMITH. We did. I did, at least. I do not answer for anybody else. I continue to believe as I did before. (Vol. 1, p. 107.)

"Senator HOAR. The apostle says that a bishop must be sober and must be the husband of one wife.

"Mr. SMITH. At least."

And one of the twelve apostles has declared the fact to be that "the manifesto is only a trick to beat the devil at his own game." Further than this, it is conceded by all that this manifesto was intended to prohibit polygamous cohabitation as strongly as it prohibited the solemnization of plural marriages. In the case of polygamous cohabitation, the manifesto has been wholly disregarded by the members of the Mormon Church. It is hardly reasonable to expect that the members of that church would have any greater regard for the prohibition of plural marriage.

The contention that the practice of polygamy is rightful as a religious ceremony and therefore protected by that provision of the Constitution of the United States which declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof," ought to be forever set at rest by the repeated decisions of the Supreme Court of the United States. In the

case of the Mormon Church *v.* The United States, Justice Bradley, in delivering the opinion of the court, said:

"One pretense for this obstinate course is that their belief in the practice of polygamy, or in the right to indulge in it, is a religious belief, and therefore under the protection of the constitutional guaranty of religious freedom. This is altogether a sophistical plea. No doubt the Thugee of India imagined that their belief in the right of assassination was a religious belief; but their thinking so did not make it so. The practice of suttee by the Hindu widows may have sprung from a supposed religious conviction. The offering of human sacrifices by our own ancestors in Britain was no doubt sanctioned by an equally conscientious impulse. But no one on that account would hesitate to brand these practices now as crimes against society and obnoxious to condemnation and punishment by the civil authority."

In the case of Davis *v.* Beason, Justice Field, in delivering the opinion of the court, said:

"Bigamy and polygamy are crimes by the laws of all civilized and Christian countries. They are crimes by the laws of the United States, and they are crimes by the laws of Idaho. They tend to destroy the purity of the marriage relation, to disturb the peace of families, to degrade woman, and to debase man. Few crimes are more pernicious to the best interests of society and receive more general or more deserved punishment. To extend exemption from punishment for such crimes would be to shock the moral judgment of the community. To call their advocacy a tenet of religion is to offend the common sense of mankind."

ONE LIVING IN POLYGAMOUS COHABITATION IS IN LAW A POLYGAMIST.

The members of the first presidency and twelve apostles of the Mormon Church claim that there is a distinction between what they term polygamy—that is, the contracting of plural marriages—and polygamous cohabitation with plural wives. But under the circumstances this distinction is little short of ridiculous. As is demonstrated by the testimony, the so-called manifesto was aimed at polygamous cohabitation, as well as against the taking of plural wives, and it is the veriest sophistry to contend that open notorious cohabitation with plural wives is less offensive to public morals than the taking of additional wives. Indeed, it is the testimony of some of those who reside in communities that are cursed by the evils of polygamy that polygamous cohabitation is fully as offensive to the sense of decency of the inhabitants of those communities as would be the taking of plural wives.

And this excuse of the Mormon leaders is as baseless in law as it is in morals. In the case of Murphy *v.* Ramsay, decided by the Supreme Court of the United States and reported in the United States Supreme Court Reports, volume 114, page 15, it was decided that any man is a polygamist who maintains the relation of husband to a plurality of wives, even though in fact he may cohabit with only one. The court further held in the same case that a man occupying this relation to two or more women can only cease to be a polygamist when he has finally and fully dissolved the relation of husband to several wives. In other words, there is and can be no practical difference in law or in morals between the offense of taking plural wives and the offense of polygamous cohabitation. The same doctrine is affirmed in the case of Cannon *v.* United States (116 U. S. Supreme Court Reports, p. 55).

MR. SMOOT RESPONSIBLE FOR THE CONDUCT OF THE ORGANIZATION TO WHICH HE BELONGS.

It is urged in behalf of Mr. SMOOT that, conceding it to be true that the first president and some of the apostles are living in polygamy and that some of the leaders of the Mormon Church encourage polygamous practices, Mr. SMOOT himself is not a polygamist, does not practice polygamy, and that there is no evidence that he has personally and individually encouraged the practice of polygamy by members of the Mormon Church, and that he ought not to be condemned because of the acts of his associates. This position is wholly untenable. Mr. SMOOT is an inseparable part of the governing body of the Mormon Church—the first presidency and twelve apostles—and those who compose that organization form a unit, an entirety, and whatever is done by that organization is the act of each and every member thereof, and whatever policy is adopted and pursued by the body which controls the Mormon Church Mr. SMOOT must be held to be responsible for as a member of that body. That one may be legally, as well as morally, responsible for unlawful acts which he does not himself commit is a rule of law too elementary to require discussion. "What one does by another he does by himself" is a maxim as old as the common law. And as the first presidency and twelve apostles of the Mormon Church have authority over the spiritual affairs of the members of that church, it follows that such governing body of said church has supreme authority over the members of that church in respect to the practice of polygamy and polygamous cohabitation.

In England in former years, and under the canon law, matters of marriage, divorce, and legitimacy were under the jurisdiction of the ecclesiastical courts of the Kingdom, in which the punishment was in the nature of a spiritual penalty for the good of the soul of the offender, this penalty in many cases being that of excommunication or expulsion from the church. (1 Blackstone's Commentaries, 431; 3 Blackstone's Commentaries, 92; 4 Blackstone's Commentaries, 153 and note; Reynolds *v.* United States, 98 U. S., 145, 164–165.) And in later years, while the civil law now prohibits and punishes bigamy, the authorities of every Christian church in this country take cognizance of matrimonial affairs and by the authority of the church in spiritual matters prevent and punish by censure or expulsion any infraction of the rules of the church regarding marriage.

The testimony taken upon this investigation shows beyond controversy that the authority of the first presidency and the twelve apostles of the Mormon Church over the members of said church is such that were the said first presidency and twelve apostles to prohibit the practice of polygamy and polygamous cohabitation by its members and abandon the practice themselves and expel from the church all who should persist in the practice those offenses would instantly cease in that church. And the fact that not a single member of the Mormon Church has ever fallen into disfavor on account of polygamous practices is conclusive proof that the ruling authorities of that church countenance and encourage polygamy.

The conduct of Mr. SMOOT in this regard can not be separated from that of his associates in the government of the Mormon Church. Whatever his private opinions or his private conduct may be, he stands before the world as an integral part of the organization which encourages, counsels, and approves polygamy, which not only fails to discipline those who break the laws of the country, but, on the contrary, loads with honors and favors those who are among the most noted polygamists within the pale of that church.

It is an elementary principle of law that where two or more persons are associated together in an act, an organization, an enterprise, or a course of conduct which is in its character or purpose unlawful the act of any one of those who are thus associated is the act of all, and the act of any number of the associates is the act of each one of the others.

An eminent legal authority says:

"Every person entering into a conspiracy or common design already formed is deemed in law a party to all acts done by any of the other parties, before or afterwards, in furtherance of the common design. The principle on which the acts and declarations of other conspirators, and acts done at different times, are admitted in evidence against the persons prosecuted is that by the act of conspiring together the conspirators have jointly assumed to themselves, as a body, the attribute of individuality so far as regards the prosecution of the common design, thus rendering whatever is done or said by anyone in furtherance of that design a part of the res gestæ and therefore the act of all. (2 Greenleaf on Evidence, secs. 93, 94. See also Commonwealth *v.* Warren, 6 Mass., 74; People *v.* Mather, 4 Wend., 229, 260; People *v.* Peckens, 153 N. Y., 576, 586, 593; United States *v.* Gooding, 12 Wheaton, 459, 469; American Fur Company *v.* United States, 2 Peters, 358, 365; Nudd et al. *v.* Burrows, 91 U. S., 426, 438; United States *v.* Mitchell, 1 Hughes, 439 (Federal Cases, No. 15790); Stewart *v.* Johnson, 3 Har. (N. J.), 87; Hinchman *v.* Ritchie, Brightley's N. P. (Pa), 143; Freeman *v.* Stine, 34 Leg. Int. (Pa.), 95; Spies et al. *v.* People, 122 Illinois, 1.)"

The case last cited illustrates this principle more forcibly than any of the others referred to. In that case, which is commonly known as "the anarchists' case," there was, as to some of the defendants, very little evidence, and as to others of the defendants no satisfactory evidence that they were present at the commission of the murder with which they were charged, or advised or intended the murder which was committed by an unknown person. But it was proved that the defendants were members of an organization known as the International Association of Chicago, having for its object the destruction of the law and government and incidentally of the police and militia as the representatives of law and government, and that some of the defendants had, by spoken and printed appeals to workingmen and others, urged the use of force, deadly weapons, and dynamite in resistance to the law and its officers.

In denying the motion for a new trial in the anarchists' case the judge who presided at the trial used the following language:

"Now on the question of the instructions, whether these defendants, or any of them, anticipated or expected the throwing of the bomb on the night of the 4th of May is not a question which I need to consider, because the conviction can not be sustained, if that is necessary to a conviction, however much evidence of it there may be, because the instructions do not go upon that ground. The jury were not instructed to find the defendants guilty if they believed they participated in the throwing of that bomb, or advised or encouraged the throwing of that bomb, or anything of that sort. Conviction has not gone upon the ground that they did have any personal participation in the particular act which caused the death of Degan, but the conviction proceeds upon the ground, under the instructions, that they had generally by speech and print, advised large classes of the people, not particular individuals, but large classes, to commit murder, and have left the commission, time, and place, to the individual will and whim, or caprice, or whatever it may be, of each individual man who listened to their advice and, influenced by that advice, somebody not known did throw the bomb which caused Degan's death." (Century Magazine, April, 1893, p. 835.)

It will be seen by the decision of the court upon the motion for a new trial in the case of Spies et al *v.* People that the anarchists were not convicted upon the ground that they had participated in the murder of which they were convicted. Whether they were or were not participants in the commission of this crime was not the main question at issue. They were convicted because they belonged to an organization which, as an organization, advised the commission of acts which would lead to murder.

Of like import is the decision in the case of Davis *v.* Beason, decided by the Supreme Court of the United States in 1889, the decision being reported in volume 133, United States Supreme Court Reports, page 333. At the time of this decision the Revised Statutes of the State of Idaho provided that no person "who is a member of any order, organization, or association which teaches, advises, counsels, or encourages its members, devotees, or any other persons to commit the crime of bigamy or polygamy, or any other crime defined by law, either as a rite or ceremony of such order, organization, or association or otherwise, is permitted to vote at any election or to hold any position or office of honor, trust, or profit within this Territory."

This provision of law the Supreme Court of the United States held to be constitutional and legal. It will be observed that this act disfranchises certain persons and makes them ineligible to any position or office of honor, trust, or profit, not for committing the crime of polygamy, nor for teaching, advising, counseling, or encouraging others to commit the crime, but because of their membership in an organization which teaches, advises, counsels, and encourages others to commit the crime of polygamy. In Wooley *v.* Watkins (2 Idaho Rep., 555, 566), the court say:

"Orders, organizations, and associations, by whatever name they may be called, which teach, advise, counsel, or encourage the practice or commission of acts forbidden by law, are criminal organizations. To become and continue to be members of such organizations or associations are such overt acts of recognition and participation as make them particeps criminis and as guilty, in contemplation of criminal law, as though they actually engaged in furthering their unlawful objects and purposes." (See also Innis *v.* Bolton, 2 Idaho Rep., 407, 414.)

It being a fact that the first presidency and the twelve apostles of the Mormon Church teach, advise, counsel, and encourage the members of that church to practice polygamy and polygamous cohabitation, which are contrary to both law and morals, and Mr. SMOOT, being a member of that organization, he must fall under the same condemnation.

And the rule in civil cases is the same as that which obtains in the administration of criminal law. One who is a member of an association of any nature is bound by the action of his associates, whether he favors or disapproves of such action. He can at any time protect himself from the consequences of any future action of his associates by withdrawing from the association, but while he remains a member of the association he is responsible for whatever his associates may do.

MR. SMOOT HAS COUNTENANCED AND ENCOURAGED POLYGAMY.

But the complicity of Mr. SMOOT in the conduct of the leaders of the Mormon Church in encouraging polygamy and polygamous cohabitation does not consist wholly in the fact that he is one of the governing

body of that church. By repeated acts, and in a number of instances, Mr. SMOOT has, as a member of the quorum of the twelve apostles, given active aid and support to the members of the first presidency and twelve apostles in their defiance of the laws of the State of Utah and of the laws of common decency, and their encouragement of polygamous practices by both precept and example.

It is shown by the testimony of Mr. SMOOT himself that he assisted in the elevation of Joseph F. Smith to the presidency of the Mormon Church. That he has since repeatedly voted to sustain said Joseph F. Smith, and that he so voted after full knowledge that said Joseph F. Smith was living in polygamous cohabitation and had asserted his intention to continue in this course in defiance of the laws of God and man. He also assisted in the selection of Heber J. Grant as president of a mission when it was a matter of common notoriety that said Heber J. Grant was a polygamist. He voted for the election of Charles W. Penrose as an apostle of the Mormon Church after testimony had been given in this investigation showing him to be a polygamist. It is difficult to perceive how Mr. SMOOT could have given greater encouragement to polygamy and polygamous cohabitation than by thus assisting in conferring one of the highest honors and offices in the Mormon Church on one who had been and was then guilty of these crimes. As trustee of an educational institution he made no protest against the continuance in office of Benjamin Cluff, jr., a noted polygamist, as president of that institution, nor made any effort to discover the truth that said Cluff had taken another plural wife long after the manifesto. Nor did he make any protest, as such trustee, against the election of George H. Brimhall, another polygamist, in the place of Benjamin Cluff, jr.

Since his election as an apostle of the Mormon Church Mr. SMOOT has been intimately associated with the first president and with those who—with himself—constitute the counsel of the twelve apostles. The fact that many of these officials were living in polygamous relations with a number of wives was a matter of such common knowledge in the community that it is incredible that Mr. SMOOT should not have had sufficient notice of this condition of affairs to at least have put him on inquiry. If he did not know of these facts it was because he took pains not to be informed of them. At no time has he uttered a syllable of protest against the conduct of his associates in the leadership of the Mormon Church, but, on the contrary, has sustained them in their encouragement of polygamy and polygamous cohabitation, both by his acts (as hereinbefore set forth) and by his silence. In the judgment of the committee, Mr. SMOOT is no more entitled to a seat in the Senate than he would be if he were associating in polygamous cohabitation with a plurality of wives.

DOMINATION OF LEADERS OF THE MORMON CHURCH IN SECULAR AFFAIRS.

A careful examination and consideration of the testimony taken before the committee in this investigation leads to the conclusion that the allegations in the protest concerning the domination of the leaders of the Mormon Church in secular affairs are true, and that the first presidency and twelve apostles of the Church of Jesus Christ of Latter-Day Saints exercise a controlling influence over the action of the members of that church in secular affairs as well as in spiritual matters; and that, contrary to the principles of the common law under which we live and the constitution of the State of Utah, the said first presidency and twelve apostles of the Mormon Church dominate the affairs of the State and constantly interfere in the performance of its functions. The domination by the leaders of the church under their claim to exercise divine authority in all matters is manifested in a general way in innumerable instances.

The right to do so is openly claimed by those who profess to speak in behalf of the church. As late as February 25, 1904, one of the twelve apostles, in a public address, said "that from the view point of the gospel there could be no separation of temporal and spiritual things, and those who object to church people advising and taking part in temporal things have no true conception of the gospel of Christ and the mission of the church."

The method by which the first presidency and twelve apostles of the Mormon Church direct all the temporal affairs of the members of that church under the claim that such direction is by divine authority, is by requiring the members of the church in all their affairs, both spiritual and temporal, and especially the latter, to "take counsel." This means that they are to be advised by their immediate superiors. These superiors in turn take their instructions from those above them, and so on back to the point whence most, if not all, these directions emanate—that is, the first presidency and twelve apostles.

As was said by Mr. Chief Justice Zane, of Utah, in 1887:

"At the head of this corporate body, according to the faith professed, is a seer and revelator, who receives in revelations the will of the infinite God concerning the duty that man owes to himself, to his fellow-beings, to society, to human government, and to God. In subordination to this head are a vast number of officials of various kinds and descriptions, comprising a most minute and complete organization. The people comprising this organization claim to direct and lead by inspiration which is above all human wisdom, subject to a power above all municipal government, above all man-made law." (Vol. 1, p. 809.)

The phrase "take counsel" does not mean that the members of the church shall inquire of those above them in all cases concerning their action, but that they shall receive counsel—that is, direction—from those above them, and this counsel they are to implicitly obey. If they fail to do so they are excommunicated from the church and deprived, not only of the privileges of membership in the church, but, as they are assured and believe, they thereby forfeit all hope of happiness in a future life. The absolute submission of the great mass of the Mormon Church is illustrated by the fact that it is laid down by the leaders of the church as a cardinal principle to the members that, if their file leaders say white is black, "it is their duty to say 'white is black.'"

Instances of the interference of the leaders of the Mormon Church in the secular affairs of their followers could be multiplied almost without number.

In one case a bishop of the church was deposed from his offices in the church because he promised to obey the laws against polygamy.

Another official of the Mormon Church was excommunicated for belonging to an organization for the enforcement of the laws and opposing the interference of the church in public affairs.

Another Mormon official was degraded in the church for refusing to obey his file leader.

In another case the members of a firm doing business in Salt Lake City were expelled from the Mormon Church because they persisted in engaging in mining operations contrary to the command of the authorities of the church.

In another instance the church authorities interfered in the matter of the establishment of an electric-light plant.

In 1903 two members of the Mormon Church who built a dancing pavilion in opposition to the "counsel" of the church authorities were summoned for trial and excommunication, and finally compromised the matter by turning over to the church officials the management of the pavilion and 25 per cent of the net earnings.

In another case there was a general understanding that the church, by its authorities, directed the location of a railroad station. In 1869 four members of the Mormon Church were excommunicated for apostacy in desiring "to open up mines against the teachings of the holy priesthood."

In another and recent instance, occurring as late as the early part of 1903, a Mormon official was deposed from his official position for writing a letter to a newspaper criticising Mr. SMOOT and his political ambitions.

In another instance, occurring in 1897, a Mormon official was deposed from his official relation to the church for distributing at a school election a ticket different from that prescribed by the church authorities.

In the year 1905 a teacher in the Mormon Church was cut off from the church for apostacy, the ostensible foundation for this charge being a criticism of the head of the church for his polygamous practices; the real ground being that the accused had persisted in engaging in the manufacture of salt, against the interests of the president of the church and some of his associates.

In what is known as the Birdsall case the officials of the Mormon Church assumed jurisdiction of a controversy concerning the title to real estate, and not only directed a conveyance of the title to a tract of land, but went further and enforced its decree by spiritual penalties. As has already been stated, no member of the Mormon Church (with possibly a single exception) has ever been disciplined for polygamy or polygamous cohabitation in defiance of the law and of the manifesto; but an obscure and feeble woman was excommunicated from the church and driven to the verge of insanity for refusing to obey the dictates of the church leaders and relinquish the title to a piece of land in favor of one who had no shadow of legal title thereto. As was testified by one of the witnesses for the protestants:

"Whenever a man disregards the teachings and instructions or counsels of the leaders of the church he has the spirit of apostasy."

A forcible illustration of the domination of the leaders of the Mormon Church over the secular affairs of the people is furnished by the fact that while a majority of these leaders have for years been living in polygamous relations, in defiance of law, no one dares to attempt to bring them to justice for fear of the consequences which would be visited by the church on the one who should make the complaint. And whenever one has been daring enough to make complaint for polygamous cohabitation against any member of the church the officers of the law have refused to prosecute, or those who were prosecuted and convicted have been released after the infliction of a merely nominal punishment.

The control which the governing body of the Mormon Church exercises over the secular affairs of the State of Utah is well illustrated by the fact that for many years past what are known as "religion classes" have been taught in connection with the public schools of that State. In these classes the youth of Utah are instructed in the doctrines of the Mormon Church by teachers in the public schools, supported by State taxation, the course of study being prescribed by officials of the church. This course of study includes the lives of noted Mormons whose chief claim to eminence in the church lies in their having taken a multiplicity of wives and in their continuance in the crime of polygamous cohabitation.

The teaching of the doctrines, faith, and practice of the Mormon Church in the public schools of Utah, under the direction of the high priesthood of the church, is not only contrary to the general law governing the use of schoolhouses as expounded by the courts of this country, but is also expressly forbidden by the constitution of the State of Utah, which provides, in article 1, section 4, as follows:

"No public money or property shall be appropriated for or applied to any religious worship, exercises, or instruction, or for the support of any ecclesiastical establishment." (Schofield *v.* School Dist., 27 Conn., 499; Spencer *v.* Joint School Dist., 15 Kans., 259; School District *v.* Arnold, 21 Wis., 657.)

Such teaching is also prohibited by a statute of the State of Utah, which declares that "No atheistic, infidel, sectarian, religious, or denominational doctrines shall be taught in any of the district schools of this State." (Revised Statutes of Utah, sec. 1848.)

The conduct of the ruling authorities of the Mormon Church in directing the teaching of "religion classes" in the schoolhouses of Utah affords a fair illustration of the contempt with which the rulers of that church treat all laws and restrictions which stand in the way of their desires, or of their own interests, or what they conceive to be the interests of the church of which they are the head.

The fact that these religion classes have been discontinued since their existence was revealed by this investigation serves to emphasize the truth that the Mormon Church dominates the affairs of the State of Utah in educational matters as well as in other respects.

POLITICAL DOMINATION OF THE MORMAN CHURCH.

But it is in political affairs that the domination of the first presidency and twelve apostles of the Mormon Church is most efficacious and most injurious to the interests of the State. The constitution of the State of Utah provides "There shall be no union of church and state, nor shall any church dominate the State or interefere with its functions." (Vol. 1, p. 25.) Notwithstanding this plain provision of the constitution of Utah, the proof offered on the investigation demonstrates beyond the possibility of doubt that the hierarchy at the head of the Mormon Church has for years past formed a perfect union between the Mormon Church and the State of Utah, and that the church through its head dominates the affairs of the State in things both great and small. Even before statehood was an accomplished fact, and while the State was in process of formation, and afterwards, during the sessions of the first and succeeding legislatures, it was notorious that a committee appointed by the leaders of the Mormon Church was supervising the legislation of the State.

At about the same time, or shortly prior thereto, it became known throughout Utah that the leading officials of the Mormon Church desired that the voters belonging to that church should so divide on political lines that about one half should belong to one of the great political parties of the nation and the other half to the other party, leaving a considerable number unassigned to either party, so that their votes could be cast for one party or the other, as might be necessary to further the interests of that church.

It is, of course, intended by the leaders of the church that this influence shall be secretly exerted, and this is in many cases, if not in most cases, easily accomplished by means of the perfect machinery of the church, which has been adverted to, by which the will of the first

presidency and twelve apostles is transmitted through ecclesiastical channels, talked over in prayer circles of the high councils of the church, and then promulgated to the members of the church as "the will of the Lord." Notwithstanding this attempt at secrecy, it has for many years been a matter of common knowledge among the people of those States in which the Mormon Church is strongest that political influence is being continually exerted in the matter of State and lower municipal officials. As was said by one of the witnesses who testified on the investigation: "Whenever they indorse a man, he will be elected. Whenever they put upon him the seal of their disapprobation, he will not be."

It was shown in the investigation that in the State of Idaho candidates for office, in order to have any hope of success, must visit Salt Lake City and arrange for such success with the leaders of the Mormon Church. The result of this is that whatever the Mormon Church desires to have done, either by way of legislation or in the way of administration of the affairs of the State, is done, and whatever the Mormon Church desires shall not be done, is not done. So well recognized is this fact that in a State convention held in Idaho in the year 1904 one of the leading Mormons made the proposition that in case a certain resolution should be withdrawn he would go to Utah and ask the president of the Mormon Church to cease interfering in Idaho politics. Thus it appears that the Mormon Church dominates the affairs of the State of Idaho to an extent only less than it does the affairs of the State of Utah. As an illustration of this fact, it was shown that a bill in which the Mormon Church was vitally interested was passed by the legislature of Idaho shortly after the visit of one of the apostles of the Mormon Church, who came there for the purpose of procuring such legislation.

A striking illustration of the power of the Mormon Church in Utah in matters of legislation appears in the history of what is known as the "Evans bill," which was passed by both houses of the legislature of Utah in 1901, in order to prevent prosecutions for polygamous cohabitation. This bill was favored by the president of the Mormon Church and by a majority of the apostles and was passed by a Mormon legislature. It was vetoed by a Mormon governor, the principal reason for the veto being that the attempted legislation would bring about an amendment to the Constitution of the United States under which those guilty of the crime of polygamous cohabitation would be prosecuted and punished in the Federal courts.

Perhaps one of the most instructive instances of the exercise of the power of the Mormon Church in political affairs was in the matter referred to in the protest as the case of Moses Thatcher. In that case the testimony taken before the committee leaves no doubt that not far from the time when the leaders of the Mormon Church required their followers to divide between the two parties, it was ordered by the Mormon leaders that those officials of the church who desired to engage in politics in behalf of one of the political parties should go out and influence the people of the Mormon Church in favor of that party, while those who were of the contrary opinion should remain at home and not attempt to influence the members of that church to adopt their way of thinking. Mr. Thatcher saw fit to disobey this edict and not only to become a candidate for the United States Senate, but to go out among the people and endeavor to win converts to the party of which he was a member. For this offense against the political dictation of the first presidency and twelve apostles, Mr. Thatcher was deposed from his position as an apostle, deprived of all his offices in the Mormon Church, denied the privileges which are accorded to every Mormon in good standing, and the whole influence of the leaders of the Mormon Church was put forth to compass his defeat.

As was well said by Mr. Thatcher at the time of this occurrence, this action on the part of the ruling authorities of the church transformed the Mormon Church into a great political machine, the steering apparatus of which was in the hands of the twelve or fifteen men at the head. All this occurred because Mr. Thatcher refused to "take counsel"—that is, to follow the dictates of the Mormon Church as to who should become candidates for office and who should not become such.

Specific directions given by the heads of the Mormon Church to those under them seem to have varied according to circumstances. Several years ago, and before the admission of Utah into the Union as a State, it would appear that the apostles of the Mormon Church would convey to the members of that church instructions concerning their political action openly and in public addresses. The people would be told from the pulpits of the Mormon Church what ticket they ought to support.

As late as 1892 a bishop of the Mormon Church called together a number of the members of that church who belonged to a party opposing the party of the bishop, and told those whom he had thus called together that he had received a message from the first presidency to the effect that the candidate of the party to which the bishop belonged should be elected to Congress. In the same year and at the same election the president of the Mormon Church took occasion to write a letter to the bishops of his church indorsing the candidacy of a certain gentleman for Representative in Congress. In 1898 one of the apostles of the Mormon Church in a letter to one of the first presidents of seventies virtually advocated the election of a certain candidate for a seat in the United States Senate.

In 1902 an apostle of the Mormon Church went through one of the counties of Idaho, telling the Mormon voters that it was the will of the church that they should vote a certain ticket.

In later years the method of domination by the Mormon Church in political affairs has been, to a great extent, by means of a rule requiring those of any prominence in the church to "take counsel" before becoming candidates for public office. This virtually puts into the hands of the Mormon priesthood the filling of the various offices in the State. If the church takes to itself the right to decide who shall be the candidates for offices, there is no other choice left to either candidates or people. Under this rule the people can not vote for anyone who is a prominent member of the Mormon Church unless the ruling authorities of the church permit him to be a candidate. This rule thereby becomes a species of political usurpation, striking at the very foundation of our Government. Our entire political system is based on the theory that every voter has the right to vote for anyone he pleases, and that the people have a right to call upon whomsoever they will to represent them and to administer the affairs of the nation and of the Commonwealth. But the rule which has been promulgated and enforced by the officials of the Mormon Church precludes any member of that church from serving the nation or the State unless he has been designated for such service by the hierarchy which governs said church. This means that the State shall subsist in all things in and through the "counsel" of the church.

The pretext under which the leaders of the Mormon Church excuse their selection of candidates for public office is that it is a rule of the church designed to prevent high officials in the church from becoming engaged in public affairs to the neglect of their ecclesiastical functions.

This veil is too thin to conceal the real motives and designs of the Mormon priesthood. Were that the true reason for the adoption of the rule, it would be made to apply to all the higher officials of the Mormon Church under all circumstances and all would be prohibited from becoming candidates for public offices. And in such case the object of the rule would be attained by requiring of every church officer who becomes a candidate for public office that he resign his church office, and this without favor or distinction.

But the rule is not so framed or administered. Under this rule one may be a candidate for public office or may not be, according to the will of the first presidency and twelve apostles of the Mormon Church. Under the rule, as it is applied, one of the twelve apostles may be elected to the Senate (as in the case of Mr. SMOOT) or he may be defeated (as in the case of Mr. Thatcher). If one of the higher officials of the Mormon Church becomes a candidate for public office he may retain his official station in the church, as in the case of Mr. SMOOT and Mr. Roberts, or he may be broken of his office and deprived of his privileges in the church, as happened to Mr. Thatcher, these differing applications of the rule depending wholly on the will or caprice of the first presidency and the twelve apostles. Under this rule Mr. Roberts was defeated for the office of Representative in Congress and under the rule he was afterwards elected to the same office.

But the domination of the higher officials in the Mormon Church does not cease with the selection by them of a candidate for public office. It is a fact of no little importance in this case that where the Mormon Church is strong the candidates favored by the ruling authorities of that church are generally elected.

The fact that Gentiles are sometimes elected to office in preference to Mormons in localities where the Mormons are in the ascendency does not tend to prove the absence of church influence. It is shown by the testimony that the officials of the Mormon Church sometimes prefer one Mormon to another and sometimes prefer a Gentile to a Mormon. So well is it understood in Utah that the power of the Mormon Church in political affairs must be recognized and deferred to that in the election of Senators and of other officials the Mormons must be given what they claim as their share of the offices to be filled.

In order to realize the potency of the influence which the ruling authorities of the Mormon Church exercise in political affairs, it must be kept in mind that this influence proceeds from men who are believed by their followers to be oracles of God; that whatsoever they speak is the word of God; and that the first presidency of the Mormon Church and the council of the twelve apostles are "the mouthpiece of God." In the efforts put forth by the rulers of the church to defeat Moses Thatcher, the Mormon people were told that the first presidency and eleven of the apostles were inspired and that Moses Thatcher, the twelfth apostle, was not inspired.

The committee has not overlooked nor failed to give due consideration to the testimony of witnesses called in behalf of Mr. SMOOT, who testified that there was no interference by the Mormon Church in the political affairs of Utah or Idaho. But, leaving out of consideration any political or personal bias for Mr. SMOOT which those witnesses may have manifested, there is very little in their testimony aside from and beyond their individual opinion and judgment as regards the political conditions in the States named. The testimony of these witnesses in no way controverts the facts before referred to, from which facts the conclusion is irresistible that the controlling authorities of the Mormon Church do dominate the political affairs of the State of Utah and control to some extent the political affairs of the State of Idaho. Without disproof of these facts, or strong proof of countervailing facts, mere opinions of witnesses, however intelligent and however candid, do not suffice.

Not only is Mr. SMOOT one of those by and through whom the political affairs of Utah are dominated, but his election to the Senate was, it is believed, the result of such domination.

When Mr. SMOOT concluded to become a candidate for the Senate, he was careful to obtain the "consent" of the first presidency and twelve apostles to his candidacy. But this so-called "consent" of the rulers of the church was naturally regarded by the people of Utah, who were familiar with the ways of the Mormon high-priesthood, as being, under the circumstances, equivalent to an indorsement and made it impossible for anyone else to become an aspirant for the same position with any hope of success.

A PRACTICAL UNION OF CHURCH AND STATE.

The fact that the adherents of the Mormon Church hold the balance of power in politics in some of the States enables the first presidency and twelve apostles to control the political affairs of those States to any extent they may desire. Thus a complete union of church and State is formed. This is in accordance with the teachings of the priesthood of the Mormon Church, as promulgated in the writings of men of high authority in the church, to the effect that the church is supreme in all matters of Government, as well as in all things pertaining to the private life of the citizen. In one of a series of pamphlets, "On the Doctrines of the Gospel," by Apostle Orson Pratt, it is affirmed:

"The kingdom of God is an order of government established by divine authority. It is the only legal government that can exist in any part of the universe. All other governments are illegal and unauthorized. God having made all beings and worlds has the supreme right to govern them by His own laws and by officers of His own appointment. Any people attempting to govern themselves and by laws of their own making and by officers of their own appointment, are in direct rebellion against the kingdom of God." (Vol. 1, p. 666.)

The union of church and state in those States under the domination of the Mormon leaders is most abhorrent to our free institutions. John Adams declared that the attempt of the Church of England to extend its jurisdiction over the colonies "contributed as much as any other cause to arouse the attention, not only of the inquiring mind, but of the common people, and to urge them to close thinking of the constitutional authority of Parliament over the colonies" and to bring on the war of independence. After the colonies had achieved their independence, the complete enfranchisement of the church from the control of the state, and of the state from the control of the church was brought about through the efforts of men like Thomas Jefferson and James Madison in Virginia, and those of almost equal prominence in other States. And thus the natural desire of the people of this nation for the entire separation of church and state was incorporated in the Constitution of the United States by the first amendment to that instrument.

The right to worship God according to the dictates of one's own conscience is one of the most sacred rights of every American citizen. No less sacred is the right of every citizen to vote according to his conscientious convictions without interference on the part of any church, religious organization, or body of ecclesiastics which seeks to control his political opinions or direct in any way his use of the elective franchise.

In the interest of religious freedom and to protect the State from the influence of the Mormon Church, the framers of the constitution of Utah incorporated in that instrument the provision which has been quoted in a preceding part of this report. That provision of the constitution of Utah has been persistently and contemptuously disregarded by the first presidency and the twelve apostles of the Mormon Church ever since Utah was admitted into the Union. They have paid as little regard to this mandate of the constitution of Utah as they have to the law which prohibits polygamy and the law which forbids polygamous cohabitation.

OATH OF VENGEANCE.

In the protest signed and verified by the oath of Mr. Leilich it is claimed that Mr. SMOOT has taken an oath as an apostle of the Mormon Church which is of such a nature as to render him incompetent to hold the office of Senator. From the testimony taken it appears that Mr. SMOOT has taken an obligation which is prescribed by the Mormon Church and administered to those who go through a ceremony known as "taking the endowments." It was testified by a number of witnesses who were examined during the investigation that one part of this obligation is expressed in substantially these words:

"You and each of you do covenant and promise that you will pray and never cease to pray Almighty God to avenge the blood of the prophets upon this nation, and that you will teach the same to your children and to your children's children unto the third and fourth generation."

An effort was made to destroy the effect of the testimony of three of these witnesses by impeachment of their reputation for veracity. This impeaching testimony was not strengthened by the fact that the witnesses by whom it was given were members of the Mormon Church, and would naturally disparage the truthfulness of one who would give testimony unfavorable to that church. The testimony of the witnesses for the protestants, before referred to, was corroborated by the testimony of Mr. Dougall, a witness sworn in behalf of Mr. SMOOT, and no attempt was made to impeach the character of this witness. It is true that a number of witnesses testified that no such obligation is contained in the endowment ceremony; but it is a very suspicious circumstance that every one of the witnesses who made this denial refused to state the obligation imposed on those who take part in the ceremony.

The evidence showing that such an obligation is taken is further supported by proof that during the endowment ceremonies a prayer is offered asking God to avenge the blood of Joseph Smith upon this nation, and certain verses from the Bible are read which are claimed to justify the obligation and the prayer. The fact that such a prayer if offered and that such passages from the Bible are read was not disputed by any witness who was sworn on the investigation. Nor was it questioned that by the term "the prophets" as used in the endowment ceremony reference is made to Joseph and Hyrum Smith.

That an obligation of vengeance is part of the endowment ceremony is further attested by the fact that shortly after testimony had been given on that subject before the committee Bishop Daniel Connelly of the Mormon Church denounced the witnesses who had given this testimony as traitors who had broken their oaths to the church.

The fact that an oath of vengeance is part of the endowment ceremonies and the nature and character of such oath was judicially determined in the third judicial court of Utah in the year 1889 in the matter of the application of John Moore and others to become citizens of the United States. In an opinion denying the application, the court say:

"In these applications the usual evidence on behalf of the applicants as to residence, moral character, etc., was introduced at a former hearing and was deemed sufficient. Objection was made, however, to the admission of John Moore and William J. Edgar upon the ground that they were members of the Mormon Church, and also because they had gone through the endowment house of that church and there had taken an oath or obligation incompatible with the oath of citizenship they would be required to take if admitted. * * *

"Those objecting to the right of these applicants to be admitted to citizenship introduced eleven witnesses who had been members of the Church of Jesus Christ of Latter-Day Saints, commonly called the "Mormon Church." Several of these witnesses had held the position of bishop in the church, and all had gone through the endowment house and participated in its ceremonies. The testimony of these witnesses is to the effect that every member of the church is expected to go through the endowment house, and that nearly all do so; that marriages are usually solemnized there, and that those who are married elsewhere go through the endowment ceremonies at as early date thereafter as practicable in order that the marital relations shall continue throughout eternity.

"On behalf of the applicants fourteen witnesses testified concerning the endowment ceremonies, but all of them declined to state what oaths are taken, or what obligations or covenants are there entered into, or what penalties are attached to their violation; and these witnesses, when asked for their reason for declining to answer, stated that they did so 'on a point of honor,' while several stated they had forgotten what was said about avenging the blood of the prophets. * * *

"The witnesses for the applicants, while refusing to disclose the oaths, promises, and covenants of the endowment ceremonies and the penalties attached thereto, testified generally that there was nothing in the ceremonies inconsistent with loyalty to the Government of the United States, and that the Government was not mentioned. One of the objects of this investigation is to ascertain whether the oaths and obligations of the endowment house are incompatible with good citizenship, and it is not for applicants' witnesses to determine this question. The refusal of applicants' witnesses to state specifically what oath, obligations, or covenants are taken or entered into in the ceremonies renders their testimony of but little value, and tends to confirm rather than contradict the evidence on this point offered by the objectors. The evidence established beyond any reasonable doubt that the endowment ceremonies are inconsistent with the oath an applicant for citizenship is required to take, and that the oaths, obligations, or covenants there made or entered into are incompatible with the obligations and duties of citizens of the United States." (Vol. 4, pp. 340–343.)

The obligation hereinbefore set forth is an oath of disloyalty to the Government which the rules of the Mormon Church require, or at least encourage, every member of that organization to take.

It is in harmony with the views and conduct of the leaders of the Mormon people in former days, when they openly defied the Government of the United States, and is also in harmony with the conduct of those who give the law to the Mormon Church to-day in their defiant disregard of the laws against polygamy and polygamous cohabitation. It may be that many of those who take this obligation do so without realizing its treasonable import; but the fact that the first presidency and twelve apostles retain an obligation of that nature in the ceremonies of the church shows that at heart they are hostile to this nation and disloyal to its Government.

And the same spirit of disloyalty is manifested also in a number of the hymns contained in the collection of hymns put forth by the rulers of the Mormon Church to be sung by Mormon congregations.

There can be no question in regard to the taking of the oath of vengeance by Mr. SMOOT. He testified that he went through the ceremony of taking the endowments in the year 1880, and the head of the Mormon Church stated in his testimony that the ceremony is now the same that it has always been.

An obligation of the nature of the one before mentioned would seem to be wholly incompatible with the duty which Mr. SMOOT as a member of the United States Senate would owe to the nation. It is difficult to conceive how one could discharge the obligation which rests upon every Senator to so perform his official duties as to promote the welfare of the people of the United States and at the same time be calling down the vengeance of heaven on this nation because of the killing of the founders of the Mormon Church sixty years ago.

MR. SMOOT NOT ENTITLED TO A SEAT IN THE SENATE.

The more deliberately and carefully the testimony taken on the investigation is considered, the more irresistibly it leads to the conclusion that the facts stated in the protest are true; that Mr. SMOOT is one of a self-perpetuating body of men, known as the first presidency and twelve apostles of the Church of Jesus Christ of Latter-Day Saints, commonly known as the Mormon Church; that these men claim divine authority to control the members of said church in all things, temporal as well as spiritual; that this authority is, and has been for several years past, so exercised by the said first presidency and twelve apostles as to encourage the practice of polygamy and polygamous cohabitation in the State of Utah and elsewhere, contrary to the constitution and laws of the State of Utah and the law of the land; that the said first presidency and twelve apostles do now control, and for a long time past have controlled, the political affairs of the State of Utah, and have thus brought about in said State a union of church and state, contrary to the constitution of said State of Utah and contrary to the Constitution of the United States, and that said REED SMOOT comes here, not as the accredited representative of the State of Utah in the Senate of the United States, but as the choice of the hierarchy which controls the church and has usurped the functions of the State in said State of Utah.

It follows, as a necessary conclusion from these facts, that Mr. SMOOT is not entitled to a seat in the Senate as a Senator from the State of Utah, and your committee report the following resolution:

Resolved, That REED SMOOT is not entitled to a seat as a Senator of the United States from the State of Utah.

J. C. BURROWS, *Chairman*.

[Senate Report No. 4253, part 2, Fifty-ninth Congress, first session.]

Mr. FORAKER, from the Committee on Privileges and Elections, submitted the following as the views of the minority:

The undersigned, members of the Committee on Privileges and Elections, having had under consideration Senate resolution No. 205, Fifty-seventh Congress, second session, adopted January 27, 1903, being unable to agree with the majority of the committee, submit the following minority report.

They attach hereto and make a part hereof a full statement of the case, showing all charges affecting or intending to affect the right and title of REED SMOOT to a seat in the Senate as a Senator from the State of Utah, together with an abstract of all the material, relevant, and competent testimony offered with respect thereto, and their conclusions deduced therefrom.

They ask that the same may be printed for purposes of reference as a part of this report, and respectfully refer to the same as a more complete statement of the following findings and propositions, and the testimony and arguments in support of the same, upon which they base their dissent from the conclusions and report of the majority of the committee:

I.

REED SMOOT possesses all the qualifications prescribed by the Constitution to make him eligible to a seat in the Senate, and the regularity of his election by the legislature of the State of Utah is not questioned in any manner.

II.

Aside from his connection with the Mormon Church, so far as his private character is concerned, it is, according to all the witnesses, irreproachable, for all who testify on the subject agree or concede that he has led and is leading an upright life, entirely free from immoral practices of every kind. He is not a polygamist; has never had but one wife, and has been noted from early manhood for his opposition to plural marriages, and probably did as much as any other member of the Mormon Church to bring about the prohibition of further plural marriages.

III.

So far as mere belief and membership in the Mormon Church are concerned, he is fully within his rights and privileges under the guaranty of religious freedom given by the Constitution of the United States, for there is no statutory provision, and could not be, prohibiting either such belief or such membership.

Moreover, having special reference to the Mormons residing in Utah and their peculiar belief, it was provided in the act of Congress passed July 16, 1894, that the people of Utah should provide in their constitution "by ordinance irrevocable without the consent of the United States and the people of said States—

"1. That perfect toleration of religious sentiment shall be secured, and that no inhabitants of said State shall ever be molested in person or property on account of his or her mode of religious worship: *Provided*, That polygamous or plural marriages are forever prohibited."

In consequence there was embodied in the constitution of the State of Utah a compliance with this requirement, and thereupon the Territory was duly admitted as a State of the Union.

Accordingly, members of the Mormon Church, open and avowed believers in its doctrines and teachings, have been admitted without question to both Houses of Congress as Representatives of the State.

IV.

There remain but two grounds on which the right or title of REED SMOOT to his seat in the Senate is contested. They are:

1. That he is shown to have taken what is spoken of in the record as the "endowment oath," by which he obligated himself to make his allegiance to the church paramount to his allegiance to the United States; and

2. That by reason of his official relation to the church, as one of its apostles, he is responsible for polygamous cohabitation which yet continues among the Mormons, notwithstanding it is prohibited by law.

As to the "endowment oath," it is sufficient in this summary to say that the testimony is collated and analyzed in the annexed statement, and thereby shown to be limited in amount, vague and indefinite in character, and utterly unreliable, because of the disreputable and untrustworthy character of the witnesses.

There were but seven witnesses who made any pretenses of testifying about any such obligation. One of these was shown by the testimony of two uncontradicted witnesses to be mentally unsound. Another, to have committed perjury in the testimony given before the committee on another point. The third was shown by the uncontradicted testimony of a number of witnesses to have a bad reputation for truth and veracity, and to be thoroughly unreliable. A fourth admitted that he had been for years intemperate, and was shown by indisputable testimony to have lost his position on that account, and thereupon and for that reason to have withdrawn from the church and to have assumed such a hostile and revengeful attitude as to entirely discredit him as a reliable witness. The other three witnesses were so indefinite as to their statements that their testimony amounted at most to nothing more than an attempt to state an imperfect and confessedly uncertain recollection.

All that it is attempted to show as to the character of this oath is positively contradicted by REED SMOOT and a great number of witnesses, whose standing and character and whose reputation for truth and veracity are unquestioned, except only in so far as their credibility may be affected by the fact that they are or have been members of the Mormon Church.

Upon this state of evidence we are of opinion that no ground has been established on which to predicate a finding or belief that Mr. SMOOT ever took any obligation involving hostility to the United States, or requiring him to regard his allegiance to the Mormon Church as paramount to his allegiance and duty to the United States.

V.

The only remaining question is whether or not by virtue of his official relation to the church as one of its apostles he has any responsibility for the continuation of polygamous cohabitation by members of that church.

The testimony on this point is also carefully collated and analyzed in the annexed statement.

It will be found by an examination of that testimony that he has never at any time, and particularly he has not since the manifesto of 1890, countenanced or encouraged plural marriages; but that, on the contrary, he has uniformly upheld the policy of the church, as announced by that proclamation, by actively advocating and exerting his influence to effect a complete discontinuance of such marriages, and that in the few instances established by the testimony where plural marriages and polygamous cohabitation, as a result of them, have occurred since 1890 they have been without any encouragement, countenance, or approval whatever on his part.

As to polygamous cohabitation in consequence of plural marriages entered into before the manifesto of 1890, there is no testimony to show that he has ever done more than silently acquiesce in this offense against law. In view of his important and influential position in the church, this acquiescence might be regarded as inexcusable if it were not for the peculiar circumstances attending the commission of this offense.

To understand these circumstances it is necessary to recall some historical facts, among which are some that indicate that the United States Government is not free from responsibility for these violations of the law. Instead of discountenancing and prohibiting polygamy when it was first proclaimed and practiced the Congress remained silent and did nothing in that behalf. While Congress was thus at least manifesting indifference, President Fillmore and the Senate of the United States, in September, 1850, gave both recognition and encouragement by the appointment and confirmation of Brigham Young, the then head of the church, and an open and avowed advocate and representative of polygamy, to be governor of the Territory of Utah. When his term of office expired under this appointment he was reappointed by President Pierce and again confirmed by the Senate.

There was no legislation or action of any kind by Congress on this subject until the act of July 1, 1862, which was in language, as well as legal effect, nothing more than a prohibition of bigamy in the Territories and other places over which the United States had jurisdiction.

After this act, for a period of twenty years, plural marriages and polygamous cohabitation continued in the Territory of Utah practically unrestrained and without any serious effort on the part of the United States to restrict the same.

Finally, in response to an aroused public sentiment, Congress passed the act of March 22, 1882, by which it prohibited both plural marriages and polygamous cohabitation, but legitimized the children of all such marriages born prior to the 1st day of January, 1883. Under this act prosecutions were inaugurated to enforce its provisions, but it was soon demonstrated that public sentiment was such that only partial and very unsatisfactory success could be secured.

Then followed what is known as the "Edmunds-Tucker Act" of March 3, 1887, by which, among other things, the rules of evidence were so changed as to make it less difficult to secure evidence in prosecutions for polygamy and polygamous cohabitation. Again, by the terms of this act all the children born within twelve months after its passage were legitimized.

This statute was upheld by the Supreme Court of the United States, and efforts to prosecute such offenses were redoubled, with such success that on the 26th day of September, 1890, the then president of the church, Wilford Woodruff, issued what is known as the "manifesto of 1890," forbidding further plural marriages. So far as the testimony discloses, there have been but few plural marriages since, perhaps not more than the bigamous marriages during the same period among the same number of non-Mormons.

The evidence shows that there were at this time about 2,400 polygamous families in the Territory of Utah. This number was reduced to five hundred and some odd families in 1905. A few of these families may have removed out of the State of Utah, but so far as the testimony discloses, the great reduction in number has been on account of the deaths of the heads of these families. It will be only a few years at most until all will have passed away. This feature of the situation has had a controlling influence upon public sentiment in the State of Utah with respect to the prosecutions for polygamous cohabitation since the manifesto of 1890.

Whether right or wrong, when plural marriages were stopped and the offense of polygamy was confined to the cohabitation of those who had contracted marriages before 1890, and particularly those who had contracted marriages before the statutes of 1887 and 1882, the disinclination to prosecute for these offenses became so strong, even among the non-Mormons, that such prosecutions were finally practically abandoned.

It was not alone the fact that if no further plural marriages were to be contracted polygamy would necessarily in the course of time die out and pass away, but also the fact that Congress having, by the statutes of 1882 and 1887, specifically legitimized the children of these polygamous marriages, it was inconsistent, if not unwise and impossible, in the opinion of even the non-Mormons, to prohibit the father of such children from living with, supporting, educating, and caring for them; but if the father was thus to live with, support, educate, and care for the children, it seemed harsh and unreasonable to exclude from this relationship the mothers of the children.

Such are some of the reasons assigned for the lack of a public sentiment to uphold successful prosecutions for polygamous cohabitation after 1890. It is unnecessary to recite others, for it is enough to say that whatever the real reason or explanation may be, the fact was that after 1890 it became practically impossible to enforce the law against these offenses, except in flagrant cases.

Such was the situation when the Territory applied for admission to the Union and Congress passed the enabling act of July 16, 1894, by which the people of Utah, in order to entitle them to admission into the Union, on terms prescribed by Congress, were required to incorporate in their constitution a proviso that "polygamous or plural marriages are forever prohibited;" not polygamous cohabitation, it will be observed, but only polygamous marriages. The testimony shows that there was a common understanding both in Congress and Utah that there were not only to be no more plural marriages, but that prosecutions for polygamous cohabitation had become so difficult that there was a practical suspension of them, and that time was the only certain solution of the perplexing problem.

This sentiment has not only ever since continued, but with the constant diminution of the number of polygamous families and the rapid approach of the time when all will have passed away there has come a natural strengthening of the sentiment. The testimony in this respect is set forth at length in the annexed statement, but we make the following quotations in order that it may appear in this summary that there is this common disposition, among non-Mormons as well as Mormons.

Judge William McCarthy of the supreme court of Utah, a non-Mormon and an uncompromising opponent of polygamy, who has held many important offices of trust, among others that of assistant United States attorney for Utah, and who, as such, was charged with the duty of prosecuting these offenses, testified as follows:

"I prosecuted them (offenses of polygamous cohabitation) before the United States commissioners up until 1893, when the United States attorney refused to allow my accounts for services for that kind of work, and then I quit and confined my investigations before the grand jury in those cases."

In explanation of his action he testified—we quote from the annexed statement:

"That he found the press was against the prosecutions; that the public prosecutor, whose attention he invited to the matter, refused to proceed. From this and other facts which came to his knowledge, Judge McCarthy reached the conclusion that the public sentiment was against interfering with men in their polygamous relations who had married before the manifesto."

E. B. Critchlow, a non-Mormon attorney at law of Salt Lake City, one of the principal managers of this proceeding against Mr. SMOOT, who gave the case his personal attention, attending most of the meetings of committee, testified before the committee, again quoting from annexed statement:

"That after the manifesto of 1890 there was no inclination on the part of the prosecuting officer to 'push these matters as to present cohabitation,' 'thinking it was a matter that would immediately die out;' that it was well known that Apostle John Henry Smith was living in unlawful cohabitation; that non-Mormons generally made no objection to it; that they were disposed 'to let things go,' and that that was the general feeling from the time of the manifesto in 1890 'down to very recent times—pretty nearly up to date, or practically up to date.'"

Mr. Critchlow further testified that the non-Mormons were disposed to overlook the continuous polygamous cohabitation of those who had taken plural wives before the manifesto, because they, the non-Mormons, felt satisfied that there would be no more plural marriages; that the thing would work itself out in the future, and that where the polygamists had their wives in separate houses and simply kept up the old relations without the offensive flaunting of them before the public, it had been practically passed over.

Orlando W. Powers, esq., a leading lawyer of Utah, who was associate justice of the supreme court of the Territory, and who showed by his testimony much hostility to the Mormon Church, testified that there was this general feeling after the manifesto not to interfere with those whose marriages were prior thereto. He then added, "There is a question for statesmen to solve. We have not known what was best to do. It has been discussed, and people would say that such and such a man ought to be prosecuted.

"Then they would consider whether anything would be gained; whether we would not delay instead of hastening the time that we hope to live to see; whether the institution would not flourish by reason of what they would term persecution. And so, notwithstanding a protest has been sent down here to you, I will say to you, the people have acquiesced in the condition that exists."

He explained that by "the people" he meant the Gentiles.

The following quotation from a speech by Senator DUBOIS, reported in the CONGRESSIONAL RECORD of February 5, 1903, page 1729 et seq., is to the same general effect:

"Mr. DUBOIS. * * * Various causes operated to cause the Mormons to abandon polygamy. There was a feeling among the younger members of the Mormon Church, and a very strong feeling, that polygamy should be done away with. So here was this pressure within the church against polygamy and the pressure by the Government from outside the church against polygamy. In 1891, I think it was, the president of the Mormon Church issued a manifesto declaring that thereafter there should be no polygamous marriages anywhere in the

Mormon Church. The Mormons were then called together in one of their great conferences, where they meet by the thousands. This manifesto was issued to them by the first presidency, which is their authority; was submitted to them, and all the Mormon people ratified and agreed to this manifesto, doing away with polygamy thereafter.

"The Senator from Maine [Mr. HALE] will recall that I came here as a Senator from Idaho shortly after that, and the Senator from Connecticut [Mr. Platt] will recall how bitter and almost intemperate I was in my language before his committee and on the floor of the other House in the denunciation of these practices of the Mormon Church. But after that manifesto was issued, in common with all of the Gentiles of that section who had made this fight, we said: 'They have admitted the right of our contention and say now, like children who have been unruly, we will obey our parents and those who have a right to guide us; we will do those things no more.' Therefore we could not maintain our position and continue punishing them unless it was afterwards demonstrated that they would not comply with their promise.

"After a few years in Idaho, where the fight was the hottest and the thickest, we wiped all of those laws from our statute books which aimed directly at the Mormon people, and to-day the laws on the statute books of Idaho against polygamy and kindred crimes are less stringent than in almost any other State in the Union. I live among those people; and, so far as I know, in Idaho there has not been a polygamous marriage celebrated since that manifesto was issued, and I have yet to find a man in Idaho or anywhere else who will say that a polygamous marriage has been celebrated anywhere since the issuance of that manifesto.

"Mr. HALE. Then it must follow from that, as the years go by and as the older people disappear, polygamy as a practice will be practically removed.

"Mr. DUBOIS. There is no question about it; and I will say to the Senator, owing to the active part which we took in that fierce contest in Idaho, I with others who had made that fight thought we were justified in making this promise to the Mormon people.

"We had no authority of law, but we took it upon ourselves to assure them that those older men who were living in the polygamous relation, who had growing families which they had reared and were rearing before the manifesto was issued, and at a time when they thought they had a right under the Constitution to enter into polygamous relations—that those older men and women and their children should not be disturbed; that the polygamous man should be allowed to support his numerous wives and their children.

"The polygamous relations, of course, should not continue, but would not compel a man to turn his families adrift. We promised that the older ones, who had contracted those relations before the manifesto was issued, would not be persecuted by the Gentiles; that time would be given for them to pass away, but that the law would be strenuously enforced against any polygamous marriage which might be contracted in the future."

Much more testimony might be quoted of the same general character. It is sufficient, however, for the purpose of this summary to say that there is practically no testimony in conflict with that which has been quoted.

In other words, the conditions existing in Utah since REED SMOOT became an official of the Mormon Church in 1900 have been such that non-Mormons and Mormons alike have acquiesced in polygamous cohabitation on the part of those who married before the manifesto of 1890, as an evil that could best be gotten rid of by simply tolerating it until in the natural course of events it shall have passed out of existence.

With this disposition prevailing everywhere in the State of Utah among all classes—the Gentile or non-Mormon population as well as among the Mormons—the undersigned are of the opinion that there is no just ground for expelling Senator SMOOT or for finding him disqualified to hold the seat he occupies because of the fact that he, in common with all the people of his State, has not made war upon, but has acquiesced in, a condition for which he had no original responsibility. In doing so he has only conformed to what non-Mormons, hostile to his church, as well as Mormons, have concluded is, under all the circumstances, not only the wisest course to pursue, but probably the only course that promises effective and satisfactory results.

J. B. FORAKER.
ALBERT J. BEVERIDGE.
WM. P. DILLINGHAM.
A. J. HOPKINS.
P. C. KNOX.

Statement.

The minority respectfully submit the following statement as a part of their foregoing report:

January 27, 1903, the Senate adopted the following Senate Resolution No. 205:

"*Resolved*, That the Committee on Privileges and Elections of the Senate, or any subcommittee thereof, be authorized and directed to investigate the right and title of REED SMOOT to a seat in the Senate as Senator from the State of Utah, and said committee, or any subcommittee thereof, is authorized to sit during the sessions of the Senate, to employ a stenographer, to send for persons and papers, and to administer oaths; and that the expense of the inquiry shall be paid from the contingent fund of the Senate upon vouchers to be approved by the chairman of the committee."

At the time of the adoption of this resolution there were pending in the Senate two formal protests against the admission of REED SMOOT to the Senate, both having been filed before he took his seat. One of these protests is signed by W. M. Paden and seventeen others, and the other by John L. Leilich alone, Mr. Leilich being also one of the seventeen who signed the principal protest.

Shortly before the adoption of the foregoing resolution at a preliminary hearing on the 16th day of January, 1903, of which notice was duly given, counsel appeared before the committee representing Mr. Paden and others who signed the principal protest, and Mr. SMOOT also appeared in person and by counsel. At that time statements were made by counsel for the respective parties stating in a general way what they expected to prove and what their claims were as to the legal aspects of the case. Later the taking of testimony commenced.

Numerous witnesses were produced and examined before the committee, both on behalf of the protestants and on behalf of Mr. SMOOT. The taking of this evidence was continued from time to time until the 25th day of January, 1905, when the further taking of testimony was closed and counsel were heard in argument. The committee took the case under consideration with a view to making a report. Afterwards, at the present session, the case was reopened for the further taking of testimony, after which the case was again argued by counsel.

In the protest signed by Mr. Leilich alone it was charged that REED SMOOT is a polygamist, and that, as an apostle of the Church of Jesus Christ of Latter-Day Saints, commonly called the "Mormon Church," he had taken an oath "of such a nature and character as that he is thereby disqualified from taking the oath of office required of a United States Senator." No one appeared, however, to sustain either of these charges. No evidence has been offered in support of either of them, but, on the contrary, both charges were refuted by a number of witnesses.

The investigation made by the committee has been based chiefly upon the charges made in the protest signed by Mr. Paden and others.

At the preliminary hearing already referred to, counsel for the protestants presented, in a more formal way than had been done in the protest itself, the charges supposed to be embodied in that protest.

The charges thus presented are as follows:

First. The Mormon priesthood, according to the doctrine of that church and the belief and practice of its membership, is vested with, and assumes to exercise, supreme authority in all things temporal and spiritual, civil and political. The head of the church claims to receive divine revelations, and these REED SMOOT, by his covenants and obligations, is bound to accept and obey, whether they affect things spiritual or things temporal.

Second. The first presidency and twelve apostles, of whom REED SMOOT is one, are supreme in the exercise of this authority of the church and in the transmission of that authority to their successors. Each of them is called prophet, seer, and revelator.

Third. As shown by their teaching and by their own lives, this body of men has not abandoned belief in polygamy and polygamous cohabitation. On the contrary—

(*a*) As the ruling authorities of the church they promulgate in the most solemn manner the doctrine of polygamy without reservation.

(*b*) The president of the Mormon Church and a majority of the twelve apostles now practice polygamy and polygamous cohabitation, and some of them have taken polygamous wives since the manifesto of 1890. These things have been done with the knowledge and countenance of REED SMOOT. Plural-marriage ceremonies have been performed by apostles since the manifesto of 1890, and many bishops and other high officials of the church have taken plural wives since that time. All of the first presidency and twelve apostles encourage, countenance, conceal, and connive at polygamy and polygamous cohabitation, and honor and reward by high office and distinguished preferment those who most persistently and defiantly violate the law of the land.

Fourth. Though pledged by the compact and bound by the law of their Commonwealth, this supreme body, whose voice is law to its people and whose members were individually directly responsible for good faith to the American people, permitted, without protest or objection, their legislators to pass a law nullifying the statute against polygamous cohabitation.

In substance these charges, so far as they seem to be a proper subject of inquiry here, are:

1. That the Mormon Church exacts and receives from its members, including REED SMOOT, absolute obedience in all political matters.

2. That the Mormon Church is promulgating the doctrine of polygamy, and that the first presidency and all the twelve apostles, including REED SMOOT, "encourage, countenance, conceal, and connive at polygamy and polygamous cohabitation, and reward those who practice it."

No evidence has been submitted to the committee or has come to its knowledge in anywise affecting injuriously the general character of REED SMOOT. On the contrary, it has been admitted by the protestants, through their counsel, and a number of witnesses on both sides have testified, that his moral character is unimpeachable in every respect. In the protest of Mr. Paden and others it is explicitly stated that they do not charge him with any offense cognizable by law.

SOME HISTORICAL FACTS.

To a proper understanding of the voluminous evidence in the case, in so far as it tends to throw any light upon the question whether REED SMOOT is entitled to retain his seat in the Senate, it will be useful to set forth, in a preliminary way, certain indisputable historical facts.

The Mormon people, under the lead of Brigham Young, in their pilgrimage from Nauvoo, Ill., settled at the place now known as Salt Lake City in the summer of 1847. The place where they located was, at that time, Mexican territory. The Mormons, however, hoisted the Stars and Stripes on an eminence near the city, ever since called Ensign Peak.

On the 20th day of September, 1850, Brigham Young, the then head of the Mormon Church, was nominated for governor of the Territory of Utah by President Fillmore, and his appointment was confirmed by the Senate September 28, 1850. During his term of office under that appointment, and in the year 1852, Brigham Young, as the president of the Mormon Church, formally and publicly proclaimed polygamy as a doctrine of that church.

There is some dispute as to whether polygamy had not been proclaimed in 1844 by Joseph Smith, jr., Brigham Young's predecessor as president of the church; but it is not deemed necessary in this statement to consider the merits of that controversy. The admitted fact is that from the time of Brigham Young's announcement in 1852 polygamy was openly practiced in Utah by many of the Mormon people, including Brigham Young himself.

When his term of office as governor of the Territory expired in 1854 he was appointed for another term of four years by President Pierce, his nomination being again confirmed by the Senate; he served out his second full term of four years. During all of this time he continued to be president of the church and to openly live in polygamous relations with several wives.

ACT OF 1862.

There seems to have been no attempt by the Government of the United States to interfere with the practice of polygamy in Utah until July 1, 1862, on which date an act of Congress entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," became a law (12 Stat. L., 501).

The first section of that act is as follows:

"That every person having a husband or wife living, who shall marry any other person, whether married or single, in a Territory of the United States, or other place over which the United States have exclusive jurisdiction, shall, except in the cases specified in the proviso to this section, be adjudged guilty of bigamy, and, upon conviction thereof, shall be punished by a fine not exceeding $500, and by imprisonment for a term not exceeding five years: *Provided, nevertheless*, That this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have

been absent for five successive years without being known to such person within that time to be living; nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court; nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage contract."

It will be observed that while this section of the act of 1862 made it a penal offense to take a plural wife or husband it did not punish or in any wise interfere with the continued cohabitation of those who had previously entered into the polygamous relation.

THE EDMUNDS LAW.

Such cohabitation was not made an offense until March 22, 1882, when the so-called "Edmunds Act" became a law (22 Stat. L., 30). This act of 1882 amended the act of July 1, 1862 (which in the meantime had become section 5352 of the Revised Statutes). Section 3 of the amendatory act provided:

"SEC. 3. That if any male person, in a Territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $300, or by imprisonment for not more than six months, or by both such punishments, in the discretion of the court."

In the seventh section of the same act it was provided as follows:

"SEC. 7. That the issue of bigamous or polygamous marriages, known as "Mormon marriages," in cases in which such marriages have been solemnized according to the ceremonies of the Mormon sect, in any Territory of the United States, and such issue shall have been born before the 1st day of January, A. D. 1883, are herby legitimated."

Soon after the Edmunds Act became a law prosecutions were instituted in the Territorial courts against persons who were living in polygamy, those prosecutions being nearly all under the third section of the act, which made it an offense for a man to cohabit with more than one woman. From that time until October, 1890, the number of polygamous marriages in Utah decreased, but the practice was not entirely stopped.

THE EDMUNDS-TUCKER ACT.

By what is called the Edmunds-Tucker Act, approved March 3, 1887 (24 Stat. L., 635), the rules of evidence were changed so as to make a lawful husband or wife of a person accused of bigamy, polygamy, or unlawful cohabitation a competent witness.

By section 7 of that act the various acts of the legislative assembly of the Territory of Utah incorporating or continuing the corporation known as the "Church of Jesus Christ of Latter-Day Saints" were disapproved and annulled, and that corporation dissolved; and it was further made the duty of the Attorney-General of the United States to take proper proceedings in the supreme court of the Territory to wind up the affairs of the corporation. Section 11 of this act of 1887 further provided as follows:

"SEC. 11. That the laws enacted by the legislative assembly of the Territory of Utah which provide for or recognize the capacity of illegitimate children to inherit or to be entitled to any distributive share in the estate of the father of any such illegitimate child are hereby disapproved and annulled; and no illegitimate child shall hereafter be entitled to inherit from his or her father or to receive any distributive share in the estate of his or her father: *Provided*, That this section shall not apply to any illegitimate child born within twelve months after the passage of this act, nor to any child made legitimate by the seventh section of the act entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' approved March 22, 1882."

REYNOLDS V. THE UNITED STATES.

Although the act of 1862, above referred to, made it a criminal offense to marry a plural wife in the Territories of the United States, and although polygamy was openly and publicly practiced, there seems to have been little effort on the part of the Government to suppress it in Utah for many years after that time. Finally, however, one George Reynolds was indicted and charged with bigamy under that act, and his case was taken to the Supreme Court of the United States.

The principal question involved was whether, since polygamy was a duty under the religious doctrines of the Mormon Church, an act of Congress punishing the taking of a plural wife was an unconstitutional interference with religion. That case was decided at the October term, 1878 (Reynolds *v.* United States, 97 U. S., 145). The court held that while it was not competent for Congress to make a mere belief a punishable offense, yet it was entirely competent for it to make criminal an act which the person committing it might consider to be a duty under his religious belief.

It is worthy of note that the belief of the Mormons in the unconstitutionality of the act in question was so strong that Reynolds, a member of the church, voluntarily enabled proof of his offense to be obtained in order that the constitutionality of the act might be tested.

THE MANIFESTO OF 1890.

On the 26th of September, 1890, Wilford Woodruff, then president of the Mormon Church, issued what is called "The manifesto," of which the following is a copy:

OFFICIAL DECLARATION.

To whom it may concern:

Press dispatches having been sent for political purposes from Salt Lake City, which have been widely published, to the effect that the Utah Commission, in their recent report to the Secretary of the Interior, allege that plural marriages are still being solemnized, and that forty or more such marriages have been contracted in Utah since last June, or during the past year; also that in public discourses the leaders of the church have taught, encouraged, and urged the continuance of the practice of polygamy:

I, therefore, as president of the Church of Jesus Christ of Latter-Day Saints, do hereby, in the most solemn manner, declare that these charges are false. We are not teaching polygamy, or plural marriage, nor permitting any person to enter into its practice, and I deny that either forty or any other number of plural marriages have during that period been solemnized in our temples or in any other place in the Territory.

One case has been reported in which the parties alleged that the marriage was performed in the endowment house, in Salt Lake City, in the spring of 1899, but I have not been able to learn who performed the ceremony; whatever was done in this matter was without my knowledge. In consequence of this alleged occurrence the endowment house was, by my instructions, taken down without delay.

Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws and to use my influence with the members of the church over which I preside to have them do likewise.

There is nothing in my teachings to the church or in those of my associates during the time specified which can be reasonably construed to inculcate or encourage polygamy, and when any elder of the church has used language which appeared to convey any such teachings he has been promptly reproved. And I now publicly declare that my advice to the Latter-Day Saints is to refrain from contracting any marriage forbidden by the law of the land.

WILFORD WOODRUFF,
President of the Church of Jesus Christ of Latter-Day Saints.

At the semiannual general conference of the members of the Mormon Church, which was held on October 6, 1890, the foregoing declaration was unanimously accepted "as authoritative and binding." Two years later it was again approved by the general conference of the church. Since it was first approved by the general conference, in October, 1890, it has been and still remains a part of the fundamental law of the Mormon Church, which can be repealed or modified only by the action of a similar conference.

As to the effect of the manifesto on the power of the president of the Mormon Church, or any subordinate official, to celebrate a plural marriage, we quote a part of the testimony of James E. Talmage. Doctor Talmage prepared and issued, under the auspices of the church authorities, a work called "Articles of Faith," which authoritatively sets forth the doctrines of the church, having been submitted to, approved by, and published by the church itself. (Vol. III, pp. 47 and 48.)

"Mr. WORTHINGTON. Doctor, you have used the expression here "holding the keys" in connection with that revelation involving polygamy, when it was given to Joseph Smith, jr., that he was the only man who held the keys to that power. He only at that time, or some person delegated by him, could make a plural marriage that would be valid according to the laws of the church. Am I right in that?

"Mr. TALMAGE. Yes, sir.

"Mr. WORTHINGTON. From that time on down to the time that President Woodruff issued this manifesto, which the church approved in conference assembled, the same principle obtained?

"Mr. TALMAGE. Yes, sir.

"Mr. WORTHINGTON. That a plural marriage could not be valid according to the law of the church, only when celebrated by the president or by somebody authorized by him to celebrate it. Is that right?

"Mr. TALMAGE. That is strictly true.

"Mr. WORTHINGTON. Then when this revelation, which is called the 'manifesto,' came and it was submitted to the people and accepted by them, that power was taken away from the president, was it not?

"Mr. TALMAGE. Yes, sir.

"Mr. WORTHINGTON. So that since the 6th of October, 1890, the president of the church had no power to solemnize a plural marriage according to the law of the church, even?

"Mr. TALMAGE. That is true.

"Mr. WORTHINGTON. And no power to authorize anybody else to celebrate one?

"Mr. TALMAGE. That is true.

"Mr. WORTHINGTON. So that if any person has undertaken to enter into plural marriage, if any woman has become the plural wife of a husband since the 6th day of October, 1890, she is no more a wife by the law of the church than she is by the law of the land?

"Mr. TALMAGE. That is true.

"Mr. WORTHINGTON. And it is not in the power of the president to revive the old system so that he can make a valid plural marriage or authorize one, unless he does it through the general conference of the church?

"Mr. TALMAGE. Certainly. It is now a rule of the church that that power shall not be exercised. The power is there, but the exercise of it is entirely stopped, and a rule of the church thus made and sanctioned is equally binding with the law founded upon revelation, and the president therefore has in one sense, half voluntarily, inasmuch as he was the chief individual to bring it before the conference, but by the action of the conference, properly speaking, has surrendered that power as far as its exercise is concerned.

"Mr. WORTHINGTON. It takes the action of the people to restore it, does it not?

"Mr. TALMAGE. Most assuredly——." (3—48, 49.)

THE ENABLING ACT.

The enabling act, under which Utah, in January, 1896, was finally admitted into the Union, was passed by Congress on July 16, 1894 (28 Stat. L., 107). By section 3 of that act it was required that the State convention, which was authorized to be called to organize the State government, should provide:

"By ordinance irrevocable without the consent of the United States and the people of said States—

"First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship: *Provided*, That polygamous or plural marriages are forever prohibited.'"

It is very important to observe that while this act made it a condition to the admission of the State that polygamous or plural marriages should not be allowed, no provision of any kind was made against polygamous cohabitation. That offense was left to be governed by the constitution and laws of the State as the inhabitants of the State might determine.

The testimony shows that the distinction thus made by Congress in the enabling act between polygamous marriages and polygamous cohabitation was intentional. Polygamous marriages, as we have seen, were not forbidden by any act of Congress until 1862, ten years after polygamy had become prevalent in Utah. It was twenty years later still, 1882, before Congress prohibited polygamous cohabitation.

From the time polygamy was first promulgated by Brigham Young, as president of the Mormon Church, until about five years thereafter, he was continued in office by the Government as governor of the Territory. Both the Edmunds Act of 1882 and the Edmunds-Tucker Act of 1887 recognized polygamous marriages to the extent of making legitimate all the children born of such marriages prior to the passage of those acts, respectively, who might be born within a period in one case of nine months and nine days and in the other twelve months after the passage of the act.

POLYGAMOUS COHABITATION.

Under these laws families had been created, and children born of polygamous marriages had grown to manhood and womanhood. It is not surprising, under such circumstances, that there was a feeling on the part both of the Government officials in that Territory and of the people of the Territory that if further polygamous marriages should cease the continuance of polygamous relations theretofore created might be tolerated, if they were not openly or flauntingly carried on.

To prohibit such relations would be to deny the parents of legitimated children to dwell together with such children. Some twenty-five or thirty witnesses have been examined on this subject, most of them non-Mormons and several of them witnesses called on behalf of the protestants. There is a practical unanimity among them that at least from the time of the admission of the State into the Union, which occurred on January 4, 1896, there was practically a universal disinclination to prosecute those who had plural families born of relations established before the manifesto of 1890.

As a sample of the evidence on this subject we refer to the testimony of Judge William M. McCarty, one of the associate justices of the supreme court of Utah. He was assistant United States attorney for the Territory of Utah from 1889 until 1902, when he was elected county attorney of Sevier County, in that Territory. He was reelected in 1894. In 1895 he was elected one of the district judges of the State of Utah.

He was reelected to that office in 1900, and in 1902 was elected to his present office. He is a non-Mormon, and has always been an uncompromising opponent of polygamy. He conducted some of the prosecutions for polygamous cohabitation between the date of the manifesto, in 1890, and the admission of the State into the Union in January, 1896. He testified:

"I prosecuted them before the United States commissioners up until 1893, when the United States attorney refused to allow my accounts for services for that kind of work, and then I quit and confined my investigations before the grand jury in those cases."

And Judge McCarty further testified that the superior to whom he referred as stopping the prosecution for polygamous cohabitation was John W. Judd, a Gentile.

In 1897 some prosecutions for polygamous cohabitations against men who were married before the manifesto came before Judge McCarty as district judge of the State. The accused in those cases admitted their guilt and were punished by a fine only, upon agreeing to cease cohabitation with their plural wives. Judge McCarty testified that it was after these prosecutions he obtained the first emphatic expression he had observed as to the state of public opinion in Utah at that time regarding such prosecutions.

He said that he found the press was against such prosecutions; that the public prosecutor, whose attention he invited to the matter, refused to proceed. From this and other facts which came to his knowledge Judge McCarty reached the conclusion that the public sentiment of the State was against interfering with men in their polygamous relations who had married before the manifesto. (Vol. 2, 882 to 886, 889, 916.)

E. B. Critchlow, a Gentile lawyer, of Salt Lake City, who prepared the principal protests in this case and who, during the early sittings of the committee, assisted Mr. Tayler, counsel for the protestants, in presenting their case, testified as a witness on behalf of the protestants that after the manifesto of 1890 there was no inclination on the part of the prosecuting officer to "push these matters as to present cohabitation," "thinking it was a matter that would immediately die out;" that it was well known that Apostle John Henry Smith was living in unlawful cohabitation; that non-Mormons generally made no objection to it; that they were disposed "to let things go," and that that was the general feeling from the time of the manifesto in 1890 "down to very recent times—pretty nearly up to date or practically up to date."

Mr. Critchlow further testified that the non-Mormons were disposed to overlook the continuous polygamous cohabitation of those who had taken plural wives before the manifesto, because they—the non-Mormons—felt satisfied that there would be no more plural marriages; that the thing would work itself out in the future, and that where the polygamists had their wives in separate houses and simply kept up the old relations without the offensive flaunting of them before the public it had been practically passed over. (Vol. 1, 624, 625.)

Another witness called on behalf of the protestants was Orlando W. Powers, a leading lawyer of Utah, a non-Mormon, who was associate justice of the supreme court of the Territory of Utah in 1885 and 1886, and whose testimony in general shows his strong feeling against the Mormon Church. He testified that, speaking for those who fought the church party in the days when it was a power, they had felt and still feel that if the church would stop new plural marriages, those who had contracted such marriages before the manifesto would not be interfered with. After stating that the people who lived in the East had no understanding of the situation in this regard in Utah, Judge Powers added:

"That condition exists. There is a question for statesmen to solve. We have not known what was best to do. It has been discussed, and people would say that such and such a man ought to be prosecuted. Then they would consider whether anything would be gained; whether we would not delay instead of hastening the time that we hope to live to see; whether the institution would not flourish by reason of what they would term persecutions. And so, notwithstanding a protest has been sent down here to you, I will say to you the people have acquiesced in the condition that exists."

Then the witness added that by "the people" he meant the Gentiles. (Vol. 1, 884–885.)

William J. McConnell, ex-governor of Idaho and ex-Senator of the United States from that State, when asked whether there was any public sentiment in Idaho in reference to prosecutions for simply unlawful cohabitation, as distinguished from new polygamous marriages, replied:

"It was understood and agreed when we adopted our State constitution and were admitted to statehood, that these old Mormons who had plural families would be allowed to support their wives and children without molestation. It was agreed by all parties, Democrats and Republicans alike, that they should be allowed to drift along. We could, under the law, have prosecuted these people and perhaps have sent them to jail. We could doubtless have broken up these families, but we felt it better that these men should be allowed to support these old women and these children than to further persecute them" (2; 522).

This witness was sharply cross-examined by Mr. Taylor and by the chairman on this subject, with the result that he made his testimony more emphatic (2, 524, 526).

On his redirect examination he further stated that he agreed to the foregoing testimony of Mr. Critchlow and Mr. Powers (2, 531, 532).

F. H. Holzheimer, a leading lawyer of Idaho, who was practicing his profession in Utah until November, 1902, testified that the issuing of the manifesto of 1890 brought about a very peculiar state of affairs, and that the question of how to take care of the problem was one which confronted the people of Utah, and which the witness did not think they have really solved.

He added:

"The consensus of opinion at that time was that those who had contracted marriages prior to the manifesto should be left alone. It was not, however, believed that they should openly violate the law and unlawfully cohabit with their numerous wives. I will say this, that where that has occurred it has been mostly in isolated cases. There have been a number of cases where children have been born, but in no case that I know of has it been done openly. It is true it is against the law, but it has not been done in such an open, lewd manner as has been intimated, nor has it been general. And because of the peculiar state of affairs it was the opinion that the whole thing would die out; that it was only a matter of a short time when the question would be entirely settled, because there would be no new marriages." (2; 575–576.)

Frank Martin, a lawyer of Idaho, testified that he believed those who were living in polygamous cohabitation in his State ought to be punished. But he added:

"A majority of our people seem to think that the best way, as far as concerns those old fellows who contracted these relations before the manifesto, as long as they stop it and do not take any new wives, or as long as no new wives are taken, is to let it go, to let it gradually die out, to let the old ones die." (2; 262.)

James H. Brady, a Gentile of Idaho, who operates several irrigation canals in that State and owns a power plant at the American Falls, when asked what is the sentiment in Idaho regarding disturbing or leaving undisturbed the men who went into polygamy prior to the manifesto of 1890, answered:

"To be absolutely frank in the matter, my judgment is that a majority of the men in Idaho would favor leaving those old men to live out their lives just as they have started in." (2; 649.)

J. W. N. Whitecotton, a lawyer who resides at Provo City, where Senator SMOOT lives, and who is intimately acquainted in most of the Mormon counties in Utah, was asked what has been the sentiment among non-Mormons in Utah in regard to the men who had entered into polygamy prior to the manifesto of 1890, and answered:

"Well, that is a pretty hard question to answer. The Gentiles in Utah have recognized that we have a very hard problem to deal with in that respect. It offers many embarrassing things. There has been a good deal said in this testimony—I have read it—about an understanding. I know nothing of any understanding in regard to that. But I do know this, that the people generally feel like they do not want to stir up this thing and set it to smelling any more. It has not a good odor.

"And there is another thing that they have taken into account in the neighborhood where I am, at least. When we get out to punish this man who is living in polygamy, put him in prison, they take into account somewhat the consequences that will come to his family. Now, the women who went into polygamy in Utah went into it because, although I think under a delusion, they thought it was a religious duty, and they are bound by the obligation. They feel that way.

"And under the rules of the church, as I understand them, a plural wife, if she is divorced from her husband, may not become the wife of another man, and those plural wives who have children are in a very precarious condition if they are to be entirely separated from the only protector they have. I think that the condition of these women and the children they have has probably entered as largely into the feeling of 'let the matter slide along and not bother it' as any other factor."

On his further examination on this subject, the following occurred:

"The CHAIRMAN. What is the sentiment in regard to those who contracted plural marriages before 1890 and are now living with their wives and having new children by them up to this time?

"Mr. WHITECOTTON. The sentiment is that it is an awful condition.

"The CHAIRMAN. That is a lawful condition?

"Mr. WHITECOTTON. That is an awful condition.

"The CHAIRMAN. Oh!

"Mr. WHITECOTTON. Leave off the 'l.' And we wish we were out of it. We do not know how to get out of it.

"The CHAIRMAN. What is the sentiment with respect to that class of people—approval or disapproval?

"Mr. WHITECOTTON. They have the disapproval of the people generally, but that does not go to the extent of causing a man to shoulder the responsibility of setting the law in motion against that man.

"The CHAIRMAN. So that that class of men are left without interference?

"Mr. WHITECOTTON. They are left practically without interference. They have our regrets, but we do not know how to get at them.

"Senator FORAKER. You have said that that is largely because of the regard the people have for the condition in which the plural wives and children would be left in case of a successful prosecution?

"Mr. WHITECOTTON. Yes, sir. I think that (regard for plural wives and children) is the chief cause of withholding the hand of prosecution. Those women are human, and so are their children, and they are not much to blame, either, especially the children." (2; 679–680.)

Hiram E. Booth, a practicing lawyer of Salt Lake City, and one of the leading managers in the State of the Republican party, upon being asked to explain why it is that, if the people of Utah, including a large part of the Mormon people, are so opposed to polygamy, those who are living in polygamous relations are not interefered with, said:

"Well, my explanation of that is that the principal fight of the Gentiles has been to do away with polygamous marriages. While during many years there were numerous prosecutions for unlawful cohabitation, it was not for the purpose of punishment so much, those people who lived in unlawful cohabitation, as it was to bring about a cessation of polygamous marriages. That was the principle for which we strove, to stop people from marrying in polygamy. This was finally brought about in 1890 by the manifesto of the president of the church, which was affirmed, or sustained, as they call it, by the conference on October 6, 1890, and again in 1891. We did not accept that in good faith at that time.

"That is, we were somewhat skeptical about it; but later we did. Now, there has been since that time a disinclination to prosecute men and women who live in unlawful cohabitation. One of my own reasons—the way I look at it—was this: My sympathy was with the plural wife and her children. By these prosecutions she suffered more really than the husband did. In nearly all of the cases I may say the plural wife is a pure-minded woman, a woman who believed that it was right according to the law of God for her to accept that relation, and

that she can not be released from her obligations when they are once entered upon.

"Mr. BOOTH. I should say, with Judge Powers and Mr. Critchlow, that the general sentiment among the Gentile people in Utah is a disinclination to prosecute those cases.

"Mr. WORTHINGTON. If I understand you, when Senator SMOOT was a candidate for Senator, and when he became an apostle, which was in April, 1900, things had settled down in Utah by the general acquiescence of the people that if there would be no new polygamous marriages the people who had entered into that relation before the manifesto should not be disturbed?

"Mr. BOOTH. Should not be disturbed; no, sir.

"Mr. WORTHINGTON. And that was the state of opinion there when he became an apostle?

"Mr. BOOTH. That was the state of opinion when he became an apostle.

"Mr. WORTHINGTON. And if he had gone against that state of opinion he would have been going against the public sentiment of the State, would he not?

"Mr. BOOTH. Yes.

"Mr. WORTHINGTON. Gentiles and Mormons?

"Mr. BOOTH. Gentiles and Mormons. I would say in that respect that where polygamous relations were carried on in such a way as to outrage public sentiment, in those cases, of course, a prosecution would have been demanded." (2; 714, 715, 723.)

Authur Pratt, who was deputy United States marshal in Utah from 1874 until 1882, and again from 1886 to 1890, and who probably arrested more Mormons charged with polygamy or polygamous cohabitation than any other man, said that he had heard Mr. Whitecotton and Mr. Booth testify on this subject, and that he agreed with them, for the reasons stated by them—not out of any pity or sympathy for the men, but out of sympathy and out of the suffering that would be entailed on the women and the children (2; 744).

E. D. R. Thompson, a non-Mormon, who has lived in Salt Lake City since 1889, never been a Mormon, and who has taken a leading part in Republican politics in that State, testified:

"Well, the general idea has been that this condition of things would gradually die away by the lapse of time. It has been generally repugnant to most people who take any position as against the Mormons in this matter which would imply either prosecution or persecution. In other words, they did not care to be informers." (2; 991.)

Charles De Moisy, a non-Mormon, who is a commissioner of the State bureau of statistics of Utah, and has never been a Mormon, says, in regard to the sentiment among Gentiles in Utah as to the punishment of those who live in polygamous cohabitation where the marriages were celebrated before the manifesto, "I think there is a matter of indifference about it"—that he himself thinks—"the less said about those things the better." (2; 1003.)

Glen Miller, a non-Mormon, who was United States marshal in the Territory of Utah for four and a half years, and had been a member of the State senate for two years after Utah had been admitted into the Union, when asked what is the sentiment of Gentiles in Utah in regard to prosecutions for polygamous cohabitation between persons who were married before the manifesto, answered:

"Well, there has been a sentiment against that, as there has been against any informing against any of the infractions of law generally. They have felt that it was only a question of time that the practice would die out through the death of those who practiced it and the removal of that generation" (3; 160).

John W. Hughes, who has never been a Mormon, and is the editor of a weekly paper in Salt Lake City, when asked the same question, replied:

"Well, the sentiment has been right along that these old fellows that are in polygamy—to let them alone and they will soon die out. Very soon none of them will be left. The great point with the Gentiles is that there will be no new plural marriages" (3; 163).

Mrs. Mary G. Coulter, a non-Mormon, whose husband is a physician in Ogden, testified:

"Those of us who have witnessed the old-time antagonisms and who are living and working for the new growth and progress do not believe in inquisitorial methods. We believe that the work of education, the establishment of industries, the developing of the mining regions, the building of railroads especially, and the influx of people, owing to the colonization schemes which are succeeding there, will in time eradicate all of the old and objectionable conditions." (3; 170.)

POLYGAMY IN OTHER COUNTRIES—HOW DEALT WITH.

A situation analogous to that existing in Utah after polygamy had been forbidden by the law of the church, as well as by the law of the State, arises in countries where polygamy is lawful, when missionaries have converted polygamists to the Christian faith. The question then frequently arises whether polygamists shall be admitted to the church; and if so, whether they shall be required to put away all of their families except one. In the argument of the case counsel for the respondent has referred to certain publications by various Christian churches, showing the proceedings that have taken place in some such cases and the results. The Presbyterian and Reformed Review, volume 7, for 1896, contains an article on "The baptism of polygamists in non-Christian lands," from which the following extracts are taken:

"At the regular meeting of the synod of India, held in Ludhiana, November, 1894, among the most important questions which came before the synod was this: Whether in the case of a Mohammedan or Hindoo with more than one wife, applying for baptism, he should in all cases, as a condition of baptism, be required to put away all his wives but one. After a very thorough discussion, lasting between two or three sessions of the synod, it was resolved, by a vote of 36 to 10, to request the general assembly, 'in view of the exceedingly difficult complications which often occur in the cases of polygamists who desire to be received into the church, to leave the ultimate dicision of all such cases in India to the synod of India.' The memorialists add: 'It is the almost unanimous opinion of the members of the synod that, under some circumstances, converts who have more than one wife, together with their entire families, should be baptized.'

"Not only is it thus the fact that more than four-fifths of the members of the synod of India believe that it may sometimes be our duty, under the conditions of society in India, to baptize a polygamist without requiring him first to put away all his wives but one, but when the missionary ladies present during the sessions of the synod, desirous of ascertaining the state of opinion among themselves on this subject, took a vote thereupon, of these thirty-six ladies, many of them intimately familiar with the interior of zenana life for years, all feeling no less hatred of polygamous marriage than their sisters in America, all but three signified their agreement with the majority of the synod, of which minority of three two had been only a few days in India, and were therefore without any experience touching the practical questions involved. Nor is this large majority of our missionaries singular in their belief on this subject.

"When some years ago the question was debated in the Panjab missionary conference, in which a large number of the missionaries and eminent Christian laymen of all denominations took part, ten out of twelve of the speakers expressed the same opinion as that held by more than four-fifths of the synod of India to-day. So the Rev. Dr. James J. Lucas, of Saharanpur, says that the brethren who maintained the lawfulness of not requiring a polygamist to put away any of his wives as a prerequisite to baptism 'are not even in a minority in the missionary body in India.'

"A few years ago the Madura Mission voted in favor of baptizing such, provided they had contracted their marriages in ignorance and there was no equitable way of securing a separation. Their action was disapproved by the American board, but it none the less illustrates again what is the judgment of a large part of those who, living in India, are in most intimate relation to the living facts, and who are thus far better qualified to form a right decision than can be the wisest men at home."

* * * * * * *

"Again, as bearing on the polygamist's duty, it should be noted that in the great majority of cases among the Hindus the second marriage is contracted because of the first wife having no children. So that when the general assembly requires the polygamist convert to put away all wives but the first, it requires him not only to signalize his conversion by violating a contract held valid alike by his Christian rulers and a large part of his Christian brethren, but to do this in such a way as shall inflict the greatest amount possible of cruel injustice and suffering, by turning out of his house that wife who is the mother of his children (who will naturally in most cases have to go with her) and denying to her conjugal rights of protection and cohabitation which he had pledged her.

"The wrong involved is aggravated under the conditions of life in India, in that it will commonly be practically impossible for the wife turned off, whichever she be, to escape the suspicion of being an unchaste woman, and she will inevitably be placed in a position where, with good name beclouded and no lawful protector, she will be under the strongest temptation to live an immoral life. No doubt polygamy is wrong; but then, is not breach of faith and such injustice and cruelty to an innocent woman and her children also wrong? If there is a law against polygamy, is there not a law also against these things even more explicit and indubitable? In the case supposed both can not be kept. Which shall the man be instructed to break?

"The general assembly of 1875 appears to have imagined that the injustice was done away by enjoining a man to 'make suitable provision for her support that is put away, and for her children, if she have any.' But this utterly fails to meet the case. For the breach of faith required remains, since the marriage contract, both according to Scripture and the law of all Christian lands, as well as of India, binds the husband not only to support, but equally to protection and cohabitation. But by the deliverence of 1875 all missionaries in non-Christian lands are directed by the general assembly to instruct the convert that, in order to baptism, he must keep the compact as regards the first particular, but break it as regards the others.

"Moreover, the moral end sought will, even so, not be gained. The wife put away may live in a separate house and at a distance—but then polygamists sometimes keep different wives in different homes—and it will not be easy to persuade a Hindoo or Mohammedan community, especially if the man still continue to give her money, as required by the assembly's law, that cohabitation really ceases."

In India and Christian Opportunity, a book published in 1904, the author of which is Harlan P. Beach, M. A., F. R. G. S., in dealing with the general subject of "Problems connected with new converts," the author, at page 222, says:

"1. *Polygamy.*—One difficulty in the way of receiving a professed convert, though affecting only a small percentage of candidates, is a most perplexing one; it is that of applicants who have more than one wife. As Hindoo or Mohammedan they have entered in good faith into marriage contracts with these wives, and if a man puts away all but one, what provision shall be made for the rejected, and on what principle shall he decide as to the one to be retained?

"While it is a question easily answered in missionary-society councils at home, it is a more serious problem at the front. Some good missionaries hold that where the husband is living the Christian life in all sincerity it is better to receive into the church such a candidate—though not eligible to any church office—than to require him to give up all but one wife and thus brand with illegitimacy his children by them, as well as occasion the wives so put away endless reproach and embarrassments."

In India's Problem, Krishna or Christ, which was published in 1903, the author of which is John P. Jones, D. D., of southern India, A. B. C. F. M., the author, in dealing with this question, says, on pages 289 and 290:

"In the consideration of the problem many things must be kept in mind. None more important than the claims to a cordial welcome from the church of any man who, in true faith and Christian earnestness, seeks admittance. If it be demanded of the man that he put away all but one of those wives taken in heathenism, then we ask whether it is Christian, or even just, to cast away one to whom he was solemnly and religiously pledged according to the laws of the land and with whom he has been linked in love and harmony for years and from whom he has gotten children? And if he is to put away one or more of his wives, which one shall it be? Shall it be the first wife?

"Certainly that would not be Christian. Or shall it be the second wife, who is the mother of his children and whom he probably married at the request of the first, who was childless, in order that he might raise seed unto himself? It is not easy on Christian grounds to decide such a problem as this, nor is it very Christian to put a ban upon any woman who, in accordance with their religion and their country's laws, has formed this sacred alliance with a man and has lived with him for years. Nor can it be right to brand with illegitimacy the children born of such a wedlock.

"I would not allow such persons, received into the Christian church, to become officers of the church. But I can not see why there may not be an humble place in the church of God for such and their families."

Whatever may be our personal views as to the propriety of the conduct of the people of Utah in thus practically overlooking the continuance of polygamous relations where those relations arose out of marriages celebrated before the manifesto of 1890, there can be no doubt that when REED SMOOT, in April, 1900, became an apostle of the Mormon Church, the great majority of the people of the State, non-

Mormons as well as Mormons, had practically agreed that it would be unwise to prosecute those who are living in such relations, or to in any wise interfere with them, unless those relations were flagrantly obtruded upon public notice.

REED SMOOT NOT RESPONSIBLE FOR POLYGAMY.

The charge of the protestants in this case, in substance, is that REED SMOOT connived at and encouraged, thereby becoming responsible for, the polygamous relations of certain of the officials of the church and of other polygamists. There is no evidence to support this charge except the fact that he acquiesced without protest in what the people of Utah generally accepted as unavoidable. In his answer and in his testimony, on his oath, he has positively denied that he has ever advised any person to violate the law, either against polygamy or against polygamous cohabitation.

No witness has been produced who has testified that he ever heard the respondent give any such advice, or in any wise defend such acts. The most anybody has attempted to charge is that he has, like others, both Mormons and non-Mormons, ignored the offense of polygamous cohabitation, both in the church and under the laws of the State, when such polygamous cohabitation was in consequence of plural marriages solemnized before 1890.

In view of the general situation and the fact that non-Mormons, even the most active opponents of the church, had by common consent adopted the policy of acquiescence as the wisest plan to pursue as to polygamous cohabitation, relying on time and the course of nature to cure the trouble, we do not think such passive acquiescence on the part of Mr. SMOOT can be held to amount to such an indorsement and encouragement of polygamous cohabitation as to make him responsible for it.

POLYGAMOUS MARRIAGES SINCE 1890.

It is further charged that notwithstanding the acts of Congress forbidding them, and in defiance of the manifesto of 1890, polygamous marriages have been celebrated by the authorities of the church since 1890.

We have already shown that since the manifesto forbidding the celebration of plural marriages became the law of the church by being ratified at a semiannual conference of the church, neither the president of the church nor any other officer thereof has the power to celebrate a plural marriage which would be any more binding under the law of the church than it would be under the law of the land.

Evidence relating to such plural marriages since 1890 could, of course, be competent in this case only as it might, with other evidence, tend to show that the respondent has advised such marriages, or in some way connived at or approved them.

On this point there is some evidence tending to show, but not in fact showing, that in the period of over fifteen years which has elapsed since the manifesto of 1890 was promulgated there may have been some fifteen or twenty cases in which a member of the Mormon Church has cohabited with a woman as his plural wife with whom he sustained no such relation prior to 1890.

In only one instance has the evidence shown the actual performance of the marriage ceremony and that occurred in Mexico. In that case it appears that a woman named Kennedy, in the year 1896, with her mother, on several occasions appealed to Apostle Teasdale, in Mexico, to marry her to a man who was already married and had a wife living, and that the apostle, whenever appealed to, refused to perform the marriage ceremony on the ground that it was forbidden by the church.

The parties then traveled in a wagon about 75 miles to an out-of-the-way place where, according to the testimony of the woman, Brigham Young, jr., another apostle, did marry her to the man in question. At the time this testimony was given Brigham Young, jr., was dead. No person testified to the ceremony except the woman who was married, and she stated that she did not tell Brigham Young that the man whom she was marrying had a wife living, and that so far as she knew he was not informed of that fact by any person.

There was no evidence offered tending to prove that the respondent had any knowledge of this alleged plural marriage until it came out in the testimony before the committee.

Among the cases of alleged plural marriage since 1890, referred to in the evidence, are those of two of the apostles, John W. Tayler and Mathias F. Cowley.

As to Apostle Tayler, L. E. Abbott gave testimony tending to show that it became public talk in or about 1902 that Tayler had then recently taken two plural wives. As to Apostle Cowley, the testimony is exceedingly indefinite as to whether he took a plural wife at all since 1890, and if so, when.

The respondent was examined as a witness in his own behalf, after the testimony with reference to the alleged recent plural marriages of these two apostles had been introduced, and on this subject testified that he knew nothing about the alleged marriages until the testimony relating to them was introduced here before the committee. He further said that he would ask that an investigation be made by the church authorities, and if it turned out that the charges were true he would not again vote to sustain them as apostles.

The taking of testimony in this case was closed and the case submitted to the committee after argument by counsel in February, 1905. But at the beginning of the present session, it being made known to the committee that it was desired to introduce further evidence on behalf of the protestants, the case was reopened and further testimony was heard on behalf of both the protestants and the respondent. The testimony was closed the second time on March 27, 1906; but, consulting the convenience of counsel for the protestants, the hearing by the committee of the final arguments of counsel in this case was postponed until April 12, 1906.

On account of these delays, for which neither the respondent nor his counsel are in any wise responsible, the case was not finally submitted to the committee for determination until after the final conference of the Mormon Church, which was held at Salt Lake City on April 6, 1906. At that conference it was made known that Taylor and Cowley had resigned from their positions as apostles in the preceding October, and that the resignations had been accepted. The conference approved this action, and also filled the vacancies thus created by new appointments.

We deem it unnecessary to go at length into the evidence relating to the other allegel plural marriages since 1890, for the reason that there is no evidence whatever in the record which even tends to show, as to any such plural marriage, actual or alleged, that the respondent had any knowledge that it was intended such marriage should be celebrated, or that he ever countenanced it in any way, or that since it took place he has at any time or in any way expressed approval of it.

In 1890, when the manifesto was promulgated, there were in the Mormon Church, according to church statistics, in the United States some 2,451 polygamous families. In May, 1902, this number had been reduced to 897. How many are left and how many of them are in Utah it is impossible to say; but probably about 500 would be a fair estimate. Many of the heads of these families are of advanced age. The population of Utah at the present time is about 500,000.

These figures strongly tend to show that, as a matter of fact, new polygamous marriages in Utah in any considerable numbers can not have taken place since 1890. In further evidence of this fact, and as showing the state of public sentiment as to polygamous cohabitation, we insert here an extract from the CONGRESSIONAL RECORD of February 5, 1903, page 1729 et seq., showing a statement made by Senator DUBOIS, who is well known to have familiar knowledge of this subject:

[CONGRESSIONAL RECORD, Feb. 5, 1903, p. 1729, et seq.]

"Mr. DUBOIS. * * * Various causes operated to cause the Mormons to abandon polygamy. There was a feeling among the younger members of the Mormon Church, and a very strong feeling, that polygamy should be done away with. So here was this pressure within the church against polygamy and the pressure by the Government from outside the church against polygamy.

"In 1891, I think it was, the president of the Mormon Church issued a manifesto declaring that thereafter there should be no polygamous marriages anywhere in the Mormon Church. The Mormons were then called together in one of their great conferences, where they meet by the thousands. This manifesto was issued to them by the first presidency, which is their authority, was submitted to them, and all the Mormon people ratified and agreed to this manifesto, doing away with polygamy thereafter.

"The Senator from Maine [Mr. HALE] will recall that I came here as a Senator from Idaho shortly after that, and the Senator from Connecticut [Mr. Platt] will recall how bitter and almost intemperate I was in my language before his committee and on the floor of the other House in the denunciation of these practices of the Mormon Church. But after that manifesto was issued, in common with all of the Gentiles of that section who had made this fight, we said:

"'They have admitted the right of our contention and say now, like children who have been unruly, we will obey our parents and those who have a right to guide us; we will do those things no more.' Therefore we could not maintain our position and continue punishing them unless it was afterwards demonstrated that they would not comply with their promise.

"After a few years in Idaho, where the fight was the hottest and the thickest, we wiped all of those laws from our statute books which aimed directly at the Mormon people; and to-day the laws on the statute books of Idaho against polygamy and kindred crimes are less stringent than in almost any other State in the Union. I live among those people; and, so far as I know, in Idaho there has not been a polygamous marriage celebrated since that manifesto was issued, and I have yet to find a man in Idaho or anywhere else who will say that a polygamous marriage has been celebrated anywhere since the issuance of that manifesto.

"Mr. HALE. Then, it must follow from that, as the years go by and as the older people disappear, polygamy as a practice will be practically removed.

"Mr. DUBOIS. There is no question about it; and I will say to the Senator, owing to the active part which we took in that fierce contest in Idaho, I with others who had made that fight thought we were justified in making this promise to the Mormon people. We had no authority of law, but we took it upon ourselves to assure them that those older men who were living in the polygamous relation, who had growing families which they had reared and were rearing before the manifesto was issued, and at a time when they thought they had a right under the Constitution to enter into polygamous relation—that those older men and women and their children should not be disturbed; that the polygamous man should be allowed to support his numerous wives and their children.

"The polygamous relations, of course, should not continue, but we would not compel a man to turn his families adrift. We promised that the older ones who had contracted those relations before the manifesto was issued would not be persecuted by the Gentile; that time would be given for them to pass away, but that the law would be strenuously enforced against any polygamous marriage which might be contracted in the future."

As further evidence of the same character we call attention to the testimony of Judge Charles W. Morse, a member of the Methodist Church and one of the judges of the third judicial district of Utah. In May, 1903, by his direction, a special grand jury was convened at Salt Lake City for the purpose of investigating charges that new polygamous marriages were being celebrated. This grand jury was composed of Mormons and non-Mormons. Its report will be found on pages 867 to 870 of volume 3 of the testimony. In their report they say:

"We have investigated thoroughly all such cases brought to our attention by the district attorney and by citizens who have appeared before us, which were reported to have occurred within the jurisdiction of this court, and have not been able to secure evidence that a single case of polygamy has occurred in this district since Utah became a State. The rumors of the commission of this crime seem to have grown out of innocent circumstances, which in ordinary communities would have created no suspicion or scandal, but which here, probably owing to a feature of our territorial history, have been seized upon and the crime assumed without evidence, much to the chagrin and injury of innocent citizens, and greatly to the detriment of our State and its reputation throughout the nation. Those who prize the fair name of our State and the rights of our neighbors should hereafter be more careful to secure facts and evidence before charging this crime."

Judge McCarty, whose testimony has already been referred to, testified as follows:

"Mr. WORTHINGTON. I am coming down to that question next. What is your observation there as to whether, as a matter of fact, the number of people living in polygamy has decreased since 1890 in Utah?

"Mr. MCCARTY. Oh, the change has been phenomenal.

"Mr. WORTHINGTON. Phenomenal?

"Mr. MCCARTY. Yes; phenomenal. There are only a very few. In the little town in which I resided there for over twenty years there were a large number of polygamists. Oh, there must have been in the neighborhood of twenty of them, and I can not call to mind now but three of those old men who are living. They have all died or moved away. Two of them procured divorces, either a church divorce for a plural wife or a divorce in the courts for the legal wife.

"Mr. WORTHINGTON. What town is that to which you refer?

"Mr. MCCARTY. That is Monroe.

"Mr. WORTHINGTON. So that there polygamy is practically extinct?

"Mr. MCCARTY. Yes; and what can be said of Monroe can be said of most other towns in the State.

"Mr. WORTHINGTON. Most other towns in the State?

"Mr. MCCARTY. Yes." (Vol. 3, 888, 889.)

THE MORMON CHURCH AND POLITICS.

As to the charge that the Mormon Church interferes in and controls political affairs in Utah, we find the facts established by the evidence to be substantially as follows: From the time the Mormons reached Utah, in the summer of 1847, until 1891 there were no political parties in that Territory in the sense in which that expression would be used in other parts of the United States. There grew up in the Territory of Utah during that time two parties, one known as the People's Party, which was comprised exclusively of members of the Mormon Church and was controlled by the leaders of that church, and the Liberal party, which was composed of non-Mormons.

Owing to controversies concerning polygamy and other matters not in issue elsewhere in the United States, these two parties were not only composed, on the one hand, of members of a religious sect and on the other hand of those opposing that sect, but the controversy between the two parties was extremely bitter. It seems not to be controverted that until the year 1891 the People's Party was not only dominated by the church, but practically was the church. But after the manifesto of 1890, hereinbefore referred to, which forbade further polygamous marriages, many members, both of the Liberal party and of the People's Party, conceived it to be to the interests of the Territory that the people should divide on party lines as they were divided in other parts of the country, and that the Liberal party and the People's Party should be disbanded.

In the course of a few months this purpose was carried into effect. The great majority of the voters of the Territory of Utah, Mormons and non-Mormons, became either Republicans or Democrats, and political controversies in the Territory till 1896 and after that time in the State have been waged, as a rule, on the lines of the national political parties.

While it is no doubt true that the habit which the church and the members of the church had followed for so many years prior to the breaking up of the old parties of voters receiving counsel from officials of the church in regard to the selection of candidates for office was not at once completely broken off, yet the evidence further establishes that the improvement in this regard has been very rapid and that, of late years, the Mormon voters of the State adhere more closely to party lines than the non-Mormons do. We think the evidence establishes the fact that since REED SMOOT became an apostle of the Mormon Church on the 6th day of April, 1900, the Mormon Church has not controlled or attempted to control elections in Utah.

It is claimed, however, that the church, by an instrument called the "Political rule," has required of its members holding office in the church that before they shall become candidates for any political position they shall receive the consent of the church authorities; and that by this device the church has controlled the election of Senators of the United States.

This political rule will be found on pages 168 to 171, Volume I, of the printed report of the testimony before the committee. The meaning and effect of this instrument were very fully considered in the case of Moses Thatcher, who in 1896 was a candidate before the legislature of the State of Utah for election as Senator of the United States.

Thatcher, at the time, was one of the twelve apostles of the church, and he did not seek or obtain the consent of the church authorities to this candidacy. For this offense he was tried before a high church tribunal. The decision of this tribunal, the acceptance thereof by Moses Thatcher, and the acquiescense by the church authorities in the terms upon which he accepted the conclusion of the tribunal, will be found upon pages 563 to 573 of the same volume. Mr. Thatcher was a witness before the committee, and his testimony on this subject will be found on pages 1038 to 1040 of that volume.

The upshot of it all is that the political rule, as construed by these proceedings, left Thatcher, to use his own words, absolutely free as an American citizen, to exercise his rights as such, and left all the officers of the church absolutely free. In his acceptance of the decision of the council Thatcher expressly stipulated that in accepting it he violated none of the engagements theretofore entered into by him, "under the requirements of party pledges respecting the political independence of the citizen, who remains untrameled, as contemplated in the guaranties of the State constitution."

Indeed, in the political rule itself it is expressly stated that if any officer of the church wishes to become a candidate for a political office or to enter into any other engagement which will interfere with the duties of his church office, he may do so without soliciting or obtaining the consent of the church or its authorities by resigning his ecclesiastical position. The whole purport and effect of the rule seems to be that high church officials, filling positions which require them to give their time to their ecclesiastical duties, shall not enter into any engagements of any kind, political or otherwise, which require them to abandon or neglect such ecclesiastical duties, without first obtaining the consent of the authorities of the church.

Thus construed, the rule seems to be a reasonable one; but whether reasonable or unreasonable it does not seem to us that it is within the province of the General Government to interfere with it or punish in any way the members of the church because of its promulgation.

The evidence in the case clearly establishes that Mr. SMOOT, for some time before he became a candidate for the Senate and even before he became an apostle, was one of the leaders of the Republican party in the State of Utah; that he had been frequently spoken of either as a candidate for the governorship of the State or the Senate of the United States; that when he became a candidate for the Senate he was, in the words of some of the witnesses, the logical candidate for that office, and that he was elected by the votes of the Republicans in the legislature—Mormons and non-Mormons—and was opposed by the Democrats in that body—Mormons and non-Mormons. He says, in his testimony, that before formally becoming a candidate he went to the first president of the church and obtained the consent of the church to his becoming a candidate.

As already intimated, if that consent had been refused, it meant no more than if he became a Senator he must give up his apostleship.

There has been no evidence offered tending to show that any member of the Mormon Church has ever asked consent to become a candidate for any office and been refused.

THE ENDOWMENT OATH.

The only other charge made against the respondent which, in our opinion, merits attention was made in the protest signed by John L. Leilich, as follows:

"That the oath of office required of and taken by the said REED SMOOT as an apostle of the said church is of such a nature and character that he is thereby disqualified from taking the oath of office required of a United States Senator." (1; 28.)

This same charge was in effect made in the protest signed by W. M. Paden and 17 others in the following clause as a deduction from previous statements rather than a specific charge in itself:

"We submit that however formal and regular may be Apostle SMOOT's credentials or his qualifications by way of citizenship, whatever his protestations of patriotism and loyalty, it is clear that the obligations of any official oath which he may subscribe are and of necessity must be as threads of tow compared with the covenants which bind his intellect, his will, and his affections, and which hold him forever in accord with and subject to the will of a defiant and lawbreaking apostolate." (1; 25.)

In the sworn answer made by the respondent to these charges on this subject he says:

"As to the charge that the respondent is bound by some oath or obligation controlling his duty and his oath as a Senator, the respondent says that he has never taken any such oath or in any way assumed any such obligations. He holds himself bound to obey and uphold the Constitution and laws of the United States, including the condition in reference to polygamy upon which the State of Utah was admitted into the Union." (1; 31.)

During the examination of the first witness called by the protestants, Joseph F. Smith, a discussion arose, in which Senator HOAR stated that he understood that the committee had reached a conclusion that there were two issues in the case—one whether REED SMOOT had practiced polygamy, which the Senator understood had been abandoned, and that the only other one was whether or not as an official of the Mormon Church the respondent took an oath or obligation that was superior in his estimation and in its requirements upon him to the oath or obligation which he must take to qualify him as a Senator.

Thereupon Senator DUBOIS stated that both these contentions were set aside entirely and that it was not contended that they would be attempted to be proved by the attorneys representing the protestants. (1; 114.) In the course of further discussion a member of the committee having stated that he never knew until Mr. Tayler had stated it that he had abandoned the idea of proving that the respondent had taken an obligation that interfered with the obligations of his oath, Mr. Tayler replied:

"I can not abandon that which I never occupied or possessed."

Senator DUBOIS added, "He never alleged it." (1; 115.)

On a subsequent day, Senator BEVERIDGE, in order, as he stated, to correct what he thought was a mistake in the popular mind as to what were the charges against the respondent which the committee was considering, said that it had been charged that the respondent was a polygamist, which charge had been withdrawn, and that he had been charged with taking an oath inconsistent with his duty as a Senator, which Senator BEVERIDGE understood Mr. Tayler to say was not a charge that had been withdrawn, but was such a charge as had never been made, and that, therefore, the issue upon which the committee would proceed from that time on, so far as the protestants were concerned, was whether the respondent was a member of a conspiracy.

Thereupon Senator DUBOIS again stated that no charge had been made against Mr. SMOOT of taking an oath inconsistent with his oath as Senator except the Leilich charge, which had been abandoned and repudiated, and that the attorneys for the respondent "have been trying to force the protestants to issues which they themselves have never raised." (Vol. 1, p. 126.)

This was the state of the record when the testimony of Joseph F. Smith and several other witnesses had been taken, and the examination of Francis M. Lyman, one of the apostles, was progressing.

He was asked by the chairman to state what the "ceremony is in going through the endowment house." This being objected to by the counsel for respondent, the chairman said:

"One of the charges is that Mr. SMOOT has taken an oath or obligation incompatible with his obligation as a Senator. The object of this question is to ascertain from this witness, who went through the endowment house—of course I know nothing about it—whether any such obligation is taken."

Counsel for the respondent having thereupon stated that they understood that that charge had been expressly disclaimed by counsel for the protestants, the chairman replied:

"Counsel stated that they did not propose, as far as they were concerned, to offer any proof upon that question, but the Chair did not understand that therefore the committee was precluded from showing it." (1; 436.)

A little later in the same session Mr. Tayler, counsel for the protestants, again stated:

"It is in respect of those two things around which all of this case gathers—polygamy and the direction of the people by the apostolate—and if those two were eliminated this hearing would not be going on here." (1; 463.)

After the chairman of the committee had ruled, as above stated, that the witness Lyman was required to answer the question, his examination on this subject proceeded as follows:

"The CHAIRMAN. Will you please state what the ceremony is in going through the endowment house?

"Mr. LYMAN. I could not do so.

"Mr. WORTHINGTON. I object to that, Mr. Chairman, on the ground that it is inquiring into a matter prior to 1890, and I understood, or we were informed that the committee had decided that would not be done.

"The CHAIRMAN. One of the charges is that Mr. SMOOT has taken an oath or obligation incompatible with his obligation as a Senator. The object of this question is to ascertain from this witness, who went through the endowment house—of course I know nothing about it—whether any such obligation is taken.

"Mr. LYMAN. Is that the question you asked me, Mr. Chairman?

"The CHAIRMAN. No; that was not my question. It was a statement to counsel.

"Mr. WORTHINGTON. I had understood, Mr. Chairman, that that was expressly disclaimed by counsel here the other day.

"The CHAIRMAN. Counsel stated that they did not propose, as far as they were concerned, to offer any proof upon that question; but the chairman did not understand that therefore the committee was precluded from showing it. Is there any objection to the question?

"Mr. WORTHINGTON. I do object to it for the reasons already stated; and, further, because it does not follow at all that because the witness went through certain ceremonies or took certain obligations, if you please, Senator SMOOT took them.

"The CHAIRMAN. That would not follow of itself. If nothing further than this can be shown, of course it will have no bearing upon Mr. SMOOT at all. Read the question, Mr. Reporter.

"The reporter read as follows:

"'The CHAIRMAN. Will you please state what the ceremony is in going through the endowment house?

"'Mr. LYMAN. I could not do so.'

"Mr. WORTHINGTON. I do insist upon my objection. I understood the Chair to ask me whether I had any further objection.

"The CHAIRMAN. The Chair thinks it is permissible; and, as the Chair stated, if nothing appears beyond this to connect Mr. SMOOT with it, of course it will have no bearing upon the case. Can you state what that ceremony was?

"Mr. LYMAN. I could not, Mr. Chairman; I could not do so if it was to save my life.

"The CHAIRMAN. You could not?

"Mr. LYMAN. No, sir.

"The CHAIRMAN. Can you state any portion of it?

"Mr. LYMAN. I might approximate something of it that I remember.

"The CHAIRMAN. As nearly as you can.

"Mr. LYMAN. I remember that I agreed to be an upright and moral man, pure in my life. I agreed to refrain from sexual commerce with any woman except my wife or wives, as were given to me in the priesthood. The law of purity I subscribed to willingly, of my own choice, and to be true and good to all men. I took no oath nor obligation against any person or any country or government or kingdom or anything of that kind. I remember that distinctly.

"The CHAIRMAN. Of course the charge is made, and I want to know the facts. You would know about it, having gone through the endowment house?

"Mr. LYMAN. Yes.

"The CHAIRMAN. There was nothing of that kind?

"Mr. LYMAN. Nothing of that kind.

"The CHAIRMAN. No obligation or oath?

"Mr. LYMAN. Not at all; no, sir." (1; 436, 437.)

After this had occurred, Joseph F. Smith was recalled, and on this subject was further examined by counsel for the respondent, as follows:

"Mr. TAYLER. I wish to ask two questions. Mr. Smith, something has been said about an endowment oath. I do not want to go into that subject or to inquire of you what it is, but whatever oath or obligation has been taken by those who have been admitted to the church, at whatever stage it is taken, is the same now that it has been for years?

"Mr. SMITH. It is the same that it has always been.

"Mr. TAYLER. It is the same that it has always been?

"Mr. SMITH. Yes; so far as I know.

"Mr. TAYLER. No other oath is taken now than heretofore?

"Mr. SMITH. I should like to say that there is no oath taken; that we abjure oaths. We do not take oaths unless we are forced to take them.

"Mr. TAYLER. I understand. You understand what I mean—any obligation——

"Mr. SMITH. Covenant or agreement—we do that.

"Mr. TAYLER. Any obligation of loyalty to the church such as would be proper to be taken?

"Mr. SMITH. Certainly.

"Mr. TAYLER. That is the same now that it has always been?

"Mr. SMITH. Yes, sir; that it has always been, so far as I know. I can only say that they are the same as they were revealed to me.

"Mr. TAYLER. Exactly.

"Mr. SMITH. And as they were taught to me.

"Mr. TAYLER. You have known them for forty years or more?

"Mr. SMITH. I have been more or less acquainted with them for a great many years." (1; 484.)

It will be seen that neither the witness Lyman nor the witness Joseph F. Smith declined to answer any question that was put to him with regard to this alleged covenant or obligation.

The next witness on the subject (who, like the two preceding witnesses, was summoned and examined on behalf of the protestants), was Brigham H. Roberts. After counsel for the protestants had examined this witness and announced that they had no further questions to ask him, the following occurred:

"The CHAIRMAN. Mr. Roberts, there is another subject upon which I want to ask you a question. It has been stated here that the endowment house was taken down in 1890.

"Mr. ROBERTS. I think earlier than that.

"The CHAIRMAN. Well, at some time it was taken down?

"Mr. ROBERTS. Yes.

"The CHAIRMAN. Did you ever go through the endowment house?

"Mr. ROBERTS. Yes, sir.

"The CHAIRMAN. When?

"Mr. ROBERTS. I think it was in 1877.

"The CHAIRMAN. Have you been present at times when others have passed through the endowment house?

"Mr. ROBERTS. Yes, sir.

"The CHAIRMAN. Frequently?

"Mr. ROBERTS. No, sir.

"The CHAIRMAN. Is the ceremony that used to be performed in what was called "the endowment house" performed now?

"Mr. ROBERTS. I think so.

"The CHAIRMAN. Where?

"Mr. ROBERTS. When?

"The CHAIRMAN. Where, I say?

"Mr. ROBERTS. In the temples, as I understand it.

"The CHAIRMAN. How many temples are there in Utah?

"Mr. ROBERTS. I believe there are four.

"The CHAIRMAN. And the ceremony that used to be performed in the endowment house is now performed in the temple?

"Mr. ROBERTS. Yes, sir.

"Mr. WORTHINGTON. He says he thinks it is. He does not know.

"The CHAIRMAN. Do you remember the ceremony?

"Mr. ROBERTS. No, sir; I do not remember the ceremonies distinctly.

"The CHAIRMAN. Do you remember any portion of it?

"Mr. ROBERTS. Only in a general way, Senator.

"The CHAIRMAN. Do you know, Mr. Roberts, of any change in the ceremony performed in the endowment house and as it is performed to-day in the temple?

"Mr. ROBERTS. No, sir.

"The CHAIRMAN. The ceremony is the same. Now, will you state to the committee what that ceremony was, or is, as nearly as you can?

"Mr. ROBERTS. Well, the ceremonies consist of what would be considered a series of ceremonies, I take it, of which I only have a general impression.

"The CHAIRMAN. You have something more than a general impression in your own case?

"Mr. ROBERTS. No; I think not.

"The CHAIRMAN. How many days did it take you to go through the endowment house?

"Mr. ROBERTS. Well, part of one day.

"The CHAIRMAN. Who were present at the time? Do you remember?

"Mr. ROBERTS. I do not remember.

"The CHAIRMAN. Can you tell the committee any portion of that ceremony?

"Mr. ROBERTS. No, sir.

"The CHAIRMAN. Why not?

"Mr. ROBERTS. Well, for one reason, I do not feel at liberty to do so.

"The CHAIRMAN. Why not?

"Mr. ROBERTS. Because I consider myself in trust in relation to those matters, and I do not feel at liberty to make any disclosures in relation to them.

"The CHAIRMAN. It was then a secret?

"Mr. ROBERTS. Yes.

"The CHAIRMAN. Does this religious denomination have, as one of its ceremonies, secret obligations or covenants?

"Mr. ROBERTS. I think they could not be properly called secrets. Of course they are common to all worthy members of the church, and generally known by them.

"The CHAIRMAN. Well, secret from the world?

"Mr. ROBERTS. Secret from the world.

"The CHAIRMAN. The obligations and covenants, whatever they are, then you are not at liberty to disclose?

"Mr. ROBERTS. No, sir; I would be led to regard those obligations as similar to those who perhaps have passed through Masonic fraternities, or are members of Masonic fraternities.

"The CHAIRMAN. Then your church organization in that particular is a sort of Masonic fraternity?

"Mr. ROBERTS. It is analogous, perhaps, in some of its features.

"The CHAIRMAN. You say you can remember, of course, what occurred, but you do not feel at liberty to disclose it, and for that reason you will not disclose it?

"Mr. ROBERTS. Not specifically. I do not wish, however, Senator, to be understood as being in any sense defiant in that matter.

"The CHAIRMAN. That is not so understood, Mr. Roberts, at all.

"Mr. ROBERTS. I do not wish to put myself in opposition or raise any issue here at all.

"The CHAIRMAN. The reason you have assigned is accepted. The obligation, whatever it is, taken in the endowment house, is such that you do not feel at liberty to disclose it?

"Mr. ROBERTS. That is right.

"The CHAIRMAN. Should you do so, what would you expect as the result?

"Mr. ROBERTS. I would expect to lose caste with my people as betraying a trust.

"Senator OVERMAN. Do all members of the church have to go through that?

"Mr. ROBERTS. Not all members.

"Senator OVERMAN. What proportion of them, and how is it regulated?

"Mr. ROBERTS. It is governed chiefly by worthiness—moral worthiness.

"Senator BAILEY. And is it somewhat a matter of degrees, as it is in Masonry? I believe they have several degrees.

"The CHAIRMAN. Do you recall whether any penalty was imposed upon a person who should disclose the covenants?

"Mr. ROBERTS. No, sir.

"The CHAIRMAN. You do not remember?

"Mr. ROBERTS. Beyond the disfavor and distrust of his fellows.

"The CHAIRMAN. Have you ever been present at a marriage ceremony in the temple?

"Mr. ROBERTS. Yes, sir.

"The CHAIRMAN. Could you tell what that is?

"Mr. ROBERTS. I could not, only in a general way. The ceremony is of some length. I remember performing the ceremony in the case of my own daughter when she was married, and, not being familiar with the ceremony, a copy of it was placed in my hands and I read the ceremony, but I could only remember the general terms of it.

"The CHAIRMAN. If the members who have gone through the endowment house, then, keep faith with the church they will not disclose what occurred?

"Mr. ROBERTS. No, sir.

"Senator BAILEY. Do you feel at liberty, Mr. Roberts, to say whether or not there is anything in that ceremony that permits a man—I will adopt a different expression—that abridges a man's freedom of political action or action in any respect, except in a religious way?

"Mr. ROBERTS. No, sir.

"Sentor BAILEY. I do not quite understand whether you mean by your answer to say that you do not feel free to answer that or that there is nothing.

"Mr. ROBERTS. I mean to say that there is nothing. (1; 740, 742.) * * *

"The CHAIRMAN. I want to ask Mr. Roberts one further question. What is there in these obligations—I will not use the term "oaths"—that makes it necessary to keep them from the world?

"Mr. ROBERTS. I do not know of anything especially, except it be their general sacredness.

"The CHAIRMAN. Their general sacredness? Ought sacred things to be kept from the world?

"Mr. ROBERTS. I think some sacred things ought to be.

"The CHAIRMAN. Could you name one sacred thing in connection with this ceremony that should be kept from the world?

"Mr. ROBERTS. No, sir.

"The CHAIRMAN. Why? Because you can not remember?

"Mr. ROBERTS. Well, I could not say that. I would not say that, Senator.

"The CHAIRMAN. You do remember it, then—the sacred thing that you mean?

"Mr. ROBERTS. Some sacred things I do.

"The CHAIRMAN. But you can not state to the committee what they are?

"Mr. ROBERTS. I ask to be excused from stating them.

"The CHAIRMAN. But I can not understand exactly how the church organization has things that the world must not know of. I did not know but you could give some reason why.

"Mr. ROBERTS. I do not think I could throw any light upon that subject.

"The CHAIRMAN. All right; I will not press it." (1; 743.)

* * * * * * * *

"Mr. WORTHINGTON. I would like to ask, Mr. Roberts, whether this obligation or ceremony to which you refer in the endowment house

relates entirely to things spiritual or whether it relates to things temporal also?

"The CHAIRMAN. Would it not be better, Mr. Worthington, to let him state what the obligation is?

"Mr. WORTHINGTON. Yes; so far as I am concerned, I would very much prefer it; but I understand the suggestion by Senator PETTUS was that he was interpreting that which he would state.

"Of course I do not know anything more about this than the members of the committee do, but I think it might very well be that a witness might be allowed to state, and might properly say, that he would answer here as to anything that related to any temporal affairs; but as to things which related to matters between him and his God, or which he conceived to be between him and his God, he would not answer here or anywhere else, and that would not be an interpretation, but would simply be taking the protection which I understand the law gives to every man—that as to things which do relate entirely to religious matters they are matters which he has a right to keep within his own breast.

"The CHAIRMAN. Your question was whether these obligations related to spiritual affairs or temporal affairs.

"Mr. WORTHINGTON. Yes; that was my question.

"The CHAIRMAN. The trouble is he interprets a thing which is unknown and unseeable to us, and which he considers spiritual.

"Mr. CARLISLE. What he considers spiritual we might consider temporal, if the matter itself was disclosed.

"The CHAIRMAN. It seems to me that the witness having refused to state what the ceremony is, or what the obligations demand, ought not to be questioned and permitted to state what he thinks it did not convey, or what obligation it imposed, or what it did not impose. The committee can judge of that.

"Mr. WORTHINGTON. Of course we are here not representing the witness, but representing only Senator SMOOT.

"The CHAIRMAN. Yes.

"Mr. WORTHINGTON. And it is the witness pleading a privilege and making the refusal and not Senator SMOOT or his counsel. We would like to have this question answered.

"The CHAIRMAN. What is the question?

"Mr. WORTHINGTON. The question is whether this obligation refers to things spiritual or things temporal.

"Senator BAILEY. I do not think it makes any difference to the committee in the end, or will affect its conclusions, whether that is answered or not. I am partly responsible for that line of questions, and I asked the first question myself because I really intended to insist, if it related in any way to the duties of a citizen, that the committee was entitled to know what that was, and if it did not, then I had no further interest in it.

"The CHAIRMAN. Let the witness answer that question.

"Mr. ROBERTS. May I have the question read?

"The CHAIRMAN. Certainly."

The reporter read as follows:

"Mr. WORTHINGTON. I would like to ask, Mr. Roberts, whether this obligation or ceremony to which you refer in the endowment house relates entirely to things spiritual or whether it relates to things temporal also?

"Mr. ROBERTS. I regard them as relating to things spiritual, absolutely.

"Mr. TAYLER. If we were in a court of justice, and insisted upon it, I think that opens the door so wide that the whole oath would come in.

"The CHAIRMAN. I think so, too.

"Mr. TAYLER. But I do not care to do it." (1; 745, 746.)

The next witness called on behalf of the protestants was A. M. Cannon. After his examination by counsel for the protestants was concluded he was further examined by the chairman of the committee on this subject, and his testimony was as follows:

"The CHAIRMAN. Do you remember the covenant you took when you went through the endowment house?

"Mr. CANNON. Oh, yes.

"The CHAIRMAN. Could you state the ceremony?

"Mr. CANNON. I would not like to.

"The CHAIRMAN. Why not?

"Mr. CANNON. Because it is of a religious character, and it is simply an obligation that I enter into to be pure before my Maker and worthy of the attainment of my Redeemer and the fellowship and love of my children and their mothers, my departed ancestry, and my coming descendants.

"The CHAIRMAN. What objection is there to making that public?

"Mr. CANNON. Because it is sacred.

"The CHAIRMAN. How sacred?

"Mr. CANNON. It is simply a covenant that I enter into with my Maker in private.

"The CHAIRMAN. All the tenets of your religion are sacred, are they not?

"Mr. CANNON. Sir?

"The CHAIRMAN. They are all sacred, are they not—the teachings?

"Mr. CANNON. All of those are sacred; yes, all of those things.

"The CHAIRMAN. I do not quite understand why you should keep them secret.

"Mr. CANNON. It is because it is necessary to keep them secret. If you will permit me, Mr. Chairman, we admit only the purest of our people to enter there.

"The CHAIRMAN. People like you and the president of the church? I suppose the president of the church is admitted?

"Mr. CANNON. The presidency of the church, if he continues in good standing, and our people whoever are in good standing and deemed worthy of the proper recommends are permitted to enter there.

"The CHAIRMAN. Do you enter into any obligation not to reveal these ceremonies?

"Mr. CANNON. I feel it would be very improper to reveal them.

"The CHAIRMAN. I say, do you enter into any obligation not to?

"Mr. CANNON. There are sacred obligations connected with all the higher ordinances of the church.

"The CHAIRMAN. In words, do you promise not to reveal?

"Mr. CANNON. I feel that that is the trust reposed in me, that I will not go and——

"The CHAIRMAN. I think you do not understand my question. Do you promise specifically not to reveal what occurs in the endowment house?

"Mr. CANNON. I would rather not tell what occurs there. I say this——

"The CHAIRMAN. I think, Mr. Cannon, you do not understand me. Do you promise not to reveal what occurs in the endowment house when you go through?

"Mr. CANNON. I feel that that is an obligation I take upon me when I do that.

"The CHAIRMAN. When you go through the endowment house do you take that obligation upon you in express terms?

"Mr. CANNON. I think I do.

"The CHAIRMAN. You know, do you not, whether you do or not? Why do you take that obligation not to reveal these things?

"Mr. CANNON. Because we are—I do not want to be disrespectful to this committee.

"The CHAIRMAN. I know you would not be.

"Mr. CANNON. The Lord gave us to understand that we should not make common the sacred things that He committed to His disciples. He told them they must not do that lest they trample them under their feet and rend them.

"The CHAIRMAN. Do you remember whether there was any penalty attached if they should reveal?

"Mr. CANNON. I do not remember that there is any penalty.

"The CHAIRMAN. None whatever?

"Mr. CANNON. I do not remember.

"The CHAIRMAN. Has there been any change in the ceremony of the endowment house since you went through in 1859, up to the present time, that you are aware of?

"Mr. CANNON. No.

"The CHAIRMAN. No change in the ceremony or obligations?

"Mr. CANNON. No." (1; 791, 792.)

The next witness called by the protestants was Moses Thatcher. After counsel for the protestants had finished their examination of Mr. Thatcher, the following occurred:

"The CHAIRMAN. One other question: The endowment house, I believe, has been taken down?

"Mr. THATCHER. That is as I understand it. It has been taken down.

"The CHAIRMAN. Has the ceremony of the endowment house been wiped out also, or is that performed now?

"Mr. THATCHER. I am just trying to think whether I have been through the temple, in the light in which I went through the endowment house, to give you a correct answer on that, but my impressions are that the ceremoney has not been changed.

"The CHAIRMAN. You have seen the ceremony in the temple? You have witnessed it?

"Mr. THATCHER. I think I have heard it.

"The CHAIRMAN. And you think there is no change in it?

"Mr. THATCHER. No, sir.

"The CHAIRMAN. When did you go through the endowment house?

"Mr. THATCHER. My impressions are when I married the wife of my youth—in 1861.

"The CHAIRMAN. Will you state to the committee the ceremony in the endowment house? I do not mean the ceremony of marriage; but did you go through the endowment house when you became an apostle?

"Mr. THATCHER. No, sir; it was not necessary.

"The CHAIRMAN. You have been through the endowment house, then, but once?

"Mr. THATCHER. Yes, sir.

"The CHAIRMAN. Will you state to the committee the ceremony of the endowment house?

"Mr. THATCHER. I think, Mr. Chairman, that I might be excused on that.

"The CHAIRMAN. Why?

"Mr. THATCHER. For the reason that those were held to be sacred matters and only pertaining to religious vows.

"The CHAIRMAN. Are you obligated not to reveal them?

"Mr. THATCHER. Yes; I think I am.

"The CHAIRMAN. What would be the effect if you should disclose them? That is, is there any penalty attached?

"Mr. THATCHER. There would be no effect except upon my own conscience.

"The CHAIRMAN. That is all?

"Mr. THATCHER. That is all.

"The CHAIRMAN. But you are under obligation as a part of the ceremony not to reveal it?

"Mr. THATCHER. Yes, sir; I feel myself under such obligation." (1; 1048, 1049.)

This was all the testimony on the subject of the alleged oath or obligation taken during the sessions of the committee held in the spring of 1904. The last session when testimony was taken during that spring occurred on the 2d of May, 1904. When the taking of testimony was resumed in December, 1904, counsel for the protestants produced and examined certain witnesses on this subject, the substance of whose testimony will now be stated.

J. H. Wallis, sr., who had been a Mormon but who had formally notified the bishop of his ward, seven or eight months before he was examined, that he no longer considered himself a member of the church, testified that on several occasions he had taken his endowments in the temple at Salt Lake City. When first examined he said that he did not know whether he had it exactly right, but that the substance of the so-called "oath of vengeance" is that those who took it promised and vowed that they "will never cease to importune High Heaven to avenge the blood of the prophets on the nations of the earth or the inhabitants of the earth." He added that if his memory served him, he thought that was about right, and that a passage of scripture is quoted from the Revelations, sixth chapter, ninth verse. (2; 79.)

The next day Mr. Wallis was recalled and testified that in repeating the obligation he had made a mistake; and that he should have said "upon this nation" instead of "upon the inhabitants of the earth." (2; 148.)

Two witnesses were called on behalf of the respondent to impeach Wallis. One of them, Moroni Gillespie, who had been a member of the police force in Salt Lake City for eleven or twelve years, testified that he knew Wallis's general reputation for truth and veracity in the community in which he lived; that it was bad; and that he would not believe him under oath. Wallis had testified that he had never been arrested.

This witness testified that he was present in the police court on one occasion when Wallis was under arrest and plead guilty to the charge of drunkenness. Gillespie further testified that he had known Wallis for several years and that, in his opinion, he was not altogether of sound mind. (3; 317, 318.)

The other witness as to the veracity of Wallis was William Langton. (2, 1022; 3, 143, 144.) Neither his testimony nor that of Gillespie was contradicted or impaired in any way. His conclusion, from what he had seen of Wallis, was that the man was crazy. He further testified that, in his opinion, Wallis's general reputation for truth and veracity was such that he would not believe him on oath.

When Langton was asked by counsel for the respondent to give his reasons for thinking that Wallis was of unsound mind, objection was made by the counsel for the protestants and the objection was sustained. (3; 144.) But subsequently he was recalled and allowed to give his reasons, which he did at length. (3; 445.)

August W. Lundstrom, another witness for the protestants, testified that he had taken the endowment six times, and that the obligation in question was:

"We and each of us solemnly promise and covenant that we shall ask God to avenge the blood of Joseph Smith upon this nation." (2; 151–153.)

He subsequently slightly varies this statement by saying that the prayer was: "We ask God, the Eternal Father, to avenge the blood of Joseph Smith upon this nation." (2; 161.)

Three witnesses were called on behalf of the respondent to impeach Lundstrom. One of them, F. S. Fernstrom, testified that he had known Lundstrom for about fourteen years, and Lundstrom's general reputation for truth in the community in which he lived was bad, and that he, witness, would not believe him under oath. On cross-examination by counsel for the protestants the fact was brought out that Lundstrom had borrowed from his bishop part of a fund which the bishop had collected for the support of the poor, and that when asked by the bishop to return the money, Lundstrom refused to do it, saying that the church owed him a living. (2; 1012.)

One of these witnesses, C. V. Anderson, testified that he knew Lundstrom's general reputation for veracity in Salt Lake City, where he lived; that it was bad, and that the witness did not think he would believe Lundstrom on oath. (2; 1013.)

J. H. Hayward was the third witness on this subject. He testified that he had known Lundstrom for many years, the latter having been at one time in his employ; that he knew Lundstrom's general reputation for truth and veracity in Salt Lake City, where he lived; that it was bad, and that from his reputation the witness would not believe him under oath.

This evidence as to Lundstrom's reputation for truth and veracity was not rebutted in any way.

The third and last witness called by the protestants, during the sessions of the committee held in December, 1904, on this subject of the alleged obligation was Mrs. Annie Elliott, who testified that she had taken the endowments several times, and that during the ceremony "they told me to pray and never cease to pray to get revenge for the blood of the prophets on this nation, and also teach it to my children and children's children." (2; 189.)

On cross-examination this witness stated positively that she had never told anybody about this obligation, and that if Mr. Tayler was examining her from a memorandum informing him what her testimony would be she did not know where it came from or how Mr. Tayler came to get it (2; 194). On her direct examination Mrs. Elliott stated that she was married in Denmark, and that her husband followed her to this country. Her examination by counsel for the protestants then proceeded as follows:

"Mr. TAYLER. Is he living now—that is, the husband whom you married in Denmark?

"Mrs. ELLIOTT. No, sir.

"Mr. TAYLER. You lived with him until he died, did you?

"Mrs. ELLIOTT. Yes, sir.

"Mr. TAYLER. Where did he die?

"Mrs. ELLIOTT. Why, in Elsinore.

"Mr. TAYLER. In Utah?

"Mrs. ELLIOTT. Yes, sir.

"Mr. TAYLER. When?

"Mrs. ELLIOTT. In 1897.

"Mr. TAYLER. Did you, after his death, marry?

"Mrs. ELLIOTT. Yes, sir; I married in 1899." (2; 184.)

On her cross-examination, after she had testified that she had left the church in 1897, the following occurred:

"Mr. WORTHINGTON. Was it before or after the death of your first husband?

"Mrs. ELLIOTT. Why, it was after.

"Mr. WORTHINGTON. What time in 1897 did he die?

"Mrs. ELLIOTT. He died in October." (2; 191.)

The value of the testimony of this witness may be judged by the fact that the husband who followed her to this country not only did not die in October, 1897, but was living at the time Mrs. Elliott gave the testimony in question, and was subsequently called as a witness on behalf of the respondent (2; 1015). He testified that she had obtained a divorce from him about six years before he gave his testimony, which was in January, 1905. His testimony showed clearly that she knew he was living when she said he was dead.

On behalf of the respondent a number of witnesses were examined on this subject, and the substance of their testimony is as follows:

Hugh M. Dougall, who is a farmer and cattle grower, and is postmaster at the town of Springville, in Utah, was expelled from the Mormon Church about 1874, and since then has not been in any way connected with it. He took his endowments when he was about 25 years old.

He testified that according to his recollection the obligation was, in substance, that those who took it importuned heaven to avenge the blood of the prophets and the martyrs on this generation, and that he did not remember the name of Joseph Smith being mentioned at all. (2; 759.)

Mr. Dougall was subsequently recalled, and asked by Senator KNOX this question:

"Are you willing to say whether the vow obligated you to anything incompatible with your giving full and supreme allegiance to the United States or the State of Utah, or which obligated you to anything incompatible with your fully performing your duty as a citizen of the United States and that State?"

He answered: "Not one thing." (2; 781.)

Alonzo A. Noon left the Mormon Church voluntarily about 1870, when he was 32 years of age, having taken his endowments when he was 28 or 30 years old. He stated that there was nothing in the ceremony about promising or vowing to importune heaven to avenge the blood of the prophets on this nation, and that there was nothing in the ceremony which in any way imported hostility to the United States or to the Government thereof. That he was perfectly clear about that.

He also said he did not remember that the name of Joseph Smith was used in the ceremony. He did recollect that there was in the ceremony a quotation from the Scriptures, and upon hearing read verses 9 and 10, chapter 6, of the Revelations, he said that it was something like that; that that was about the intent.

One of these verses, it will be remembered, was referred to by the witness Wallis.

The two verses are as follows:

"Nine. And when he had opened the fifth seal, I saw under the altar the souls of them that were slain for the word of God, and for the testimony which they held.

"Ten. And they cried with a loud voice saying: How long, Oh, Lord, holy and true, dost Thou not judge and avenge our blood on them that dwell on the earth." (774.)

Being asked whether there was anything in the obligation which indicated hostility to the Government, Mr. Noon said:

"The very reverse. I have never heard any people taught only loyalty to the Government of the United States." (2; 775.)

Mr. Noon was recalled and asked the same question that had been propounded by Senator KNOX to Mr. Dougall, and he answered the question in the same way. (2; 781.)

William Hatfield, who was a Mormon until he was 23 years of age, after which he drifted away from that church, when he was not quite 21 years of age took his endowments as a preliminary to his marriage. (2; 785.)

He said that neither he nor any others in his hearing took the obligation which Wallis had testified to, and that he did not at that time take any obligation or enter into any covenant, vow, or agreement of any kind inconsistent with his duties as a citizen of the Territory of Utah or of the United States. He was not cross-examined. (2; 796.)

John P. Meakin, who was a Mormon until he was 23 or 24 years of age, left the church because he did not believe in polygamy. (2; 796.)

He went through the Endowment House when he was 18 years old. He stated that he had no recollection at all of any obligation of vengeance or retribution, and that nothing took place at the time with reference to promising or vowing to importune heaven to avenge the blood of the prophets on this nation, or to avenge the blood of Joseph Smith on anybody; that there was nothing took place which imported any obligation in opposition to his duty as a citizen either of the Territory of Utah or of the United States; that he was very clear about this. (799.)

He also said that there was nothing in the endowment ceremony about praying the Almighty to avenge the blood of the prophets on this generation. (2; 801.)

Elias A. Smith, cashier of the Desert Savings Bank, in Salt Lake City, in answer to a question by the chairman, stated that he had conscientious scruples against divulging any part of the endowment ceremony (2; 854); but in answer to a question by Senator FORAKER he said there was nothing in any obligation of the church which it imposed upon its members, in connection with marriage or any other occasion, inconsistent with fidelity as citizens of the National Government or to the State government. Mr. Smith persisted that while he had stated what was not in the obligation he did not feel at liberty to state what was in it. (2; 855.)

Richard W. Young, who was a graduate of West Point and of the law school of Columbia College, New York City, and who had served in the Volunteer Army in the Spanish war, in the Philippines, and elsewhere, is a member of the Mormon Church, and is not a polygamist. (2; 950–952.) He was asked by the chairman if he had any objection to disclosing what took place during the endowment ceremony, and he replied that he considered himself under an obligation not to do so. (2; 969.)

He was asked later by counsel for the respondent if he had any objection to stating whether the ceremony included, in any form or shape, any invocation of vengeance or retribution against this nation. Senator McComas suggested that the witness should state the whole ceremony or nothing. Thereupon an extended argument was made, at the end of which the witness was asked by counsel for the respondent:

"In that ceremony is there anything which relates to your duties or obligations to your Government or to this nation."

The chairman ruled that if the witness should answer this question he would be required to state the whole ceremony, and thereupon the witness declined to answer it. (2; 981–985.)

REED SMOOT testified positively that there is nothing in the endowment ceremony about avenging the blood of the prophets or avenging anything else on this nation or on this Government. (3; 183, 184.)

As already stated, the case was reopened during the present session of Congress for the purpose of allowing the introduction of further testimony on behalf of the protestants, and four additional witnesses were produced with reference to the matter of the alleged obligation. No further testimony on the subject was taken on behalf of the respondent.

The four witnesses referred to were W. J. Thomas, J. P. Holmgrem, H. W. Lawrence, and W. M. Wolfe.

The witness Thomas testified that he passed the endowment house in 1869. His examination on this subject was as follows:

"Mr. CARLISLE. I have asked you about whether any ceremonies took place before the oath or obligation took place? If so, state what it was.

"Mr. THOMAS. There were washings and anointings there.

"Mr. CARLISLE. Describe to the committee what you mean by anointing. Was your whole body anointed or your arm anointed; and, if so, was anything said when that was done?

"Mr. THOMAS. My head was anointed and my right arm. I do not remember anything else.

"Mr. CARLISLE. Was anything said by the person who conducted these ceremonies at the time he anointed your right arm? Were you told what it was for?

"Mr. THOMAS. Yes, sir; he spoke very quick and I couldn't catch it all, but I remember when he anointed my arm to make it strong, and the substance of it was that I would avenge the blood of the prophets—prophet or prophets. I believe it was the plural. (4; 69.)

* * * * * * *

"Senator KNOX. You took this vow in what year?

"Mr. THOMAS. In 1869.

"Senator KNOX. How long did you remain in the church after that?

"Mr. THOMAS. I remained in the church up until 1880.

"Senator KNOX. That was eleven years; and you vowed to avenge the blood of the martyrs upon this nation, did you?

"Mr. THOMAS. Yes, sir.

"Senator KNOX. And your right arm was anointed to give you strength that you might do so. Is that correct?

"Mr. THOMAS. That is the way I understood it.

"Senator KNOX. What did you ever do in the line of keeping that vow? Did you ever avenge the blood of the martyrs upon this nation?

"Mr. THOMAS. No, sir. I have enlisted twice to try and defend the nation.

"Senator KNOX. Were you ever stirred up by the authorities of the

church to get busy in that direction of avenging the blood of the martyrs upon this nation?

"Mr. THOMAS. No.

"Mr. WORTHINGTON. Do you know of any member of the church who did do anything in the way of using his right arm to avenge the blood of the prophets on this nation?

"Mr. THOMAS. No, sir." (4; 71, 72.)

The witness Holmgren on this subject testified that he passed through the endowment house in 1889. His further examination on this subject is as follows:

"Mr. CARLISLE. Do you remember the ceremonies that took place at that time?

"Mr. HOLMGREN. Part of it.

"Mr. CARLISLE. Are you willing to state the oath that was taken, or not? If you are not, I shall not press you.

"Mr. HOLMGREN. What I understood and heard of it—sure.

"Mr. CARLISLE. In the first place, what occurred?

"Mr. HOLMGREN. In the endowment house?

"Mr. CARLISLE. Yes.

"Mr. HOLMGREN. There were a number of oaths and performances that were insignificant, I would say, until we came to the anointing room, and in that anointing room there was some language used that I am sorry I ever heard.

"Mr. CARLISLE. Can you state what it was?

"Mr. HOLMGREN. In anointing my arms, the gentleman used this language: 'That your arms might be strong to avenge the blood of Joseph and Hyrum Smith.'" (4; 76, 77.)

The witness Lawrence, who was 70 years old at the time he testified, stated that he was a member of the Mormon Church until 1869, and that he had taken or administered the alleged obligation in question a number of times. The following are the substantial parts of his testimony on this point:

"Mr. CARLISLE. Mr. Lawrence, would you object to stating whether there is any oath, commonly called here the oath of vengeance, taken in the endowment house, and what it is?

"Mr. LAWRENCE. Yes; there is.

"Mr. CARLISLE. Can you state it in terms or in substance?

"Mr. LAWRENCK. 'You covenant and agree before God and angels and these witnesses that you will avenge the blood of the prophets, the prophet Joseph Smith, Hyrum Smith, Parley P. Pratt, David Patton'—their names are mentioned.

"Mr. CARLISLE. Was that the case when you took the endowment?

"Mr. LAWRENCE. Yes, sir. I do not know whether they were all mentioned when I was there or not, but they have been mentioned when I have been there.

"Mr. CARLISLE. You have passed through the endowment a number of times?

"Mr. LAWRENCE. Yes; I have been there a number of times.

"Mr. CARLISLE. You mean these names have been mentioned some of the times when you passed through? That is what you mean?

"Mr. LAWRENCE. Yes, sir.

"Mr. CARLISLE. You do not know whether they were all mentioned at the same time or not?

"Mr. LAWRENCE. No, sir.

"Senator DILLINGHAM. Do I understand the witness has given the whole of the obligation,

"Mr. CARLISLE. I will ask him. Do you remember now whether there was anything said about vengeance upon the people or vengeance upon the nation, or what was said of that sort, if you remember?

"Mr. LAWRENCE. I say it has been stated. I can not state it only as I understand it. The word 'nation' was not mentioned where I was in regard to that vengeance, but the feeling has always been against the nation and the State for allowing that deed to be perpetrated. The word 'nation' was not mentioned. It is a little ambiguous in regard to that.

"Mr. WORTHINGTON. You say you are ambiguous or it was ambiguous?

"Mr. LAWRENCE. It was a little ambiguous there who it should be executed on. The supposition is it should be executed on the perpetrators of the deed.

"Mr. CARLISLE. Mr. Lawrence, I will get you to state, if you can, whether this covenant, or oath, or whatever it may be called, is always administered by the same person and in the same terms, or whether it is administered at different times by different persons, and whether it is in writing or merely oral.

"Mr. LAWRENCE. It is administered orally by different persons at different times.

"Mr. CARLISLE. It may be, then, that there is a different form of the oath?

"Mr. LAWRENCE. It may be administered a little different. Of course the substance is about the same, but there may be some men who administer it a little different from others. I have no doubt that it is, from what I have heard.

"Mr. CARLISLE. You may take the witness.

"Senator KNOX. Was this vengeance to be executed by the person taking the oath, or vow, or were you to implore the Almighty to avenge the blood of the prophets?

"Mr. LAWRENCE. As I say, it was a little ambiguous in regard to that. Of course you take an oath to avenge the blood of the prophets and teach the principle to your children and children's children.

"Senator KNOX. I think you do not understand me. You stated a moment ago that there was some ambiguity in the oath as to whom the vengeance is directed against.

"Mr. LAWRENCE. Yes.

"Senator KNOX. Now, I am asking you who it was who was to execute the vengeance. Was the person taking the vow, or oath, to execute it or were they to implore by prayer that God should take this vengeance?

"Mr. LAWRENCE. Well, that was not inserted in it for the Lord to do it. They simply took upon themselves the oath to do it; but I say it is almost impossible for them to wreak vengeance, because those men that committed the deed have probably gone years ago.

"Senator KNOX. My question was based on the exact language used by Professor Wolfe yesterday. He said that he heard the oath taken very recently, and that they vowed or promised that they would pray to Almighty God to avenge the blood of the prophets. I think it is quite material, and I want to know what your recollection is about it.

"Mr. LAWRENCE. That was not inserted in my day—that is, in regard to asking God to wreak this vengeance. (4; 108, 109.)

* * * * * * *

"Mr. WORTHINGTON. Tell us about how many times you were present when this oath was administered.

"Mr. LAWRENCE. I could not say. It would go into the hundreds, probably.

"Mr. WORTHINGTON. Several hundred times?

"Mr. LAWRENCE. Yes; or dozens. I would say from one to three years, probably.

"Mr. WORTHINGTON. And on each occasion to a great many people, I suppose.

"Mr. LAWRENCE. Yes, sir.

"Mr. WORTHINGTON. On all the occasions when you heard it administered to others, or when it was administered to you, did you ever hear any reference to the nation of the United States as the object of vengeance?

"Mr. LAWRENCE. During my administration the word 'nation' was not used.

"Mr. WORTHINGTON. Do you mean you administered the oath?

"Mr. LAWRENCE. No, sir; yes, sir. I mean I officiated there with the rest of them.

"Mr. WORTHINGTON. Then you both administered the covenant, and you heard others administer it?

"Mr. LAWRENCE. Yes, sir.

"Mr. WORTHINGTON. You administered it hundreds of times, and you heard it administered hundreds of times; is that right?

"Mr. LAWRENCE. I was there off and on for one or two years.

"Mr. WORTHINGTON. Did you administer it hundreds of times?

"Mr. LAWRENCE. I will say yes. (4; 110, 111.)

* * * * * * *

"Mr. WORTHINGTON. Now, I come back. During all the time you administered the oath, or heard it administered by others, did you ever hear the 'nation' or the 'United States' or the 'Government of the United States' referred to in any way as the object of vengeance that was the subject of that covenant?

"Mr. LAWRENCE. I will say that, at that time, it was not connected with the obligation. I will say this, that the Government has always been blamed for allowing that deed to be perpetrated.

"Mr. WORTHINGTON. Don't let us depart from the ceremony. I want to find out what took place at the ceremony when you administered the covenant. Did you administer it always in the same language?

"Mr. LAWRENCE. I tried to, sir.

"Mr. WORTHINGTON. Where did you learn it?

"Mr. LAWRENCE. I learned it from the church ritual, I suppose. It was what was given to me.

"Mr. WORTHINGTON. Was it something that was in writing or was it in print?

"Mr. LAWRENCE. No, sir; not in writing.

"Mr. WORTHINGTON. It was communicated to you orally and you committed it to memory, did you?

"Mr. LAWRENCE. Yes, sir.

"Mr. WORTHINGTON. You do not remember who gave it to you?

"Mr. LAWRENCE. I do not remember just now.

"Mr. WORTHINGTON. It was given to you as the traditional oath of the temple, was it not?

"Mr. LAWRENCE. It was given to me to use.

"Mr. WORTHINGTON. You have said to Mr. Carlisle that there is no doubt that the language of the covenant was varied from time to time. Did you ever hear it given in any other form than that you have told us about?

"Mr. LAWRENCE. Yes. I will explain that. I have said that there were different parties that officiated at different times, and from what I had heard they had changed it a little. Inasmuch as it was orally given, one man would administer it a little different from others.

"Mr. WORTHINGTON. You know that by hearsay?

"Mr. LAWRENCE. I know that by hearsay only. (4; 111, 112.)

* * * * * * *

"Mr. WORTHINGTON. Referring to this ceremony, and the covenant of vengeance, as it is called, do you remember in that connection whether there was any passage in the Book of Revelations of the Bible?

"Mr. LAWRENCE. Yes, sir.

"Mr. WORTHINGTON. What is that?

"Mr. LAWRENCE. That is used in connection with this as a justification for it.

"Mr. WORTHINGTON. Can you give us the verse and chapter of Revelations?

"Mr. LAWRENCE. I think it is a chapter from Revelations. It is probably chapter 6. It is taken from Revelations. It is simply referred to. I will answer that that quotation is referred to.

"Mr. WORTHINGTON. Was it not a part of the teaching of the church, when you were connected with it, that the Constitution of the United States is an inspired document?

"Mr. LAWRENCE. Yes, sir. Do you want an answer to that?

"Mr. WORTHINGTON. I have all the answer I care to have, sir. If there is anything you wish to add or take from the effect of your testimony, you have that privilege, provided it is not a speech. Let me read the ninth and tenth verses of the sixth chapter of Revelations, and see if those——

"Mr. LAWRENCE. 'How long, O Lord?' It is just a quotation.

"Mr. WORTHINGTON. I will read the two, and see if those two verses, or either of them, are the ones to which you refer:

"'And when he had opened the fifth seal I saw under the altar the souls of them that were slain by the Word of God, and by the testimony which they held.

"'And they cried with a loud voice, saying, How long, O Lord, Holy and true, dost Thou not judge and avenge our blood on them that dwell on the earth?'

"Mr. LAWRENCE. That is part of it in connection with this?

"Mr. WORTHINGTON. We should like to have the whole of it. Just show us all that was referred to in your ceremony there.

"Mr. LAWRENCE. 'How long, O Lord, Holy and true.'

"Mr. WORTHINGTON. 'Dost thou not judge and avenge our blood on them that dwell on the earth?'

"Mr. LAWRENCE. I think that was the part connected with it—just that part.

"Mr. WORTHINGTON. You say that was used as a justification of the covenant, in connection with it?

"Mr. LAWRENCE. That was used as a justification of the obligation.

"The CHAIRMAN. He did not say as a justification of the covenant.

"Mr. LAWRENCE. I said that was used as a justification of the obligation." (4; 116, 117.)

It will be seen that all three of these witnesses flatly contradicted what seems to be the theory of the protestants, that the obligation in question involved a promise on the part of the party going through the ceremony hostile to the United States or an appeal to the Almighty to inflict punishment on the nation.

The other witness on the point now under consideration is W. M. Wolfe. He testified that he had passed through the endowment house no less than twelve times, the first time being in May, 1894, and the last time in October, 1902. His examination on this subject then proceeded as follows:

"Mr. CARLISLE. Will you state to the committee whether there is, as part of the ceremonies in the temple, any oath administered?

"Mr. WOLFE. There are several oaths administered.

"Mr. CARLISLE. Can you state what they are?

"Mr. WOLFE. There is an oath of chastity, or, I might say, a covenant or law—a law of sacrifice and a law of vengeance.

"Mr. CARLISLE. When you say a law of vengeance, what do you mean? Do you mean that there is any promise or pledge to avenge a wrong, or do you mean simply that there is some law read to you, or some rule read to you?

"Mr. WOLFE. There is no covenant or agreement on the part of any individual to avenge anything.

"Mr. CARLISLE. Just state to the committee what it is.

"Mr. WOLFE. The law of vengeance is this: 'You and each of you do covenant and promise that you will pray, and never cease to pray, Almighty God to avenge the blood of the prophets upon this nation, and that you will teach the same to your children and your children's children unto the third and fourth generations.' At the conclusion the speaker says: 'All bow your heads and say "Yes."'

"Mr. CARLISLE. Was that done?

"Mr. WOLFE. It was done.

"Senator OVERMAN. Was that done every time, or just one time?

"Mr. WOLFE. It was done every time I went through." (4; 7.)

Mr. Wolfe, for several years, and up to January last, was one of the professors in the Brigham Young College, at Logan, a Mormon institution. When asked on cross-examination whether charges of drunkenness had not been preferred against him in the institution, he said that no such charges had been made, to his knowledge, but that such charges might have been preferred against him. Upon being asked what he meant by saying that such charges might have been preferred against him, he answered that he meant that he had made himself liable to such charges for a period of possibly twenty years. (4; 24.)

He admitted that certain officers of the institution had had conversations with him in regard to his habit of drinking (4; 25). He admitted that he had been required to resign his position in January last; but claimed that this was done because about that time he had given notice that he would no longer pay tithing. He admitted that officers of the institution had made objection to his habits of drinking, but said that they had never suggested his removal, or the desirability of his resignation until he had refused to pay tithes. (4; 26.)

As to Wolfe's testimony, the respondent offered considerable testimony in rebuttal. One of the witnesses on this subject was James H. Linford, the president of Brigham Young College. He testified fully as to Wolfe's habit of drinking for a considerable period prior to the time he was compelled to resign; and testified, in substance, that Wolfe's resignation was not demanded on account of his refusing to pay tithes, but because his habits of drinking had grown on him so that it was no longer possible to allow him to retain his position. (4; 261, 271.)

There was also filed on behalf of the respondent the affidavit of Joseph E. Cardon, the bishop of the ward at Logan, in which Wolfe lived. This affidavit was admitted as evidence by consent of counsel for the protestants, and by leave of the committee. In this affidavit the witness contradicts what Wolfe stated in his testimony with reference to a conversation with the witness on the subject of tithing.

Wolfe was also contradicted, in a very material part of his evidence, by four witnesses. He had preferred charges against one Benjamin Kluff, in connection with a certain expedition that had been made to Mexico, of which expedition Kluff was in charge, and Wolfe was a member. Wolfe testified that on that expedition he had seen Kluff living in marital relations with one Florence Reynolds, who is alleged to have been Kluff's plural wife, taken since the manifesto. Wolfe testified that, at the hearing of these charges before a church council, he had stated that he had seen Kluff and Florence Reynolds living in that relation.

By consent of counsel for the protestants, and by leave of the committee, there were filed the affidavit of the stenographer who took down Wolfe's statement, and the joint affidavit of the three members of the committee before whom he made his statement, all of them saying that he had not in any way referred to the fact that he had seen Kluff and Florence Reynolds living together, and that he did not in any way refer to the relations between those two people. (4; 302, 408, 409.)

Taking all of the testimony on this subject together, the overwhelming weight of it is against the contention that the respondent ever took any obligation of hostility to the United States. Seven witnesses have in an indefinite way testified that the obligation included some kind of a promise or prayer indicating hostility to the nation, while thirteen witnesses, about one-half of whom were called on behalf of the protestants, have testified positively and unqualifiedly to the contrary. All of the witnesses who have testified that the word "nation" was used in the obligation have been impeached as to their credibility, and no evidence has been introduced tending to sustain the veracity of any one of them.

Mr. FORAKER. It is understood, I believe, that the reports themselves are to be printed separately, as separate documents.

The VICE-PRESIDENT. And 10,000 copies of each.

Mr. BAILEY. Mr. President——

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

Mr. BURROWS. If the Senator will yield to me just a moment, I desire to state that I shall call this matter up at the earliest possible moment consistent with the public business.

Mr. FORAKER. I want to say that I join with the Senator making the majority report in that notice. This matter, we think, should be called up at the earliest moment possible, and I shall insist upon its being called up for consideration before final adjournment.

Mr. BAILEY. Mr. President, I had intended this morning to add a brief statement to the report which has been submitted by the Senator from Michigan, but I was unable to reach his committee room in time to do that. I therefore desire to say, in order that it may appear in the RECORD, that while I concur in the conclusion of the majority that Senator SMOOT is not entitled to continue as a member of this body, it is my opinion that he can not be deprived of his seat, under the Constitution, except by expulsion.

The orders heretofore made were subsequently reduced to writing, as follows:

On motion of Mr. BURROWS, it was

Ordered, That 10,000 additional copies of the report of the Committee on Privileges and Elections, accompanying the resolution that REED SMOOT is not entitled to a seat in the Senate as a Senator from the State of Utah, be printed, 3,000 for the use of the committee and 7,000 for the use of the Senate.

On motion of Mr. FORAKER, it was

Ordered, That 10,000 additional copies of the views of the minority of the Committee on Privileges and Elections, accompanying the resolution that REED SMOOT is not entitled to a seat in the Senate as a Senator from the State of Utah, be printed, 3,000 for the use of the committee and 7,000 for the use of the Senate.

On motion of Mr. BURROWS, it was

Ordered, That the hearings had before the Committee on Privileges and Elections in the investigation of the right of REED SMOOT to a seat in the Senate from the State of Utah be printed as a document.

REPORTS OF COMMITTEES.

Mr. PERKINS, from the Committee on Forest Reservations and the Protection of Game, to whom was referred the bill (S. 6119) for the protection of animals, birds, and fish in the forest reserves of California, and for other purposes, reported it without amendment, and submitted a report thereon.

Mr. STONE, from the Committee on Indian Affairs, to whom was referred the bill (S. 6384) authorizing the Secretary of the Interior to examine and adjust the accounts of William R. Little, or his heirs, with the Sac and Fox Indians, reported it without amendment, and submitted a report thereon.

Mr. SPOONER, from the Committee on the Judiciary, to whom was referred the bill (S. 6364) to incorporate the National Child Labor Committee, reported it with an amendment.

Mr. OVERMAN, from the Committee on Forest Reservations and the Protection of Game, to whom was referred the bill (H. R. 13190) to protect birds and their eggs in game and bird preserves, reported it with an amendment.

BILLS INTRODUCED.

Mr. PENROSE introduced a bill (S. 6421) pertaining to the duties of the division of dead letters, Post-Office Department; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

He also introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6422) granting an increase of pension to John L. Wells;

A bill (S. 6423) granting an increase of pension to Cecile O. Hamill;

A bill (S. 6424) granting an increase of pension to Charles E. Tipton;

A bill (S. 6425) granting an increase of pension to Frederick Kerchof;

A bill (S. 6426) granting a pension to Eliza Jane Cameron (with an accompanying paper);

A bill (S. 6427) granting a pension to Thomas Moran; and

A bill (S. 6428) granting an increase of pension to B. K. Spangler.

Mr. KEAN introduced a bill (S. 6429) granting an increase of pension to Mary L. Beardsley; which was read twice by its title, and referred to the Committee on Pensions.

Mr. DRYDEN introduced a bill (S. 6430) granting an increase of pension to Melvina Battles; which was read twice by its title, and referred to the Committee on Pensions.

Mr. PATTERSON introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 6431) granting an increase of pension to R. Smith Coats; and

A bill (S. 6432) granting a pension to John F. Mohn.

Mr. FRAZIER introduced a bill (S. 6433) for the relief of D. S. Henderson, executor of the estate of Mary A. Henderson, deceased; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

Mr. OVERMAN introduced a bill (S. 6434) for the relief of Albert L. Scott; which was read twice by its title, and referred to the Committee on Claims.

Mr. BLACKBURN introduced a bill (S. 6435) for the relief of the estate of Leonidas Walker, deceased; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Claims.

Mr. WARREN introduced a bill (S. 6436) granting an increase of pension to George W. Kelsey; which was read twice by its title, and referred to the Committee on Pensions.

Mr. MILLARD introduced a bill (S. 6437) granting an increase of pension to Mildred L. Allee; which was read twice by its title, and referred to the Committee on Pensions.

Mr. FORAKER introduced a bill (S. 6438) granting an increase of pension to Martha J. Haller; which was read twice by its title, and referred to the Committee on Pensions.

Mr. BLACKBURN introduced a bill (S. 6439) to reinstate Kenneth G. Castleman as a lieutenant in the Navy; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. DANIEL introduced a bill (S. 6440) granting an increase of pension to R. D. Gardner; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 6441) for the relief of William F. McKimmy, administrator of John McKimmy, deceased; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 6442) for the relief of the heirs of Thomas P. Mathews; which was read twice by its title, and referred to the Committee on Claims.

Mr. MALLORY introduced a joint resolution (S. R. 65) directing the Secretary of Agriculture to cause a survey of the Everglades of Florida, to determine the feasibility and cost of draining said Everglades, and for other purposes; which was read twice by its title, and referred to the Committee on Agriculture and Forestry.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. PERKINS submitted an amendment providing for the establishment of a life-saving station at Half Moon Bay, south of Point Montara and near Montara Reef, California, intended to be proposed by him to the sundry civil appropriation bill; which was ordered to be printed, and, with the accompanying paper, referred to the Committee on Appropriations.

He also submitted an amendment proposing to appropriate $75,000 for the construction of revenue cutter for service in the Bay of San Francisco, California, intended to be proposed by him to the sundry civil appropriation bill; which was ordered to be printed, and, with the accompanying papers, referred to the Committee on Appropriations.

He also submitted an amendment proposing to appropriate $225,000 for the construction of a steam vessel of the first class for the Revenue-Cutter Service, at Honolulu, Hawaii, intended to be proposed by him to the sundry civil appropriation bill; which was ordered to be printed, and, with the accompanying paper, referred to the Committee on Appropriations.

Mr. FULTON submitted an amendment providing that jurisdiction in equity is hereby conferred upon the circuit court of the United States of the ninth circuit to examine and determine the rights of American citizens under the boards of the bureaus of arbitration concerning the jurisdiction of the Bering Sea, etc., intended to be proposed by him to the general deficiency appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

DIPLOMATIC AND CONSULAR APPROPRIATION BILL.

Mr. HALE. I move that the Senate proceed to the consideration of House bill 19264, being the diplomatic and consular appropriation bill.

The motion was agreed to; and the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 19264) making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1907, which had been reported from the Committee on Appropriations with amendments.

Mr. HALE. I ask that the formal reading of the bill be dispensed with and that the amendments of the committee be considered as they are reached in the reading.

The VICE-PRESIDENT. The Senator from Maine asks unanimous consent that the formal reading of the bill be dispensed with, that the bill be read for the consideration of amendments, the committee amendments to be first considered. Without objection, it is so ordered.

The Secretary proceeded to read the bill.

The first amendment of the Committee on Appropriations was, in the appropriation for Schedule A, under the subhead "Salaries of ambassadors and ministers," on page 1, line 12, before the word "France," to insert "Brazil;" on page 2, line 1, after the word "Mexico," to strike out "and;" in the same line, after the word "Russia," to insert "and Turkey;" and in line 3, before the word "thousand," to strike out "forty" and insert "seventy-five;" so as to make the clause read:

Ambassadors extraordinary and plenipotentiary to Austria-Hungary, Brazil, France, Germany, Great Britain, Italy, Japan, Mexico, Russia, and Turkey, at $17,500 each, $175,000.

The amendment was agreed to.

The next amendment was, on page 2, after line 3, to strike out:

Ambassador extraordinary and plenipotentiary to Brazil, $12,000.

The amendment was agreed to.

The next amendment was, on page 2, line 7, after the word "Republic," to insert "Belgium;" in the same line, after the word "China," to insert "Cuba, the Netherlands and Luxemburg;" and, in line 9, before the word "thousand," to strike out "thirty-six" and insert "seventy-two;" so as to make the clause read:

Envoys extraordinary and ministers plenipotentiary to the Argentine Republic, Belgium, China, Cuba, the Netherlands and Luxemburg, and Spain, at $12,000 each, $72,000.

The amendment was agreed to.

The next amendment was, on page 2, line 11, before the word "Chile," to strike out "Belgium;" in the same line, after the word "Colombia," to strike out "Cuba, the Netherlands and Luxemburg;" in line 12, after the word "Peru," to strike out "Turkey;" and in line 13, before the word "thousand," to strike out "ninety" and insert "fifty;" so as to make the clause read:

Envoys extraordinary and ministers plenipotentiary to Chile, Colombia, Panama, Peru, and Venezuela, at $10,000 each, $50,000.

The amendment was agreed to.

The reading of the bill was continued to line 9 on page 3.

Mr. HALE. On page 3, line 9, after the word "Cairo," I move to strike out "five thousand" and insert "six thousand five hundred;" so as to read:

Agent and consul-general at Cairo, $6,500.

The amendment was agreed to.

The next amendment was, on page 3, line 14, to increase the total of the appropriations for salaries of ambassadors and ministers from $458,000 to $477,000.

The VICE-PRESIDENT. This total will have to be changed.

Mr. LODGE. It should be $478,500.

The VICE-PRESIDENT. Without objection, the total will be changed to $478,500.

The next amendment was, under the subhead "Salaries of secretaries of embassies and legations," page 3, line 21, after the word "Republic," to insert "Belgium;" and in line 25, before the word "dollars," to strike out "ten thousand five hundred" and insert "thirteen thousand one hundred and twenty-five;" so as to make the clause read:

Secretaries of legations to the Argentine Republic, Belgium, China, the Netherlands and Luxemburg, and Turkey, at $2,625 each, $13,125.

The amendment was agreed to.

The next amendment was, on page 4, line 1, before the word "Bolivia," to strike out "Belgium;" and in line 6, before the word "thousand," to strike out "thirty-six" and insert "thirty-four;" so as to make the clause read:

Secretaries of legation to Bolivia, Chile, Colombia, Cuba, Denmark, Guatemala and Honduras, Liberia, Morocco, Norway (to be immediately available), Panama, Peru, Portugal, Santo Domingo, Spain, Sweden, Switzerland, and Venezuela, at $2,000 each, $34,000.

The amendment was agreed to.

The next amendment was, on page 4, line 8, to reduce the appropriation for the salary of the secretary of legation to Nicaragua, Costa Rica, and San Salvador from $2,800 to $2,000.

The amendment was agreed to.

The next amendment was, on page 5, line 12, to increase the total appropriation for salaries of secretaries of embassies and legations from $108,000 to $108,425.

The amendment was agreed to.

The next amendment was, under the subhead "Clerks at embassies and legations," on page 6, line 14, after the word "who," to insert "whenever hereafter appointed;" so as to make the clause read:

For the employment of necessary clerks at the embassies and legations, who, whenever hereafter appointed, shall be citizens of the United States, $65,000.

The amendment was agreed to.

The next amendment was, under the subhead "Salaries of interpreters to embassies and legations," on page 7, line 3, before the word "consulate-general," to strike out "legation and;" and in the same line, after the word "to," where it occurs the second time, to strike out "Korea" and insert "Seoul;" so as to make the clause read:

Interpreter to consulate-general to Seoul, $500.

The amendment was agreed to.

The next amendment was, under the subhead "Repair of consulate building at Tahiti, Society Islands," on page 9, line 23, after the word "For," to strike out "the repair of" and insert "rebuilding;" and in line 24, after the word "thousand," to insert "three hundred;" so as to make the clause read:

For rebuilding the American consular building at Tahiti, Society Islands, $5,371.45.

The amendment was agreed to.

The next amendment was, on page 15, after line 5, to insert:

REPORTS RELATIVE TO THE WORK OF THE JOINT HIGH COMMISSION.

For the preparation of reports and material necessary to enable the Secretary of State to utilize and carry on the work partly performed by the Joint High Commission of 1898, for the settlement of questions between the United States and Great Britain relating to Canada, $10,000, or so much thereof as may be necessary.

The amendment was agreed to.

The next amendment was, on page 15, after line 14, to insert:

BOUNDARY LINE, ALASKA AND CANADA.

To enable the Secretary of State to mark the boundary, and make the surveys incidental thereto, between the Territory of Alaska and the Dominion of Canada in conformity with the award of the Alaskan Boundary Tribunal and existing treaties, $25,000, together with the unexpended balance of the previous appropriations for this object.

The amendment was agreed to.

The next amendment was, on page 15, after line 22, to insert:

BOUNDARY LINE, UNITED STATES AND CANADA.

For the more effective demarcation and mapping of the boundary line between the United States and the Dominion of Canada, near the forty-fifth parallel, from the Richelieu River to Halls Stream, as established by the commissioners of 1842 to 1848, under the treaty of Washington of August 9, 1842, to be expended under the direction of the Secretary of State, and to be immediately available and continue available until expended, $20,000, or so much thereof as may be necessary.

The amendment was agreed to.

The next amendment was, on page 16, after line 8, to insert:

ST. JOHN RIVER COMMISSION.

For the expenses of a joint commission, to be constituted if the Government of Great Britain concurs, to investigate and report upon the conditions and uses of the St. John River, and to make recommendations for the regulation of the use thereof by the citizens and subjects of the United States and Great Britain, according to the provisions of treaties between the two countries, $30,000.

The amendment was agreed to.

The next amendment was, on page 16, after line 16, to insert:

CONSULAR BUILDINGS IN CHINA, KOREA, AND JAPAN.

The Secretary of State shall report to Congress at its next session a plan in detail covering provisions for the purchase of ground and the erection of buildings for consular offices in China, Korea, and Japan, and estimates shall be submitted for the same, showing the amount required at each place, the total sum for all such buildings not to exceed $1,000,000.

The amendment was agreed to.

The next amendment was, at the top of page 17, to insert:

PURCHASE OF LEGATION PREMISES IN CONSTANTINOPLE, TURKEY.

For the purchase of the buildings and grounds now occupied by the legation of the United States in Constantinople, Turkey, $150,000, or so much thereof as may be necessary.

The amendment was agreed to.

The next amendment was, in the appropriation for Schedule B, under the subhead "Salaries, consular service," on page 17, after line 17, to insert:

For salary of consul-general at Boma, Kongo Free State, class 5, $4,500.

The amendment was agreed to.

The next amendment was, on page 17, after line 19, to insert:

For salary of consul at Calgary, Canada, class 9, $2,000.

The amendment was agreed to.

The next amendment was, under the subhead "Expenses of consular inspectors," on page 18, line 1, to increase the appropriation for the actual and necessary traveling and subsistence expenses of consular inspectors while traveling and inspecting under instructions from the Secretary of State from $10,000 to $15,000.

The amendment was agreed to.

The next amendment was, in the items of Schedule C, under the subhead "Allowances for clerk hire at United States consulates," on page 20, line 11, before the word "dollars," to strike out "five hundred" and insert "one thousand;" and in line 13, before the word "thousand," to strike out "fifty" and insert "one hundred and fifty-five;" so as to make the clause read:

Allowance for clerks at consulates, to be expended under the direction of the Secretary of State at consulates not herein provided for in respect to clerk hire, no greater portion of this sum than $1,000 to be allowed to any one consulate in any one fiscal year, $155,000: *Provided*, That the total sum expended in one year shall not exceed the amount appropriated.

The amendment was agreed to.

The next amendment was, under the subhead "Expenses of interpreters, guards, and so forth, in Turkish dominions, and so forth," on page 21, line 2, to increase the appropriation for interpreters and guards at the consulates in the Turkish Dominions and at Zanzibar, to be expended under the direction of the Secretary of State, from $10,000 to $12,000.

The amendment was agreed to.

The next amendment was, under the subhead "Contingent expenses, United States consulates," on page 23, line 6, to increase the appropriation for contingent expenses, United States consulates, from $300,000 to $350,000.

The reading of the bill was concluded.

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

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

PRESERVATION OF NIAGARA FALLS.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 18024) for the control and regulation of the waters of Niagara River, and for the preservation of Niagara Falls, and for other purposes, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. LODGE. I move that the Senate insist upon its amendments, agree to the conference asked for by the House, and that the Chair appoint the conferees.

The motion was agreed to; and the Vice-President appointed Mr. LODGE, Mr. CULLOM, and Mr. MORGAN as the conferees on the part of the Senate.

BLACKFEET INDIAN RESERVATION LANDS IN MONTANA.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 19681) to survey and allot the lands embraced within the limits of the Blackfeet Indian Reservation, in the State of Montana, and to open the surplus lands to settlement, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. CLAPP. I move that the Senate insist on its amendments and accede to the request of the House for a conference, and that the conferees on the part of the Senate be appointed by the Chair.

The motion was agreed to; and the Vice-President appointed Mr. CLARK of Montana, Mr. DUBOIS, and Mr. CLAPP as the conferees on the part of the Senate.

HOUSE BILL REFERRED.

H. R. 19144. An act granting an increase of pension to Sarah Louisa Sheppard was read twice by its title, and referred to the Committee on Pensions.

INDIAN APPROPRIATION BILL.

Mr. CLAPP. I move that the Senate proceed to the further consideration of the conference report on House bill 15331, the Indian appropriation bill.

Mr. TILLMAN. Will the Senator from Minnesota yield to me for a moment to make an inquiry?

Mr. CLAPP. I will yield as soon as the conference report is taken up.

The VICE-PRESIDENT. The Senator from Minnesota moves that the Senate proceed to the consideration of the conference report on the Indian appropriation bill.

The motion was agreed to.

Mr. TILLMAN. Will the Senator from Minnesota yield to me for a moment?

Mr. CLAPP. Certainly.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. B. F. BARNES, one of his secretaries, announced that the President had approved and signed the following acts and joint resolutions:

On June 8:

S. R. 20. Joint resolution directing the selection of a site for the erection of a bronze statue in Washington, D. C., in honor of the late Henry Wadsworth Longfellow;

S. 86. An act for the erection of a monument to the memory of Commodore John Barry;

S. 333. An act in regard to a monumental column to commemorate the battle of Princeton, and appropriating $30,000 therefor;

S. 685. An act for the erection of a monument to the memory of John Paul Jones;

S. 4370. An act to appropriate the sum of $40,000 as a part contribution toward the erection of a monument at Provincetown, Mass., in commemoration of the landing of the Pilgrims and the signing of the Mayflower compact; and

S. 4698. An act for the preservation of American antiquities.

On June 9:

S. R. 54. Joint resolution authorizing a change in the weighing of the mails in the fourth division;

S. 5489. An act to provide for sittings of the circuit and district courts of the southern district of Florida in the city of Miami, in said district; and

S. 6288. An act to create a new division of the western judi-

cial district of Texas, and to provide for terms of court at Del Rio, Tex., and for a clerk for said court, and for other purposes.

REPORT ON ALASKAN SCHOOLS, ETC.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States; which was read, and, with the accompanying papers, referred to the Committee on the Territories, and ordered to be printed:

To the Senate:

In compliance with the resolution of the Senate of May 31, requesting the President, "if not incompatible with the public interest, to furnish the Senate with a copy of the report of the investigation made in 1905, under the direction of the Secretary of the Interior, by Special Agent Frank C. Churchill, regarding the condition of educational and school service and the management of reindeer service in the District of Alaska, together with all exhibits accompanying said report," I transmit herewith copies of the original and supplemental reports of Mr. Churchill, dated, respectively, December 11, 1905; January 10, February 15, and June 2, 1906, together with all the exhibits accompanying the same.

I also inclose a letter from the Secretary of the Interior submitting the papers for transmission to the Senate.

THEODORE ROOSEVELT.

THE WHITE HOUSE, *June 11, 1906.*

PROPOSED INVESTIGATION OF NATIONAL BANKS.

Mr. TILLMAN. Mr. President, I see the Senator from Rhode Island [Mr. ALDRICH], the chairman of the Committee on Finance, in the Chamber, and I desire to call his attention, and the attention of the Senate also, and to make an inquiry of him in regard to the resolution which I submitted on the 16th of April, and which was referred to the Committee on Finance the following day. In order that Senators may understand what is involved, I ask that the resolution may be read.

The VICE-PRESIDENT. Without objection, the Secretary will read the resolution.

The Secretary read the resolution submitted by Mr. TILLMAN April 16, 1906, as follows:

Resolved, That the Committee on Finance be directed to inquire whether or not the national banks have made contributions in aid of political committees, and if so to what extent and why the facts have not been discovered by the Comptroller of the Currency; and whether or not such contributions have been embezzlements, abstractions, or willful misapplications of the funds of the banks which call for restitutions and criminal prosecutions. Said committee is also directed to inquire whether or not the national banks of Chicago have recently engaged in transactions beyond their lawful powers in connection with the recent failure of a bank in that city, and whether such failure involved illegalities and crimes; and also to inquire whether the national banks in Ohio have been in the habit of paying large sums of money in a secret and illicit manner to the county treasurers of Ohio as a compensation to said treasurers for making deposits of public money with such banks; and to report the facts to the Senate and the opinion of the committee whether any legal proceedings should be instituted on account of the transactions disclosed; and whether the public interest requires any amendments of the existing national banking laws.

Mr. TILLMAN. Mr. President, Senators will remember that at the time this resolution was presented to the Senate I made some remarks in regard to it and called attention to the general mismanagement, as it appeared to me, or looseness of management, of national banks. I proved practically that there were campaign contributions contrary to law, and in that discussion the case of John R. Walsh's bank in Chicago was rather prominently brought forward. The Senator from Illinois [Mr. HOPKINS] seemed to take great umbrage that I should presume to meddle with a bank in his home city and—well, if I had been willing to so consider it, he used language which was insulting. He advanced the remarkable doctrine or dogma that because South Carolinians were accustomed to lynch negroes for rape, and because I had announced and declared on the floor of the Senate and elsewhere that in 1876 we shot negroes and stuffed ballot boxes to carry the elections in order to regain control of our State and protect our civilization, it was prefectly permissible for people in Chicago to go on stealing without any question from me, and for national bankers to disobey the law as they saw fit. I am merely giving the outline of the Senator's argument, and I have no desire in mentioning it to renew that unpleasant discussion, though I am ready at any time.

My purpose this morning is to make inquiry of the chairman of the Committee on Finance as to whether this resolution has been considered, or whether it will be considered, or whether there is any purpose to take up this investigation and follow it or not.

As a further argument or reason why there should be an investigation, a very thorough investigation, and at the earliest possible moment, I send to the desk and ask to have read an article in the New York Sun of June 6, relating to the condition in Chicago now in regard to the Walsh bank, and the situation in which the clearing-house association of Chicago finds itself in connection with the Walsh bank, and the assumption by that association of all of the Walsh debts. It will throw a great deal of light on the present situation, and I think will emphasize the necessity for action by the Finance Committee.

The VICE-PRESIDENT. Is there objection to the request made by the Senator from South Carolina? The Chair hears none, and the Secretary will read as requested.

The Secretary read as follows:

RECEIVER FOR WALSH ROADS—BANKERS WHO LIQUIDATED HIS BANKS SEE NO OTHER SOLUTION.

CHICAGO, *June 5, 1906.*

Receivership proceedings against the railroads of John R. Walsh are imminent.

This became known to-day when it was revealed that there is dissension which amounts almost to open quarreling among the banks of the clearing-house association, which advanced more than $14,000,000 to liquidate the Chicago National and Home Savings banks last December. Members of the clearing-house committee, managing directors of the Walsh deal, are divided into two factions, unable to agree on the course to take to clear the banks of the Walsh tangle.

The demand for a receivership became insistent a few days ago, when it became known to the associated banks that the financial affairs of the Southern Indiana, Chicago Southern, and Illinois Southern roads are in a bad way.

"There has been a great deal of grumbling among the banks for some months," said a man in close touch with the situation through one of the most heavily interested banks to-day. "Ever since the deal to sell the Walsh roads fell through in New York grumbling has grown louder. The bankers are not satisfied to have their money tied up in a venture which looks more hopeless every day. The only course open to give relief seems to be a receivership for the roads."

The Southern Indiana is the only road of the Walsh group which has shown earning capabilities. No financial statement was ever made of the Chicago Southern or the Southern Illinois. The Southern Indiana, according to its last annual statement, was making enough to pay interest on its indebtedness and 1½ per cent on its stock. Since the coal strike was declared on May 1, the bankers have learned, the Southern Indiana has not been a paying property.

On top of the banks' other troubles has come a report that Secretary of the Treasury Shaw gave strong intimation to national bankers that they should unload the bonds of Walsh's roads now carried as assets of their institutions.

There remain something like $12,000,000 of Walsh paper and securities in the associated banks. It has become clear to the banks, according to one of their attorneys, that in reserving the stock in his railways, which they thought of little consequence, Walsh made them victims of a sharp trick. The stock carries the voting power and control of the roads. As long as the roads pay interest on bonds Walsh will be in command of the situation. He will dictate the policy of the railways and their management.

The banks are left "holding the bag."

When Walsh's banks went out of business, it is asserted he transferred to a bank whose president is on the clearing-house committee all the accounts of his railroads and other interests, amounting to many thousands of dollars. This bank president is reported to be standing by Walsh in the present crisis and seeking to avert the threatened receivership.

Work on the investigation of the criminal charges made against Walsh is progressing rapidly in the office of District Attorney C. B. Morrison. Special Bank Examiner Moxey, who is inspecting the bank and railroad company books, conferred with Mr. Morrison to-day. Assistant Attorney-General Pagin has seen all of the evidence thus far gathered, so as to be ready to draw an indictment should the case progress that far.

Mr. TILLMAN. Mr. President, it is well understood by those who read the newspapers that after the efforts which were made to secure the dismissal of the charges against Mr. Walsh before the United States commissioner failed and he was bound over to court to await the action of the grand jury people expected this financial tangle in Chicago to be straightened out. The "admirable financiering" which elicited so much commendation from the Senator from Illinois [Mr. HOPKINS] has failed to accomplish that purpose, and the money of the banks which are in the clearing-house association is tied up. We find that, instead of being able to sell the railroads to liquidate the debts of Mr. Walsh and get things straightened out, the valuation of the roads, which in the last newspaper article I read on the subject was, I think, placed at about twenty-one or twenty-two million dollars, has now shrunk so that no one knows what they are worth, and if knocked off under the hammer it seems as if the chances are for a very large loss to the banks, which may cause further embarrassment. I have nothing to do with that. I do not know whether these statements are true or not, and I do not care. What I want is to have this subject investigated, as I said before when I brought this matter forward, without any special parade or hurrah, because I thought it was a legitimate subject for inquiry. I should like to have the Finance Committee seriously consider the propriety and necessity for examining into the facts and determining once for all what is necessary to be done, and, as the resolution has pointed out, to see that the laws of the United States are obeyed by the national banks, so that this kind of wild-cat proceeding shall not be repeated somewhere else.

Mr. CLAPP and Mr. HOPKINS addressed the Chair.

The VICE-PRESIDENNT. The Senator from Minnesota is recognized. Does he yield to the Senator from Illinois?

Mr. CLAPP. I had no idea this resolution would lead to debate, but I will yield to the Senator from Illinois.

Mr. HOPKINS. Mr. President, I do not propose to take very much of the time of the Senate, but I desire to call the

attention of Senators to the statement made by the Senator from South Carolina [Mr. TILLMAN] that he has no knowledge as to whether the statement made in the article which he has had read is true or false. If that is the only information which he has, it is not such information as men rely upon in a great financial transaction such as is there represented.

I desire again to call the attention of the Senate and of the country to the fact that every depositor in the Walsh bank was paid one hundred cents on the dollar; that everybody who has had any connection with the bank as a depositor or any relation with it in a financial way has been paid in full, and that there are assets enough to pay the full book value to every stockholder in the bank.

The article shows, if I remember its statement, that the Chicago banks advanced something like $14,000,000, and took the bonds and stocks of those various railroads as security in order to finance the situation. I will say to the Senator from South Carolina that I was told by one of those bankers that they had a standing offer of $22,500,000 for those properties. So that will leave a large margin, after paying these banks, to go to Mr. Walsh and the other parties who are interested in the Walsh bank. Mr. Walsh and those interested with him regard these properties as worth from twenty-five to twenty-seven million dollars, and they have been insisting that the properties should not be sold for less than that sum.

The leading bankers there, who represent the great financial interests of Chicago, are in full accord with Mr. Walsh, as I understand, upon this proposition that these great properties, so valuable, as I have just indicated, shall not be sacrificed by any Wall street interest that might seek to depress their value. That is all there is to it. When somebody loses money out in Chicago on this question, it will be time enough for the Senator from South Carolina to characterize it as "wildcat banking;" but up to the present time it is shown that the banking there is of a character that precludes the idea that there should be a loss of a cent to anybody.

Mr. CLAPP and Mr. FRAZIER addressed the Chair.

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Tennessee?

Mr. ALDRICH. The Senator from South Carolina [Mr. TILLMAN] has asked me a question, which I should be glad to answer, if he desires an answer.

Mr. TILLMAN. Well, I do desire to hear something from the chairman of the Committee on Finance, and to know whether he or the committee has considered this resolution, or whether they will consider it, or whether he thinks the committee—of course, unless the committee has considered it, he can not express any opinion as to what it will think or what it does think—but I should like to have an assurance from him that the committee will do something with the resolution, either adopt it or refer it back here for the Senate's action, or else make some report as to why it does not do it.

Mr. ALDRICH. Mr. President——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Rhode Island?

Mr. CLAPP. I do.

Mr. ALDRICH. One of the subjects included in the resolution is that in regard to contributions for political purposes. That has already been disposed of by the Senate, and that is, therefore, I suppose, out of the jurisdiction of the committee.

Of the other two matters in relation to national banks, I will say that the committee has been very busy of late and, therefore, have not taken those up, not supposing that there was any special haste in regard to them. The question the Senator from South Carolina now brings to the attention of the Senate has not been acted upon by the committee; but I will say that the committee meets to-morrow morning, and I will assure the Senator we will take the matter up.

Mr. TILLMAN. That is all I want. I simply do not want it to die here and that that anomalous condition in Chicago should continue. There must be some foundation for this statement, because the New York Sun is not a yellow journal; it is usually accurate in its news service; and its statement is that there are differences of opinion in the clearing house as to what should be done with these properties, and there may be wreckers in New York and elsewhere who would like to get these railroads so far wrecked and demoralized as to be able to buy them in at a sacrifice. But I am willing to have the committee investigate these matters and determine, once for all, whether the laws of the United States have been broken there and what laws ought to be enacted, if any, to protect the banks.

Mr. FRAZIER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Minnesota yield to the Senator from Tennessee?

Mr. CLAPP. The conference report on the Indian appropriation bill is pending, and it can not be acted upon by the other House until the Senate first acts upon it. So I feel that it ought to be pressed to a conclusion; but I understand the bill which the Senator from Tennessee is anxious to have taken up is one merely to change the time for holding circuit and district courts in Tennessee and that both the bench and bar—the bill having passed the House—are interested in knowing what is to become of the bill, so that they may adjust their dates accordingly. In view of that, I make an exception and yield to the Senator from Tennessee.

TERMS OF COURT IN TENNESSEE.

Mr. FRAZIER. I ask unanimous consent for the present consideration of Senate bill 6149, being a bill in relation to the time for holding the circuit and district courts of the United States in certain districts of Tennessee.

The VICE-PRESIDENT. The Senator from Tennessee asks unanimous consent for the present consideration of a bill, the title of which will be stated.

The SECRETARY. A bill (S. 6149) to change and fix the time for holding the circuit and district courts of the United States for the middle district of Tennessee; in the southern division of the eastern district of Tennessee at Chattanooga, and the northeastern division of the eastern district of Tennessee at Greeneville, and for other purposes.

The VICE-PRESIDENT. Is there objection to the present consideration of the bill?

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

The VICE-PRESIDENT. The amendment reported by the Committee on the Judiciary will be stated.

Mr. FRAZIER. Mr. President, I will state that a bill has been passed by the other House on the same subject which is identical with the Senate bill. I therefore ask that the House bill may be taken up for consideration, and that the Senate bill be indefinitely postponed.

The VICE-PRESIDENT. The House bill is not at the Secretary's desk. The Chair supposes it to be in the Committee on the Judiciary.

Mr. FRAZIER. Then I ask that the consideration of the Senate bill may be proceeded with.

The VICE-PRESIDENT. The committee amendment will be stated.

The SECRETARY. The Committee on the Judiciary report an amendment, to insert, as section 3, the following:

SEC. 3. That the clerks of said circuit and district courts for the eastern district of Tennessee may reside and keep their offices, respectively, in either the city of Knoxville, Chattanooga, or Greeneville; but said clerks shall each, respectively, appoint a deputy to reside and keep their offices in each of the above-named cities other than the one in which said clerks shall respectively reside and keep their offices; that the said deputy clerks shall, in the absence of their principals, do and perform all the duties appertaining to their offices, respectively.

The amendment was agreed to.

The VICE-PRESIDENT. The Chair would suggest that the House bill has been sent for, and the Chair will recognize the Senator from Tennessee later. The action on the Senate bill will for the present be suspended.

INDIAN APPROPRIATION BILL—CONFERENCE REPORT.

The Senate resumed the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 15331) making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1907.

Mr. CLAPP. I understand the Senator from South Carolina [Mr. TILLMAN] desires to be heard.

Mr. TILLMAN. Mr. President, late Saturday evening I brought to the attention of the Senate a matter which has twice before been considered by the Senate and which to me appears wholly indefensible. In order that Senators who were not present Saturday, and who have not read the RECORD, may understand somewhat what is involved, I will restate briefly my objections to having this conference report adopted by the Senate.

I know, Mr. President, of course, that it is practically a hopeless thing for a Senator to attempt to secure the rejection of such a report at this stage of the session. We are all working under pressure; we are tired, fatigued, and worn out with the long, laborious session, and when a matter has been considered in the Senate and then brought back in the shape of a conference report, the usual feeling of Senators is that it must be fairly reasonable and proper, and that it is to be accepted as the inevitable thing. Therefore I have small hope of getting

Senators to vote to reject this report, although there are things in it which would warrant it being sent back to conference with instructions.

The particular item to which I wish to call attention is the matter of Andrew Jackson Brown and the Seminole Indians. In the bill which passed the Senate some six weeks or two months ago to finally dispose of the affairs of the Five Civilized Tribes there was an amendment put on by the Senate committee providing that—

> The disbursements, in the sum of $186,000, to and on account of the loyal Seminole Indians, by James D. Jenkins, special agent appointed by the Secretary of the Interior, and by A. J. Brown as administrator de bonis non, under an act of Congress approved May 31, 1900, appropriating said sum, be, and the same are hereby, ratified and confirmed: *Provided*, That this shall not prevent any individual from bringing suit in his own behalf to recover any sum really due him.

Mr. President, I do not like to insist that Senators shall quit talking and listen, but I will insist because they are going to vote on this report presently and I am determined that they shall vote with their ears open, or their eyes open, anyhow.

The VICE-PRESIDENT. The Senate will be in order.

Mr. TILLMAN. This provision, which was inserted in the Five Civilized Tribes bill, ratified and legalized the action of Brown and Jenkins in disbursing this money. I was informed by a private letter from the Indian Territory that it was an outrageous proceeding; that many of the Indians had been cheated; that there were minors whose rights were involved, and that the Indian Department has instituted suit to protect those minors, and had employed an attorney to press the suits in the United States courts. I saw the chairman of the committee privately, and suggested that this was a bad thing to go in that bill. He said that, so far as he was concerned; he was willing for it to go out. I sat here one evening very late anxious to get an opportunity to have the Senate vote it out, but, having assurance that it would go out in conference if the House did not readily agree to it, I left the Chamber. It was ratified by the Senate, and when the conference report on the Five Civilized Tribes bill came back, instead of the provision being out, it was in. I was informed that the House conferees had accepted it without question, and that the Senate conferees were therefore helpless, and could not get it out.

Well, I made a little talk in the Senate in the course of the proceeding called the yeas and nays on the adoption of the conference report on the Five Civilized Tribes bill; but that provision in it was accepted by the Senate and the provision became a law. Later when the Indian appropriation bill, which we now have before it, came into the Senate, finding that it contained a provision amending the bill in relation to the Five Civilized Tribes, which had just passed and which was then not signed by the President, I thought I might still get a chance to get this piece of bad legislation eliminated, and proposed an amendment repealing this provision of the Five Civilized Tribes bill. The conferees on the part of the Senate agreed to let it go in, and assured me that they would try to hold it in.

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from South Carolina yield to the Senator from Minnesota?

Mr. TILLMAN. Oh, certainly.

Mr. CLAPP. This matter having been thoroughly discussed once in the Senate, I do not care to discuss it again, nor do I care to let a statement pass unchallenged which is not according to my understanding of the facts. In reference to this amendment going into the Indian appropriation bill, the Senator from South Carolina asked me if I would see that it was retained. I very frankly told him that he had charged me with bad faith in a case where a Senate amendment had been accepted by the House conferees and the Senate conferees were powerless, and that that was the last promise he would get from me. Whatever I did—and I worked hard to get this in—I did because the Senate had passed the amendment, and not because of any understanding with the Senator from South Carolina.

Mr. TILLMAN. Mr. President, I spoke with the other two conferees. I had very little chat with the Senator from Minnesota.

Mr. CLAPP. The Senator did not say that.

Mr. TILLMAN. I was speaking of the conferees who really had the power. The other two would, of course, outvote the Senator from Minnesota, and they had the controlling hand. I furnished one of them with documents, which were sent to me from the Interior Department, in relation to this claim, which showed its bad character, its outrageous character, and I felt every assurance that the Senate amendment, which I had introduced, which provided for the repeal of this provision in the Five Civilized Tribes bill, being a Senate amendment, and therefore giving the Senate conferees power to insist on it and giving them some leverage on the House conferees, would stay in. But the conference report comes back and this obnoxious provision is left in the law passed to dispose of the affairs of the Five Civilized Tribes, and when this conference report is adopted, if it shall be adopted with that provision in it, this outrage, as I have called it, and I think so still, will be the law.

Why do I call it an outrage? For this simple reason: The litigation which was instituted by the Commissioner of Indian Affairs under the instructions and authority of the Secretary of the Interior is now pending. The lawsuits were begun by the Government to protect the rights and to recover the property or the money due the minors among the Seminoles, for whom Brown had acted as administrator de bonis non. This provision simply ratifying Brown's acts and validating them, puts it out of the power of these little Indian children or orphans to ever recover what is due them, because who can imagine two or three ignorant Indian minors being able to institute a suit or employ any lawyer to go into court to protect their rights and recover the money which Brown misappropriated?

I will read what the Secretary of the Interior in his report, which Senators will find on page 8419 of last Saturday's RECORD, says about this matter. I will just read his conclusions:

> The Commissioner of Indian Affairs recommends, for reasons stated by him, that said amendment should not be enacted into law.
> I fully concur with the Commissioner in his recommendation.

In other words, he wants these lawsuits to be carried to their conclusion and let the man Brown, who is wealthy and powerful, go into court and get such protection as the law will give him—no more and no less. But the proposal here is to validate his acts, to stop the lawsuits, and to turn these orphans loose with no chance for a recovery of their property, unless by some strange and unlikely piece of good fortune some good Samaritan of a lawyer will come along and undertake to conduct their lawsuits for them. I read further down from the report of the Commissioner:

> Special Agent Jenkins paid Andrew Jackson Brown, as administrator of the estates of deceased Seminoles, $151,299.60, of which amount he paid to the Wewoka Trading Company, Samuel J. Crawford, and for cost of administration $103,183.70, which is about 69 per cent of the amount paid him by the special agent.

The Indian Office, after sending an inspector to examine into this matter, reported—

> that the payment to Mr. Crawford seemed to have been made without authority of law; that in most of the cases payments were made without the consent of the persons from whose estates the deductions were made, and that proper action should be taken to recover the amount so paid Mr. Crawford.

Further on I read a statement from Mr. Crawford himself, who appears to have been in Washington, and doubtless has appeared before the Committee on Indian Affairs. It is dated Washington, May 14, Ebbitt House, and in it he says:

> Would it not be more honorable for the Government to pay this balance—

A balance of $252,000, which he says is due the Seminoles—

> rather than try to compel the administrator to again pay that which he has already paid? This, it seems to me, would be better for the Indians than if the Government should adopt a course calculated to impress upon their minds the fact that they are under no moral obligations to pay their honest debts.

Mr. Crawford is very kind in advising Congress to let this matter rest, after having secured this special piece of legislation validating the payment to himself and validating the action of Jenkins and Brown in disbursing the $186,000.

I read further on in a memorandum submitted by the chairman of the committee a statement by Messrs. Butler and Vale, who have doubtless been employed as attorneys of Mr. Brown—

> It is now conceded that the appointment of Brown as administrator was without authority of law and improvidently made, and that the money of minors was paid over to him by Jenkins without legal authority.

And yet when the Government of the United States, which is in effect the guardian of these Indian orphans, begins lawsuits to determine whether what has been done is wrongful or illegal, the Senate is asked—and the Senate has granted the request—to put into this bill a provision that all the acts, whether lawful or unlawful, whether wrong or right, are ratified and confirmed, and therefore the lawsuits will be stopped and the action of the Commissioner of Indian Affairs and of the Secretary of the Interior will be ignored and in a manner a reprimand will be administered to those officers for attempting to discharge their duties.

I do not know that I care to say anything more, Mr. President. It seems to me very clear that in dealing with the money of Indians nothing can ever be done here without some lawyer appearing on the scene and acting as their agent and going

before some committee and getting the indorsement of that committee for legislation which will in the end enable the lawyer to get a very large percentage of the money.

In the Colville Reservation matter, which we had up Saturday, we find that these very same attorneys, Butler and Vale, have been before the committee; that they secured the insertion of a provision which looks to recognizing the debt of the Government—a million and a half dollars—and appropriating at this time a hundred and fifty thousand dollars, which went into the bill as passed by the Senate. But the conference have reported back a provision which strikes that out and refers the claim of the attorneys—who have some claim; I do not know what sort of one, whether honest or dishonest, just or unjust—to the Court of Claims for adjudication and report, and I suppose that in due time we will have some other lawyer employed to collect the remainder of the money and get the Treasury to pay it. So this will go on. While we have money here belonging to the Indians, recognized as belonging to them, appropriated by Congress, it can not be collected and paid to them until some lawyer comes here and goes before a committee and gets a provision in some bill authorizing its payment and, of course, gets a good fat fee for it.

I shall ask the Senate at the proper time to disagree to the report, and send it back with instructions to strike out this provision.

Mr. SIMMONS obtained the floor.

Mr. TELLER. Mr. President——

The PRESIDING OFFICER (Mr. NELSON in the chair). Does the Senator from North Carolina yield to the Senator from Colorado?

Mr. TELLER. I desire to discuss the question which the Senator from South Carolina has just discussed.

Mr. SIMMONS. I yield to the Senator from Colorado.

Mr. TELLER. I will proceed now on this proposition.

It will clarify things somewhat, I think, Mr. President, to have the facts come before the Senate, and one of the most important points in this discussion is that these Indians have not been Indians within the meaning of the law for a large number of years. They are citizens, and were citizens before this appropriation was made, and the attorney who appeared for them appeared for them not as members of a tribe, not as Indians within the meaning of the law, but as citizens of the United States. He made a contract with them through a committee appointed by those claimants, specifying the percentage he should receive. This is not the statement that the Senator from South Carolina [Mr. TILLMAN] made. He understands that they are Indians, because he says they are under the guardianship of the United States. That is a mistake. They are not under the guardianship of the United States any more than any other citizens of the United States.

Mr. TILLMAN. Will the Senator pardon me?

Mr. TELLER. Certainly.

Mr. TILLMAN. I was speaking broadly and of the actual condition rather than of the technical, legal situation, and realizing, as the Senator himself must, that the bill which was passed a little while ago, a month ago, for the settlement of the affairs of the Five Civilized Tribes took charge of their entire property, handled it, distributed it, worked it in any shape we saw fit, made allotments, and provided everything connected with it, the Seminoles being among those Indians, I do not see how the idea of guardianship can be got away from. We are in actuality and in honesty their guardians, whether we are legally or not.

Mr. TELLER. The Senator from South Carolina is not accurate in the last statement any more than he was in the first. We did not attempt to touch or interfere with the personal property of these Indians in the bill to which the Senator refers. The Government did claim, under a decision of the Supreme Court, that although they had become citizens, the Government, having exercised rights over their real estate, might still continue to do so. But there has been no claim at any time that the Government had any control over the personal property of these Indians.

Mr. TILLMAN. Let me ask the Senator a question.

Mr. TELLER. Certainly.

Mr. TILLMAN. When the money was appropriated for these loyal Seminoles, a hundred and eighty-six thousand dollars, through what instrumentality and at whose initiative was Brown appointed administrator?

Mr. TELLER. That I can not answer.

Mr. TILLMAN. As I understand, there were families of deceased Indians who had rights to a part of the money appropriated, and the Indian agent, Jenkins——

Mr. TELLER. He was not the Indian agent; he was a special agent.

Mr. TILLMAN. A special agent; anyhow, he had to do with Indian affairs. Jenkins was paid the money by the Government here and authorized and required to disburse it according to law, of course. He goes to the Indian Territory; I do not know how it happened; I have no facts; I can only guess; but he and Brown being friendly, Brown somehow or other got the administratorship. He did not get it legally, because Mr. Butler says it was not lawful. But still Mr. Jenkins paid to an illegally appointed administrator the money intrusted to him by the Government to pay to these Indians. What I am contending against here is that instead of letting the courts—for which the Senator has so much respect and which we all ought to respect—instead of letting the law settle it and let the rights of Brown and everybody else concerned be passed upon by the courts, we step forward and take the responsibility upon ourselves in the Senate to say "We know Brown is an honest man; we know that Brown has not stolen a dollar; therefore we ratify his acts and Jenkins's acts." I want the courts to determine whether or not Brown has stolen any money.

Mr. TELLER. If the Senator will let me go on and make this speech, and not make it himself, I will give him the facts and not guesses, as he has given. I do not intend to do any guesswork here.

Mr. TILLMAN. I am guessing from the official record.

Mr. TELLER. I do not think I need to say that I have as much interest in the proper discharge of the duties of this Government as has the Senator from South Carolina, and I do not think it would be boasting if I should say that I know a good deal more about the facts in this case than does the Senator from South Carolina. I will show a case before I get through in which, if the Senator has any desire to protect the Indians, he will find a wide field for his sympathy and operations.

I want to go back to the beginning. During the war the Seminole Indians divided into two parts. A part of them were in sympathy with the Confederacy and a part in sympathy with the Government of the United States. Quite a large number of them entered the service of the Government; some of them went the other way. The property of those who remained at home—I am speaking about those who were loyal to the Government—and the property of those who went into the Army was destroyed and appropriated by the Confederate forces, composed in part of Seminole Indians who were disloyal to the Government.

At the close of the war the Government of the United States made a treaty with them and recognized their services. I will not say whether there was one regiment or two, for I have forgotten, but there was at least one regiment in the public service. Before I state the proposition that I started on, I desire to say that the regiment was commanded by Samuel Crawford, who was a colonel, and I believe afterwards a brigadier-general; but at that time he was a colonel. These Seminoles were members of his regiment. At the close of the war Mr. Crawford became governor of Kansas. He was governor for four years. While I was engaged as Secretary of the Interior I made, I think for the first time, the acquaintance of Governor Crawford, who had more or less matters pertaining to Kansas interests and some pertaining to Indian affairs before the Department. I have known him since, and that is in the neighborhood now of twenty-five years. I have always known him as a man of character and good standing. I know that has been his reputation in the community in which he lives.

In the early part of the session Governor Crawford came to me with the suggestion that Mr. Jenkins, who had been appointed by the Government to pay out this money, had paid over a portion of it to a man whom it was afterwards found was not legally entitled to receive it from the Government, and Mr. Jenkins could not get an acquittance from the Government if the Government was disposed to say it was paid to an improper person; that under a condition which did not in the slightest degree reflect upon the integrity of Mr. Brown, he had paid out the money to parties who were entitled to it, under a mistake of law, supposing that he had been properly appointed an administrator for these people.

There are not many Senators present, Mr. President, but I should like to have the attention of those who are here.

Mr. TILLMAN. I think it is of importance that there should be a quorum present, and I make the point of order that there is not one in the Chamber.

The PRESIDING OFFICER. The point of no quorum having been made, the Secretary will call the roll.

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

Aldrich	Beveridge	Burnham	Clay
Ankeny	Blackburn	Carter	Crane
Bacon	Bulkeley	Clapp	Cullom
Bailey	Burkett	Clarke, Ark.	Daniel

Dillingham	Hopkins	Millard	Scott
Dolliver	Kittredge	Morgan	Simmons
Dryden	Knox	Nelson	Spooner
Dubois	La Follette	Nixon	Sutherland
Flint	Lodge	Overman	Teller
Frazier	Long	Patterson	Tillman
Gallinger	McEnery	Perkins	Warner
Hale	Mallory	Pettus	Warren

The PRESIDING OFFICER. Forty-eight Senators have responded to their names. A quorum is present.

Mr. TELLER. I was saying, in response to the inquiry of the Senator from South Carolina, that Mr. Brown paid out this money as administrator and was afterwards held not to be legally appointed, and the proceedings were irregular, owing to the fact that it was supposed at that time that the laws of Arkansas were in force in the Seminole country, when, in fact, they were not, and were not put in force there for some years afterwards.

A large number of Senators have come in since I commenced talking, and I fear before I reach that point in my remarks they may leave. So I desire to say again that one of the prominent features of this case, which must be kept in mind, is that these people are citizens of the United States, and were citizens of the United States when they made their contract with their attorney; and when I have detailed the history of this case as I understand it, there will be nobody in this Chamber, or outside of it either, who will not say that they were entitled to employ attorneys, and that no discredit can come to the attorney who took their case, but some discredit may come to the Government of the United States that it created the necessity for attorneys in this case.

I will now refer to the administrator's acts. He became administrator supposing the Arkansas law was in effect in that section of the Indian Territory when it was not. Every proceeding under the law was correct, except that the court in one instance made an order in chambers which ought to have been made in court; and subsequently, when Mr. Brown presented his report for approval, it was examined and approved by the judge in chambers when it is now said he should have approved it in open court. That was a proceeding the like of which exists practically everywhere. I will venture to say that in 90 per cent of the cases where the courts pass upon accounts of this kind, while the order may be made in open court, the examination is usually made in chambers, because there it can be done with much better ease and with much greater safety than from the bench. Mr. Brown reported to the court. The court accepted his proceedings as correct, and approved them.

I think I will go back and commence from the beginning again, not repeating what I have said except so far as may be necessary to make it consecutive with what I desire to say now.

At the conclusion of the war, in 1866, the Seminole Indians, who had been loyal to the Government, set up the claim that they had suffered by reason of their loyalty, and they desired the Government to make them some compensation for the property they had lost and for the injuries they had suffered because of their loyalty. The Government made a treaty with them, which I have before me, in which the Government recognized the fact that they were loyal—they could not ignore if they would—and provided in that treaty that a commission should be appointed to determine what the Indians had suffered, what was the value of the property they had lost, and in what cases they were entitled to compensation for property so lost. That was some time in 1866.

Some time in 1867—if anybody is particular about the dates I can give them exactly—this Commission was appointed, as provided by the treaty. They made the examination. The Government advanced $50,000 before this examination was made. The Commission reported that there was due, over and above what had been paid, subtracting the $50,000, $163,000 in round numbers. In section 3 of the act providing for this Commission there was a provision inserted, which any Senator may see, that if there was an amount found due greater than the $50,000 which had been paid, it should draw interest at 5 per cent per annum until it was paid.

Mr. President, that report was made on the 26th day of November, 1867. I hold before me a copy of the report, with the names of all the people who were entitled to receive and the amount which they were entitled to receive. Bear in mind this is not a claim and never has been a claim made by the tribe. It is a claim for losses by individuals. The Commission found how much each individual was entitled to. I listened to a debate here the other day wherein it was said (and it will probably be said again) that where an amount is found against the Government there is no necessity for any attorney to come here to secure the payment of it. There is nobody in this country who is authorized to pay out money, no matter how certain it may be due by the Government of the United States, until the Congress of the United States has made an appropriation for that amount. From the 26th day of November, 1867, until 1902 there was no appropriation of that money made. The Indians appeared here from time to time.

In 1898 we made another treaty with them, or another arrangement, which can also be found in the statutes, by which we agreed that the Senate of the United States should pass upon the question of this unpaid amount, and whatever the Senate did find should belong to them. There was nothing in the world to do but to compute the interest on the balance due—$163,000—in order to find how much was due these Indians.

In the act of 1866 this tribe of Indians ceded to the Government of the United States more than 2,000,000 acres of land, now occupied by white citizens in the Territory of Oklahoma, for the munificent sum of 15 cents an acre, amounting to three hundred and some fifty-odd thousand dollars. I am not going to make any claim that there was anything wrong with this transaction, but it is pretty certain that the Government, then the guardian of these Indians, put a very small price upon the land that the Indians ceded to us, which the Government subsequently sold for a dollar and a quarter an acre, if it sold it at all.

Year after year came these Indians here for their money. But before the act of 1898 they employed Governor Crawford, who had been the colonel of some of them and the colonel of some of the ancestors of these claimants, as is stated, under a written contract. Governor Crawford came here repeatedly. Finally the Senate Committee on Indian Affairs repudiated the claim made by the Indians for $163,000 and 5 per cent on it from that time to the time the matter was before the Senate committee. Thereupon it was said, as a compromise, "We will give you interest on this $163,000 from the time you made the agreement with the Government of the United States," and that gave them about $20,000. That is added to the $163,000, amounting to $23,000, I think, making $186,000.

Now, Mr. President, I stop a moment, and I want some Senator, with the statute lying before him, in which the Government agreed to pay 5 per cent on any amount that should be found above the $50,000, to tell me, subjecting that question to the law of common decency, by what right the Government of the United States had through its committee and through this body and the other to declare that these Indians should take $186,000, leaving unpaid $250,000 due them according to the contract the Government had made with them? And then the Government in that bill required of them that they should accept every dollar that they accepted in full of all that ought to have been paid them.

Mr. President, that is a history which is not respectable. That is a history which no American citizen can be proud of. Whether they were Indians or white men, or Indians who were citizens under the law, they were entitled to the money the Government had agreed to pay them, and which they would not have had to-day if it had not been for the persistent effort of Governor Crawford, coming here year after year, until he finally secured an appropriation for the payment.

You can readily conceive, when I give you these facts, that if Congress, acting through its committee, would pay less than half what was due, it was not likely to pay any of this amount unless some virile force made it necessary that it should be paid.

Mr. President, if any Senator who thinks that attorneys are not needed here when the Indian has a claim against the Government, will take that case and look at the record he will not need to take my statement or anybody else's. It is in black and white. It is on the records that can not be disputed. There is the report of the Commission. There is the contract made in 1866. There is the contract made in 1898. The evidence is abundant of the persistent effort of these people to get the money due them, and which they have received only comparatively recently.

When Congress had made that appropriation the Government sent a man by the name of Jenkins down to pay it out. Mr. Jenkins was not, as supposed, I think, by the Senator from South Carolina, their agent, but a special agent charged with the disbursement of this fund. He went down there, and Mr. Brown was at that time, as I understand he is yet, the treasurer. I suppose the tribe has still a semiofficial relation. He was the treasurer of that organization or tribe. The Government recognized him as the administrator. The Government required him to put up a bond of $300,000 for the proper discharge of his duty as such administrator. He put up that bond, and Mr. Jenkins, supposing him to be administrator de jure, as he was de facto, paid over to him the money that was to be paid to the Indian minors and the heirs, and I suppose in a great measure, undoubtedly as he had

to do, turned the matter over to the man who knew the Indians and who has as much character among the Indians as any man there. I have the assurance of the Senator who sits in front of where I speak when here that Mr. Brown is a man of the highest character in the community in which he lives.

Mr. TILLMAN. Will the Senator pardon me?

Mr. TELLER. I will.

Mr. TILLMAN. All that can be brought out in the courts there, where Mr. Brown——

Mr. TELLER. I wish the Senator would wait until I get through. I will touch on the court when I come to it. I know as much about this case as the Senator does, and I would rather make this speech myself.

Mr. President, I want to say here, as a lawyer, that every act Mr. Brown performed in connection with that matter is a legal act. He was the administrator de facto, if he was not de jure. He had given a bond. No man can go into court and say: "I have got $50 from you, but you had no right, as administrator, to take it from Mr. Jenkins, and therefore I will not recognize it as a payment." That is the position not only of the Senator from South Carolina, but I am sorry and ashamed to say that that is the position of the Commissioner of Indian Affairs on this proposition.

Governor Crawford came to me and told me the situation. I had never before heard of the matter. He detailed to me the exact conditions, and I introduced at the proper time—not immediately—the amendment. Later, in February, came this letter from the Commissioner of Indian Affairs, by which he notified us that suits had been brought. Thereupon the committee added what the Senator from South Carolina ignores, that nothing should prevent suits being brought by any individual who had a legal claim against either Mr. Brown or Mr. Jenkins. The only office, then, of that provision of the law, so far as the United States Government is concerned, was simply to say that Mr. Brown and Mr. Jenkins had discharged their duties properly so far as the General Government was concerned. Ex industria the committee said: "We will not interfere with the suits that have been brought. We will leave that where it is."

Now, Mr. President, the Government has brought no suit. The suits must be brought and can only be brought in the name of the individuals. They are not disturbed in the slightest degree. If Mr. Brown—I hear of no suits against Mr. Jenkins at all—if Mr. Brown can not defend himself and show that he properly paid out the money, then Mr. Brown is a man, I am told, of sufficient wealth to respond, and he has given a bond that is good for $300,000 that the Government holds. There will certainly be an opportunity for these complaining Indians, if complaining they are, to get redress.

Mr. President, the Senator from South Carolina has repeated, whenever he had an opportunity, that we have interfered with the processes of the court. I repeat the Government has no suit pending, and I do not know that the Government ever anticipated bringing suit against Mr. Jenkins or Mr. Brown. I doubt whether, under the conditions existing, they could have maintained a suit even if there had been misappropriation, to the extent that it may be claimed, of the fund. However, that is not a matter now which concerns us. The interference of the committee was for the purpose of protecting Mr. Brown and Mr. Jenkins against any claim that the Government of the United States might have made, and when the amendment was introduced I will venture to say no member of the committee, certainly not the Senator who introduced it, had information that any suit was pending.

Mr. CLAPP. If the Senator will pardon me, I think it will perhaps throw light on the matter to say that he is absolutely correct. The Government is not bringing this suit. The Government is rather supervising the expenditure of the money to the Indians. Some $12,000 being left over, a very industrious attorney down there thought it needed being placed in circulation, and he got the Government in a sort of pro forma manner to stand behind him in bringing two hundred and odd suits. The money, I take it, is rapidly disappearing.

Mr. TELLER. Mr. President, I want to say a few words about Mr. Brown's payments. It has been the custom in the Indian Territory for years when Indians had a claim against the Government to go to a trader and get credit on the strength of what they would ultimately receive. While I have no doubt that in some instances the Indian has suffered by that system, I know a great many of the traders have suffered worse than the Indians because of the long delay.

Here is a claim adjudicated by the court that we provided, lying here for thirty years, with no effort on the part of the Government to pay it, with a persistent demand by the Indians that it should be paid, and when it finally got before a committee the poor Indian was told that he might take less than one-half or he would get nothing, and then the Government said: "You must release the entire claim or you will get nothing at all."

Mr. Brown, following the practice, paid to those who claimed to have the debt, with the consent of the Indians wherever they were capable of consenting. Where they were minors and could not consent he paid under his bond. I repeat that no act of Congress can deprive any citizen down there of his claim against Mr. Brown if he paid the money to the wrong party. He has his action in that case.

Mr. President, I should have cared but little about this amendment except that I believe Governor Crawford to be a man of high character. I believe he had earned the money, and I know whereof I speak when I say he did not solicit from the Indians this engagement, but they forced it upon him because he had been their colonel and because of his relations to them in the past. The amount paid him is, I understand, in accordance with the contract which he had made not with the tribe of Indians, but with citizens of the United States acting, as all such communities must act, through a committee appointed by them.

Mr. President, there has been no complaint made that I know of by these Indians that they have been swindled. That is the complaint of the man who has brought these suits. I can not say what his fee is to be, but I understand that somebody down there has a fee by which 50 per cent of all that he shall recover from Mr. Brown is to be paid. I have no doubt that that is a fact.

PANAMA CANAL.

The PRESIDING OFFICER. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated.

The SECRETARY. A bill (S. 6191) to provide for the construction of a sea-level canal connecting the waters of the Atlantic and Pacific oceans, and the method of construction.

Mr. KITTREDGE. I inquire if the Senator from Nebraska is ready to address the Senate upon the unfinished business?

Mr. MILLARD. I am not ready this morning to address the Senate, but I expect to do so on Wednesday morning after the morning hour.

Mr. KITTREDGE. I ask unanimous consent that the unfinished business be temporarily laid aside, in the light of the statement of the Senator from Nebraska.

The PRESIDING OFFICER. The unfinished business will be laid aside unless objection is made. The Chair hears no objection, and it is laid aside.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the following bills:

S. 59. An act providing for the establishment of a uniform building line on streets in the District of Columbia less than 90 feet in width;

S. 2270. An act for the relief of Nicola Masino, of the District of Columbia;

S. 4170. An act to amend an act approved March 3, 1891, entitled "An act making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1891, and for prior years, and for other purposes;" and

S. 4268. An act changing the name of Douglas street to Clifton street.

The message also announced that the House had passed a joint resolution (H. J. Res. 172) to supply a deficiency in an appropriation for the postal service; in which it requested the concurrence of the Senate.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 18442) to fix and regulate the salaries of teachers, school officers, and other employees of the board of education of the District of Columbia; asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. MORRELL, Mr. GREENE, and Mr. MCLAIN managers at the conference on the part of the House.

ENROLLED BILL SIGNED.

The message also announced that the Speaker of the House had signed the enrolled bill (H. R. 17881) permitting the building of a dam across Crow Wing River between the counties of Morrison and Cass, State of Minnesota, and it was thereupon signed by the Vice-President.

PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA.

Mr. GALLINGER. I ask that the message just received from the House of Representatives, relative to the school bill, be laid before the Senate.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 18442) to fix and regulate the salaries of teachers, schools officers, and other employees of the board of education of the District of Columbia, and requesting a conference on the disagreeing votes of the two Houses thereon.

Mr. GALLINGER. I move that the Senate insist upon its amendments, agree to the conference asked for by the House, and that the conferees on the part of the Senate be appointed by the Chair.

The motion was agreed to; and the Vice-President appointed Mr. BURKETT, Mr. SCOTT, and Mr. GEARIN as the conferees on the part of the Senate.

INDIAN APPROPRIATION BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 15331) making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1907.

Mr. TELLER. Now, Mr. President, I wish to add a word or two more. There is nothing in this bill, there is nothing in this proceeding that will prevent the Government from continuing the course that it has adopted of encouraging some man down there to bring these suits. There ought to be something in the bill that would prevent the Government from paying out the money of these Indians that has not yet been paid to this attorney, whoever he may be. If the Government chooses to pay the expenses of this litigation, it can do so, if it has the funds, and I suppose it can pay them out of the funds that belong to the Indians who have not yet been found or who have not claimed it. However, this litigation down there is not in the interest of the Indians, but in the interest of some man who wants to make a fee.

Mr. President, I expressed some feeling on this subject the other night. I have some feeling on it. I am not proud of the statement that I have to make here. Yet, Mr. President, after nearly thirty years of active public service here, I can say that it is but a sample, and not an exaggerated sample either, of our treatment of the Indian tribes of this continent when it comes to paying our just and proper debts.

Mr. President, I think perhaps, on the whole, I had better leave this matter where it is. My experience in the Senate, and in another place in connection with these affairs is—and I will sum it up in a few words—that the Government of the United States never paid an honest debt to an Indian until it was compelled to do it. One of the greatest troubles we have had in securing proper legislation has been that every movement to right the wrong of the Indian has been met on this floor and on the other by those who did not know anything about the subject, and who took charge of it, in spite of the protests of those who knew the facts and who were ready to do justice, so far as they could, to the Government and the Indian alike.

Mr. President, I am glad, in some respects, that we have reached a point in the history of this country when there are no longer any wards for us, or, practically only a few at least, for I am sure if the history of our guardianship shall ever be written in truth, as it is, it will be the blackest and most disgraceful chapter in our whole history as a nation.

When I say that I do not mean to say that we have not dealt with the Indians more liberally than any nation in the world ever dealt with the natives. There is no history where an invading nation like we were, coming into a country occupied by the natives, has ever dealt with them as liberally as we have. We have made the most extraordinary contracts, because there was not proper attention paid to them.

We have recognized titles that did not belong in the Indian, and we have entered into a solemn obligation to pay them for land which in part we ought to have opened and held, and that they did not own. When we found we had made a mistake or when we began to doubt whether it was what we ought to have done, then we have quietly repudiated the obligation, until the Indian has believed for more than two generations that the white man always spoke to him with a forked tongue.

Now, Mr. President, this case is neither infamous nor outrageous. If it is infamous at all, it is in the fact that this debt was not paid. If it is infamous at all, it is infamous because we demanded that they should take a small part of the money when they ought to have had it all. If it is an outrage, Mr. President, it is an outrage because they were compelled to come here and prosecute a case, and hire lawyers to do it. I have always said, and I repeat now, for we shall soon be done with this class of cases, in every instance where a lawyer came here and prosecuted a case before the committees and before the courts, the Government of the United States ought to have been compelled to pay that fee and not the Indian.

Mr. SIMMONS obtained the floor.

Mr. SPOONER. Mr. President——

The PRESIDING OFFICER (Mr. NELSON in the chair). Does the Senator from North Carolina yield to the Senator from Wisconsin?

Mr. SIMMONS. If he desires it.

Mr. SPOONER. Does the Senator want to speak on this subject?

Mr. SIMMONS. I am going to speak on the amendment involving the payment of attorneys' fees which has been discussed in connection with this subject.

Mr. TELLER. Will the Senator from North Carolina yield to me?

Mr. SIMMONS. Certainly.

Mr. TELLER. I desire to put in the RECORD, at the close of my remarks, Senate Document No. 72, Fifty-fifth Congress, third session, leaving out the list of names. I ask permission to do that.

The PRESIDING OFFICER. Leave will be granted, if there be no objection.

Mr. TELLER. I do not wish the names, because that is immaterial; I should like to have the amounts put in, but not the names.

The report referred to is as follows:

[Senate Document No. 72, Fifty-fifth Congress, third session.]

LOYAL SEMINOLE ROLLS AND LOSSES.

DEPARTMENT OF THE INTERIOR,
Washington, January 20, 1899.

SIR: On January 18 the Department received the resolution of the Senate of the United States dated 17th instant, as follows:

"Whereas by article 4 of the treaty of March 21, 1866, with the Seminole Nation of Indians, the Secretary of the Interior was authorized to investigate and determine the losses sustained by loyal Seminoles during the war of the rebellion; and

"Whereas by the agreement of December 16, 1897, with said nation it was and is provided as follows: 'The loyal Seminole claim shall be submitted to the United States Senate, which shall make final determination of the same, and, if sustained, shall provide for payment thereof within two years from date thereof:' Therefore

"*Resolved*, That the Secretary of the Interior be, and is hereby, requested to furnish the Senate with a copy of the roll of said loyal Seminoles, and also a copy of the report of the commissioners appointed by him to investigate and determine said losses, in pursuance of the said treaty of 1866. And be it further

"*Resolved*, That the Committee on Indian Affairs be, and is hereby, instructed to investigate the matter, in accordance with said treaty and agreement, and report by bill or otherwise its conclusions to the Senate, with such recommendations as may be deemed advisable."

Said resolution was duly referred to the Commissioner of Indian Affairs for early report in duplicate. In compliance with said resolution, I now have the honor to transmit copies of the loyal Seminole rolls and the report of the commissioners appointed to investigate Seminole losses.

Respectfully,

C. N. BLISS,
Secretary.

The PRESIDENT OF THE SENATE.

WASHINGTON, *November 26, 1867.*

SIR: The undersigned, a commission by appointment of the Secretary of the Interior, under the authority of the fourth article of the treaty of the 21st March, 1866, between the United States and the Seminole Indians, "to adjudge and determine the claims of loyal Seminoles for losses actually sustained by reason of their having remained loyal and faithful to their treaty stipulations to the United States during the recent rebellion," etc., respectfully report that having received our instructions, we immediately started for the Seminole country.

By appointment of the Acting Commissioner of Indian Affairs, it was arranged that the commission should meet in the city of St. Louis, Mo., on the 14th of August. The undersigned were prompt in their meeting, but failed to meet a third commissioner, of whose appointment we had been duly advised. We waited a reasonable time for his appearance, then telegraphed the Department for instructions, and received an answer authorizing us "to wait one day longer, and if he did not appear, then we should proceed and execute our mission without him." Acting upon our instructions, we promptly left St. Louis and proceeded by the most direct and expeditious route to the field of our labors. After a fatiguing trip, made long by the modes of travel incident to the far West, we reached the Seminole Agency on the night of the 9th of September, and on the morning following we began our duties.

Upon our arrival we found the northern portion of the Seminoles in council, and at once put ourselves in communication with them, making known our business, and thus giving the "public notice" required by the terms of our instructions, which notice was promptly disseminated among the people of the nation by the chief and headmen of the different bands. We also communicated with John Jumper, a chief residing with the southern portion of the Seminoles at the old agency, distant 50 miles, and requested that he would make known our arrival and business among that portion of the Seminole people. In due time we received his acknowledgment, which, with a copy of our letter, is herewith transmitted.

It will be seen by reference to some of the claims that the claimants have put in for loss of guns; also for loss of cash (gold and silver coin). In the instance of a loss of guns, we have, through witnesses, satisfied ourselves that the claimants carried a gun off with them at the time of leaving home, and only allowed for guns when the claimant carried away one or more and had to leave others behind.

In the item of cash, occurring in some of the claims, we have made our investigations as full as possible, always satisfying ourselves through witnesses that the claimant actually possessed said money and lost it on account of the disturbed condition of the country in consequence of the rebellion. In every such case the money was lost at the Budd Creek fight, occurring on the night of the 25th of December, 1861, while the claimant was endeavoring to escape from the rebel forces then overrunning the Seminole country.

These loyal Indians had successfully beaten the rebels in two previous fights, but on the 25th of December they were surprised in camp and many massacred, and lost all their effects. We are of opinion that the claimants are entitled to include said item in their bill of losses, as much so as if the loss had been in cattle, especially so when we consider that their best efforts were exhausted to prevent its loss.

Our investigations were thorough in each case, especially as regarded the amounts and the estimates or prices therefor; we obtained reliable information from disinterested persons of prices ruling the market in the Seminole country at the breaking out of the war, and in our awards governed ourselves accordingly. We are satisfied that the prices allowed the claimants are reasonable and just, certainly not too high.

We held our sessions as a board from day to day, and neither commissioner transacted any business in the absence of the other. We received much valuable assistance in our investigations from the chief, John Chupco, and the headmen of the various bands; also from Robert Johnson, interpreter.

In our expenditures for expenses we were as economical as circumstances would allow, and feel warranted in saying that we incurred no bills, chargeable to the Government, except such as were necessary to the proper discharge of our duties.

During our labors we examined and determined 340 claims, amounting in the aggregate to $213,915.95.

Respectfully submitted.

J. TYLER POWELL,
J. W. CALDWELL,
Commissioners.

Hon. O. H. BROWNING,
Secretary of the Interior.

List of claims of loyal Seminole Indians adjudged and determined by J. Tyler Powell and J. W. Caldwell, commissioners appointed under the provisions of the treaty of March 21, 1866.

	Amount claimed.	Amount passed.
* * * * *	*	*
SUMMARY.		
Manwell band	$15,947.40	$14,602.40
Foos Hotsche band	9,612.50	9,434.50
Pow hos fixico band	13,474.85	13,284.85
Pas cofa band	19,803.20	19,630.95
Ko a harjo band	27,025.20	27,025.20
Foos harjo band	19,414.50	19,414.50
Cho fixico band	11,477.25	11,477.25
Ah ha lock fixico band	31,305.45	31,305.45
Nuth ko buck ny band	16,872.85	16,872.85
John Chupco band	23,737.05	23,187.05
Jim Lane band	14,686.45	14,686.45
John Brown band	12,994.50	12,994.50
Total ($213,888.95)	216,351.20	213,915.95
	213,915.95	
	2,435.25	

After correcting clerical errors the actual amount is $213,888.95.

Mr. SIMMONS. Mr. President——

Mr. TELLER. If the Senator will allow me to interrupt him for a moment further, I have just received a letter from the Secretary of the Interior in which he says that I am quoted as saying on Saturday that within the last two years we paid attorneys in the Indian Territory $750,000 upon a contract approved by the Department of the Interior, as the law required, and gave them a million and a half dollars, etc.

I think I may have said that, but I was under the impression that that contract was approved. I know Congress appropriated the money. I think, perhaps, the Senator from North Dakota [Mr. MCCUMBER], who I see here, would be able to state more about the matter. I gave it no personal attention at the last session. But the Secretary says the Department did not approve the contract. However, the fact remains that it was paid. I think I had better put into the RECORD the letter. It was left to some court down there to determine. They were claiming a million and a half dollars. The court held that they were entitled to $750,000. I ask to add that to what I have said.

The PRESIDING OFFICER. The letter will be printed in the RECORD, if no objection is made.

The letter referred to is as follows:

DEPARTMENT OF THE INTERIOR,
SECRETARY'S OFFICE,
Washington, D. C., June 11, 1906.

Hon. H. M. TELLER,
United States Senate.

MY DEAR SENATOR: My attention has been called to your remarks on Saturday, as reported in the CONGRESSIONAL RECORD, on page 8414, reading as follows:

"Within the last two years we paid attorneys in the Indian Territory $750,000 upon a contract approved by the Department of the Interior, as the law required, which gave them a million and a half dollars, etc."

In reply to which I respectfully ask you to correct this statement, as such contract was never approved, in whole or in part, by the Department of the Interior.

The facts are as follows:

The value of a citizenship in the Choctaw Nation was estimated at $5,000, and it was claimed that some 4,000 Mississippi Choctaws, through certain attorneys, were endeavoring to have their names enrolled for the purpose of sharing this asset, if secured.

Messrs. Mansfield, McMurray & Cornish, of South McAlester, claimed that if these 4,000 applicants for citizenship were enrolled it would represent a total of $20,000,000, on a $5,000 citizenship valuation, and the assets available for those Choctaws that were regularly enrolled would be diminished correspondingly. In order to prevent this, they secured the approval of the chiefs of the Choctaw and Chickasaw tribes of a contract on the basis of 9 per cent for preventing the enrollment of these 4,000 Choctaws, which contract, if carried out in its entirety, would have given them a fee of $1,800,000.

As you are aware, section 2103 requires that all contracts with Indians, to be effective, must have the approval of the Secretary of the Interior. Such approval, because of its extraordinary terms, was refused by me and, without going into details, the matter was then taken by Messrs. Mansfield, McMurray & Cornish to Congress, which left the matter of compensation to the citizens' court, which was organized to dispose of these Choctaw cases, and the last act of that court was to award to Messrs. Mansfield, McMurray & Cornish the $750,000 fee which you, in an unintentional error, stated was approved by this Department. On the contrary, this Department took every means within its power to prevent the payment of said fee, going so far as to ask the opinion of the Attorney-General, who decided that this Department was powerless, because the matter had been taken out of its hands by Congress.

Respectfully, E. A. HITCHCOCK,
Secretary.

Mr. SIMMONS. Mr. President, I desire briefly to address myself to the amendment made by the conferees to the Senate amendment providing for the payment to certain attorneys of $150,000 for services rendered in connection with the collection from the Government of compensation for certain lands purchased by the Government from the Indians. Before I conclude I wish to call particular attention to what I regard as a very extraordinary proviso at the end of the amendment which the conferees made to the Senate's amendment. Before doing that I shall——

Mr. CLAPP. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Carolina yield to the Senator from Minnesota?

Mr. SIMMONS. Certainly.

Mr. CLAPP. I should like to inquire what amendment the Senator is directing his remarks to?

Mr. SIMMONS. It is amendment numbered 191.

Mr. CLAPP. All right.

Mr. SIMMONS. Before doing that, Mr. President, I wish to make some general observations upon the proposition to have this very large sum of money paid these attorneys.

I do not know anything about the facts in this case further than I have been able to gather them in the course of this debate. It may be that these attorneys are entitled to this money, but from the statements that have been made during the course of this debate, in my opinion, if they are entitled to any part of it, and I think probably they are entitled to some part of it, they are not entitled to all of it, nor to any great portion of it. I am utterly unable to see what services have been rendered by these attorneys which constitute legal services, except that in connection with the investigation of the titles to these lands.

As I understand it, the Government desired to purchase from the Indians certain lands. An agreement was entered into for the purchase of those lands. It was discovered that perhaps there was some question as to the title of the Indians to the lands, or at least to a part of them, and it became necessary, as I understand it, to make a legal investigation to ascertain whether the title of the Indians was good and such as gave them the right to convey these lands to the Government. Nobody will question that legal services of this character ought to be paid for, and ought to be paid for liberally, but I take it that nobody will contend that such services as might be required in connection with the looking up of a title, or if it involved a number of titles, to a million and a half acres of land is worth the great sum of $150,000.

The Government itself would not pay any such sum of money as that for such service. No individual or corporation would think of paying any such sum as that. That, I say, is, to my mind, from the statements which have been made in this debate, the only service rendered by these attorneys for which they have in law a claim against these Indians.

I am aware of the fact that it has been the custom of the Government, in allowing attorneys' fees in these controversies growing out of the interest of Indians, to be exceedingly liberal to attorneys. Enormous fees have been paid in this connection—fees large enough, in some instances, to make a man independent for the remainder of his life; but, Mr. President, that is all wrong. These Indians are in the nature of wards of the Government.

Mr. McCUMBER. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Carolina yield to the Senator from North Dakota?

Mr. SIMMONS. Certainly.

Mr. McCUMBER. I simply wish to ask the Senator from North Carolina whether he does not believe that the Court of Claims will take into consideration what services have been legally performed and for what character of services no compensation should be allowed, if there were such services, and also, instead of paying $150,000 to determine what properly would be a fair fee and proper fee for proper legal services?

Mr. SIMMONS. Mr. President, I have no doubt in the world that the Court of Claims will take into consideration these questions, but——

Mr. McCUMBER. May I call the Senator's attention to the fact that the action contemplated is not an action upon a contract, but an action on the quantum meruit to determine the value of the services rendered wholly independent of contract?

Mr. SIMMONS. I understand that.

Mr. PATTERSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Carolina yield to the Senator from Colorado?

Mr. SIMMONS. Certainly.

Mr. PATTERSON. The Senator from North Dakota [Mr. McCUMBER] does not state the proposition exactly. If it were as he states it, perhaps little or no objection could be made; but it is admitted on every hand that as to any contracts entered into in 1903 or 1904, or somewhere along there, such contracts at that time became as though they had no recognition; and certainly all that ought to be recovered under those circumstances would be the quantum meruit. When the committee in the amendment propose to refer this matter to the Court of Claims they do it with this direction:

> And in determining the amount of compensation for such services the court may consider all contracts or agreements heretofore entered into by said Indians with attorneys who have represented them in the prosecution of said claim, and also all services rendered by said attorneys for said Indians in the matter of said claim.

It comes pretty nearly to a direction to the court to let them have what Congress in this amendment will set aside—$150,000. It is not a command; it is not a direction to give them a certain $150,000, but it directs the court to take into consideration the contract that will give them $150,000 for services rendered on that contract, that contract now being a new and absolutely void contract. It is that element of this amendment which ought not to be in it. To my mind, it is very clearly intended that the Court of Claims shall be moved or directed in their investigation and final determination of this matter by the terms of the contract itself.

Mr. McCUMBER. The Senator from Colorado will recall that there is no direction, no command, merely an authority given, as I understand it, that the court may take into consideration, if they see fit, the matter of any contracts heretofore made between the attorneys and the tribes for the purpose only of determining what are the usual or proper charges for work of that character in that section of the country; and obviously that is the only way they can get at it.

Mr. PATTERSON. That is precisely the necessary result of that interpretation. I think the Senator properly states the question. It directs the Court of Claims to take into consideration testimony which, without this direction, it probably would not take into consideration.

Mr. McCUMBER. It is not a direction, as I understand.

Mr. PATTERSON. Oh, no; but——

Mr. McCUMBER. It simply provides——

Mr. PATTERSON. It will be recognized as a command from Congress.

Mr. McCUMBER. I know we are taking the time of the Senator from North Carolina [Mr. SIMMONS]——

Mr. PATTERSON. That is true, but the Senator from North Carolina does not object to that.

Mr. SIMMONS. No; I am very good natured and very patient.

Mr. PATTERSON. If these attorneys are to be paid for the value of services for which they had no contract, no court should be directed to take into consideration documents which could not properly otherwise be considered under the rules of evidence, and which they would not otherwise be permitted to take into consideration. Congress setting apart $150,000 and directing or suggesting that the court shall consider the contract which gives $150,000 is equivalent to saying that, in the judgment of Congress, the court ought to give that amount.

Mr. McCUMBER. I want to say that in the amendment Congress does not set aside $150,000. That part is stricken out of the amendment, and it will become no part of the proposed new law.

Mr. SIMMONS. Mr. President, the Senator from Colorado [Mr. PATTERSON] has anticipated me. I was going to say that I thought it was entirely proper, and, so far as I was concerned, I had no objection to the Court of Claims passing upon this question and allowing these attorneys such sums of money as it might find were due them upon a quantum meruit; but, Mr. President, if that were the sole purpose of the conferees when they injected this amendment into this bill, as the Senator from Colorado says, why did they incorporate in that amendment what is tantamount to a direction to the Court of Claims to take into consideration the contracts which were made with those attorneys and which had in law expired and become of no effect four years ago? It is manifest, Mr. President, that this amendment is so drawn as to carry the question before the Court of Claims with an intimation, or what is in the nature of an intimation, on the part of Congress that these attorneys are to be paid under a contract which has become void and of no effect. I can not see any other purpose in embodying in this amendment the specific reference to which I have referred and to which the Senator from Colorado has referred, unless it was expected to have that effect.

But, Mr. President, as I was proceeding to say, the Government has been exceedingly liberal with attorneys of Indians when paying out money which belongs to the Indians. It has repeatedly paid fees which, compared with the ordinary compensation of attorneys in this country, were fabulous. In some instances they have paid fees which have made men rich. I think it was the Senator from Colorado [Mr. TELLER] on Saturday, in discussing this amendment, who referred to one case in which Congress had indirectly, if not directly, given its assent to the payment to certain attorneys of the sum of $750,000 out of a total fund of about a million and a half dollars due the Indians, or 50 per cent of the whole.

The Indians are the wards of the Government; they are, in a sense, children; they are under disability; they can not act for themselves; we have to act for them. That being the case, Mr. President, when the Government is providing for fees or the expenditure for any other purpose of Indian funds it ought to hold itself to the same degree of responsibility that a court of chancery holds a guardian in dealing with the funds of his ward. If we were to apply that test in this case, in my judgment, disallowing that part of the fees here claimed which are immoral and illegal, and as being contrary to public policy, this fee, instead of being $150,000, would not be one-tenth of that great sum.

Mr. President, I do not question for a minute that it is perfectly legitimate and proper that an attorney may, in certain cases and for certain purposes, appear before the Departments here at Washington and appear before the committees of Congress. If there is a question of fact involved in any controversy before the Department in which the Government is interested, or in which these Indians, the wards of the Government, are interested, I can see no reason why it should not be represented before the Departments for the purpose of presenting to the Department or to the committees of Congress for the purpose of presenting to that committee those facts or the evidence of those facts. So, Mr. President, if there is involved before a Department or before a committee of Congress a controverted question of law, I can see no reason why it is not legitimate and proper that counsel should appear, and there present an argument, throwing light, or tending to throw light, upon those difficult and complex questions of law.

But, Mr. President, the testimony in this case shows to my mind clearly that there is not in this particular instance a single controverted fact outside of the investigation of the title to these lands, to which I referred, nor a single question of law to be settled and determined by the Department or by a committee of Congress.

The Government had made a contract. That contract definitely and specifically fixed the price to be paid for the land. That contract specified the location of the land, specified the number of acres that were to be required and the price to be paid per acre. There was no controversy either before the Department of the Interior or before the committees of Congress as to the contract, as to the price to be paid, or as to the property stipulated to be bought; the only question of fact or law in this whole matter was as to the title of the land which the Government had contracted to buy.

I say it is perfectly legitimate to pay these attorneys for the investigation of that title, but I say that $150,000 to investigate the title to a million and a half acres of land, or one hundred titles that might be involved in the whole tract, would be an enormous sum and out of all proportion to the services rendered.

Mr. PATTERSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Carolina yield to the Senator from Colorado?

Mr. SIMMONS. Certainly.

Mr. PATTERSON. I want to state to the Senator from North Carolina that there was in reality no question of title at all.

Mr. SIMMONS. It has been stated that there was. I do not know anything about it, except from the statements made.

Mr. PATTERSON. The facts, as gleaned from the letter of the Interior Department to the committee of the House, are that there was no title in question at all. The President by Executive order set apart a certain area of land in Washington for the Colville Indians.

Within a short time it was discovered that the area set apart embraced five or six hundred whites, two or three small villages, and a jail and a few other public improvements. Thereupon a new Executive order was made that gave to these Colville Indians a smaller area of land. Then a commission was appointed to negotiate a treaty for the surrender of the possession of one-half of the last area that had been set apart. The contract was negotiated, and a million and a half dollars were to be paid. The Secretary of the Interior communicated that treaty or agreement to Congress and asked for the appropriation. Congress deliberately determined that the Indians had no title that the Government was bound to regard. It was simply a title of possession, and, because Congress concluded at that time, in 1902, that the title of the Indians was not such that the Government was bound to pay attention to it, Congress did not ratify that contract, but proceeded to legislate with reference to the land that it had secured by the treaty, opening it up to settlement, setting apart certain portions of it for the Indians, and doing various other things with it. The only controversy that has existed from that time to this has been as to whether or not the title, such as it was—that is, a mere possession or taking possession of this great area of land by the Indians under Executive order—constituted a title that the Government or Congress ought to respect. There has never been any investigation of the title. It has been simply a contest on the one side that the title was such that Congress ought to regard it, and up to the present time Congress declaring that it was a title that the Government was not bound to observe. Ultimately a settlement was made recognizing the validity of the contract, but there has never been an abstract of title or a record examined or one item of work done by an attorney in the matter of determining whether or not these Indians had any title, legal or equitable, beyond the facts I have stated.

Mr. SIMMONS. Then, as I understand the Senator, there has been no investigation of the title to these lands?

Mr. PATTERSON. None whatever.

Mr. SIMMONS. But the Government has taken its chances as to the soundness or unsoundness of the title. If that be true, Mr. President, then, in my judgment, there have been no services, so far as the debate discloses and so far as the facts have been presented, performed by these attorneys that constitute legal services for which they ought to be paid. If they have performed no service in the investigation of the title, if there have been no controverted facts that had to be presented to the Department and the committee, if there have been no questions of law that had to be argued before the Department or before the committee, then the sole consideration for this demand upon the Government to put its hands into the funds of its wards is based upon the contention that these eminent counsel have been able to exert sufficient influence upon the Department and upon the Houses of Congress to secure the passage of an act of Congress referring their claim for fees to the Court of Claims.

Mr. PATTERSON. I want to state one other fact. The Department has always been with the Indians; the Department has always wanted Congress to make this appropriation, and all that remained to be done was to induce Congress to make it.

Mr. SIMMONS. That simply lessens the services which these gentlemen performed, and reduces it to a proposition of these gentlemen to have the Congress send to the Court of Claims a claim based upon no other consideration than that they have been able to persuade the committees of this Congress to provide through legislation for the payment of this bogus claim.

Mr. OVERMAN. May I interrupt my colleague?

Mr. SIMMONS. Certainly.

Mr. OVERMAN. Such considerations as those, under the Supreme Court decisions, are void in law.

Mr. SIMMONS. I am going to discuss that. Mr. President, while I have frankly admitted that there are circumstances under which it is proper for attorneys to appear before committees of Congress and to be paid for their appearance, yet if that appearance is simply for the purpose of exerting influence to bring about legislation——

Mr. OVERMAN. For a contingent fee.

Mr. SIMMONS. Or if it is for a contingent fee, then that contract, based upon payment for services of that kind, is according to the decision of the Supreme Court of the United States, read in this body by my colleague [Mr. OVERMAN] on Saturday, and according to the uniform decisions of the courts of this country, an immoral contract and void, as being against public policy, and it ought to be.

If it be proper to refer this case to the Court of Claims—and I do not know enough about the facts to venture a positive opinion that it is not proper to do it—it is also proper, Mr. President, that this discussion should take place here; and if Congress has not heretofore let it be understood that it placed the seal of its condemnation upon the appearance of attorneys before the committees of this body simply for the purpose of lobbying, it is time that we should not only give the courts to understand, but it is time that we should let the district attorneys of the United States, who represent the Government in cases of this kind, understand that they are to put that defense before the court and insist upon it.

The Senator from Massachusetts [Mr. LODGE] on Saturday, in answer to the decision cited by my colleague, referred to a case in his own State in which an attorney had been allowed by the court a large sum of money for appearing before the Departments here and before the committees of Congress. I think he said that the court allowed it. The Senator did not state what court; I do not know whether that case went to a court of last resort. If it were merely the adjudication of some court of first instance, it goes for naught. If it were the adjudication of the highest court in this land—the Supreme Court—it goes for naught, unless the specific question of the immorality as against public policy of the contract was set up by the attorney as a defense.

We all know that ordinarily a court can not take cognizance of anything except what appears of record. Every lawyer knows that ordinarily a court can not pass upon any defense which is not raised by the pleadings. It is true that if enough appears from the record to show that the court has not jurisdiction or power to try the question, then the court must of its own motion take cognizance of that fact; but a decision of the Supreme Court sustaining a contract for services to appear before a committee of Congress would not in itself settle that question, unless it appeared affirmatively that in the pleadings made up in the court of first instance that specific defense was set forth. Therefore, Mr. President, I say it is of the highest importance here that this discussion should take place, and that the Senate should give an expression of opinion which the district attorney who will be in charge of this matter on behalf of the Indians in the Court of Claims will have to recognize, to the end that he may in that court present the defense that this contract was based upon an immoral and illegal consideration and, therefore that the contract was void as against public policy.

It was said, I believe, both by the Senator from North Dakota [Mr. MCCUMBER] and the Senator from Colorado [Mr. TELLER] that the contention that this was an illegal contract had no force because it was claimed that there are statutes of the United States which recognize the right of the Indians to employ counsel.

Mr. PATTERSON. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Carolina yield to the Senator from Colorado?

Mr. SIMMONS. Yes.

Mr. PATTERSON. In order that the record may be complete upon this question of the controversy over title, I want to read a short extract from a letter written by the Commissioner of Indian Affairs to the Secretary of the Interior in relation to this $1,500,000 under the contract to show that there were no services to be rendered in the Department because the Department had always held that it was a valid contract, that there was no controversy over the title, and that it was simply a matter of duty on the part of Congress to make the appropriation. This is the closing paragraph of that letter.

> In all of the reports made by this Office in regard to the rights of the Indians to that part of the reservation ceded to the United States in the agreement dated May 9, 1901, it has expressed the opinion that the Indians had a good and valid title to the land in question.

Mr. McCUMBER. The Senator read "May 9, 1901." Did the Senator read it correctly?

Mr. PATTERSON. Yes, May 9, 1901. That is the date of the agreement, I think.

Mr. DUBOIS. It should be 1891.

Mr. McCUMBER. 1891 is the date of the agreement.

Mr. SIMMONS. Will the Senator from Colorado object to putting that matter in after I have finished?

Mr. PATTERSON. It is only three or four lines.

In all of the reports made by this Office in regard to the rights of the Indians to that part of the reservation ceded to the United States in the agreement dated May 9, 1901—

It ought to be 1891—

it has expressed the opinion that the Indians had a good and valid title to the land in question, and that they ought to be paid the amount stated in the agreement made with them by the commission appointed for that purpose.

Mr. DUBOIS. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Carolina yield to the Senator from Idaho?

Mr. SIMMONS. Certainly.

Mr. DUBOIS. This treaty, if you will excuse me for just a little explanation——

Mr. SIMMONS. Yes.

Mr. DUBOIS. Was made in 1891 by a commission, at the head of which was Judge Fullerton, the Government agreeing to pay the Indians a million and a half dollars for a million and a half acres, and there were some other considerations in the treaty. Congress, in 1892, ratified the agreement, except to pay the Indians this money, and the committee of the Senate then made a report that these lands did not belong to the Indians; that they were created by an Executive order, and the Indians had not any title to the land. That report of the Senate committee, made by General Manderson, has stood as a bar against that payment up to and including the present time. The attorneys have been contending against the report of the Senate committee.

Mr. PATTERSON. The Senator from Idaho is not altogether correct in his facts. This is also an extract from the letter from which I have been reading:

This agreement was, by letter of January 6, 1892, with a draft of a bill prepared by this Office, transmitted by the President to Congress for its action. The correspondence relative to this matter up to the submission of the agreement to Congress is printed in Executive Document No. 15, Fifty-second Congress, first session.

The Senate Committee on Indian Affairs refused to recommend the ratification of the agreement, taking the ground that the Indians had no title to the reservation set apart for them by the Executive order of July 2, 1872, which the Government was bound to recognize and which would, in effect, be recognized by the ratification of the agreement. (See Senate Report No. 664, 52d Cong., 1st sess.)

In lieu of ratifying the agreement a bill was reported by the Senate committee vacating the north one-half of the reservation (the part proposed to be ceded by the agreement), which bill became a law July 1, 1892, without the President's approval. (27 Stat. L., 62.)

Mr. DUBOIS. That is precisely what I tried to say.

Mr. PATTERSON. The Senator said Congress ratified it, but did not pay the money. It distinctly refused to ratify it.

Mr. DUBOIS. Congress took their lands. It ratified the treaty to that extent. It took this land away from the Indians, but refused to appropriate the money, on the ground that the Indians had no title to the land. As a matter of fact, the Government did take their lands, opened to settlement, and sold the land for a dollar and a quarter an acre——

Mr. PATTERSON. A dollar and a half an acre.

Mr. DUBOIS. Until the free-homes bill was passed. Then they let other settlers take the land for nothing. Those are the facts, and the necessity for the employment of attorneys is obvious. They were employed, and they have been employed ever since.

Mr. SIMMONS. I do not understand that even the Senator from Idaho contends that these attorneys made any investigation of the titles or furnished the Government with any chain or abstract of title.

Mr. DUBOIS. I will say to the Senator from North Carolina that they did. Evidently this debate will continue for a half hour or so, and I will have all of that evidence here. I did not suppose it would be necessary. I presumed the Senate would take the word of the committee, who have gone into it carefully and before whom all this evidence has been exhibited, showing the services of the attorneys for all these years. But it will be here in a few moments, and I will submit it to the Senator or to the Senate.

Mr. SIMMONS. I stated in the beginning of my remarks with entire frankness that my understanding from the statements made on this floor on Saturday, was that there had been some service rendered the Government by these attorneys in the way of investigating titles to this land, and that I thought they ought to be paid for making those investigations a reasonable and a fair price. The question whether there was any such investigation was raised by the Senator from Colorado, who stated that his information was to the effect that no such investigation had been made, and that no abstract of title had ever been furnished to the Government; and I said if that was true there was no consideration which the law recognizes as a legal and valid consideration for the payment of this large sum of money which it is proposed to have the Court of Claims pass upon, or even for the reference of this matter to the Court of Claims. But if there were services of the character indicated by the Senator from Idaho, they were legitimate services and they ought to be paid for, and I would have no objection whatever to the reference of this matter to the Court of Claims for the purpose of ascertaining what was the reasonable value of that service, and I would be glad to have the gentlemen get it.

But, Mr. President, that is a diversion. I had passed that part of my argument. I was replying to the contention made here on Saturday that Congress had directly recognized this class of contracts, and that the legislation which had taken place upon the subject of paying attorneys for appearing before Congress and the Departments in behalf of the Indians was to be taken as the sanction of Congress to the validity and binding effect of such contracts.

I have not read all of the statutes. I have, however, examined the statute read by the Senator from Colorado to sustain that contention, and, in my judgment, it has nothing to do with the question which we are now discussing. That statute simply clothes the Indians with the power, under certain circumstances and conditions and with certain safeguards, to contract for the sale of their lands and for the payment of attorneys. Without that statute these Indians were under a disability. They had no power to contract, such as I have and such as the ordinary American citizen has. The only office of this statute was to confer upon the Indians, within the limitations and circumstances specified in that statute, the same contractual powers than an ordinary citizen possesses. An ordinary citizen, while possessing the power to contract, has no right to make an illegal contract; and when the laws of Congress confer upon the Indian the power of contract that I possess as a free citizen, it does not confer upon him any right to make an illegal contract.

That is the contention which I am pressing now—that as there were no facts to be established by testimony before the Department or the committees of Congress, as there were no controverted questions of law to be argued before the Department or before the committees of Congress, the only possible consideration for these services, outside of the investigation of title, was the services performed by these attorneys in the way of persuading the committees, or, to be blunt and short about it, the only service to be performed was the service of a lobbyist, and it is against the public policy of this country, and it ought to be against the public policy of this country, and every other country, to prevent recovery for services of that character.

Mr. President, I stated in the outset that before I concluded I wanted to call attention to what I regard as an extraordinary proviso in this amendment, made by the conferees to the Senate amendment, for that is what it is. It is this: After providing for sending this case to the Court of Claims, and after specifying that the Court of Claims shall take into consideration a contract for fees which it is admitted has expired and become void, and the payment of the whole sum collected to Butler & Vale, they insert this proviso:

Provided, That before any money is paid to any attorney having an agreement with Butler & Vale as to the distribution of said fees each of the same shall execute and deliver to the Secretary of the Interior a satisfaction and discharge of all claims and demands for services rendered said Indians in the matter of their said claim.

Now, immediately before that proviso is a provision authorizing the payment to Butler & Vale of the whole sum that may be found by the Court of Claims to be due all these attorneys—that which is due other attorneys, as well as that which is due them as attorneys. They are made the receivers of the full amount embraced in the judgment of the Court of Claims, and then comes a proviso which recognizes the fact that the Government might be under legal obligations to other attorneys than Butler & Vale, and unless it secured a discharge and acquittance from those other attorneys, it might be subject to an additional claim and a future suit; and it provides that after Butler & Vale have received the money, they shall not pay it out until these other attorneys present a receipt in favor of the Government. In other words, if I can construe the English language, the effect of this provision is to make Mr. Butler and Mr. Vale disbursing officers of the Government, as to the amount of this fund found due attorneys other than themselves.

If the Government has a liability in this matter to these other attorneys that it is proper it should protect itself against by requiring receipts, why not require those receipts to be made to the Treasury Department and the money paid out by the Treasury Department? Is it not an unheard-of thing that the Government should turn over its funds, recognizing in the law

that it needs a receipt and has not a receipt, and then say that the parties to whom it shall turn over that money shall not pay it out until a receipt is presented to the Government? I think myself it is a very extraordinary proceeding, and I do not understand why the committee should have inserted such a proviso in this bill.

Mr. President, for a long time it has seemed to me that the Government in paying out the funds of Indians did not exercise that care and that prudence and that economy which common justice and ordinary fairness in dealings between man and man required, to say nothing about the higher duties which the Government placed in the position of guardian, as it is, owes to its ward. I had made up my mind at the first opportunity to express myself against this practice of the Government in paying out Indian funds without regard to the interest of the ward and with such lavish liberality and extravagance. This is the first opportunity I have had, and I have gladly availed myself of it.

Mr. SPOONER. Mr. President, a few words only on the amendment to which the Senator from Colorado [Mr. TELLER] addressed his remarks. In this bill, as it was reported from the Committee on Indian Affairs, was found this item:

> The disbursements, in the sum of $186,000, to and on account of the loyal Seminole Indians, by James D. Jenkins, special agent appointed by the Secretary of the Interior, and by A. J. Brown as administrator de bonis non, under an act of Congress approved May 31, 1900, appropriating said sum, be, and the same are hereby, ratified and confirmed: *Provided*, That this shall not prevent any individual from bringing suit in his own behalf to recover any sum really due him.

I do not intend to criticise the conferees. The management of the bill has been one, I concede, involving a great deal of trouble and a great deal of labor, and I in no way would impeach the good faith of any of the conferees. I am told and the Senate has been told that this provision was insisted upon by the conferees on the part of the House, and it being a Senate amendment, they were helpless to prevent its incorporation in the bill as reported by the conferees.

The Commissioner of Indian Affairs and the Secretary of the Interior both protested against the incorporation in this bill of that amendment, their objection, as I understand, going, as mine does, only to a portion of it. I think it is a vicious piece of legislation, and absolutely indefensible. I listened to the Senator from Colorado with great interest, but he did not address himself to the grounds upon which this portion of the provision, it seems to me, to be without the slightest foundation in reason. I do not defend the Government against the charge which he brings against it of having been an unfaithful, unwise, and indifferent guardian of the Indian, using the word in a generic sense. No one can successfully controvert, in my opinion, his proposition. But, Mr. President, the guardianship of the Government, inefficient, unjust, dilatory as it was, was infinitely better and kindlier to the Indians than the policy adopted by the Congress under which by an act of legislation the Indian became a citizen, removed from the guardianship of the Government, and subject, without limit, to spoliation by the white man; and that in substance is his present condition.

Mr. President, these Indians ought to have been paid long ago. The Senator from Colorado is right about that. They broke away from their band and adhered to the cause of the Union during the war; very many of them entered the Army of the United States, and naturally they paid the penalty in the destruction of their crops, the loss of their cattle, and the destruction, in many instances, of their homes. They had no legal claim against the Government, but it was an unique and exceptional case under the circumstances, and if any government ever owed a debt of honor, this Government owed it to the loyal Seminoles to ascertain as speedily as possible their loss and to secure to them prompt reparation. And there is no reason or justification to be given for withholding it for many years, and for the necessity being put upon the Indians to employ lawyers to jog the Government, to prick the conscience of Congress, and to secure the ascertainment and ultimately the payment of the money with interest.

Mr. TILLMAN. Will the Senator allow me?

Mr. SPOONER. The Senator will pardon me. I am in a hurry to get through.

Mr. TILLMAN. I was just thinking that the Senators who will come from the cloak rooms and the committee rooms presently to vote upon this question——

Mr. SPOONER. I beg the Senator not to make any suggestion of that kind.

Mr. TILLMAN. I am interested in this matter; I started this racket; and I want Senators to vote intelligently. I suggest, Mr. President, there is no quorum in the Chamber.

Mr. SPOONER. The Senator can not compel anybody to vote intelligently.

Mr. TILLMAN. I can at least have them responsible if they vote wrongly.

Mr. SPOONER. The Senator has once performed this operation.

The VICE-PRESIDENT. The Senator from South Carolina suggests the absence of a quorum. The Secretary will call the roll.

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

Aldrich	Culberson	Hansbrough	Pettus
Ankeny	Cullom	Hemenway	Piles
Bacon	Daniel	Kean	Rayner
Bailey	Dillingham	Kittredge	Scott
Beveridge	Dolliver	Knox	Spooner
Blackburn	Dryden	La Follette	Stone
Brandegee	Dubois	Long	Sutherland
Bulkeley	Flint	McCumber	Taliaferro
Burkett	Foraker	Mallory	Teller
Burnham	Frazier	Money	Tillman
Burrows	Fulton	Morgan	Warner
Clapp	Gallinger	Overman	Warren
Clarke, Ark.	Gearin	Patterson	Wetmore
Clay	Hale	Perkins	Whyte

The VICE-PRESIDENT. Fifty-six Senators have answered to their names. A quorum is present. The Senator from Wisconsin will proceed.

Mr. SPOONER. I shall take but a short time.

The Government at last appropriated $186,000 to be paid to the loyal Seminole Indians, and appointed J. D. Jenkins as special agent to make the payments. Jenkins made the payment to A. J. Brown—Andrew Jackson Brown—agent of the tribe and administrator of the estates of deceased Seminoles. No impeachment of the good faith of J. D. Jenkins is made, as I understand. He paid in perfect good faith the $186,000 to Andrew Jackson Brown, who supposed he had been regularly appointed administrator.

Mr. TILLMAN. The Senator is in slight error there. He paid only $153,000 to Brown, and the remainder, I suppose, he accounted for or else has it on hand.

Mr. SPOONER. Call it $153,000. That does not go to the merit or demerit of what I want to say. I am perfectly willing, and was perfectly willing when this matter was pending in the Senate before, to cure liability upon the part of Jenkins, special agent of the United States, which might arise or be held to arise from the invalidity of the appointment of Andrew Jackson Brown as administrator. If this bill had confined itself to that, I should have no objection whatever to it.

The Senator from Colorado has paid a tribute to Governor Crawford. So far as I know it is a just one. I have never heard anything against Governor Crawford, and I have heard much in his favor. If the Senator from Colorado is right, if these Indians were citizens of the United States, I know of no reason, none has been given, why they were not bound by the contracts which they made with Governor Crawford under which he was paid by Andrew Jackson Brown the $27,000.

Andrew Jackson Brown, Mr. President, from the papers, was something of a Pooh-Bah. He never ought to have been appointed administrator of these estates, nor do I think he should have been the agent of the tribe. But that was for them to determine. These Indians were creditors of the firm of which Andrew Jackson Brown was a member and of which he was an agent, and as the administrator——

Mr. TELLER. I understand it was a corporation.

Mr. SPOONER. Very well; he was a stockholder in the corporation, and he was its agent, and acting as administrator he dealt with himself.

Mr. TELLER. Mr. President——

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

Mr. SPOONER. Certainly.

Mr. TELLER. I do not know whether he was the agent of the company or not. He paid the money over to the company. Whether he was the agent of the company I never heard.

Mr. SPOONER. It is so stated by the Department of the Interior. As administrator, appointed not by the United States but appointed by the court, representing the estates of deceased Seminoles, he dealt with himself and with his own financial interests. He paid over to the company—the letter signed by Mr. Leupp, Commissioner, shows—all this money, or, as it is put here, he collected from himself as administrator of Seminole estates for the Wewoka Trading Company, of which firm he was a partner, you may say, of which company he was a stockholder, and for which he acted as agent, $72,783.84.

Every lawyer knows, and every fair-minded man knows without being a lawyer, that he could not properly act in that double capacity, for if there is one thing clear above another it is that trustees can make no profit out of the trust estate for themselves; that administrators shall not be permitted to rep-

resent the estate of another and deal with it at the same time from a selfish and personal standpoint.

I agree with the Senator from Colorado that notwithstanding Andrew Jackson Brown's appointment as administrator was technically illegal, because of some mistake in the law, adults from whom he took receipts and to whom he paid what they were entitled to receive would not be able to recover the money again from him. They would in equity be estopped. They would have dealt with him as administrator, they would have received from him what belonged to them, and that would be the end of it.

But it is different as to the minors. What became of their money? It does not appear from the papers here that the children of deceased loyal Seminole Indians had any guardians appointed by law. It is not presented, as shown by these papers, that Andrew Jackson Brown stopped for that in his payment of money belonging to minors. He paid over to the guardians by nature, as these papers show. One of the guardians by nature had died; it may have been the father, it may have been the mother. Then what happened, Mr. President? The guardian by nature paid back to Andrew Jackson Brown, the papers show, the debts incurred by these minors to this trading concern and their proportion of the fee due to the attorneys.

Who spoke for the minors in that transaction—for the Indian girls and the Indian boys? I have not understood that the guardian by nature has control of the estate of the ward, while the guardian by nature does have control of the person.

So Andrew Jackson Brown, as administrator, paid over to the guardian by nature, or whom he considered the guardian by nature, money due to these minors or to their estates, and then he takes from this guardian by nature into the coffers of his trading company the debts incurred by these minors. It is not in evidence here that they were consulted about it. It seems from the papers that Andrew Jackson Brown was the tribunal which audited these accounts and which passed upon the obligations due from these minors, fixing the amounts, to this trading company.

Mr. McCUMBER. May I ask the Senator a question?

Mr. SPOONER. Certainly.

Mr. McCUMBER. Does not this bill provide in such a manner that the minors may still have an action against Brown? I am simply asking for information.

Mr. SPOONER. The minors would need no such provision if it were not understood that the bill in its relation to Andrew Jackson Brown means something, and if it does mean anything it is a fraud upon the children of the loyal Seminole Indians who have passed away and left their children to be protected by others.

Mr. McCUMBER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Wisconsin yield further to the Senator from North Dakota?

Mr. SPOONER. Certainly.

Mr. McCUMBER. Possibly the Senator gets the idea from the bill that it must be a fraud upon some one, but the method of this appointment has already been explained to the Senator, and the question of the technicality, so far as Brown is concerned, I do not understand that it relieves him from anything except the technicality in the matter of his appointment.

Mr. SPOONER. Mr. President, I am not speaking of the technicality of the appointment or the invalidity of the appointment.

Mr. McCUMBER. What else does it relieve him from?

Mr. SPOONER. I will tell the Senator.

Mr. McCUMBER. All right.

Mr. SPOONER. Nor does the bill speak of the appointment or the technical invalidity of the appointment. It would have the effect probably, for it is blindly, but not unadroitly, drawn in that respect, to validate the appointment. But it goes away beyond that:

The disbursements, in the sum of $186,000, to and on account of the loyal Seminole Indians, by James D. Jenkins, special agent appointed by the Secretary of the Interior—

I do not object to that. Here Andrew Jackson Brown, who did not represent the United States, with whose transactions the Congress of the United States has legitimately no concern whatever, comes in—

and by A. J. Brown as administrator de bonis non, under an act of Congress approved May 31, 1900, appropriating said sum, be, and the same are hereby, ratified and confirmed.

It is all right to legalize the disbursements of the special agent of the United States, but why is there wrought industriously into this provision language which ratifies or is intended to ratify and confirm the disbursements made by this administrator appointed by the court to the cestui que trust whom he represented in law? Why is that here? Once legalize the payment by Jenkins to Brown, so far as the United States is concerned, and that relieves Jenkins. I have no objection to that. But why go beyond that, some one tell me, and thrust the Congress of the United States between this administrator de bonis non as to his disbursements and these heirs of deceased loyal Seminoles? I can discover no good reason, Mr. President, for that provision in an act of Congress, and no good reason has been given.

It is said that these disbursements were reported to the court and were approved in vacation, and therefore are invalid. As to adults, I agree with the Senator from Colorado, the disbursements are closed transactions. As to the minors, they are not. If Congress had the power to ratify the payments by Andrew Jackson Brown to guardians by nature, whoever they were, to collect back from the guardian by nature what Andrew Jackson Brown thought belonged and was due or claimed as due to his trading company, what has the Congress to do with it?

The Senator from Colorado says they are American citizens. Very well; that does not better it. That does not remove the difficulty; it simply intensifies it. Why should the Congress step between American citizens who are minors and an administrator whose distribution of the money which belongs to them they challenge?

I wonder if notice was given to these guardians by nature of the settlement of these accounts? It does not appear here. Lawsuits are pending down there, not brought by the Government, but the Government rightly, as a matter of common and decent justice to the dead Seminoles who enlisted under our banner during the war to preserve this Government, have employed special attorneys to see that these minor heirs of deceased loyal Seminole Indians are not wronged by Andrew Jackson Brown. If their money has been paid to some one to whom it could not be lawfully paid, they are not bound by it, and the Congress ought not to put in any act language which would bind them by it, if the Congress has the power. The Senator from Colorado says Congress has not the power.

Mr. TELLER. Does the Senator think it does?

Mr. SPOONER. I do not think it does; and that leads me to inquire why so much toil and labor are expended in keeping in the bill a provision which its friends admit is invalid.

I think it will conserve one purpose, Mr. President. I think this declaration by the Congress of the United States will be deemed by the Indians to mean something, and it may discourage them from pursuing the remedies to which in law they are entitled. But upon what principle of law and upon what principle of fair play, Mr. President, upon what ground consistent with a sense of duty to those people, only a little time ago made citizens, do we bestow such tender care upon the financial interests of Andrew Jackson Brown? He is looking after his own interests. There was no one here except the Department to look after the interests of those who need it most. Andrew Jackson Brown, so far as these papers show, needs no guardian. He looked after his interests and he will continue to do it.

But it is a precedent, Mr. President, which never can be defended. And after passing this law it is provided here (a provision which has no earthly sense except upon the hypothesis that what precedes it so far as Andrew Jackson Brown is concerned is without validity) that this shall not prevent any individual from bringing suit in his own behalf to recover any sum really due him. When you once legalize the payment by Jenkins to Andrew Jackson Brown, of course that is a valid payment as far as the Government is concerned, and that ought to be done. But the Government has no relation to Mr. Andrew Jackson Brown. It has no claim against him for any improper expenditure of the money. The Government is not to call him to account for infidelity in the discharge of a trust. That is a matter for the courts, Mr. President. Why not leave it to the courts? Why invoke the action of Congress? Will some one tell me?

Mr. TELLER. I will.

Mr. SPOONER. I would be glad to hear the Senator do it. Will some one tell me? I should like to know it now. I am curious to hear it. I beg the Senator to tell me now.

Mr. TELLER. When the Senator gets through, I will.

Mr. SPOONER. Very well.

Mr. CLAPP. Will the Senator pardon me?

Mr. SPOONER. Certainly.

Mr. CLAPP. I should like to ask the Senator a question as a legal proposition. It has been controverted, not on the floor, but outside.

Provided, That this shall not prevent any individual from bringing suit in his own behalf to recover any sum really due him.

Would that, in the Senator's judgment, apply to pending

suits? As the Senator can see, the question was whether we can take away from these parties the right of action, and we added this proviso. Would it interfere with suits that are now pending? Do I make the inquiry clear?

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

Mr. CLAPP. Certainly.

Mr. SPOONER. Does the Senator regard this language, so far as it relates to Andrew Jackson Brown as administrator de bonis non, of any legal effect, if it shall be enacted?

Mr. CLAPP. So far as I am personally concerned, of course, I do not. I do not believe that Congress can interfere with the rights of those Indians in their claims. But if the Senator will pardon me a moment, I made the statement some time ago that there is not a line in the bill, if it became a law, which would interfere with a pending suit. That statement was vigorously challenged, and I appeal to the Senator, as a legal proposition, if I was not correct?

Mr. SPOONER. Now, let me ask the Senator another question.

Mr. CLAPP. I should like an answer to some of my questions.

Mr. SPOONER. I will answer the Senator's question, but I should like to ask him another question. Upon what possible theory, if he thinks this language is of no legal effect, is it here?

Mr. CLAPP. Upon the same theory that time after time, when we passed legislation, and it may be said that that legislation, as a legal proposition, could affect rights, we add, at the close of a section, "*Provided*, That nothing herein shall be construed" so and so, simply out of supercaution, which has grown up as a practice in legislation.

Mr. SPOONER. I have not been here a great many years, but I have been an attentive member of the Senate while I have been here. This is the first time I have ever known any suggestion or attempt to put a validating act of this sort or any sort between an administrator and the estate which he was appointed to represent.

Mr. CLAPP. Will the Senator pardon me?

Mr. SPOONER. Certainly.

Mr. TELLER. That is not the purpose.

Mr. SPOONER. What is it for, then? Is it to protect Andrew Jackson Brown against the claim of the Government? If you pass this provision legalizing the payment of $186,000 by Jenkins to Brown he goes free of that.

Mr. TELLER. If the Senator will allow me, I will say I think the act would be practically the same if Andrew Jackson Brown's claim is stricken out.

Mr. SPOONER. It would not be the same to Andrew Jackson Brown.

Mr. TELLER. It would be the same to him.

Mr. BLACKBURN. Why not strike it out?

Mr. SPOONER and Mr. TELLER. It can not be stricken out.

Mr. CLAPP. It was at the House provision that this Senate amendment was aimed.

Mr. TELLER. If the Senator desires me, as the question has been asked why so much fuss about this provision, I will tell him. I am engaged on a conference committee, who have sent me word that they want me, and if the Senator will permit me, I will make a statement in a minute, and he will see where the committee stand.

Mr. President, we put this in to ratify the action of Brown and dispense with some technicality. After we had agreed to it, the Department sent up this statement. Thereupon I think the chairman or somebody drafted it so that it should not interfere with any litigation. That we thought was sufficient. When the Senator from South Carolina found fault with it, the Senator who had the bill in charge said specifically that it would go out if there was any objection to it. When it went into conference and got in the proper place, they found it could not go out, because the House would not allow it to go out. A member of the committee from the House, who knows all about these transactions and who probably has had more to do with Indian Affairs than all the men in the Senate [Mr. CURTIS], would not let it be stricken out.

I will wait until the Senator from South Carolina [Mr. TILLMAN] instructs the Senator from Wisconsin what he wants him to say.

Mr. TILLMAN. The Senator from Wisconsin is not instructed by the Senator from South Carolina. I was giving him a statement of fact. I will give it to the Senator if he wants it.

Mr. TELLER. You may give it later.

Mr. TILLMAN. All right.

Mr. TELLER. That was somewhat embarrassing to the chairman of the committee, who had it in hand. So it went into the bill and became a part of the bill. When the time came for the passage of this bill, we put it in the amendment. Everybody agreed that it should go in. The chairman spoke to me about it. I said if there was any trouble about this matter, repeal it; I do not care.

Mr. TILLMAN. The Senator will remember that I introduced it.

Mr. TELLER. Certainly. I did not think it was necessary to repeal it, and I do not think so now. We agreed to that. Thereupon, when it went to the House it was our amendment. Then it was for the House to agree to that amendment; but the House said, "No; we will not agree to it." So there we were.

Mr. TILLMAN. Will the Senator pardon me a moment?

Mr. TELLER. I hope the Senator will wait a minute until I get through. He has plenty of time, while I have to leave to attend a committee meeting.

This is an appropriation bill, which we are anxious to complete. It has come back here. I suppose if the Senate says the provision shall not go out, and it goes back to conference, we shall be met just as we were met before, and the House committee will say it shall stay in. I was entirely willing that the chairman should leave it out; I never asked him to leave it in; but we had no opportunity to leave it in.

We are in this position, Mr. President: This bill is here, and we are asked to set aside this conference report, and send it back to the House to be dealt with in a manner that does not at all require our interference. If Mr. Andrew Jackson Brown has done anything wrong, the courts are open to every man down there; if he is not responsible, I presume the bond he has given to the Government will probably bring that out, so that these people will get their money.

We are anxious to get this bill through, Mr. President. If we send it back, we shall probably have the same controversy over again. So far as I am concerned, I am going to dismiss this case.

Mr. SPOONER. Before the Senator does that, I hope he will permit me to ask him a question.

Mr. TELLER. I propose to go down and attend to some other duties. It is perfectly inconsequential, so far as I am concerned, what is done with the report, except I wished to say what I have said here to vindicate the committee against what I regard as unfounded and improper charges of either incompetence on our part, or what might be considered worse.

Mr. SPOONER. While the Senator from Colorado was out, I took occasion to say that I had no strictures to make upon the committee at all, and I had informed the Senate that this was forced upon them by the House conferees. That I repeat.

In all human probability, Mr. President, this provision will stay in the bill. I opposed it before; I protest against it now, and I put it in the RECORD—and that is why I speak—as a precedent which never ought to be in the RECORD in a case like this.

Mr. TILLMAN. Will the Senator from Wisconsin pardon me a moment?

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from South Carolina?

Mr. SPOONER. I yield for a question.

Mr. TILLMAN. I just want to make a statement, and it is this: In the first instance, the amendment which the Senate put on the Five Civilized Tribes bill was objectionable; but the House accepted it, and the Senate conferees were helpless. In the second case, the amendment which the Senate put into this bill repealed the other, and the House made the Senate give way, or the Senate conferees did give way; they yielded. They were not at the mercy of the House.

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

Mr. SPOONER. Yes.

Mr. CLAPP. I will describe the condition of the conferees. They were very much in the same condition that the conferees headed by the Senator from South Carolina were on the rate bill when the House insisted that they should take the express companies out of that bill and relieve it of that provision.

Mr. TILLMAN. That means, if it means anything, that the House conferees on this bill said to the Senate conferees, "If you do not take this out, we will report a disagreement." Is that what the Senator means?

Mr. CLAPP. I mean, Mr. President, that I do not believe we can get this provision out. We tried it in the first instance, as I explained to the Senator from South Carolina, upon a personal plea that was embarrassing, in view of the understanding that we had; we tried it again on this bill, but the House conferees insist that they will not let this amendment go in.

Mr. TILLMAN. Now, Mr. President, that causes me to say what I would not otherwise say—that one of the House conferees, who are now charged with being responsible for having the Senate amendment stricken out, tells me that the House conferees did not do that.

Mr. CLAPP. That is a mistake.

Mr. TILLMAN. Well, there you are.

Mr. SPOONER. Mr. President, I think that is a pretty fair illustration of the soundness of the usage which precludes statements by conferees as to what occurs in a conference committee.

Mr. CLAPP. Will the Senator pardon me a moment?

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Minnesota?

Mr. SPOONER. Certainly.

Mr. CLAPP. Some time ago, early in my chairmanship of the Committee on Indian Affairs, I took occasion to inquire of several older members of the Senate, and was informed that what took place in a conference was always a proper subject of discussion in the Senate.

Mr. NELSON. Mr. President——

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from Minnesota?

Mr. NELSON. I desire to say that the amendment under discussion is marked on the bill reported by the conference committee as amendment No. 58, if I am correct. The Senate report shows that the Senate has receded from amendment No. 58.

Mr. SPOONER. The Senate could not very well recede from it.

Mr. TILLMAN. The Senator must not forget that the Senate amendment was to repeal the original Brown proviso, the validating proviso. The amendment in this bill is to repeal the other; and when the Senate recedes, it restores the other to the law, of course.

Mr. NELSON. According to the conference report, amendment No. 58 is out of the bill, the Senate having receded, if this report is correct.

Mr. TILLMAN. In receding, the Senate merely gave up the provision in the original bill, and by holding in this amendment we repeal the other. Senators ought not to get the two things mixed.

Mr. SPOONER. Mr. President, I have not much more to say. It is perfectly clear to me, as I think it will be clear to everyone, what this provision, so far as it relates to Mr. Brown, is understood to mean. The proviso, in that view, would be of no meaning whatever unless the language which I object to means something. As it is, if the gentlemen who favor this—that is, those who are promoting it—I do not mean in the Senate—are correct, it will destroy any cause of action of these minors and then provide that nothing herein contained shall be construed to prevent their bringing suit.

I have no objection to the payment of Governor Crawford. That may be right in amount, and it may not be right. There are other evidences in this paper officially reported here by the Commissioner of Indian Affairs in regard to Mr. Brown. There is too much Brown in this whole business—not "too much Johnson," but too much Brown. Here is a sort of side light thrown on the transactions of administrator de bonis non Andrew Jackson Brown. Here is the Seminole agreement of July 1, 1898, which provides, among other things, that—

> The town site of Wewoka shall be controlled and disposed of according to the provisions of an act of the general council of the Seminole Nation, approved April 23, 1897, relative thereto, and on extinguishment of the tribal government deeds of conveyance shall issue to owners of lots as herein provided for allottees and all lots remaining unsold at that time may be sold in such manner as may be prescribed by the Secretary of the Interior.

A. J. Brown—

Andrew Jackson Brown; the same Brown—

brother of the principal chief—

Who was also a Brown, I take it—

> A. J. Brown, brother of the principal chief, was made secretary of the commission to dispose of the Wewoka town site. This commission selected a tract of 640 acres, within the boundaries of which were permanent improvements claimed by the said Secretary Brown, and 160 acres within the town-site limits were set aside for said Brown, as provided by section 3 of the Seminole act.
>
> In February, 1900, John F. Brown, principal chief of the nation, submitted to the commission a proposition on behalf of himself and his brother, A. J. Brown, to purchase the lots remaining unsold for the lump sum of $12,000. During about three years following the organization of the commission and prior to February, 1900, only seven lots were sold, and the proposal of John F. Brown was accepted and the transaction concluded by the execution of a deed dated February 12, 1900, to John F. Brown, purporting to convey all of the lots in the town site of Wewoka remaining unsold and not otherwise disposed of. The legality of these proceedings was questioned and the Seminole Nation made an investigation, and on December 16, 1903, passed an act declaring that the sale of the town site by the town-site commission "was done in accordance with the law governing the same."
>
> There was still a question as to the validity of the sale of the town site of Wewoka, and Congress, by the act of March 3, 1903 (33 Stats., 1048, 1068), confirmed and ratified the action of the town-site commissioners in disposing of the unsold lots in the town to John F. Brown.
>
> The records of this office show that A. J. Brown—

Who was made the secretary of this commission—

was interested in the purchase and—

The commissioner adds—

> In my opinion Congress has been very lenient with the Browns, so I earnestly recommend that you request that the amendment herein mentioned be eliminated from the bill and that the question of determining whether the distribution was properly made by Mr. Brown be left to the courts.

That is the fair thing to do, Mr. President. That is what the courts are for. If Mr. Brown has been an unfaithful administrator, if these payments by him as administrator to himself as agent of the Wewoka Trading Company were not just, if they are impeachable for fraud, they can be taken care of in the courts. If the interests of these minors who are represented by Mr. Andrew Jackson Brown, administrator, have been spoliated by Mr. Andrew Jackson Brown, the agent, or Mr. Andrew Jackson Brown in propria persona, the court, not Congress, is the place to protect their interests.

As I have said before, I suppose the provision will stay in the bill, but I shall conclude, as I began, Mr. President, by expressing the opinion that it is a vicious and absolutely indefensible precedent that ought not to find its place in any enactment of Congress.

Mr. McCUMBER. Mr. President, during the time the Senator from Wisconsin has been discussing this provision I have tried to figure out how anyone under it can be deprived of any legal right which he or she may have against Andrew Jackson Brown. The name appears here as "A. J. Brown," but I presume it is Andrew Jackson Brown, as stated by the Senator from Wisconsin.

Mr. SPOONER. I took that from the Commissioner's report.

Mr. McCUMBER. I presume it is the same person.

Mr. President, possibly it may be necessary to go over this case briefly once again. Mr. Jenkins was appointed an agent to make the payments; A. J. Brown was appointed administrator for the estate of deceased Seminoles. There are two propositions. Since the appointment of A. J. Brown some question has arisen as to its legality. For instance, the power of appointing referred to a certain statute of the State of Arkansas, I think it was, which was presumed to have effect in the Indian Territory. There was a question about that. The next question that arose was as to the confirmation of the payments made by A. J. Brown. It was afterwards held that the confirmation of the payments ought to have been in open court, instead of by the judge in chambers. So far as the difference between having the report confirmed in open court and confirmed before the judge in chambers is concerned, there can be no possible question. It was a mere technicality. The same judge acts in either instance. The result would have been exactly the same. But so far the payments made by Andrew Jackson Brown have not been legalized by the action of a court, although they have been legalized so far as the judge of that court could have legalized them by his action.

Another party comes on the scene. It is an attorney who wants to bring an action against Andrew Jackson Brown to recover the whole $150,000 paid. On what ground? Not on the ground that it was improperly paid, not on the ground that it was paid to the wrongful parties, but on the ground—a technical one—that his acts have never been confirmed and therefore the payments made by him are illegal. The action which is brought is not an action for a few of these to recover in cases where error might have been made, but an action to recover the whole sum. Who is paying for this? Who is paying the attorney to recover this money?

Mr. TILLMAN. Mr. President——

The VICE-PRESIDENT. Does the Senator from North Dakota yield to the Senator from South Carolina?

Mr. McCUMBER. Not just now. Somebody has got to make the payment. Who is it? It is not the individual who has received his money and is satisfied with it. It is paid out of the fund that belongs to these same minors, and soon that fund will be exhausted and they will receive nothing.

As stated in the beginning, I tried to find some way by which I could agree with the Senator from Wisconsin that some one would be injured by this provision. Every person who has a claim against Andrew Jackson Brown has, under the provisions of this bill, a right to bring that action, because it is provided that nothing in the bill shall prevent any individual from bringing suit in his own behalf to recover any sum really due him. No individual is excepted from the operation of that provision. He would have that right independent of the provision. The object sought to be accomplished, if I understand the object—of course, there may have been something in the mind of the

drafter of the amendment or of the bill as it was originally introduced which is not clear—but, as we all understand it, the object was to confirm the payments so far as this technical objection was concerned, and make it impossible for the attorney bringing an action to base it wholly upon that technicality and yet at the same time to provide clearly that it should not cut off any plain, legal right where there was any claim for money due from the administrator. Now I yield to the Senator from South Carolina.

Mr. TILLMAN. As the Senator has stated the case, it is a very clear and pleasant transaction; but I want to ask the Senator whether or not it is altogether fair to the Senate for him to make an ex parte statement without any evidence but merely the statement of the attorneys who are interested to protect Brown; and instead of letting the Senate hold on to this amendment, take out this provision and let the court settle it, we should go forward on the statement of the attorneys who are here to defend Brown and who are employed by Brown to keep this amendment out—I want to ask the Senator if he thinks that altogether fair?

Mr. McCUMBER. Therein, Mr. President, always lies the trouble when a Senator finds fault with a committee about a matter as to which he has not the requisite information. The Senator from South Carolina assumes that there was no evidence, no report, nothing, before that committee, except the bare statement of some counsel appearing on behalf of Mr. Brown. We had before us, Mr. President, at that time the same letters of which he spoke, and we had the statement of the Senator from Colorado [Mr. TELLER], who investigated it on his own account. I did not go into the question of his investigation, because the general committee often leaves it to a subcommittee to report and often takes the word of a Senator as to what the result of his investigation has been.

Mr. TILLMAN. Nevertheless, all the evidence that has been produced, including that filed by the chairman of the committee on Saturday evening, bears out the statement that I made, that there is nothing here whatever to show upon what the Senate had acted except the plea or memorandum of the attorneys in the case. And when we try to have the matter referred back to the courts, where it is now pending, to let the courts settle it and determine whether or not Brown has robbed the Indians, the Senator gets up and makes an ex parte statement, with no evidence to back it.

Mr. McCUMBER. Oh, Mr. President, I am not making an ex parte statement, with no evidence to back it. I am making the statement upon the evidence which was before the committee, of which I am a member and of which the Senator from South Carolina is not a member.

Mr. TILLMAN. Why not produce it and put it in the RECORD?

Mr. McCUMBER. I understand something about this case and what testimony has been produced, and I reassert that the only object of this amendment is to cure that technical defect which made the administrator responsible for the mere fact that, instead of having his account confirmed by the court in open court, it was confirmed before the judge in chambers, or the court in chambers, as it is sometimes called. That, of course, makes an illegal confirmation, and any attorney bringing an action upon any claim, although it may be on a claim of a party who has received every dollar, will attack it, first, upon the ground that it was made without his being the proper administrator, and secondly, that it has never been confirmed by the court, as provided by the law.

There is nothing in that case that is unjust or unfair, or that is intended to be unjust or unfair, and, as the Senator from Minnesota has explained—and his contention has not yet been answered—no suit pending is abated and no suit can be abated by the provision of this bill.

Mr. TILLMAN. I have only a word more to say. The Senator just remarked that no suit can be abated. When these suits come to trial, if they should go on, what will the complainants be met with? They will be met with the act of Congress, saying that the acts of Brown and Jenkins are validated, and, of course, the court will throw the suits out, because the law of Congress will declare the suits——

Mr. McCUMBER. This bill does not say that the act of Brown is validated in the case of any improper payment or lack of payment of those funds. On the contrary, it provides that Brown shall be liable to anyone who has any actual claim against him.

Mr. TILLMAN. The trouble is that the minor children who are being protected by the Government now, and whose estates have been taken by Brown, are left to their own individual effort with no money whatever to employ a lawyer, and no estate which a lawyer can get after he wrenches it from Brown. Instead of the Government carrying out its obligations to protect these minors, the Congress steps in and says——

Mr. McCUMBER. The Government would have no right to bring an action in any event. The Government is not a party to it in any way. The Government can provide an attorney, if the Government sees fit to do so; but the attorney who is prosecuting those cases is paid out of the very fund that belongs to the minors of whom the Senator speaks.

Mr. CLAPP. Will the Senator pardon me a moment?

The VICE-PRESIDENT. Does the Senator from South Carolina yield to the Senator from Minnesota?

Mr. TILLMAN. With pleasure.

Mr. CLAPP. I do not want to prolong this discussion, but I undertake to say that there is not a line in this bill that interferes in any manner with the control now being exercised by the Department, either in the prosecution of these suits, or in the use of the fund that unquestionably is being sought to be used in their prosecution. We do not take this undistributed money out of the hands of the Department. There is not a word in the bill that changes the relation of the Department to the attorney whom they have employed on the suits which he is bringing under the tacit consent and authorization of the Department.

Mr. TILLMAN. And as against that statement of the Senator, I put the statement to the contrary of the Senator from Wisconsin [Mr. SPOONER], from whom the Senator from Minnesota [Mr. CLAPP] learned law.

Mr. CLAPP. Yes; and while I regret the absence of the Senator from Wisconsin, the two questions as to whether this provision interferes with the right of these minors and whether this bill, if passed in this form, would interfere with a pending suit, remain unanswered.

Mr. TILLMAN. I thought the Senator from Wisconsin answered them very clearly. All those who have listened at all are in possession of the facts. I have no interest in this matter except this, Mr. President, I want to see the Senate do no wrong; but try to do right. These children are the offspring of men who wore the Federal uniform and who fought against the South. If Republican Senators see fit to approve this report and ratify the wrong perpetrated by Brown against these ex-Union soldiers' orphans, I have no objection. I have done my duty in calling the attention of the Senate to the fact that the Indian Bureau say this provision ought not to be here. They object to it, and oppose its enactment. The only way the Senate can get this thing right is to reject the report and send the bill back to conference, with instructions to the Senate conferees to stand by the amendment which repealed the original provision.

Mr. BAILEY. Mr. President, on Saturday afternoon I asked the chairman of the committee, who has charge of this conference report, if there was anything in the bill that interfered with the rights of what are known as the "children of intermarried white citizens." I expressed the opinion that I was unable to conclude from the provision before me that any such effect could be given to that provision. The Senator from Minnesota concurred in my view. But when I come to look closer into the matter I find that the trouble is not in the Senate amendment, but the trouble is in the language of the conference report. I submit to the Senate as a question of order that the provision of the conference report is not permissible. It injects into this bill a question which was not in difference between the two Houses—in other words, the conference report incorporates or embodies a provision which had been rejected by the Senate when the bill pertaining to the Five Civilized Tribes was pending here. That particular provision is inserted for the express purpose of denying to these children participation in that land.

I submit as a question of order that the conference committee has exceeded its power in reporting to the Senate a provision which confines this enrollment to minors of Indian blood or to the minors of freedmen.

Mr. CLAY. Mr. President, this is one instance where I believe the report of the conference committee ought to be rejected and the bill sent back to the conferees to confer again and to eliminate certain features of the conference report.

To give a short history of the matter we were discussing on Saturday ought to convince any man that the item to which I refer should be rejected. In 1891 Congress passed a law directing the Secretary of the Interior to appoint a commission to negotiate with the Colville Indians for the purchase of a certain tract of land. The Secretary of the Interior appointed the commission, and they negotiated the purchase of the land for the sum of $1,500,000. That commission made its report to the Secretary of the Interior. The Secretary of the Interior approved it, and sent a letter to the President notifying him that he had approved the report. Mr. Harrison, who was President of the United States at that time, sent a message to

Congress recommending that the report be approved by act of Congress. It was approved, and the act approving it set forth that the Government of the United States owed these Indians the sum of $1,500,000. That report also set forth that the money ought to be kept in the Treasury of the United States in trust for these Indians to draw interest at the rate of 5 per cent per annum.

I presume, Mr. President, that this money was kept in the Treasury simply for the benefit of the Indians and was not paid to them in order that their financial interests might be protected. It was clearly a statutory obligation against the Government of the United States.

Now, what is the truth? In 1892 a contract was entered into by certain attorneys for the purpose of recovering this money from the United States for the benefit of the Indians.

Mr. DUBOIS. Mr. President——

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

Mr. CLAY. Certainly.

Mr. DUBOIS. The Senator from Georgia will pardon me. The Senate struck out the provision paying the Indians $1,500,000 with 5 per cent interest. That was never passed. The House had it in the bill, but when it came to the Senate that provision was striken out, and the bill became a law with what the Senator refers to as being in the bill stricken out. The money never has been appropriated from that day to this.

Mr. CLAY. That does not change the feature of the argument I intend to make in a very few minutes.

Mr. President, clearly the Government of the United States owed the Indians $1,500,000. In 1892 these attorneys entered into a contract with the Indians to collect this money from the Government of the United States, and the attorneys were to receive 10 per cent of the amount that was recovered. This contract expired nearly four years ago. There was a provision in the contract that if this money were not collected within a period of ten years, the contract was void, and the attorneys should not be entitled to a single cent. In the year 1906 the Committee on Indian Affairs looked over the statutes and they found that this was a legal and a valid claim against the Government of the United States, and the Committee on Indian Affairs inserted a provision in the bill that the $1,500,000 should be paid to the Indians. This contract which had been dead for four years is now revived. How came it to be revived?

Mr. CLAPP. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Minnesota?

Mr. CLAY. Certainly; with pleasure.

Mr. CLAPP. I have had some experience in framing this bill, and I am at a loss to find the language in it which revives that expired contract, and I would appreciate it if the Senator would point it out.

Mr. CLAY. My understanding is that it sets forth the fact that there is $1,500,000 coming to the Indians——

Mr. CLAPP. Yes.

Mr. CLAY. And you appropriated $150,000 of this sum; and this amendment is intended to utilize that sum for the purpose of paying these attorneys.

Mr. CLAPP. The Senator is mistaken. We do not, as I read the amendment, appropriate $150,000; and that is just the trouble and just where this whole difficulty arises.

The Senate did appropriate $150,000, and no doubt in view of the fact that some of that money would be used for paying attorneys, the conferees yielded to a suggestion striking out the appropriation of $150,000 and inserting in lieu thereof that the attorneys might bring their suits in the Court of Claims; and that is what has given rise to this discussion.

Mr. CLAY. I will ask the Senator this question: The Senator does not deny that we owe $1,500,000 to the Indians. The Senator does not deny that this bill recognizes the justice of the claim?

Mr. CLAPP. Which claim?

Mr. CLAY. I mean the claim of the Indians against the Government of the United States.

Mr. CLAPP. Should this bill become a law, it will be the first act of Congress since the land was taken which does recognize it.

Mr. CLAY. Then I am right.

Mr. CLAPP. But the Senator said we appropriated $150,000.

Mr. CLAY. I did not.

Mr. CLAPP. Why——

Mr. CLAY. I said this bill recognizes the validity of a claim on the part of the Indians——

Mr. CLAPP. Unquestionably.

Mr. CLAY. Against the Government of the United States——

Mr. CLAPP. Certainly.

Mr. CLAY. For a million five hundred thousand dollars.

Mr. CLAPP. Yes.

Mr. CLAY. I am correct. I knew I was right.

Mr. CLAPP. What I was correcting was the statement that this went on to appropriate.

Mr. CLAY. I did not intend to say that.

Mr. CLAPP. I am sure you did not intend to say it, but you said it.

Mr. CLAY. I say the bill recognizes the validity of this claim, and that the bill is proper, and that the validity of the claim should be recognized.

I wish to say that the contract of these attorneys expired four years ago, as the contract expressly provided that in the event the attorneys did not recover the money within a period of ten years the contract should be void, and that they should not receive a single dollar.

Now, what does this amendment attempt to do? It undertakes to give life to a dead contract, to a contract that has been dead for a period of four years. It was drawn——

Mr. CLAPP. If the Senator can point out the language that does that, I wish he would do so.

Mr. CLAY. I can point it out very easily.

Mr. CLAPP. Let us understand what the Senator says. The other time, as I understood the Senator, he said we validated this extinct and expired contract. Afterwards I understood him to say that he did not intend to say that.

Mr. CLAY. I was not discussing that feature of the bill.

Mr. CLAPP. You certainly referred to it.

Mr. CLAY. Here is what I want to call the Senator's attention to. The contract made with the attorneys to pay them 10 per cent expressly provided that they should recover the money within the period of ten years, and that if they did not recover it within a period of ten years, the contract should expire and they should not have anything.

What did these attorneys do? They found that the United States Senate had done justice to the Indians, had give them a million and a half of dollars, and the bill passed the House and the Senate without a word being said about these attorneys. They go to the conferees and try to reap the benefit of the services of the Senate to the Indians and to secure $150,000, to which they have no legal right or claim. This amendment was drawn by a sharp, shrewd lawyer, who drew it in his own interest. It deserves the condemnation of the Senate. I do not hesitate to say that I have no patience with a practice that has grown up whereby we pass legislation and it goes to a conference committee, and the conferees put new and distinct matter in the bill, and Senators are compelled to vote against the entire bill in order to reject such an objectionable item in the conference report.

Mr. President, it is surprising to know the unjust legislation that frequently creeps into bills in conference committees.

Mr. PILES. Mr. President——

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

Mr. CLAY. In one moment.

Mr. PILES. I want to correct——

Mr. CLAY. I will yield directly.

I want to call especial attention to this provision:

> And jurisdiction is hereby conferred upon the Court of Claims to hear, determine, and render final judgment in the name of Butler & vale (Marion Butler and Josiah M. Vale), attorneys and counselors at law, of the city of Washington, D. C., for the amount of compensation which shall be paid to the attorneys who have performed services as counsel on behalf of said Indians in the prosecution of the claim of said Indians for payment for said land, and in determining the amount of compensation for such services the court may consider all contracts or agreements heretofore entered into by said Indians with attorneys.

Now, mark you this: If this claim was before the court without any instruction from Congress, and the court examined the contract and found that it had expired four years ago, any court which had any respect for the law would dismiss the case. These attorneys come into the Senate and they say: "Our contract is dead; we never recovered this money, but Congress has awakened to the fact that the Indians were entitled to the money. We see this bill is going through the Senate. We will slip in and get the conferees to give us a hundred and fifty thousand dollars and to put life into a contract which has been dead for four years; dead and buried long, long ago."

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

Mr. CLAY. Certainly.

Mr. CLAPP. Last Saturday the senior Senator from Massachusetts [Mr. LODGE] took occasion to compliment the committee upon the wisdom of inserting this provision. He did not go as much into detail as he might have gone.

As I understand, after this contract expired in 1904, indi-

vidual contracts were obtained with these Indians; and an Indian, as a rule, will pay that which he believes he is morally obligated to pay. So it seemed better that Congress should refer the matter, in which the Indians were bound morally by the contracts they had entered into since 1904, to the disposition of a court rather than to permit them to attempt to settle it or to leave these people to settle with the Indians when the money was paid over. The Senator from Massachusetts was right when he did commend the wisdom of the committee in doing that.

Mr. CLAY. I should like to ask the Senator a question.

Mr. CLAPP. Certainly.

Mr. CLAY. If this was a just and legal claim, and the Committee on Indian Affairs knew it to be a just claim when the bill was pending before that committee and when the amendment was adopted appropriating a hundred and fifty thousand dollars, why did not the Committee on Indian Affairs offer this amendment and give the Senate a chance to pass upon it?

Mr. CLAPP. A simple answer to that is found in the history of any legislation that passes Congress. The question betrays its own weakness. There is not a bill that passes Congress but which, before it finally gets to the President, has amendments put upon it which were not contained in it originally. "If those amendments were wise," it might be asked, "why were they not suggested earlier?"

The fact is, at the time the bill passed the Senate, this matter had not reached this stage of consideration. We were then setting aside $150,000, knowing that the contracts existed, knowing that these claims existed; but when we came into conference and began to get nearer to the solution of this question, it seemed infinitely better, instead of leaving the $150,000 in a gross sum, subject to the claims of the attorneys upon the moral obligation, to send it to the Court of Claims.

Mr. BAILEY. Will the Senator permit me?

Mr. CLAPP. I have not the floor, really.

The VICE-PRESIDENT. The Senator from Georgia is entitled to the floor.

Mr. BAILEY. Will the Senator from Georgia permit me?

Mr. CLAY. I yield.

Mr. BAILEY. The objection that the Senator from Georgia makes, that this revives an expired contract, it seems to me could have been obviated by providing that the court should consider only valid and existing contracts.

Mr. CLAPP. Does the Senator from Texas hold that simply authorizing the court to take into account the terms of a contract, where they are fixing compensation, where they are to ascertain the quantum meruit, revives that contract?

Mr. BAILEY. I think it does when it is provided for in this language, because it declares that the court may consider all contracts or agreements heretofore entered into. That is authority to the court not only to consider those contracts as mere evidences of the value of the services, but as instruments upon which a judgment may be predicated.

I desire to say that my experience is somewhat different from that of the Senator from Minnesota. He tells the Senate that the Indians will pay anything that appeals to their sense of moral obligation. Probably that was true before they were contaminated by too close association with white people, but since the Indians have become American citizens in the Indian Territory they stand upon the law.

Mr. CLAPP. They think they have all of the rights of citizens.

Mr. BAILEY. They think they have them, and my judgment is they will exercise them. I think if Congress will send these attorneys with their expired contracts to the Indian Territory, merely conferring upon those courts the power to hear and determine any valid and existing contract against the Indians——

Mr. TILLMAN. These are blanket Indians in Oregon.

Mr. CLAY. Washington.

Mr. TILLMAN. Washington.

Mr. BAILEY. That is so far from my home that I am not willing to express an opinion about it, but I am not inclined to believe that the sense of moral obligation is stronger in the State of Washington than it is in the Indian Territory, which is the home of the Indians of whom I speak. But possibly if these Indians still wear blankets they may be so simple-minded as to perform an expired contract. However, I think it ought to be left to them and that they ought not to be dragged into the Court of Claims and made to answer for what they are not obliged to pay.

Mr. McCUMBER and Mr. DUBOIS addressed the Chair.

The VICE-PRESIDENT. Does the Senator from Georgia yield?

Mr. CLAY. I yield to the Senator from North Dakota.

Mr. McCUMBER. I was simply going to ask the Senator from Texas whether he ever knew an Indian, if he had the money, to refuse to pay the first man who came to him who had a legal claim upon him?

Mr. CLAY. Will the Senator let me answer that question? I am sure these attorneys, from the way the amendment has been drawn, will be the first men to get to the Indian.

Mr. BAILEY. Just as a tribute to a vanishing race, I will answer the Senator from North Dakota by saying that the Indian does almost universally pay his honest debts, and I beg also to add that when the Indians are pursued by remorseless creditors like these they never escape.

Mr. DUBOIS. Mr. President——

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

Mr. CLAY. With pleasure.

Mr. DUBOIS. I simply desire to correct a mistake into which I think the Senator from Texas has fallen, as well as the Senator from Georgia. In the first place, the contract was made in 1894 for 15 per cent, and approved by the Secretary of the Interior for 10 per cent. That contract expired only two years ago, not four years ago. During its life the Senate recommended the payment of this money. After the expiration of the approved contract the attorneys, who had been diligent enough, but Congress had not acted, made another contract with the Indians for 10 per cent. That contract has not been approved.

Mr. PETTUS. I should like to ask the Senator from Idaho a question.

Mr. DUBOIS. Certainly.

Mr. PETTUS. He speaks of a second contract, and it has been spoken of very often, but no one has stated what it was or when it was made.

Mr. DUBOIS. The second contract was similar to the first contract, providing for the payment to the attorneys of 10 per cent of the money recovered. But that contract was not approved by the Secretary of the Interior. I refer to the second contract made in 1904. The approved contract expired in 1904. Another contract which has not been approved by the Secretary was made in 1904.

Mr. PETTUS. When was it made?

Mr. DUBOIS. In 1904.

Mr. CLAY. Why was not the latter contract approved by the Secretary of the Interior?

Mr. DUBOIS. I do not know. Probably because there was a different Secretary of the Interior. My observation is that the Secretary of the Interior approves some contracts identical in terms with others which he will not approve. Here were two contracts precisely the same, one of which the Secretary of the Interior approved and the other the Secretary of the Interior did not approve.

Mr. CLAY. Mr. President, this is a very peculiar claim. It is reported by the conference committee and inserted in this bill, and the Senate has no information from the committee in regard to the terms of these contracts except what it can get from the Interior Department. The Senate committee has not set forth these contracts. The committee has not given the Senate any of the particulars in regard to these contracts. This amendment has never been discussed by the Committee on Indian Affairs. There was nothing in the amendment adopted by the Senate to indicate that the Senate committee intended to deal with this subject in any way whatever. And in truth and in fact this amendment has never been dealt with by the Senate committee and has never been considered by anybody except the conferees.

Look how this amendment is drawn. I do not know who drew it. It is drawn in such a way that the judgment must be rendered in favor of Marion Butler and Josiah M. Vale, and it also provides—

> The same—
>
> That is, the money—
>
> to be apportioned among said attorneys by said Butler and Vale.

I have understood from the statements on the floor of the Senate that only $15,000 was to go to any particular firm of lawyers, but the amendment is drawn in such a way that the Secretary of the Treasury must pay to Marion Butler and Josiah Vale a hundred and fifty thousand dollars, if this is found to be the correct sum, and these gentlemen are to say how much shall be paid to the other attorneys. They are certainly made the masters of the situation.

Mr. McCUMBER. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from North Dakota?

Mr. CLAY. With pleasure.

Mr. McCUMBER. The Senator did not, of course, have be-

fore him the facts the Committee on Indian Affairs had. A contract has been entered into between the other attorneys and Butler and Vale, constituting the latter the attorneys in whose favor the payment shall be made, and the contract provides for a division among the other attorneys according to the amount of work done.

Mr. CLAY. I know the Senate is anxious to vote on this report and to get through with it, but I will yield to the Senator from Washington [Mr. PILES] for a minute. I had forgotten.

Mr. PILES. Mr. President, I wish to refer to one statement made by the Senator from Georgia, feeling that it is my duty to do so in view of the fact that a very distinguished lawyer in my State, one of the ex-justices of the supreme court of that State, represents, among other lawyers, these Indians in this claim.

I understood the Senator from Georgia to say that the lawyers did nothing with this matter until Congress had provided for the payment of a million and a half dollars, and then the lawyers went before the conferees and had their claim of $150,000 recognized.

So far as concerns my relations with this matter, they are these: When I first took my seat in this body, one of the lawyers in this case in my State wrote me with reference to the south half of the Colville Reservation, saying he hoped I would insist, when that part of the reservation was opened, upon the payment of the just claim of a million and a half which the Government owed the Indians for the north half of that reservation. I wrote to him, telling him that when I had traveled through the north half of the Colville Reservation I had learned, as I recalled, from gentlemen living in that section of the country that the Indians were not entitled to that sum of money, and I did not see my way clear to support the claim, but that I would be perfectly willing to investigate the matter, and if I found they were entitled to the money, to support it.

The attorney then laid before me the record in the case and the proof showing to my mind conclusively that the Indians were entitled to that money. It developed that the chief justice of the State of Washington had acted as one of the commissioners to effect the contract between the United States and the Indians, under the terms of which they were entitled to $1,500,000. Upon that understanding I have supported and am supporting this claim of the Indians for $1,500,000. Therefore I know from my personal knowledge that at least one attorney in this case did represent the Indians long before Congress recognized this claim.

Mr. TILLMAN. If the Senator from Georgia will permit me, I should like to ask the Senator from Washington whether or not the solicitude in this instance arose for the Indians to get their money or for the lawyers to get their fees.

Mr. PILES. The statement to me on behalf of the Indians was that they were entitled to this money.

Mr. TILLMAN. But it seems that all the money that will be paid will go to the lawyers, and the Indians will have to get another lawyer to come here and collect the balance.

Mr. PILES. I do not understand that to be the case at all. All I understand about the matter is that these lawyers have a right to go before the Court of Claims and prove whether or not they are entitled to $1 or to $150,000, and whatever they are entitled to, if anything, they will have a right to recover. That is my understanding of it.

Mr. BAILEY. Mr. President——

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

Mr. CLAY. Certainly.

Mr. BAILEY. My friend from South Carolina seems to be especially severe against the lawyers. I have no patience with his continual attempt to prevent the lawyers from recovering their fees. My own opinion is that the $150,000 in this transaction is none too large. But lawyers are expected to collect their fees under existing contracts, and if those contracts expire, of if they fail to perform their duty under the contract according to its terms, I do not believe the Congress ought to revive any contract in their favor.

If there were no question about the expiration of this contract, I would not hesitate one minute to give these people not only the right to go to the court to recover it, but, under the facts, I would make the direct appropriation to it. But the trouble here is that according to their contract these lawyers are not entitled to this money. I do not think that a lawyer ought to be permitted to take advantage of an expired contract any more than anybody else, nor do I think the fact that he is a lawyer deprives him of his right until it has expired.

Mr. CLAY. Mr. President, just a word and I am through, because I know we want to vote on this report.

I will say to the Senator from Washington that I have great respect for his judgment, and have always had since I have known him. I am unable to understand, however, how he ever reached the conclusion, after reading the statutes, that the Indians were not entitled to this money. I reached the conclusion the very minute I read the law. It did not seem to me to be disputable at all.

Mr. PILES. No; the Senator——

Mr. CLAY. I understand the Secretary of the Interior has recognized the validity of this claim and has recommended its payment time and again.

Mr. PILES. The Senator misunderstood me.

Mr. CLAY. Originally, I will say to the Senator, it was not intended that this money should be paid to the Indians. It was intended that the money should be kept in trust by the Secretary of the Treasury for their benefit, to be paid out at such time as Congress might recommend hereafter. We have frequently, I will say to the Senator, pursued that course. We have frequently done so because the Indians in many instances are spendthrifts, and being their guardian, our Government has undertaken frequently to keep their money and use it and pay it to them in such a way as they might need it.

But what I object to in this case is that here is an amendment that has never been considered by the Senate at all. I believe that with the facts before us we should leave it out of this conference report, and that if it were left out of the conference report and voted on separately it would be overwhelmingly defeated.

It is an easy matter for a man with a doubtful claim to go before a conference committee. I make no reflection upon the conference committee; they are honorable men; but I say it is an easy matter for a man with a doubtful claim to go before a conference committee and to have inserted new matter of a doubtful character that would be overwhelmingly defeated in the Senate if brought into the Senate before it was inserted in the conference report.

Mr. TILLMAN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from South Carolina?

Mr. CLAY. Certainly.

Mr. TILLMAN. If the Senator will pardon me, I want to know when this bad practice will ever stop if the Senate gives way whenever such a provision gets into a conference report on an appropriation bill? If the bill is full of improper things, steals, I have almost said, are we just simply going to swallow them because they are in the conference report?

Mr. CLAY. I intend to vote against this conference report. I believe it ought to be defeated. I think we ought to send it back to the conference committee and let the conference committees know that they shall not pass upon anything except matters that are in dispute between the House and the Senate. This matter was never thought of on the floor of the Senate. It was never discussed by the Committee on Indian Affairs. It was inserted, as is my understanding, just before the committee came to a conclusion, and inserted without the Senate ever even considering it.

Mr. President, the committee ought to have had these contracts before them. They ought to have known about the services that have been performed. They ought to have been familiar with the case from the beginning to the end, and to have reported the facts to the Senate, and the Senate ought to have had an opportunity to pass upon the merits of this claim. I believe that the claim ought to be defeated, and at least that it ought never to have been inserted in the bill by the conferees.

Mr. McCUMBER. Mr. President, whatever may be the difference between Senators so far as a proper conclusion to be drawn is concerned, they certainly ought not to draw upon their imagination for the facts in any given case. The facts ought to be settled between them before they make that the basis of an argument. I can excuse the Senator from Georgia for errors as to what the facts are, because he took no part in the investigation of the matters before the committee of conference or before the Committee on Indian Affairs.

I believe that I can make this clear. I believe that I can dispel the fog that seems to surround it to some extent, going over very briefly indeed some of the facts in this case.

Here were a number of Indians, several tribes, known as the Colville tribes of Indians. They occupied a large section of country in the Territory of Washington, afterwards the State of Washington. There was a question as to where they came from. There was a question as to what title they had, whether they had the Indian title or a mere possessory title. Afterwards it seems that the Department itself, not being certain as to what the Indian title of that land was, and thinking that the Indians did not at least need all of it, made a departmental order which placed those Indians within circumscribed bounds,

much less than what the Indians claimed in the first instance.

Afterwards they made a treaty with those Indians. In that treaty they acknowledged practically the right of the Indians to the land, but that treaty which provided that the Indians should be paid a certain amount, $1,500,000, for one-half of the reservation which was created by Executive order, was never accepted by Congress. On the contrary, Congress declared by its act at that time that the Indians had no title.

Thus the Indian being despoiled of his $1,500,000 was also deprived, by the action of Congress, of his right to the money itself. In other words, we threw open this territory, gave it to the public, but declined to pay for it. So when the Indian wanted his rights he was faced with a Congressional act which had denied after an investigation any title that he might have. Any Senator can understand, when Congress has once put in the form of a law its decision upon the title to Indians, how difficult it is for the Indian to establish his right against that claim.

Then they came to the Department. The Department knew the law; the Department knew what Congress had done, and it agreed with the Indians to affirm such contract as those Indians should make with attorneys for the purpose of impressing Congress, we will say, with the absolute right of the Indian to that land notwithstanding the previous action of Congress.

Now, had they a right to enter into any such contract? Mr. President, there can be no possible question upon that score. The provision of the law which was read Saturday, the statute of the United States, section 2103, provides that—

> No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof, or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows.

And then it provides for the execution and approval of it. By that very law we legalized any contract that is made with the Indians for any of those purposes.

Now, how is the Indian going to get his rights? The Government of the United States owes him. He can not sue the Government, can he? When you give him the right, therefore, to employ an attorney for the purpose of securing that right how is the attorney going to act? To whom will he appeal? To Congress. He can not go into the courts. He must get an act of Congress to go into the courts. He can not get an appropriation except from Congress. He must go to Congress to get that appropriation. Therefore, when that contract was made it was necessarily understood that it would be a contract to convince Congress that the Indian had a right which Congress ought to respect notwithstanding its previous action.

Now, what did the attorneys have to do in that case? The very first duty incumbent upon them as an attorney was to establish Indian titles. How are you going to establish an Indian title to land? As was suggested by the Senator from North Carolina [Mr. SIMMONS], by an abstract of title? That does not determine an Indian title to lands. He must find that those Indians have occupied that land practically from time immemorial.

I have had a little experience since I have been in Congress in attempting to determine the title of Indians to a certain tract of land—10,000,000 acres—in my own State. It was necessary for me to go through our oldest records. I had to get hold of every record that was made by the Hudson Bay Company, the great fur company, nearly 200 years old. I had to find out where they had established their posts; what Indians they dealt with there; who were the chiefs at that time; how many there were; what kind of Indians they were. I had to establish then the line of the chiefs from that time down as near as possible to make a clear case that the land had belonged to the Indians practically from time immemorial.

These attorneys had practically to do the same thing; and then they had to convince Congress not only that the Indian had the title, but they had to convince Congress of the righteousness of their claim against the Government for the $1,500,000, notwithstanding the fact that Congress had once repudiated it, and that was no slight job. No one could criticise the Department for authorizing them to employ an attorney.

Those attorneys worked on that contract from 1894 until 1904. They did make a clear case, not, as some Senators think on the other side, because the Department found that they had a title. The Department has nothing to do with establishing the title. Congress has to determine that question when it determines its legal or moral liability to the Indians. After less than ten years they had satisfied the Committee on Indian Affairs that they had a title to those lands and that Congress ought to pay for them.

What did the committee do? There were other treaties every year. Some of them had to go off. It was impossible to put them all upon the appropriation bills; and the only practical way to get an Indian treaty through Congress is by an appropriation bill. Year after year the Colville bill went off, notwithstanding the committee found it to be just, until the ten years had expired. So by our own negligence we destroyed the contract that would have given them nearly $150,000.

Mr. BACON. Will the Senator pardon an inquiry?

Mr. McCUMBER. Certainly.

Mr. BACON. I should like to make the inquiry of the Senator that my colleague [Mr. CLAY] made of the Senator from Idaho. What was the reason which caused the Secretary of the Interior to refuse to approve the last contract?

Mr. McCUMBER. The reason is that the Secretary of the Interior lately approves no contracts. He has started out, I understand, upon a different theory, and upon what ought to have been the right theory in the first instance, that Congress ought to do its duty without the assistance of an attorney, and for the last few years he has declined, I understand, to approve any contracts whatever.

Mr. BACON. I presume the Senator is familiar with the fact that the Secretary of the Interior in refusing to approve the new contract knew the history of this case and knew of the prior contract.

Mr. McCUMBER. It was a different Secretary, of course. I understand that the present Secretary of the Interior will approve no contracts of that kind at the present time; that his theory is that the Indian Office and the Secretary of the Interior ought to take care of the rights of the Indians without their attempting to hire any attorneys.

Mr. BACON. While I am on my feet, if the Senator will pardon me, I should like to ask him another question in the same connection.

Mr. McCUMBER. I will be glad to answer the question as far as I can.

Mr. BACON. I should like to ask the Senator if he knows what is the attitude of the Indians in reference to the justice of this claim, whether they recognize it or not?

Mr. McCUMBER. I understand that it is satisfactory to the Indians. I have not heard anything to the contrary. One thing is certain, I think, that the great majority of them have signed the new contract within the last four years. I understand that that is as good evidence as you can get of their being satisfied to continue the same attorneys in the case.

Mr. BACON. Now, with the permission of the Senator, I will ask him one other question, and then I will not trespass further upon him. In a matter of this kind, when we are dealing with the rights of both parties, does not the Senator think we ought to know whether they recognize the propriety of this charge for the fee? Does not the Senator think we ought to inform ourselves on that question before we attempt to act for them and to pay out money to which they would be otherwise entitled?

Mr. McCUMBER. That is not only provided for, but in all instances when provision is made for the trial, notice is given, and the Secretary of the Interior looks after the rights of the Indians in those matters. That, it is understood, will be done in all cases. But the fact is that I do not know but all of the adult Indians, at least the majority of them, signed a new contract with the same attorneys to continue them, and they have been working now fourteen years upon this one case.

Mr. DUBOIS. Mr. President——

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

Mr. McCUMBER. Certainly.

Mr. DUBOIS. I desire to state, in answer to the Senator from Georgia, that in addition to the Indians having signed a new contract, five of the leading Indians, when the appropriation bill was up two years ago, came all the way from Washington State with the attorneys from that State with whom they had made the contract to urge the payment of the money and the payment to the attorneys; and the Senate then recommended the payment just before the expiration of the signed contract.

Mr. McCUMBER. Mr. President, it has been suggested here, and I think unjustly to the conferees, that these attorneys, unable to secure anything before the Senate, then went before the conferees and got a new provision in the bill for their benefit.

Now, let me correct the Senator from Georgia [Mr. CLAY] upon that proposition. When this bill passed the Senate it contained a provision that $150,000, 10 per cent, should be immediately paid over to the Indians. What was that for? I sup-

pose we all understand what it was for—at least the committee understood what it was for. At that time it was thought best to let those Indians who had signed the contract for the $150,000 pay the $150,000 themselves. Therefore they would have had it in their power, immediately upon the passage of the act and the payment of the money, to pay over the $150,000 to the attorneys. Of course the attorneys would have had the trouble of collecting it from the Indians after it was paid. Probably they would have got most of it in a very short time. Then the conferees on the part of the House, objecting to that provision, agreed upon another, which seemed more just. What was it? The question arose whether, notwithstanding these contracts, notwithstanding the fact that they had given fourteen years' service, without having before us necessarily everything that would justify us in determining what those attorneys' fees should be, we said, "We will not pass on that, but we will refer it to the Court of Claims to determine whether you are entitled to $1, to $1,000, to $10,000, or to $150,000;" and it is within the jurisdiction of the Court of Claims to determine that one question.

It is provided here—and the conferees are criticised because of that provision—that the court may take into consideration any contracts heretofore entered into. Why? For the purpose of fixing 10 or 15 per cent? No; for the purpose of determining not only whether it might have been reasonable, but the services that were to be performed under the contract. Whatever that contract says, so far as the price is concerned, it is not binding upon the court. So far as it outlines the duties of the attorneys it is binding to the extent that it determines what the duties were which they were to perform.

Mr. BAILEY. Will the Senator permit me?

Mr. McCUMBER. Certainly.

Mr. BAILEY. In the absence of any direction in this amendment that the court shall consider these expired contracts or agreement, does the Senator from North Dakota doubt that they would be competent evidence?

Mr. McCUMBER. Mr. President, I can answer that very quickly. If the question arose between the attorneys and the Indians as to what kind of work was to be performed by the attorneys the contracts would be proper evidence.

Mr. BAILEY. Or——

Mr. McCUMBER. Just a moment. If the question arose as to the value of the services, then the contracts would not be competent evidence as to the value.

Mr. BAILEY. Mr. President, I have no doubt that the contracts are competent evidence, both as to the character of the services to be performed and as to the value; of course not conclusive upon either point, but entirely competent upon both points. Therefore I think the express stipulation in this amendment that the court shall consider those contracts is unnecessary if it is only desired that they be used as evidence. As they could be used as evidence without this express provision, I can not escape the conclusion that the purpose of this is to revive them and give them force; in other words, not only to revive and give the expired contracts force, but to operate as an approval of the unapproved contracts.

Mr. McCUMBER. Oh, Mr. President, it does not seem to me possible that we could give this law that construction. We can not revive those contracts. This action, if the action is maintained at all under the provisions of this law, would be an action on the quantum meruit, and there you would determine simply the legal fact. They could not under this agreement or under this law bring an action upon the old contract which might be evidence for some particular purpose but could not be the basis of the action. If it would be, then, of course, we might have said, without sending it to the court, that the sum shall be $150,000, and nothing else. It would be folly to send it to the Court of Claims upon a quantum meruit, and at the same time say that the court shall give effect to the provision and reinstate a contract that has become void by the lapse of time.

Mr. BAILEY. It occurs to me, Mr. President, that the very purpose of this provision is to make the court do this, instead of Congress. I hardly think Congress would appropriate $150,000 to discharge a contract which, according to its own terms, laid no obligation upon the Indian tribes. But Congress, it seems to me, is now asked to revive the expired contracts, or, what is the same thing, to approve the unapproved contracts, and with them before the court, the court finds these people entitled to a judgment of so much; and then Congress has nothing to do but to appropriate to pay that judgment.

Mr. McCUMBER. Mr. President, I have not the amendment here before me, but the amendment proposes to send the matter to the Court of Claims to determine the value of the services. That being the case, the action must be brought upon the quantum meruit, and the court must simply determine what the services were reasonably worth. If the contract is of any benefit to the court in determining what the services are really worth, of course it would be proper that it should be an instrument of evidence; but it can not be used for any other purpose. It can not be used as the basis upon which the action is to be instituted.

I simply desired to clear up this proposition of the title and the character of work that was to be performed, and to say that the committee of conference believe that, so far as the Indians are concerned, they have performed an act of far greater justice in saying that the court shall determine the value of these services, rather than to report it back to Congress. If, in the view of Congress, the court should award too much, it can still be cut down rather than leave it as it was in the act as it stood before, appropriating $150,000, paying it over to the Indians, and then having them pay it to their attorneys as soon as they got it. From the standpoint of those who have opposed the provision, I think they must agree that it is far preferable to the first amendment as it passed the Senate, because if next winter the court determine that $25,000 is a proper sum, Congress may still say that the service was not worth more than $10,000, and refuse to appropriate any more than that sum.

Mr. LA FOLLETTE. Mr. President, the Senate has spent almost the entire day in debate upon two amendments involving, I think, but little more than $300,000. I wish to call the attention of the Senate to amendment No. 56 in the conference report, which involves property rights amounting to at least $10,000,000. It is the amendment upon which the Senator from Texas [Mr. BAILEY] raised the point of order.

It is with some reluctance, sir, that I oppose the conference report, or any portion of it. I am a member of the Committee on Indian Affairs, and I should not oppose the report if I did not believe that very great injustice would be done to a large number of Indians unless the Senate rejects it and sends it back to conference.

I regret that the rules do not permit of separate action upon each item in the report, and that there is no other way to prevent the perpetration of the wrong which the adoption of this amendment would work to these helpless people except by rejecting the entire report and sending it back to conference. But, sir, the enactment of this amendment into law will destroy the hope and wipe out the only opportunity which 2,000 men, claiming to be members of these tribes, have to prove their right to participate in the patrimony given to them by this Government as a recompense for the great country east of the Mississippi which they once owned. I know that on the disposition of this amendment depends the possession of hundreds of homes, with all of the sacred ties that bind their owners to them. I know that it will result in driving men off the farms they have developed; will take from them all they have accumulated by years of toil and endeavor—years in which they contributed to the development of the rich country included in the Indian Territory, years in which they were fitting themselves to take a place in the citizenship of our country. I can not, I say, for these reasons remain silent and permit this amendment to pass without protest. I consider it a duty I owe the Senate to call attention to the injustice, the great wrong, which would result.

On Saturday afternoon, late in the day's session, I asked the attention of the few Senators then present to this amendment. I contended at that time that, if it were adopted, it would exclude possibly as many as 2,000 Indians from having their cases considered at all by the Commissioner of the Five Civilized Tribes or by the Department of the Interior.

Mr. TILLMAN. Mr. President——

The PRESIDING OFFICER (Mr. BURNHAM in the chair). Does the Senator from Wisconsin [Mr. LA FOLLETTE] yield to the Senator from South Carolina?

Mr. LA FOLLETTE. I do.

Mr. TILLMAN. I dislike to do it for the third time, but this is a very important matter, and I shall insist occasionally, at least, that Senators shall listen to what is going on, and not come in here and ask, "What is my vote?" and then vote with the committee regardless of what has been said or done here. I make the point that there is no quorum present, Mr. President.

The PRESIDING OFFICER. The absence of a quorum being suggested, the Secretary will call the roll.

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

Ankeny	Clapp	Flint	Kittredge
Bacon	Clay	Frazier	Knox
Bailey	Cullom	Gallinger	La Follette
Blackburn	Daniel	Hansbrough	Lodge
Brandegee	Dillingham	Hemenway	Long
Bulkeley	Dolliver	Hopkins	McCumber
Burnham	Dubois	Kean	McEnery

Mallory	Pettus	Stone	Warner
Money	Piles	Sutherland	Warren
Nelson	Scott	Taliaferro	Wetmore
Overman	Simmons	Teller	
Perkins	Spooner	Tillman	

The VICE-PRESIDENT. Forty-six Senators have answered to their names. A quorum is present.

Mr. LA FOLLETTE. Mr. President, I repeat that when this matter was under discussion on Saturday evening I then asserted that in the neighborhood of 2,000 Indians under existing law are recognized by the Department of the Interior as being fairly entitled to have their right to enrollment investigated and determined, and that if amendment numbered 56 were adopted none of these Indians would have or could have a hearing on their cases. That statement was controverted by the chairman of the committee, the Senator from Minnesota [Mr. CLAPP]. I therefore submitted the matter to the Department of the Interior this morning. I presented to the Secretary the bill, directed his attention to sections 1 and 2 of the act of April 26 last, known as the "Five Civilized Tribes act," and to the proposed amendment numbered 56. The matter was referred by the Secretary to the Assistant Attorney-General for his investigation. I have received a communication from the Secretary of the Interior as a result of that investigation, and I ask the attention of Senators to it. The letter of the Secretary is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, June 11, 1906.

Hon. ROBERT M. LA FOLLETTE,
United States Senate.

SIR: I received your letter of this date stating that—

"I invite your attention to an amendment, No. 56, of the conference report on the Indian appropriation bill and respectfully request to be informed as to the effect of the proposed amendment No. 56 upon the rights of the Indians whose cases are now pending investigation, and who have been held by your Department to be entitled to investigation by the Commissioner to the Five Civilized Tribes."

Since prior to 1830 there have been white persons residing in certain of the Five Civilized Tribes whose descendants have been recognized as members of the tribes, and have without objection from the tribes improved lands and built homes. Among others may be instanced the descendants of W. J. Thompson, a white intermarried Choctaw, who was transported by the Government to the Indian Territory as a Choctaw under the treaty of 1830; also descendants of the Christian missionary, John Parker Kingsbury and his wife, Mariah, adopted by act of the Choctaw council, November 15, 1854.

Such persons have never had any other home than in such Indian nations, and have not borne allegiance to any other immediate nationality than that of the Indian nation into which they have been affiliated and many of them born.

If the legal effect of such amendment excludes them from enrollment, it is in effect an expatriation from the allegiance to which they were born, and necessarily excludes them from allotment in severalty of the communal lands and gives their homes and improved lands to others who have not toiled to construct or improve, giving the fruit of their labor to other less provident members of the tribe.

The Choctaw treaty of 1830 (7 Stat. L., 333) was executed by "the Mingoes chiefs, captains, and warriors of the Choctaw Nation." Twenty-seven per cent of the representative parties signing the treaty on behalf of the nation bore surnames of the white races, principally English and French. This shows that prior to 1830 there was a large infusion of white blood, and it is shown by the records of this Department that numbers of Indian tribes, recognized as such, are not infrequently without any intermixture of Choctaw blood.

The enrollment acts governing the Commission to the Five Civilized Tribes authorizes the Commission to scrutinize the tribal rolls and exclude therefrom persons whose names have been enrolled by fraud or without authority of law.

As construed by the Department, this made every enrolled person presumptively a tribal member, so that formal application for enrollment was unnecessary. The effect of the provision in amendment 56—

This is quoted—

"that the fact that the name of a person appears on the tribal roll of any of said tribes shall not be construed to be an application for enrollment," would be to exclude all such tribal members as have not heretofore filed formal application, whether of white or Indian blood. If formal applications are to be required, a time should be fixed in the future within which the formal application must be filed.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

The last two lines of amendment No. 56 provide:

And the fact that the name of a person appears on the tribal roll of any of said tribes shall not be construed to be an application for enrollment.

Section 1 of the Five Civilized Tribes act provides that—

The Secretary of the Interior may enroll persons whose names appear upon any of the tribal rolls.

But that is not all. Note what follows. There is another condition necessary before the Secretary of the Interior can consider applications of persons for enrollment, the name of the applicant must not only appear on the tribal roll, but there must also be some independent record of previous application to the Commission for enrollment. The balance of the proviso is as follows:

And for whom the records in charge of the Commissioners to the Five Civilized Tribes *show application was made* prior to December 1, 1905, etc.

Mr. President, the adoption of this amendment will exclude all of that class. It will also exclude those to whom the Senator from Texas [Mr. BAILEY] referred when making his point of order against this amendment; besides this, it will exclude a very large class who, under the act of 1896, were given three months in which to present their applications for enrollment to the Dawes Commission. When applications were then made, if any question whatever, whether of fact or of law, was raised as to their right to enrollment, all so challenged were set apart in a doubtful class. Such claims were not determined, but are still pending. They were not entered on any tribal roll, and if this amendment is adopted their rights can not be considered. All told, it will exclude in the neighborhood of 2,000 Indians, who, upon every possible ground, in equity and in law, as the law is construed by the Interior Department, are entitled to have their day in court.

The Senate has listened patiently all afternoon to the discussion of two amendments, one involving $150,000 and the other $186,000. The average amount involved in the case of each of the 2,000 Indians affected by this amendment is in the neighborhood of $5,000. Of these 2,000 claims about 1,000 of them are pending in the Interior Department to-day. The amount involved in these claims in round numbers is upward of $12,000,000.

I have not heard one word in defense of this proposition from the conferees, and I do not know that it can be justified in any way. A good deal has been said about great fees for attorneys. I suppose Senators have heard of the case of one firm of attorneys in the Indian Territory who drove a bargain with two of the tribes and then sought to collect, upon their so-called "contract," a fee amounting to nearly $2,000,000. As I am informed, they finally succeeded in collecting something like $700,000. That firm still has, as I was informed to-day at the Interior Department, a standing contract with those Indians. By its terms they are paid $10,000 a year as a general retainer. But that is not all. Besides this they have a contract to collect for every Indian whose enrollment is denied 10 per cent of the amount such Indian would receive as his share of the tribal property if he were enrolled.

Mr. TILLMAN. Mr. President——

The VICE-PRESIDENT. Does the Senator from Wisconsin yield to the Senator from South Carolina?

Mr. LA FOLLETTE. Certainly.

Mr. TILLMAN. My attention was diverted for a moment. The Senator may have already given the name, but if not, I hope he will give us the name of the firm of lawyers who are thus sucking the blood out of these Indians.

Mr. LA FOLLETTE. I think I have it here—Mansfield, McMurray & Cornish. I am informed by the Senator from North Carolina [Mr. OVERMAN] that this firm collected a fee of $750,000, which is a little more than I thought.

Mr. President, I do not know——

Mr. McCUMBER. I should like to ask the Senator if any of these contracts of which he speaks have been approved by the Secretary of the Interior?

Mr. LA FOLLETTE. I am not able to answer the question. I have no information on the subject.

Mr. McCUMBER. I understand he has approved none.

Mr. SPOONER. The contract under which the firm of lawyers received $750,000 the Secretary of the Interior refused to approve.

Mr. LA FOLLETTE. Yes, sir; the Secretary refused to approve their contract and saved the Indians more than a million dollars.

Mr. TILLMAN. How did they get the money?

Mr. SPOONER. Congress approved it.

Mr. LA FOLLETTE. Yes.

Mr. TILLMAN. Another case of the lawyers coming here and getting something done.

Mr. SPOONER. Another case of the cornfield lawyer not attending——

Mr. TILLMAN. The cornfield lawyer can not attend to all the stealing in this House. If he could, there would be no stealing.

Mr. SPOONER. He attends to a lot.

Mr. LA FOLLETTE. Mr. President, I do not know that this firm of attorneys have been about the Capitol, or that they appeared before the conferees to secure the incorporation of this amendment in the conference report. But though they may not have been within a thousand miles of the Capitol when this provision found its way into the conference report, if it is adopted I predict that they will present a bill to the Indians for a fat attorneys' fee of several hundred thousand dollars for having secured this legislation. And when the Secretary bars their way to the collection of their claim, a bill will be presented to the Senate overruling the Secretary and providing for payment of the fee. Or if such a measure en-

counters too strong opposition, a bill will be offered to create a commission or special court, upon which gentlemen with liberal views will find a place. Then those thrifty lawyers will realize on this legislation.

Such a course would but repeat the history of their collection of the $750,000 fee. I was informed to-day that a portion of that amount was a charge for securing Congressional legislation, and that at least one of the members of the court or commission, which was created by special act to pass upon their claim, was a brother-in-law of one of the Senators who supported the legislation establishing the court.

Mr. President, the Commissioner to the Five Civilized Tribes was present in all the executive sessions of the Committee on Indian Affairs while the Five Civilized Tribes bill was under consideration. He was ready, in season and out, with objections to any proposition which would require the Commissioner to give consideration to cases for the enrollment of Indians, however meritorious they appeared to be. Many cases were presented to the committee which were admittedly just. But he was always prompt with a protest, and we were constantly warned that even though this case or that class of cases might be worthy, it would not do to open the door or a flood of fraudulent claims would break over the helpless Commission.

Mr. President, I am not prepared to assert that there is any connection between the firm of attorneys who are after these enormous fees and any public official. But upon this very day I have received information which I believe it to be my duty to lay before the Senate in connection with this proposed legislation. In the month of June, 1903, I am informed, the present assistant to the Commissioner to the Five Civilized Tribes, and who at that time was chief clerk to the Dawes Commission, was given a leave of absence for a month or so; that during that month he went into the offices of the firm of Mansfield, McMurray & Cornish and was employed there briefing their cases for the exclusion of Indians from these rolls. Some of these cases, I am informed, will be affected by this amendment if it is adopted; and, sir, it is asserted that he then came back to the office of the Dawes Commission and proceeded to the consideration of the very cases which he had briefed up and prepared for the Commission, the findings which determined whether these Indians were entitled to be entered upon the rolls. I learned from the Interior Department that that information has reached the Department within the last four or five days, but as yet they have not taken it up for investigation.

Mr. President, this is a matter of tremendous importance to the people whose interests are involved and who will be denied rights of trial if the conference report is adopted, and I appeal to the Senate to reject it.

The VICE-PRESIDENT. Does the Chair understand the Senator from Texas to insist upon his point of order?

Mr. BAILEY. Yes, sir.

The VICE-PRESIDENT. Will the Senator kindly restate it?

Mr. BAILEY. I make the point of order that the provision reported by the conference committee contains matter not in difference between the two Houses, in that it excludes from the benefits of the law the children of intermarried white Indian citizens. It not only changes existing law, which would have been contrary to the rule if it had been proposed in the Senate, but it introduces into the conference report a matter not the subject of difference between the two Houses.

The VICE-PRESIDENT. The Chair is of the opinion, as he has previously held, that under the usual practice of the Senate a point of order will not lie against a conference report. The matter in the report challenged by the point of order interposed by the Senator from Texas may be considered by the Senate itself when it comes to consider the question of agreeing to the report. The only question under the usual practice of the Senate, in the opinion of the Chair, is, Will the Senate agree to the conference report?

Mr. BAILEY. Then, Mr. President, I understand the rule simply to amount to this, that under the rules of the Senate there is no such practice as a point of order against a conference report.

The VICE-PRESIDENT. The Chair so understands.

Mr. BAILEY. I am going to accept the ruling of the Chair, because I have always found the Chair to be fair, impartial, and usually correct. I am very much surprised, however, if it is possible for a conference committee to include matter not in difference between the two Houses and it becomes necessary for the Senate to disagree to the entire report in order to reach it.

It might happen, if the Chair will indulge me for a moment, that except against a particular matter, subject to a point of order, I might desire to agree to the report. But as that is the ruling of the Chair, I acquiesce in it, and shall vote against the motion to agree.

The VICE-PRESIDENT. The question is on agreeing to the report of the committee of conference.

Mr. LODGE. Mr. President, in regard to the point of order, the rule is that—

Conferees may not include in their report matters not committed to them by either House.

In the Senate, in case such matter is included, the custom is to submit the question of order to the Senate.

I am reading from the rules and compilations we have made.

In the Fifty-fifth Congress, first session, Vice-President Hobart, in overruling a point of order made on this ground against a conference report during its reading in the Senate, stated that the report having been adopted by one House and being now submitted for discussion and decision in the form of concurrence or disagreement, it is not in the province of the Chair during the progress of its presentation to decide that matter has been inserted which is new or not relevant, but that such questions should go before the Senate when it comes to vote on the adoption or rejection of the report.

In other words, the rule is, and it was so held by Vice-President Hobart, that it should be submitted when the Senate is ready to vote upon the question of rejecting or agreeing to the report.

Mr. TELLER. Mr. President——

Mr. LODGE. One moment and I will yield.

At a later time, when I myself happened to be in the chair, it is stated here:

The PRESIDING OFFICER (Mr. LODGE in the chair) referred with approval to the foregoing decision of Vice-President Hobart, and stated that when a point of order is made on a conference report on the ground that new matter has been inserted the Chair should submit the question to the Senate instead of deciding it himself, as has been the custom in the House.

I had never understood that a point of order against a conference report could not be decided by the Senate. The only point which this seems to me to decide—and I say it with all submission to the Chair—is that a point of order can not be made during the consideration of the report. It has to be submitted when we come to the question of the adoption or rejection of the report. If the Senate sustains the point of order as well taken and holds the matter to be new matter, it operates precisely as it operates in the House. If the Speaker holds it to be new matter, the report is rejected thereby. If the Senate holds it to be new matter, the report is rejected thereby. Therefore the action is a final action and amounts to a rejection of the report. But I have never understood that the point of order may not be decided by the Senate at the appropriate time, just as it may be decided by the Speaker at the appropriate time.

Mr. TELLER. I rose to ask the Senator from Massachusetts a question, but he has explained the matter fully and precisely as I understand the law is.

The VICE-PRESIDENT. The question is on agreeing to the report of the committee of conference.

Mr. BAILEY. I think, and I thought when I was about to acquiesce, that it would be a dangerous practice to deny the Senate the right to determine first whether or not the conferees had transcended the authority vested in them by their appointment on a conference committee. I remembered that the practice in the House was that the point of order could be made. In that body the Chair passes on it. Of course he passes on it subject to appeal. If his ruling was not challenged, and he held that new matter was incorporated beyond the authority of the conference committee, that ended it. Or if his ruling to that effect was challenged and sustained by the House, that likewise ended it. I think it would not be a safe practice to compel the Senate to reject a report instead of allowing it to first insist upon the point of order.

But, as it is late in the afternoon, and I do not want to delay this matter, and as I know the Senator from Minnesota wants to conclude it, rather than to have that ruling made a precedent I withdraw the point of order until I can still further examine it.

The VICE-PRESIDENT. The Senator from Texas withdraws his point of order. The question is on agreeing to the report. [Putting the question.] In the opinion of the Chair, the "ayes" seem to have it.

Mr. TILLMAN. I ask for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr KITTREDGE (when his name was called). I have a general pair with the junior Senator from Colorado [Mr. PATTERSON]. In his absence, I withhold my vote.

Mr. MALLORY (when his name was called). I have a general pair with the senior Senator from Vermont [Mr. PROCTOR]. If he were present, I should vote "nay."

Mr. NELSON (when his name was called). I have a general

pair with the senior Senator from Arkansas [Mr. BERRY]. I transfer the pair to the Senator from New Jersey [Mr. DRYDEN], and will vote. I vote "yea."

Mr. PETTUS (when his name was called). I have a general pair with the junior Senator from Massachusetts [Mr. CRANE].

Mr. SPOONER (when his name was called). I have a general pair with the Senator from Tennessee [Mr. CARMACK], who is absent. If I were at liberty to vote, I should vote "nay."

Mr. STONE (when his name was called). I have a general pair with the senior Senator from Wyoming [Mr. CLARK].

Mr. TALIAFERRO (when his name was called). I have a general pair with the junior Senator from West Virginia [Mr. SCOTT]. In his absence, I withhold my vote.

The roll call was concluded.

Mr. CULLOM. I have a general pair with the junior Senator from Virginia [Mr. MARTIN]. I understand the pair has been transferred to the Senator from Vermont [Mr. PROCTOR], who is absent, and I will vote. I vote "yea."

Mr. WARREN. I wish to announce that my colleague [Mr. CLARK of Wyoming] is unavoidably absent. He stands paired, I believe, with the senior Senator from Missouri [Mr. STONE].

Mr. MALLORY. I should like to inquire if the Senator from Illinois [Mr. CULLOM] transferred his pair with the Senator from Virginia [Mr. MARTIN] to the Senator from Vermont [Mr. PROCTOR]? I understood him to say so.

Mr. CULLOM. That was the arrangement made. If it is not satisfactory, I will withdraw my vote.

Mr. MALLORY. I was paired with the Senator from Vermont.

Mr. CULLOM. Then I withdraw my vote.

Mr. MALLORY. I have not the slightest objection to the transfer. I wanted to understand whether the Senator did transfer the pair.

Mr. CULLOM. I will withdraw my vote.

Mr. MALLORY. Oh, no. I should like to vote, in order to make a quorum. I vote "nay."

Mr. TALIAFERRO. As I have stated, I have a pair with the Senator from West Virginia [Mr. SCOTT]. I transfer the pair to the Senator from Mississippi [Mr. MCLAURIN], and will vote. I vote "nay."

Mr. BLACKBURN. I desire to state that my colleague [Mr. MCCREARY] is necessarily absent from the city.

Mr. SPOONER. I transfer my pair with the Senator from Tennessee [Mr. CARMACK] to the Senator from Wyoming [Mr. CLARK], which will leave the Senator from Missouri [Mr. STONE] and myself at liberty to vote. I vote "nay."

Mr. STONE. I vote "yea."

Mr. KITTREDGE. I transfer my pair to the junior Senator from Idaho [Mr. HEYBURN], and will vote. I vote "yea."

The result was announced—yeas 30, nays 16, as follows:

YEAS—30.

Ankeny	Cullom	Kittredge	Stone
Brandegee	Dillingham	Lodge	Sutherland
Bulkeley	Dubois	Long	Teller
Burkett	Flint	McCumber	Warner
Burnham	Fulton	Nelson	Warren
Burrows	Gallinger	Penrose	Wetmore
Carter	Hansbrough	Perkins	
Clapp	Hopkins	Piles	

NAYS—16.

Bacon	Daniel	McEnery	Simmons
Bailey	Frazier	Mallory	Spooner
Blackburn	Kean	Money	Taliaferro
Clay	La Follette	Overman	Tillman

NOT VOTING—42.

Aldrich	Culberson	Hale	Nixon
Alger	Depew	Hemenway	Patterson
Allee	Dick	Heyburn	Pettus
Allison	Dolliver	Knox	Platt
Berry	Dryden	Latimer	Proctor
Beveridge	Elkins	McCreary	Rayner
Carmack	Foraker	McLaurin	Scott
Clark, Mont.	Foster	Martin	Smoot
Clark, Wyo.	Frye	Millard	Whyte
Clarke, Ark.	Gamble	Morgan	
Crane	Gearin	Newlands	

So the report was agreed to.

COLLECTION DISTRICT OF SABINE, TEX.

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

Mr. OVERMAN. Will the Senator yield that I may submit a report from a committee?

The VICE-PRESIDENT. It is not in order, under the new rule, to receive the report.

Mr. BAILEY. Will the Senator from New Jersey permit me to ask unanimous consent for the consideration of a bill?

Mr. KEAN. With great pleasure.

Mr. BAILEY. I ask unanimous consent for the consideration of the bill (H. R. 10715) to establish an additional collection district in the State of Texas, and for other purposes.

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

Mr. KEAN. I wish to say to the Senator from Texas that this is not a bill I am very heartily in accord with, but I do not want to make any objection. I hope the amendments will be read.

Mr. BAILEY. There are committee amendments, but in the first committee amendment there is a mistake. In line 14, on page 2, the last three words "and to the" ought not to have been stricken out.

The VICE-PRESIDENT. The first amendment will be stated as modified.

The SECRETARY. In section 1, page 2, line 13, after the word "basin," strike out "slip known as slip No. 3 in Taylors Bayou, and to the;" in line 16, after the word "built," strike out "and there shall also be ceded by the State of Texas to the United States exclusive jurisdiction and sovereignty over said waterway, basin, and slips;" in line 22, after the word "thereto," strike out "and upon proof being furnished to him of legal cession by the State of Texas of jurisdiction and sovereignty as aforesaid;" and on page 3, line 21, after the words "United States," strike out "*And provided further*, That the person or persons, companies, or corporations owning or controlling docks, wharves, or terminals in, along, or upon said canal, or in, along, or upon any basins, slips, or channels connected therewith, directly or indirectly, shall by valid contract agree that the charges for the use of said docks, wharves, and terminals shall be such as the Secretary of War may from time to time approve;" so as to make the section read:

That an additional collection district in the State of Texas shall be, and is hereby, established, to be known as the "district of Sabine," to comprise all of that portion of the State of Texas formerly embraced in the district of Galveston and now hereby detached therefrom, beginning on the Gulf of Mexico at the center of the stream of Sabine Pass; thence north with the center of the stream of Sabine Pass to Sabine Lake; thence with the center of the stream of Sabine Lake to a point directly opposite to the Sabine River; thence north with the east shores of the Sabine River to the north boundary line of Shelby County, Tex.; thence west to the Neches River; thence down said river with its west shores to a north boundary line of Jefferson County; thence in a westerly direction with the said north boundary line to the east boundary line of Liberty County, Tex.; thence south to the Gulf of Mexico; thence in an easterly direction along the Gulf shores to the place of beginning; that Port Arthur, in the county of Jefferson, shall be the port of entry for said district, and Sabine, in the county of Jefferson, shall be a subport of entry: *Provided*, That there shall be conveyed to the United States, free of cost, a valid title to the line of water communication between Taylors Bayou and Sabine Pass, known as the "Port Arthur Ship Canal," together with a valid title to the existing turning basin and to the artificial slip on which the lumber dock of the Port Arthur Canal and Dock Company is built, and the Secretary of War is hereby authorized to accept the said waterways as the property of the United States upon the delivery to him of a clear and indefeasible title thereto; and the said waterways shall thereupon become free public waters of the United States, and be subject to the laws heretofore enacted and that may be hereafter enacted by Congress for the maintenance, preservation, protection, and regulation of navigable waters: *Provided further*, That the company or corporation conveying title to said canal as aforesaid shall also convey to the United States, free of cost, the fee to a strip of land 150 feet wide along the westerly margin of the canal, except that where the right of way of the Southern Pacific Railroad Company prevents the transfer of such srip of land along the westerly margin of said canal there shall be conveyed such strip on the easterly margin thereof as may be necessary to make up such 150 feet of width, with the reservation that until Congress shall have authorized and provided for the enlargement and widening of said canal the said company or corporation, its successors or assigns, shall have the right to control, occupy, and use the said strip of land and every part thereof in the same manner and to the same extent as before the execution and delivery of the conveyance, and also the right to transfer, lease, sell, quitclaim, or otherwise dispose of said property and every part thereof, subject to the grant made to the United States: *And provided further*, That this act shall take effect only when the foregoing requirements shall have been fully complied with to the satisfaction of the Secretary of War.

The amendment was agreed to.

The next amendment was to strike out section 3 in the following words:

SEC. 3. That Sabine, in the State of Texas, shall be, and is hereby, made a subport of entry and delivery in the customs district of Sabine, and a customs officer, or such other officers, shall be stationed at said subport, with authority to enter and clear vessels, receive duties, fees, and other moneys, and perform such other services and receive such compensation as in the judgment of the Secretary of the Treasury the exigencies of commerce may require.

And to insert the following as section 3:

SEC. 3. That Sabine, in the State of Texas, shall be, and is hereby, made a subport of entry and delivery in the customs district of Sabine, with the privileges of immediate transportation, as defined by section 7 of the act of June 10, 1880, entitled "An act to amend the Statutes in relation to immediate transportation of dutiable goods, and for other purposes," being chapter 190, volume 21 of the Statutes at Large; that a deputy collector and such other officers of the customs as may be deemed necessary by the Secretary of the Treasury shall be ap-

pointed to reside at said subport; and that, subject to the supervision of the collector at Port Arthur, the deputy collector of said subport is hereby authorized to license and enroll, enter and clear vessels, receive entries, collect duties, fees, and other moneys, and generally to perform the functions prescribed by law for collectors of customs, and perform such other services and receive such compensation as in the judgment of the Secretary of the Treasury the exigencies of commerce may require.

The amendment was agreed to.

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

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

AMENDMENT OF BANKRUPTCY ACT.

Mr. KEAN. In order that the new rule may not be enforced, I withdraw the motion I made for an executive session.

Mr. NELSON. I am directed by the Committee on the Judiciary, to whom was referred the bill (H. R. 4478) to amend section 64 of the bankruptcy act, to report it favorably without amendment, and I ask 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. It proposes to amend clause 4 of subdivision B of section 64 of the act so as to read as follows:

Fourth. Wages due to workmen, clerks, traveling or city salesmen, or servants which have been earned within three months before the date of commencement of proceedings, not to exceed $300 to each claimant.

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

WEIGHTS AND SALES OF PRODUCTS.

Mr. GALLINGER. I ask for the consideration of the bill (H. R. 4468) to amend an act entitled "An act to provide for the appointment of a sealer and assistant sealer of weights and measures in the District of Columbia, and for other purposes," approved March 2, 1895.

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 from the Committee on the District of Columbia with amendments, on page 1, line 10, before the word "weight," to strike out "greater;" and in the same line, after the word "measure," to insert "less;" so as to make the bill read:

Be it enacted, etc., That section 10 of the act entitled "An act to provide for the appointment of a sealer and assistant sealer of weights and measures in the District of Columbia, and for other purposes," approved March 2, 1895, be, and the same is hereby, amended so as to read:

"SEC. 10. No person shall sell or offer for sale anywhere in the District of Columbia, any provisions or produce or commodities of any kind for a weight or measure less than the true weight or measure thereof; and all provisions, produce, or commodities of any kind shall be weighed by scales, weights, or balances or measured in measures duly tested and sealed by the sealer or an assistant sealer of weights and measures: *Provided*, That berries, when offered for sale in an original package or basket containing a standard measure, may be sold in said package or basket without the same having first been tested and sealed, but in no case shall said basket be refilled for use in the sale of berries or produce of any kind whatsoever: *And provided further*, That poultry and vegetables, usually sold by the head or bunch, may be offered for sale and sold in other manner than by weight or measure; but in all cases where the person intending to purchase shall so desire and request, poultry shall be weighed as hereinbefore prescribed: *And provided further*, That scales reported not in use shall be sealed down, and said seal shall not be broken except by authority of the sealer of weights and measures."

The amendments were agreed to.

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

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

ENTRY OF IRRIGABLE LANDS.

Mr. ANKENY. I ask for the consideration of the bill (H. R. 18536) providing for the subdivision of lands entered under the reclamation act, and for other purposes.

The Secretary read the bill.

Mr. SPOONER. I should like to inquire if the bill leaves it entirely to the Secretary of the Interior to determine the quantity of irrigated land that a man may enter.

Mr. CARTER. I desire to state to the Senator that the bill as it came to this body did leave the matter entirely discretionary. It is discretionary under existing law, but the minimum limit is 40 acres for a farm unit. The bill proposes to allow a reduction to 10 acres.

Mr. SPOONER. Who is to determine that?

Mr. BLACKBURN. The Secretary of the Interior.

Mr. SPOONER. Absolutely?

Mr. CARTER. The Committee on Irrigation put an amendment into the bill, which is printed as a part of it, that where owing to market conditions, climate, and soil the land is specially adapted to the growth of fruit or garden produce the Secretary of the Interior may reduce the limit to 20 acres, not to 10, as proposed by the House. That was for the purpose for allowing the bill to be justly applicable to regions in Arizona and to certain fruit regions in California, where a 20-acre tract would probably be quite sufficient.

Mr. PETTUS. Is there any matter before the Senate, Mr. President?

The VICE-PRESIDENT. The Senator from Washington has asked unanimous consent for the consideration of the bill which has been read. Is there objection to its consideration?

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

The first amendment was, in section 1, page 1, line 3, after the word "Interior," to insert "by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce;" in line 6, after the words "may be," to strike out "reasonably required" and insert "sufficient;" in line 11, after the word "than," to strike out "ten" and insert "twenty;" and at the end of the section to insert the following proviso, "*Provided*, That an entryman may elect to enter under said reclamation act a lesser area than the minimum limit in any State or Territory;" so as to make the section read:

That whenever, in the opinion of the Secretary of the Interior, by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce, a lesser area than 40 acres may be sufficient for the support of a family on lands to be irrigated under the provisions of the act of June 17, 1902, known as the reclamation act, he may fix a lesser area than 40 acres as the minimum entry and may establish farm units of not less than 20 nor more than 160 acres. That wherever it may be necessary, for the purpose of accurate description, to further subdivide lands to be irrigated under the provisions of said reclamation act, the Secretary of the Interior may cause subdivision surveys to be made by the officers of the Reclamation Service, which subdivisions shall be rectangular in form, except in cases where irregular subdivisions may be necessary in order to provide for practicable and economical irrigation. Such subdivision surveys shall be noted upon the tract books in the General Land Office, and they shall be paid for from the reclamation fund: *Provided*, That an entryman may elect to enter under said reclamation act a lesser area than the minimum limit in any State or Territory.

The amendment was agreed to.

The next amendment was, in section 2, page 2, line 15, before the word "lands," to insert "by relinquishment;" so as to make the section read:

SEC. 2. That wherever the Secretary of the Interior, in carrying out the provisions of the reclamation act, shall acquire by relinquishment lands covered by a bona fide unperfected entry under the land laws of the United States, the entryman upon such tract may make another and additional entry, as though the entry thus relinquished had not been made.

The amendment was agreed to.

The next amendment was, on page 3, after line 10, to insert the following as an additional section:

SEC. 4. That in the town sites of Heyburn and Rupert, in Idaho, created and surveyed by the Government, on which town sites settlers have been allowed to establish themselves, and had actually established themselves prior to March 5, 1906, in permanent buildings not easily moved, the said settlers shall be given the right to purchase the lots so built upon at an appraised valuation for cash, such appraisement to be made under rules to be prescribed by the Secretary of the Interior. Reclamation funds may be used to defray the necessary expenses of appraisement and sale, and the proceeds of such sale shall be covered into the reclamation fund.

The amendment was agreed to.

The next amendment was, on page 3, after line 22, to insert the following as an additional section:

SEC. 5. That where any bona fide desert-land entry has been or may be embraced within the exterior limits of any land withdrawal or irrigation project under the act entitled "An act appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands," approved June 17, 1902, and the desert-land entryman has been or may be directly or indirectly hindered, delayed, or prevented from making improvements or from reclaiming the land embraced in any such entry by reason of such land withdrawal or irrigation project, the time during which the desert-land entryman has been or may be so hindered, delayed, or prevented from complying with the desert-land law shall not be computed in determining the time within which such entryman has been or may be required to make improvements or reclaim the land embraced within any such desert-land entry: *Provided*, That if after investigation the irrigation project has been or may be abandoned by the Government, time for compliance with the desert-land law by any such entryman shall begin to run from the date of notice of such abandonment of the project and the restoration to the public domain of the lands withdrawn in connection therewith, and credit shall be allowed for all expenditures and improvements heretofore made on any such desert-land entry of which proof has been filed; but if the reclamation project is carried to completion so as to make available a water supply for the land embraced in any such desert-land entry, the entryman shall thereupon comply with all the provisions of the aforesaid act of June 17, 1902, and shall relinquish all land embraced within his desert-land entry in excess of 160 acres, and as to such 160 acres retained he shall be entitled to make final proof and obtain patent upon compliance with the terms of payment prescribed in said act of June 17, 1902, and not otherwise. But

nothing herein contained shall be held to require a desert-land entryman who owns a water right and reclaims the land embraced in his entry to accept the conditions of said reclamation act.

The amendment was agreed to.

Mr. KEAN. Is there a report accompanying the bill?

The VICE-PRESIDENT. There is a report accompanying it.

Mr. KEAN. It seems to be a pretty important bill, but I am informed by the Senator from Montana that it is a very carefully drawn one. Therefore I shall not object to its passage, but I think the report ought to be published with it.

The VICE-PRESIDENT. Without objection, the report will be published in the RECORD.

The report is as follows:

[Senate report No. 3897, Fifty-ninth Congress, first session.]

The Committee on Irrigation, to whom was referred the bill (H. R. 18536) providing for the subdivision of lands entered under the reclamation act, and for other purposes, report the same back with amendments, as follows:

In section 1, page 1, after the words "Secretary of the Interior," on line 3, add the words "by reason of market conditions and the special fitness of the soil and climate for the growth of fruit and garden produce."

In section 1, page 2, on line 4, strike out the words "reasonably required" and insert in lieu thereof the word "sufficient."

In section 1, page 1, on line 9, strike out the word "ten" and insert in lieu thereof the word "twenty."

At the end of section 1, page 2, add the words "*Provided*, That an entryman may elect to enter under said reclamation act a lesser area than the minimum limit in any State or Territory."

In section 2, page 2, on line 9, after the word "acquire," insert the words "by relinquishment."

Add a new section, to be known as section 4, in words as follows:

"That in the town sites of Heyburn and Rupert, in Idaho, created and surveyed by the Government, on which town sites settlers have been allowed to establish themselves, and had actually established themselves prior to March 5, 1906, in permanent buildings not easily moved, the said settlers shall be given the right to purchase the lots so built upon at an appraised valuation, for cash, such appraisement to be made under rules to be prescribed by the Secretary of the Interior. Reclamation funds may be used to defray the necessary expenses of appraisement and sale, and the proceeds of such sale shall be covered into the reclamation fund."

The purpose of this amendment is to provide the manner of sale of lots in the town sites of Heyburn and Rupert, both being towns on the Minidoka reclamation project, in Idaho, for cash, at an appraised value, to be determined by the Secretary of the Interior, at the expense of the reclamation fund, the money derived from the sale of the lots so occupied by permanent improvements to be covered back into said reclamation fund. Almost a year ago it was announced that these lots would be offered for sale some time during the autumn. Later the land department ordered a survey and appraisement of these respective town sites, and the announcement was made that the sale of said lots would take place soon after the acceptance of said survey and appraisement.

Later a date certain was fixed, viz, November 20, 1905, and official notice of such sale was published in a number of newspapers. Following this came an abandonment of the plan to sell said lots until some indefinite date. A large number of the permanent improvements made on these two town sites were commenced, if not finished, prior to the postponement of this sale. They were made in entire good faith and with the assurance that they would be permitted to purchase these lots within a few weeks. The builders of these improvements took their chances on an auction sale and were entirely willing at that time to purchase the lots at auction.

Since the postponement of the sale of these lots the business built up by the business men of these respective towns, Heyburn and Rupert, have made each important trading centers, thereby increasing materially the value of these lots so occupied by these early settlers. These occupants, business men, are entirely willing to pay a fair valuation for the lots they occupy, such as may be fixed by disinterested appraisers.

By the settlement of these business houses on these town sites set aside by the Reclamation Service the hardships of the early settlers on their homesteads nearby have been minimized and the development of the tract materially benefited.

Section 5 is added as an amendment to the bill for the purpose of relieving desert-land entrymen, who are not at fault, from the effects of an act of the Government which may hinder, delay, or prevent them from compliance with the desert-land law. At the same time, the section provides that an entryman thus hindered, delayed, or prevented from complying with the law, if furnished with an available water supply by the Government, shall relinquish all land covered by his entry in excess of 160 acres, and comply with the terms and conditions of the reclamation act.

This legislation appears necessary, just, and desirable, because in certain sections, particularly in the State of Washington and in the northern part of Montana, desert-land entrymen, in good faith endeavoring to comply with the law, without notice were suddenly embraced within a Government irrigation project under the reclamation act, and thus prevented from complying with the desert-land law by reason of the fact that the Government project contemplated the appropriation and use of all the water from the stream from which the desert-land entrymen expected to obtain a supply of water for the use of the lands embraced in their respective entries.

In the nature of things one or more years must in each case elapse after the withdrawal of land for the irrigation project before the Government is able to determine the feasibility thereof; then a considerable time must necessarily elapse before the irrigation works can be constructed. Through such delay and interference the time in which the desert-land entryman is required to make improvements, reclaim the land, and make final proof expires. Section 5 is intended to relieve the entrymen from injury through such interference and delay on the part of the Government.

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

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

IMPORTATION OF IMPURE TEA.

Mr. STONE obtained the floor.

Mr. PETTUS. Mr. President——

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

Mr. STONE. For what purpose?

Mr. PETTUS. I wish to move an adjournment.

Mr. STONE. I hope the Senator will not make that motion yet.

The VICE-PRESIDENT. The Senator from Missouri declines to yield.

Mr. PETTUS. Mr. President, I move that the Senate adjourn.

Mr. KEAN. I wish the Senator would withhold that motion for a moment, that we may have an executive session.

The VICE-PRESIDENT. The Chair has recognized the Senator from Missouri. The Senator from Missouri has the floor and declines to yield to the Senator from Alabama.

Mr. STONE. I ask unanimous consent for the present consideration of Senate bill 1548.

The VICE-PRESIDENT. The Senator from Missouri asks unanimous consent for the present consideration of a bill, the title of which will be stated.

The SECRETARY. A bill (S. 1548) to amend an act entitled "An act to prevent the importation of impure and unwholesome tea," approved March 2, 1897.

Mr. KEAN. That bill can not pass at the present time, Mr. President.

The VICE-PRESIDENT. Objection is made.

Mr. STONE. Did I understand the Senator from New Jersey to object to the consideration of the bill?

Mr. KEAN. The Senator from New Jersey stated that the bill could not pass at the present time.

Mr. STONE. Do I understand that objection is made?

The VICE-PRESIDENT. The Chair understood the remark of the Senator from New Jersey to be equivalent to an objection.

Mr. KEAN. It is.

Mr. STONE. I suppose the Senator has that privilege.

ENTRY OF COAL LANDS IN ALASKA.

Mr. PILES. I ask unanimous consent for the consideration at this time of House bill 17415. It is a little bill, giving coal miners in Alaska the same right to make entry of coal lands under the coal-land laws that are applicable elsewhere. I understand the bill has been heretofore read, Mr. President.

Mr. NELSON. It has been.

The VICE-PRESIDENT. The Senator from Washington asks unanimous consent for the present consideration of a bill, the title of which will be stated.

The SECRETARY. A bill (H. R. 17415) to authorize the assignees of coal-land locations to make entry under the coal-land laws applicable to Alaska.

The VICE-PRESIDENT. The bill has been heretofore read. The bill has been reported from the Committee on Public Lands with an amendment in the nature of a substitute. Is there objection to its present consideration?

Mr. TELLER. Mr. President, that is a bill changing very materially the land laws of this country, and I do not think it ought to be passed in this way. I will object to it.

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

The VICE-PRESIDENT. Objection is made to the consideration of the bill.

Mr. PILES. I do not understand that the bill was objected to.

Mr. TELLER. I objected to the bill. As I have stated, I think a bill that changes materially the land laws of this country should not pass with less than a quorum in the Senate.

The VICE-PRESIDENT. Objection is made.

JOHN P. HUNTER.

Mr. TILLMAN. I ask unanimous consent for the consideration of the bill (S. 3020) for the relief of John P. Hunter.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It directs the Secretary of the Treasury to pay to John P. Hunter, late United States marshal for the district of South Carolina, $308.13, which sum shall be taken and accepted and receipted for in full satisfaction of his claim for services performed by his deputy, H. J. Hickson, in the case of the United states against J. T. Tillman.

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

FISH-CULTURAL STATION IN FLORIDA.

Mr. TALIAFERRO. I ask the Senator from New Jersey to yield to me for a moment.

Mr. KEAN. I yield to the Senator from Florida, and after that I will insist upon my motion for an executive session.

Mr. TALIAFERRO. I ask unanimous consent for the present consideration of the bill (S. 5986) for the establishment of a fish-cultural station in the State of Florida.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill. It proposes to appropriate $25,000 for the establishment of a fish-cultural station for the propagation of shad and other fishes on St. Johns River, Florida, the purchase of site, the construction of buildings and ponds, and equipment.

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

EXECUTIVE SESSION.

Mr. KEAN. I renew my motion 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 five minutes spent in executive session the doors were reopened, and (at 6 o'clock and 25 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, June 12, 1906, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate June 11, 1906.

DISTRICT ATTORNEY.

George DuRelle, of Kentucky, to be United States attorney for the western district of Kentucky, vice Reuben D. Hill, deceased.

MARSHALS.

Charles T. Elliott, of California, to be United States marshal for the northern district of California, vice John H. Shine, whose term expired May 28, 1906.

Leo V. Youngworth, of California, to be United States marshal for the southern district of California, vice Henry Z. Osborne, whose term expired May 15, 1906.

RECEIVER OF PUBLIC MONEYS.

John Jones, of Michigan, to be receiver of public moneys at Marquette, Mich., to take effect June 24, 1906, at the expiration of his term. (Reappointment.)

APPOINTMENT IN THE NAVY.

Paul J. Dashiell, a citizen of the State of Maryland, to be a professor of mathematics in the Navy from the 21st day of June, 1906, vice Professor of Mathematics William W. Hendrickson, to retire on that date on account of age.

PROMOTIONS IN THE ARMY.

Lieut. Col. Oliver E. Wood, detailed military secretary, to be colonel in the Artillery Corps from June 8, 1906, vice McClellan, appointed brigadier-general.

Maj. John R. Williams, detailed military secretary, to be lieutenant-colonel in the Artillery Corps from June 9, 1906, vice Dyer, detailed as military secretary.

POSTMASTERS.

FLORIDA.

Daniel T. Gerow to be postmaster at Jacksonville, in the county of Duval and State of Florida, in place of Daniel T. Gerow. Incumbent's commission expires June 24, 1906.

ILLINOIS.

Joseph T. Van Gundy to be postmaster at Monticello, in the county of Piatt and State of Illinois, in place of Joseph T. Van Gundy. Incumbent's commission expires June 27, 1906.

Thomas W. Price to be postmaster at Astoria, in the county of Fulton and State of Illinois, in place of Thomas W. Price. Incumbent's commission expired June 10, 1906.

William H. Shaw to be postmaster at Canton, in the county of Fulton and State of Illinois, in place of William H. Shaw. Incumbent's commission expired June 10, 1906.

Cassius M. C. Weedman to be postmaster at Farmer City, in the county of Dewitt and State of Illinois, in place of Cassius M. C. Weedman. Incumbent's commission expires June 27, 1906.

Sewell P. Wood to be postmaster at Farmington, in the county of Fulton and State of Illinois, in place of Sewell P. Wood. Incumbent's commission expires June 19, 1906.

INDIANA.

James R. Spivey to be postmaster at Bluffton, in the county of Wells and State of Indiana, in place of Arthur L. Sharpe. Incumbent's commission expired December 12, 1905.

Harry A. Strohm to be postmaster at Kentland, in the county of Newton and State of Indiana, in place of Harry A. Strohm. Incumbent's commission expired February 7, 1906.

INDIAN TERRITORY.

Ulysses S. Markham to be postmaster at Caddo, in District 25, Indian Territory, in place of Millard C. Faulkner, resigned.

IOWA.

William M. Sindlinger to be postmaster at Waterloo, in the county of Blackhawk and State of Iowa, in place of William M. Sindlinger. Incumbent's commission expired January 20, 1906.

KANSAS.

John W. Skinner to be postmaster at Winfield, in the county of Cowley and State of Kansas, in place of Leonard A. Millspaugh. Incumbent's commission expires June 30, 1906.

Floyd E. Young to be postmaster at Stockton, in the county of Rooks and State of Kansas, in place of Floyd E. Young. Incumbent's commission expires June 27, 1906.

NEW YORK.

Leroy H. Van Kirk to be postmaster at Ithaca, in the county of Tompkins and State of New York, in place of Frank J. Enz, deceased.

NORTH CAROLINA.

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

OHIO.

Oakey V. Parrish to be postmaster at Hamilton, in the county of Butler and State of Ohio, in place of Oakey V. Parrish. Incumbent's commission expires June 24, 1906.

Edwin P. Webster to be postmaster at Gambier, in the county of Knox and State of Ohio, in place of Edwin P. Webster. Incumbent's commission expired January 16, 1906.

OREGON.

James T. Brown to be postmaster at Pendleton, in the county of Umatilla and State of Oregon, in place of Lot Livermore. Incumbent's commission expires June 30, 1906.

PENNSYLVANIA.

John Grein to be postmaster at Homestead, in the county of Allegheny and State of Pennsylvania, in place of John Grein. Incumbent's commission expires June 24, 1906.

Alonzo G. Hudson to be postmaster at Safe Harbor, in the county of Lancaster and State of Pennsylvania. Office became Presidential April 1, 1906.

James E. Karns to be postmaster at Springdale, in the county of Allegheny and State of Pennsylvania, in place of James E. Karns. Incumbent's commission expires June 28, 1906.

George R. Morrison to be postmaster at Oakmont, in the county of Allegheny and State of Pennsylvania, in place of Thomas A. Hunter. Incumbent's commission expired April 10, 1906.

SOUTH DAKOTA.

Edward G. Edgerton to be postmaster at Yankton, in the county of Yankton and State of South Dakota, in place of Edward G. Edgerton. Incumbent's commission expired June 4, 1906.

VIRGINIA.

Alexander McCormick to be postmaster at Berryville, in the county of Clarke and State of Virginia, in place of Alexander McCormick. Incumbent's commission expires June 24, 1906.

WASHINGTON.

James Ewart to be postmaster at Colfax, in the county of Whitman and State of Washington, in place of James Ewart. Incumbent's commission expired June 7, 1906.

WISCONSIN.

Benjamin Webster to be postmaster at Platteville, in the county of Grant and State of Wisconsin, in place of Benjamin Webster. Incumbent's commission expired June 4, 1906.

CONFIRMATIONS.

Executive nominations confirmed by the Senate June 11, 1906.

REGISTER OF THE LAND OFFICE.

Matthew R. Wilson, of Montana, to be register of the land office at Bozeman, Mont., to take effect June 30, 1906.

SURVEYOR OF CUSTOMS.

Sheridan F. Master, of Michigan, to be surveyor of customs for the port of Grand Rapids, in the State of Michigan.

RECEIVERS OF PUBLIC MONEYS.

John R. Hilman, of Columbia Falls, Mont., to be receiver of public moneys at Kalispell, Mont.

Charles A. Wilson, of Great Falls, Mont., to be receiver of public moneys at Great Falls, Mont.

Samuel A. Wells, of Spokane, Wash., to be receiver of public moneys at Spokane, Wash.

PROMOTION IN THE ARMY.

First Lieut. Ethelbert L. D. Breckinridge, Tenth Infantry, to be captain from May 31, 1906.

POSTMASTERS.

CALIFORNIA.

N. T. Edwards to be postmaster at Orange, in the county of Orange and State of California.

FLORIDA.

Daniel T. Gerow to be postmaster at Jacksonville, in the State of Florida.

IDAHO.

Grace H. Woolley to be postmaster at Preston, in the county of Oneida and State of Idaho.

INDIANA.

Maynard A. Frisinger to be postmaster at Decatur, in the county of Adams and State of Indiana.

KENTUCKY.

Robert E. Woods to be postmaster at Louisville, in the county of Jefferson and State of Kentucky.

MISSOURI.

Edward T. Alexander to be postmaster at Slater, in the county of Saline and State of Missouri.

James W. Mills to be postmaster at Versailles, in the county of Morgan and State of Missouri.

George W. Smith to be postmaster at Sweet Springs, in the county of Saline and State of Missouri.

NEW JERSEY.

Orwill Van Wickle to be postmaster at Matawan, in the county of Monmouth and State of New Jersey.

OKLAHOMA.

Sam L. Darrah to be postmaster at Custer, in the county of Custer and Territory of Oklahoma.

TEXAS.

H. W. Derstine to be postmaster at Merkel, in the county of Taylor and State of Texas.

VIRGINIA.

Holt F. Butt, jr., to be postmaster at Portsmouth, in the county of Norfolk and State of Virginia.

WASHINGTON.

William L. Lemon to be postmaster at North Yakima, in the county of Yakima and State of Washington.

Fred W. Miller to be postmaster at Oakesdale, in the county of Whitman and State of Washington.

William W. Ward to be postmaster at Dayton, in the county of Columbia and State of Washington.

WEST VIRGINIA.

Carrie Newton to be postmaster at Benwood, in the county of Marshall and State of West Virginia.

HOUSE OF REPRESENTATIVES.

MONDAY, *June 11, 1906.*

The House met at 12 o'clock m.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of Saturday, June 9, were read and approved.

URGENT DEFICIENCY.

Mr. TAWNEY. Mr. Speaker, I am directed by the Committee on Appropriations to report the following joint resolution, which I send to the desk and ask to have read.

The Clerk read as follows:

House joint resolution (No. 172) to supply a deficiency in an appropriation for the postal service.

Resolved, etc., That there is hereby appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $80,000 to supply a deficiency in the appropriation for the manufacture of stamped envelopes and newspaper wrappers for the fiscal year 1906.

Mr. TAWNEY. Mr. Speaker, I ask unanimous consent that the joint resolution be considered in the House as in Committee of the Whole.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

The joint resolution was ordered to be engrossed and read the third time; was accordingly read the third time, and passed.

REGULATION OF WATERS OF NIAGARA RIVER.

The SPEAKER laid before the House the bill (H. R. 18024) for the control and regulation of the waters of Niagara River, for the preservation of Niagara Falls, and for other purposes, with Senate amendments.

The Senate amendments were read.

Mr. BURTON of Ohio. Mr. Speaker, I ask unanimous consent that the House nonconcur in the Senate amendments and ask for a conference.

The SPEAKER. The gentleman from Ohio moves to disagree to the Senate amendments and ask for a conference.

Mr. DALZELL. Mr. Speaker, for the present I am not prepared to assent——

The SPEAKER. Well, the gentleman can demand a separate vote on each amendment if he chooses, or by unanimous consent it can be postponed, or it can be postponed by motion.

Mr. DALZELL. I ask unanimous consent that it be postponed for the present.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent temporarily that the consideration of the bill before the House may be postponed.

Mr. BURTON of Ohio. I object, Mr. Speaker.

The SPEAKER. The gentleman from Ohio objects.

Mr. CURTIS. Mr. Speaker, this is simply, I understand, a motion to nonconcur and ask for a conference.

The SPEAKER. Yes; to disagree to the Senate amendments and ask for a conference.

Mr. DALZELL. Mr. Speaker, I withdraw my objection.

The motion was agreed to.

The SPEAKER. The Chair announces the following conferees.

The Clerk read as follows:

Mr. BURTON of Ohio, Mr. BISHOP, and Mr. LESTER.

ALLOTTING LANDS IN LIMITS OF BLACKFEET INDIAN RESERVATION.

The SPEAKER also laid before the House the bill (H. R. 19068) to survey and allot lands embraced within the limits of the Blackfeet Indian Reservation, in the State of Montana, and to open the surplus lands to settlement, with Senate amendments.

The Senate amendments were read.

Mr. SHERMAN. Mr. Speaker, I ask to nonconcur in the Senate amendments and ask for a conference.

Mr. WILLIAMS. Mr. Speaker, is this the Indian appropriation bill?

Mr. SHERMAN. No; it is the bill opening the Blackfeet Indian Reservation.

The motion was agreed to.

The SPEAKER. The Chair announces the following conferees.

The Clerk read as follows:

Mr. SHERMAN, Mr. CURTIS, and Mr. ZENOR.

CLOSING CERTAIN PLACES OF BUSINESS IN THE DISTRICT OF COLUMBIA ON SUNDAY.

Mr. BABCOCK. Mr. Speaker, I would like to call up the bill (H. R. 16483) requiring certain places of business in the District of Columbia to close on Sunday.

The SPEAKER. The Clerk will report the bill.

The Clerk read as follows:

Be it enacted, etc., That it shall be unlawful for any person in the District of Columbia to sell or to offer for sale, or to keep open any place of business for the sale or delivery of, any groceries or meats or vegetables or other provisions on Sunday, except that from the 1st day of June until the 1st day of October meats sold prior to Sunday may be delivered at any time before 10 o'clock of the morning of that day. Any person who shall violate the provisions of this act shall, on conviction thereof, be punished by a fine of not less than $25 nor more than $50 for the first offense, and for each subsequent offense by a fine of not less than $50 nor more than $100, or by imprisonment in the jail of the District of Columbia for a period of not less than one month nor more than three months, or by both fine and imprisonment, in the discretion of the court.

SEC. 2. That all prosecutions for violations of this act shall be in the police court of the District of Columbia and in the name of the District of Columbia.

Mr. BABCOCK. Mr. Speaker, I yield to the gentleman from Kansas [Mr. CAMPBELL], who reported this bill.

The SPEAKER. How much time?

Mr. BABCOCK. As much time as is necessary.

Mr. CAMPBELL of Kansas. Mr. Speaker, the purpose of this legislation is to extend the rest day to the employees and the shopkeepers within the District of Columbia who hitherto by a common custom have kept their places of business open on Sunday. Their clerks and they themselves have not been able to have a day with their families or to attend church, as have the employees and the proprietors of other business houses and places within the District. The purpose of this bill is to make a uniform regulation by law for the closing of such places on Sunday, and all those who are to be affected by the bill favor its enactment into law. The employers favor the bill; the employees favor it. Many associations in the District favor the enactment of this bill into law. We have provided in the bill that during the heated months of the year purchases of meat made on Saturday may be delivered up until 10 o'clock on Sunday morning. This is for the purpose of enabling those who do not keep refrigerators or have ice boxes to have their meat delivered to them on Sunday morning. We have restricted the bill to the character of employment that I have