## HOUSE OF REPRESENTATIVES.

### MONDAY, *April 6, 1908.*

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 was read.

Mr. PAYNE. Mr. Speaker, I move that the Journal stand approved.

The SPEAKER. The gentleman from New York moves the approval of the Journal.

The question was taken, and the Chair announced the ayes seemed to have it.

Mr. WILLIAMS. Division, Mr. Speaker.

The SPEAKER. The gentleman from Mississippi demands a division.

The House divided, and there were—ayes 130, noes 80.

Mr. WILLIAMS. Mr. Speaker, I call for tellers.

The SPEAKER. The gentleman from Mississippi demands tellers.

Mr. PAYNE. Mr. Speaker, I make the point of order that that motion is clearly dilatory. It is a very decisive vote.

The SPEAKER. The Chair holds the motion is dilatory.

Mr. WILLIAMS. Then, Mr. Speaker, I call for the yeas and nays.

The yeas and nays were ordered.

The question was taken, and there were—yeas 240, nays 34, answered "present" 11, not voting 103, as follows:

YEAS—240.

| | | | |
|---|---|---|---|
| Adair | Dawson | Huff | Overstreet |
| Adamson | Denby | Hughes, N. J. | Padgett |
| Aiken | Denver | Hull, Iowa | Page |
| Alexander, Mo. | Diekema | Hull, Tenn. | Parker, N. J. |
| Alexander, N. Y. | Dixon | Humphrey, Wash. | Parsons |
| Allen | Douglas | Humphreys, Miss. | Patterson |
| Ames | Draper | Jones, Wash. | Payne |
| Ansberry | Driscoll | Kahn | Perkins |
| Anthony | Dwight | Keifer | Pou |
| Ashbrook | Ellerbe | Kennedy, Iowa | Pray |
| Barclay | Ellis, Mo. | Kinkaid | Pujo |
| Bartholdt | Ellis, Oreg. | Kitchin, Claude | Rainey |
| Bartlett, Nev. | Englebright | Knopf | Randell, Tex. |
| Bates | Esch | Knowland | Ransdell, La. |
| Beale, Pa. | Fassett | Küstermann | Rauch |
| Beall, Tex. | Favrot | Lafean | Reeder |
| Bede | Ferris | Lamar, Mo. | Reid |
| Bell, Ga. | Fitzgerald | Landis | Rodenberg |
| Bennet, N. Y. | Floyd | Langley | Rothermel |
| Birdsall | Focht | Laning | Rucker |
| Bonynge | Foss | Law | Russell, Mo. |
| Booher | Foster, Ill. | Lawrence | Ryan |
| Bowers | Foster, Vt. | Leake | Saunders |
| Boyd | Foulkrod | Lee | Scott |
| Bradley | Fuller | Lewis | Shackleford |
| Brodhead | Fulton | Lindbergh | Sheppard |
| Brownlow | Gaines, Tenn. | Littlefield | Sherley |
| Brumm | Gaines, W. Va. | Lloyd | Sherwood |
| Burke | Gardner, Mich. | Longworth | Sims |
| Burleigh | Garner | Loudenslager | Slayden |
| Burleson | Garrett | Lovering | Small |
| Burnett | Gillespie | Lowden | Smith, Cal. |
| Butler | Gillett | McCall | Smith, Iowa |
| Byrd | Goebel | McCreary | Smith, Mich. |
| Calder | Gordon | McDermott | Snapp |
| Calderhead | Graham | McGuire | Southwick |
| Caldwell | Granger | McKinlay, Cal. | Sperry |
| Campbell | Greene | McKinley, Ill. | Spight |
| Candler | Griggs | McLachlan, Cal. | Stafford |
| Capron | Hackney | McLain | Steenerson |
| Carter | Haggott | McLaughlin, Mich. | Stephens, Tex. |
| Cary | Hale | McMillan | Sterling |
| Caulfield | Hamilton, Mich. | Macon | Sturgiss |
| Chaney | Hamlin | Madden | Sulloway |
| Chapman | Hammond | Madison | Tawney |
| Cocks, N. Y. | Harding | Malby | Taylor, Ohio |
| Conner | Hardwick | Mann | Thistlewood |
| Cook, Colo. | Hardy | Moon, Tenn. | Thomas, Ohio |
| Cook, Pa. | Haskins | Moore, Pa. | Tirrell |
| Cooper, Tex. | Haugen | Moore, Tex. | Tou Velle |
| Cooper, Wis. | Hawley | Morse | Volstead |
| Cousins | Henry, Conn. | Murdock | Wanger |
| Cox, Ind. | Henry, Tex. | Murphy | Washburn |
| Cravens | Higgins | Needham | Weeks |
| Crawford | Hitchcock | Nelson | Weems |
| Crumpacker | Holliday | Nicholls | Williams |
| Cushman | Houston | Norris. | Wilson, Ill. |
| Dalzell | Howell, N. J. | Nye | Wood |
| Darragh | Howland | O'Connell | Woodyard |
| Davis, Minn. | Hubbard, W. Va. | Olcott | Young |

NAYS—34.

| | | | |
|---|---|---|---|
| Bartlett, Ga. | Hamill | Keliher | Sulzer |
| Brundidge | Harrison | Lamb | Taylor, Ala. |
| Carlin | Hay | Legare | Thomas, N. C. |
| Clark, Mo. | Heflin | Peters | Underwood |
| Clayton | Helm | Richardson | Wallace |
| Flood | Hill, Miss. | Robinson | Watkins |
| Goulden | Hobson | Russell, Tex. | Wolf |
| Gregg | James, Ollie M. | Smith, Tex. | |
| Hackett | Johnson, Ky. | Stanley | |

ANSWERED "PRESENT"—11.

| | | | |
|---|---|---|---|
| Cockran | Hamilton, Iowa | Lassiter | Prince |
| Currier | Jenkins | Lever | Roberts |
| Foster, Ind. | Johnson, S. C. | McGavin | |

NOT VOTING—103.

| | | | |
|---|---|---|---|
| Acheson | Edwards, Ky. | James, Addison D. | Pearre |
| Andrus | Fairchild | Jones, Va. | Pollard |
| Bannon | Finley | Kennedy, Ohio | Porter |
| Barchfeld | Fordney | Kimball | Powers |
| Bennett, Ky. | Fornes | Kipp | Pratt |
| Bingham | Fowler | Kitchin, Wm. W. | Reynolds |
| Boutell | French | Knapp | Rhinock |
| Brantley | Gardner, Mass. | Lamar, Fla. | Riordan |
| Brick | Gardner, N. J. | Lenahan | Sabath |
| Broussard | Gilhams | Lilley | Sherman |
| Burgess | Gill | Lindsay | Slemp |
| Burton, Del. | Glass | Livingston | Smith, Mo. |
| Burton, Ohio | Godwin | Lorimer | Sparkman |
| Clark, Fla. | Goldfogle | Loud | Stevens, Minn. |
| Cole | Graff | McHenry | Talbott |
| Cooper, Pa. | Gronna | McKinney | Townsend |
| Coudrey | Hall | McMorran | Vreeland |
| Craig | Hayes | Marshall | Waldo |
| Davenport | Hepburn | Maynard | Watson |
| Davey, La. | Hill, Conn. | Miller | Webb |
| Davidson | Hinshaw | Mondell | Weisse |
| Dawes | Howard | Moon, Pa. | Wheeler |
| De Armond | Howell, Utah | Mouser | Wiley |
| Dunwell | Hubbard, Iowa | Mudd | Willett |
| Durey | Hughes, W. Va. | Olmsted | Wilson, Pa. |
| Edwards, Ga. | Jackson | Parker, S. Dak. | |

So the Journal was approved.

The Clerk announced the following pairs:

On the vote:

Mr. DUREY with Mr. MAYNARD.

For the day:

Mr. GRONNA with Mr. SMITH of Missouri.

Mr. BRICK with Mr. WILLIAM W. KITCHIN.

Mr. DUNWELL with Mr. GODWIN.

Mr. HEPBURN with Mr. WILSON of Pennsylvania.

Mr. BOUTELL with Mr. WILLETT.

Mr. POWERS with Mr. PRATT.

Until Wednesday:

Mr. PRINCE with Mr. GLASS.

Until April 14:

Mr. COOPER of Pennsylvania with Mr. KIPP.

Until further notice:

Mr. ACHESON with Mr. BURGESS.

Mr. STEVENS of Minnesota with Mr. SPARKMAN.

Mr. PARKER of South Dakota with Mr. LENAHAN.

Mr. WATSON with Mr. LIVINGSTON.

Mr. MILLER with Mr. JONES of Virginia.

Mr. MUDD with Mr. TALBOTT.

Mr. HUGHES of West Virginia with Mr. WILEY.

Mr. HILL of Connecticut with Mr. SABATH.

Mr. COUDREY with Mr. LAMAR of Florida.

Mr. FAIRCHILD with Mr. RHINOCK.

Mr. BANNON with Mr. DE ARMOND.

Mr. SLEMP with Mr. GILL.

Mr. FOSTER of Indiana with Mr. BRANTLEY.

Mr. MCKINNEY with Mr. MCHENRY.

Mr. WHEELER with Mr. CRAIG.

Mr. JENKINS with Mr. CLARK of Florida.

Mr. ROBERTS with Mr. BROUSSARD.

Mr. OLMSTED with Mr. EDWARDS of Georgia.

Mr. GILHAMS with Mr. HOWARD.

Mr. KNAPP with Mr. LINDSAY.

Mr. POLLARD with Mr. LEVER.

Mr. MCGAVIN with Mr. WEBB.

Mr. HALL with Mr. HAMILTON of Iowa.

Mr. ADDISON D. JAMES with Mr. KIMBALL.

Mr. BARCHFELD with Mr. GOLDFOGLE.

Mr. BINGHAM with Mr. DAVEY of Louisiana.

Mr. FRENCH with Mr. DAVENPORT.

For the session:

Mr. KNOPF with Mr. WEISSE.

Mr. SHERMAN with Mr. RIORDAN.

Mr. CURRIER with Mr. FINLEY.

Mr. BENNET of New York with Mr. FORNES.

The result of the vote was announced as above recorded.

### EMPLOYERS' LIABILITY BILL.

Mr. STERLING. Mr. Speaker, I move to suspend the rules and pass the bill H. R. 20310, the employers' liability bill.

Mr. LITTLEFIELD. Mr. Speaker, I demand a second.

The SPEAKER. The gentleman from Illinois [Mr. STERLING] moves to suspend the rules and pass the bill (H. R. 20310), which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 20310) relating to the liability of common carriers by railroad to their employees in certain cases.

*Be it enacted, etc.*, That every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering

injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee; and, such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

SEC. 2. That every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

SEC. 3. That in all actions hereafter brought against any such common carrier by railroad to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided*, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

SEC. 4. That in any action brought against any common carrier under or by virtue of any of the provisions of this act to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

SEC. 5. That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this act, shall to that extent be void: *Provided*, That in any action brought against any such common carrier under or by virtue of any of the provisions of this act, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death for which said action was brought.

SEC. 6. That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued.

SEC. 7. That the term "common carrier" as used in this act shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

SEC. 8. That nothing in this act shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other act or acts of Congress, or to affect the prosecution of any pending proceeding or right of action under the act of Congress entitled "An act relating to liability of common carriers in the District of Columbia and Territories, and to common carriers engaged in commerce between the States and between the States and foreign nations to their employees," approved June 11, 1906.

Mr. LITTLEFIELD. Mr. Speaker, I demand a second.

Mr. HENRY of Texas. Mr. Speaker——

The SPEAKER. Is a second demanded?

Mr. HENRY of Texas. I demand a second.

The SPEAKER. Is the gentleman from Texas against the bill?

Mr. LITTLEFIELD. I am against the bill, and on the committee, and filed a minority view.

Mr. STERLING. Mr. Speaker, I ask unanimous consent that a second may be considered as ordered.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. The gentleman from Illinois [Mr. STERLING] is recognized for twenty minutes, and the gentleman from Maine [Mr. LITTLEFIELD] for twenty minutes.

Mr. STERLING. Mr. Speaker, the bill under consideration is what is known as the employers' liability bill. It relates to common carriers by railroads engaged in interstate commerce, commerce with foreign nations, in the District of Columbia, the Territories, the Canal Zone, and other possessions of the United States. The first two sections of the bill abolish the doctrine of fellow-servant in this line of commerce. Section 3 is a modification of the common-law doctrine of contributory negligence. It provides that contributory negligence shall not bar a recovery, but it further provides that the responsibility of the negligence of the employer and of the employee shall rest upon each. It requires the jury to reduce the damages in proportion to the negligence committed by the injured employee. The proviso in section 3 and section 4 provides that contributory negligence and assumption of risk shall not be charged to the employee where he is injured by reason of the violation of any statute by the employer that has been enacted for the safety of employees. That is to say, where a violation of any such statute contributes to the injury, then contributory negligence or assumption of risk can not be pleaded as a defense to the recovery of damages.

Section 5 of the bill provides that all contracts, rules, and regulations, which seek to exempt the employer, the common carrier, from liability created by this act shall be void so far as it seeks to produce that exemption. But in case the common carrier has paid any benefit or any insurance by virtue of such a contract, he shall be permitted to set it off in any claim for damages made by the employee.

Mr. CRUMPACKER. Will the gentleman allow a question?

The SPEAKER. Will the gentleman yield?

Mr. STERLING. I yield.

Mr. CRUMPACKER. I am in favor, I will say, of the pending bill. I believe it to be a just and a humane measure, but I would like to know if it was the intention of the Committee on the Judiciary that the bill should apply to interurban and street railroads, where it was applicable at all, as well as to street railroads operated by electric power? Would it apply to the street-railroad system in the city of Washington, or the system in Honolulu and Manila, for instance?

Mr. STERLING. I think it does.

Mr. CRUMPACKER. And electric interurban roads operating between States and Territories?

Mr. STERLING. Yes, sir. Mr. Speaker, I yield four minutes to the gentleman from Texas [Mr. HENRY].

Mr. HENRY of Texas. Mr. Speaker, we are about to pass a meritorious bill, in which are embraced the rights of millions of American people. It should have been passed long ago by the present Congress, and I hope there will not be a single vote recorded against it upon the other side, although one gentleman on the Republican side has demanded a second for the purpose of opposing the enactment. We congratulate the country upon the report from the Committee on the Judiciary, and I believe it can be safely promised that every vote on this side of the House will be promptly and cheerfully given in behalf of the measure. [Applause on the Democratic side.]

Mr. Speaker, during the limited time allotted me I can not go into details, but can safely state that we have reported to this House what we deem to be a constitutional law. [Applause.] We have endeavored to embrace within its terms only provisions that refer to commerce between States. We concede that the American Congress has no power and has no right to touch the internal commerce of the States. This bill is fashioned solely with the intention of governing interstate commerce and matters arising out of the same. We can not say what view the Supreme Court of the United States may take of it, because when the last act was before that body four justices believed that Congress was only attempting to deal with interstate commerce, whereas five of them declared that we were undertaking to invade the domain of State jurisdiction and deal with intrastate commerce.

Let me submit in brief language the provisions of this measure, in order that we may thoroughly understand it. At common law there was no right of recovery for damages for death resulting from negligence; by this act we authorize recovery for injury or death. At common law there could be no recovery against the employer for the neglect of fellow-servants engaged in common employment; by this act we abrogate that ancient doctrine and permit recovery for the negligence of the officers, agents, or employees, although the one guilty of negligence is a fellow-servant of the one injured or killed. At common law the one who had contributed by his own negligence to his injury could not recover, and also for the negligence of another which had been the concurring cause; by this law we authorize a recovery in such cases and only demand that the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. Furthermore, if the damage is attributable to the violation of a statute by the employer, contributory negligence can not be imputed to the employee. At common law the employer could bind the employee by contract to renounce his right to damage in cases of injury in the course of employment; we here abrogate that rule of the common law. This statute forbids such contract. We abolish the common-law doctrine of fellow-servant, a doctrine long ago discontinued by many States. Hence we have changed four rules of the common law. These changes are in obedience to the demands of humanity, justice, and the sacred rights of millions of American citizens engaged in hazardous employments.

Therefore, Mr. Speaker, the common law is changed in four respects. Favoring most cordially its every provision, I hope that this bill will be promptly passed. [Loud applause.]

Mr. STERLING. I reserve the balance of my time.

Mr. LITTLEFIELD. Mr. Speaker, this bill, in section 3, practically abolishes the doctrine of contributory negligence and is a very pronounced innovation on existing law. There are but two or three States that have any legislation anything like parallel to this proposition, and it did not appear before the committee that there had been such experience under that legislation as to enable us to judge one way or the other

whether this legislation would be wise or unwise. I should not feel at liberty to vote for this bill for that reason, if there were no other; but my objections to the bill are mainly legal in their character. They are stated as concisely and as briefly as I can state them in the minority views, and I should like to have the Clerk read them, excluding the citations and discussions of the authorities, in support of the views found on pages 79 to 87 and 92 to 94, inclusive. I ask unanimous consent that the remainder may be inserted in the RECORD.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

Mr. COOPER of Wisconsin. Will the gentleman allow me to ask him a question?

The SPEAKER. Does the gentleman yield?

Mr. LITTLEFIELD. I do.

Mr. COOPER of Wisconsin. I observe that the bill, as originally introduced by the gentleman from Illinois [Mr. STERLING], applied to all common carriers.

Mr. LITTLEFIELD. Yes.

Mr. COOPER of Wisconsin. The commitee have inserted in the third line the words "by railroad," so that it now reads, "any common carrier by railroad."

Mr. LITTLEFIELD. That is correct.

Mr. COOPER of Wisconsin. Has the gentleman thought whether or not there is a constitutional question here involving a declaration by Congress of a legislative discrimination against one class of common carriers?

Mr. LITTLEFIELD. I did consider that part of the bill. The question of class legislation is discussed in the second paragraph of the minority views.

If the Clerk will read and the House will listen to the views we prepared, they will get a very clear idea of the position of the minority on this legislation.

The Clerk read as follows:

VIEWS OF THE MINORITY.

The undersigned respectfully submit their minority views in connection with H. R. 17036, the committee's draft known as H. R. 20194, and the committee's redraft known as H. R. 20310, as follows:

I.

The first question that properly arises in connection with this proposed legislation is whether or not the changing of the law governing the liability of the master to the servant engaged in interstate commerce is a regulation of interstate commerce. It seems to be settled in the Howard case (Howard, admx., etc., *v.* Ill. Cen. R. R. Co., Jan. 6, 1908) and in the Adair case (Adair *v.* U. S., Jan. 27, 1908) that Congress has no power to regulate "persons because they engage in interstate commerce," and that its power of regulation is "confined solely to regulating the interstate-commerce business which such persons may do." While it is quite true that this question was the first in order discussed and passed upon in the Howard case, and is referred to with approval in the Adair case, in each case it was clearly a dictum, too clear for discussion in the Adair case, and in the Howard case asserted to be a dictum by three eminent members of the court, Mr. Chief Justice Fuller and Justices Peckham and Brewer.

The second proposition in the Howard case upon which the court held the act unconstitutional turned upon an entirely different legal question, with which the first proposition has no connection whatever. The first question passing upon the right to regulate the relation between master and servant was in no sense essential to the result reached in the opinion, which result was reached for an entirely different reason, viz, because the bill understood to control and regulate both interstate and State commerce. As this question is, therefore, still open, we do not think this bill should go from the Judiciary Committee with the exercise of this power to regulate the relation between master and servant as an essential and integral factor of interstate commerce unchallenged. We are unable to see how interstate commerce can be impeded, obstructed, or hindered, or facilitated, promoted, or aided, either directly or indirectly, in the slightest degree in either case, because the doctrine of fellow-servant does or does not apply as a matter of liability between the employer and the employee engaged in interstate commerce.

In the argument of the dictum sustaining this power it is not even intimated that the safety or security of passengers or freight is in any way subserved or that its transportation is in any way facilitated by this effort to regulate and control. To be sure the arbitrary assertion is made in the opinion that such a regulation is a "regulation of interstate commerce," but it is respectfully submitted that, as a matter of reasoning, this is hardly sufficient to establish the proposition. To assert it is one thing and to sustain it by adequate legal reasoning is quite another. The bill provides that the master engaged in interstate commerce is to be liable to his employee also engaged in interstate commerce, notwithstanding the injury was sustained through the negligence of a coemployee. Is that really a regulation of interstate commerce? It is pertinent to inquire in what way does this change of legal relation between the employer and employee, both engaged in interstate commerce, affect the interstate commerce itself, or in what way does it regulate it? That, as we understand it, is the test. Under the existing law, does the fact that the master is not liable to a coemployee for the negligence of a fellow-servant in any way embarrass, impede, or obstruct interstate commerce, or, upon the other hand, does the proposed change tend to facilitate, promote, or expedite such commerce? We are not aware that anyone pretends that either of these consequences follows; on the contrary, the parties who are most earnestly urging this legislation invariably insist that the fellow-servant doctrine has no connection whatever, either theoretical or actual, with the safety of the enterprise to which it applies.

Will any more freight or passengers be carried in interstate commerce or will freight or passengers be carried more rapidly or more safely after this bill becomes a law than now? No one even pretends to claim it. If this change of legal relation between employer and employee is really a regulation of commerce it would seem necessarily that there must be some point of contact between the regulation and the commerce itself, some place or some phase where the proposed regulation will produce some result upon the commerce regulated, at least theoretically or technically, but this place or phase or result no one has ever been able to point out, and in fact no attempt of that kind, so far as we know, has been made. Until it can be shown that there is such point of contact or that the regulation regulates in some way, in some place, or has some connection with some phase of interstate commerce we feel bound to conclude that the proposed bill is an attempt to regulate the carrier because he is engaged in interstate commerce, which the court has held could not be done, and not a regulation of the commerce itself in which the carrier is engaged, and therefore beyond the domain of the Congress. If it is a regulation, must not the regulation be substantial and appreciable, and of such a character that it can be ascertained, at least in theory?

If it is suggested that it is a regulation of an instrumentality of interstate commerce, the same considerations apply. What is the instrumentality that it attempts to regulate, and in what way and in what manner does it regulate the instrumentality? What aid does the instrumentality receive from this alleged regulation of interstate commerce? From what incumbrance is it relieved? We have never heard of any answer to these questions, and until they are answered we do not believe the legislation can be sustained.

We have examined with care the able, exhaustive, and learned opinion of Mr. Justice Moody, and respectfully submit that in all of the legislation to which he refers the effect of the regulation upon interstate commerce was obvious, and that there is no case cited by him where the power to regulate was sustained; where the point of connection with interstate commerce did not clearly appear. As we understand it, the real reason upon which he relies and upon which he fundamentally disagrees with the majority of the court is well indicated when he says: "How poor and meager the power would be if whenever it was exercised the legislator must pause to consider whether the action proposed regulated commerce or merely regulated the conduct of persons engaged in commerce," insisting that the power must extend to "the conduct of persons engaged in commerce."

II.

We think the bill should be confined in its operation to the extrahazardous risks involved in the actual operation of interstate railroads, assuming that Congress has power to regulate the carriers engaged in interstate commerce in the manner proposed. If this were a State statute, unless the language used in the bill is of such an indefinite, uncertain, and indeterminate character as to justify the court in holding that the act applied only to the extrahazardous risks involved in the actual operation of the road, it would, without any question, be held to be unconstitutional as being class legislation and depriving the railroad of the equal protection of the law guaranteed to it by the fourteenth amendment to the Constitution, which provides that no State shall "deny to any person within its jurisdiction the equal protection of the law." In this connection we insert copious extracts from a brief upon this point furnished the committee by Mr. Benjamin D. Warfield, which, as we understand it, states the cases and their effect correctly.

BRIEF SUBMITTED BY MR. BENJAMIN D. WARFIELD.

In G. C. and S. F. R. Co. *v.* Ellis (165 U. S., 150), the Supreme Court of the United States declared a statute void which arbitrarily classified railroad companies exclusively, because the statute violated the fourteenth amendment to the Constitution of the United States.

Again, in Cotting *v.* Kansas City Stock Yards Company, etc. (183 U. S., 79), the Supreme Court of the United States held that a statute of Kansas violated the fourteenth amendment to the Constitution of the United States in that it applied to the Kansas City Stock Yards Company, but did not apply to other companies or corporations engaged in like business in Kansas. The Supreme Court of the United States, in the opinion in the Cotting case, quoted approvingly from the supreme court of Kansas in State *v.* Haun (61 Kans., 146), where a statute of that State, which provided for the payment of laborers in money, etc., was held unconstitutional on the ground that it was obnoxious to the fourteenth amendment to the Constitution of the United States, as follows:

"Everyone has a right to demand that he be governed by general rules, and a special statute which, without his consent, singles his case out as one to be regulated by a different law from that which is applied in all similar cases would not be legitimate legislation, but would be such an arbitrary mandate as is not within the province of free governments. Those who make the laws 'are to govern by promulgated, established laws, not to be varied in particular cases, but to have one rule for rich and poor, for the favorite at court and the countryman at plow.' This is a maxim in constitutional law, and by it we may test the authority and binding force of legislative enactments."

In Connelly *v.* Union Sewer Pipe Company (184 U. S., 540) the anti-trust statute of Illinois, 1893, was held to be unconstitutional because if violated the fourteenth amendment to the Constitution of the United States. The statute contained a section exempting from its operation agricultural products or live stock while in the hands of the producer or raiser.

The Supreme Court said:

"The difficulty is not met by saying that, generally speaking, the State, when enacting laws, may, in its discretion, make a classification of persons, firms, corporations, and associations in order to subserve public objects. For this court has held that classifications 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. * * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the fourteenth amendment forbids this. * * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection.'"

In Adair *v.* United States, decided by the Supreme Court of the United States January 27, 1908, the court held section 10 of the act of Congress of June 1, 1898, unconstitutional and void. By that section Congress attempted to make it a misdemeanor against the United States for an employer or its officer or agent, among other things, to threaten any employee with loss of employment or unjustly discriminate against any employee because of his membership in a labor organization. During the course of the opinion of the court, delivered by Mr. Justice Harlan, it was said:

"It may be observed in passing that while that section makes it a crime against the United States to unjustly discriminate against an employee of an interstate carrier because of his being a member of a labor organization it does not make it a crime to unjustly discriminate against an employee of the carrier because of his not being a member of such organization."

And again:

"The first inquiry is whether the part of the tenth section of the act of 1898 upon which the first count of the indictment was based is repugnant to the fifth amendment of the Constitution declaring that no person shall be deprived of liberty or property without due process of law. In our opinion that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that amendment."

And again:

"We need scarcely repeat what this court has more than once said, that the power to regulate interstate commerce, great and paramount as that power is, can not be exerted in violation of any fundamental right secured by other provisions of the Constitution." (Gibbons *v.* Ogden, 9 Wheat., 1, 196; Lottery Case, 188 U. S., 321, 353.)

While the exact question for which we are here contending has not been adjudicated by the Supreme Court of the United States for the reason that that court has not yet been called upon to decide the question, its decision in Howard *v.* I. C. R. Co., etc., decided January 6, 1907, whereby the employers' liability act of July 11, 1906, was held unconstitutional, having been decided on another ground, we earnestly insist that any statute of the character of the bills now pending in Congress above referred to, in order to withstand the fifth amendment to the Constitution of the United States, must be limited by its terms or construed by the courts as embracing only those interstate employees of interstate carriers who are engaged in extrahazardous employment—i. e., in those employments where the employees are exposed to dangers peculiar to railroading, those occasioned by the movements of engines, cars, and trains on tracks, or directly connected therewith, just as State statutes of similar import have been construed by the courts of last resort of the States enacting the statutes, in order that such statutes should not violate the fourteenth amendment to the Constitution of the United States.

The earliest of the State statutes which attempted to modify and alter the common-law rule of fellow-servants, so far as we are advised, was a statute of Iowa, enacted in 1862, and which will be found in the Iowa code of 1873, section 1707. The statute read as follows:

"Every corporation operating a railway shall be liable for all damages sustained by any person, including employees of such corporation, in consequence of the neglect of agents, or by any mismanagement of the engineers or other employees of the corporation, and in consequence of the willful wrongs, whether of commission or of omission, of such agents, engineers, or other employees, when such wrongs are in any manner connected with use and operation of any railway on or about which they shall be employed, and no contract which restricts such liability shall be legal or binding."

The supreme court of Iowa, in order to hold the statute just quoted constitutional, has held that it applied only to dangers peculiar to railroading, those occasioned by the movements of engines, cars, and machinery on tracks or directly connected therewith. (Akeson *v.* R. Co., 75 N. W., 676.)

During the course of that opinion this language was used:

"The peculiarity of the railroad business which distinguishes it from any other is the movement of vehicles or machinery of great weight on the track by steam or other power, and the dangers incident to such movements are those the statute was intended to guard against. If, then, the injury is received by an employee whose work exposes him to the hazards of moving trains, cars, engines, or machinery on the track, and is caused by the negligence of a coemployee in the actual movement thereof, or in any manner directly connected therewith, the statute applies, and recovery may be had. Beyond this the statute affords no protection. The purpose of the lawmakers was evidently not to make men, because employed by railroad companies, favorites of the law, but to afford protection owing to the peculiar hazards of their situation."

In the Akeson case the supreme court of Iowa held that the statute did not apply in favor of a person employed to coal engines from coal cars alongside of the engine, by carrying coal from the car to the tender in wheelbarrows, over planks laid as a footway from the car to the tender, and who was injured by the negligence of a coservant in removing a plank over which the wheelbarrows were operated between the coal car and the engine tender.

In Luce *v.* R. Co. (67 Iowa, 75; 24 N. W., 600), the plaintiff was employed in the coal house of a railroad company, and while hoisting coal for the purpose of coaling an engine was struck by the crane by which the coal was hoisted, owing to the negligence of a coservant. It was held that the statute did not apply, the court saying:

"The danger arising from the use of the crane does not appear to have been greater or less by the fact that it was used loading a railroad car, nor does it appear that the plaintiff while engaged in his duty was exposed to any danger from the operation of the road."

To the same effect, see Stroble *v.* R. Co. (70 Iowa, 555; 31 N. W., 63), Reddington *v.* C., M. & St. P. R. Co. (78 N. W., 800), Foley *v.* Chicago, etc., R. Co. (64 Iowa, 644; 21 N W., 124), in the latter of which cases the supreme court of Iowa denied a recovery to a car repairer for injuries received while repairing a car on a sidetrack, by reason of the alleged negligence of a coemployee in failing to block the wheels of the car. Foley was injured by a movement of the car while he was under it engaged in repairing it. In the opinion in the Foley case the supreme court of Iowa declared that with the single exception of Deppe *v.* R. Co. (36 Iowa, 52), in which a recovery was allowed to an employee while shoveling earth onto flat cars, by the caving in of a bank of earth, all of the occasions on which that court had held railroad companies liable under the statute were those where the injury was received by the movement of cars or engines upon the track.

The employers' liability act of Minnesota (chap. 13. Gen. Laws 1887) declares:

"Every railroad corporation owning or operating a railroad in this State shall be liable for all damages sustained by any agent or servant thereof, by reason of the negligence of any other agent or servant thereof, without contributory negligence on his part, when sustained within this State, and no contract, rule, or regulation between such corporation and any agent or servant shall impair or diminish such liability: *Provided*, That nothing in this act shall be so construed as to render any railroad company liable for damages sustained by any employee, agent, or servant, while engaged in the construction of a new road, or any part thereof, not open to public travel or use."

The supreme court of Minnesota, in Lavallee *v.* St. P., M. and M. R. Co. (40 Minn., 249; 41 N. W., 974), Johnson *v.* St. P. and D. R. Co. (43 Minn., 222; 45 N. W., 156; 8 L. R. A., 419), and in Jemming *v.* Great Northern Ry. Co. (104 N. W., 1079), and in other cases has construed the Minnesota statute as applying only to those employees of railroads who are engaged in the operation of railroads.

In the Lavallee case the opinion of the court, by Chief Justice Gilfillan, does not show the precise nature of Lavallee's employment. The opinion does say, however, that he and the persons through whose negligence he received the injury from which he died were fellow-servants. The court, after stating that the question for decision was whether the Minnesota statute includes all employees, agents, and servants of a railroad corporation, without regard to the character of the business in which they were employed, declared that while taken literally the statute did so, that it was evident that the statute could not be taken literally. After referring to the decisions of the courts of last resort of some of the other States, which had enacted similar statutes, and quoting approvingly from R. Co. *v.* Mackey (127 U. S., 205), where the character of the employee injured was such that no question could be made that he came within the operation of the Kansas statute, if it was to be given any effect whatever, and after discussing the power of legislatures to classify subjects of legislation, said, respecting the Minnesota statute:

"Applying this test, it is impossible to avoid the conclusion that the statute, if construed as appellant claims it ought to be, would be class legislation, not applying upon the same terms to all in the same situation, nor having any apparent natural reason for any distinction.

"The frequency and magnitude of the dangers to which those employed in operating railroads are exposed; the difficulty, sometimes impossibility, of escaping from them with any amount of care, when they come; the fact that a great number of men are employed, cooperating in the same work, so that no one of them can know all the others, their competency, skill, and care, so that he may be said to voluntarily assume the risk arising from the want of skill or care by any one of the number—are a sufficient reason for applying a rule of liability on the part of the employer to the employee so employed different from that ordinarily applied between master and servant. But no just reason can be suggested why such difference should be founded, not on the character of the employment, nor of the danger to which those employed are exposed, but on the character only of the employer. We can see why the empolyers' liability should be greater when the business is that of operating a railroad, but can not see why one individual or corporation should be held to a rule of liability different from that applied to another, when the employment and its hazards are precisely the same. We can not illustrate this better than by using an illustration employed by the supreme court of Iowa in Deppe *v.* Railroad Co. (36 Iowa, 52): 'Suppose a railroad company employ several persons to cut the timber on its right of way where it is about to extend its road, and the landowner employs a like number of persons to cut the timber on a strip of equal length alongside such right of way. If one of each set of employees shall be injured by the negligence of a coemployee, and the railroad employee can under the

statute maintain an action against his employer and the other can not, then it is clear that the law does not apply upon the same terms to all in the same situation.'

"The legislature might intend to make such a difference, but it would require unmistakable terms to make us think so. We do not find such to be the character of the terms used in this statute. That language is rather indicative that it was intended to confine its operation to the case of employees engaged in operating a railroad, and necessarily exposed to the hazards attending that business, and not to take in the case of all employees of a railroad company, without regard to the kind of work in which they are engaged."

In the Johnson case, supra, a crew of men, of which the plaintiff was one, was engaged in repairing a bridge on defendant's railroad, and in performing the work it was necessary to leave the draw partly open. Through the negligence of one of the crew the draw was left unfastened and was blown shut by the wind, and injured plaintiff while at work between the stationary part of the bridge and the draw. It was held that the Minnesota statute, supra, did not apply, and that the railroad company was not liable to Johnson. In the course of the opinion, after referring to the fact that in the Lavallee case the court had held that the statute applied only to the peculiar hazards due to the *use and operation of* railroads, that it must be construed as designed exclusively for the benefit of those who are, in the course of their employment, exposed to such hazards, and whose injuries are caused by them, the court said:

"And the more we consider the question, the more we are confirmed in the opinion that it is only when construed as subject to some such limitation that the statute can be sustained as a valid law. As was said in the case referred to, to avoid the imputation of 'class' legislation, the classification, in cases of special legislation, must be made upon some apparent, natural reason—some reason suggested by necessity, by such a difference in the situation and circumstances of the subjects placed in different classes as suggests the necessity or propriety of different legislation with respect to them. If a distinction is to be made as to the liability of employers to their employees, it must be based upon a difference in the nature of the employment, and not of the employers.

"One rule of liability can not be established for railway companies, merely as such, and another rule for other employees, under like circumstances and conditions, unless upon the theory suggested in Railway Co. *v.* Mackey (127 U. S., 205; 8 Sup. Ct. Rep., 1161), that the State may 'prescribe the liabilities under which corporations created by its laws shall conduct their business in the future, where no limitation is placed upon its power in this respect by their charters,' a proposition which, as thus broadly stated, that court, in view of its later utterances, could hardly have intended to announce. Indeed, the particular question now under consideration was not before the court, and, presumably, was not in mind. Neither would it relieve the act from the imputation of class legislation that it applies alike to all railroads.

"It has been sometimes loosely stated that special legislation is not class 'if all persons brought under its influence are treated alike under the same conditions.' But this is only half the truth. Not only must it treat alike, under the same conditions, all who are brought 'within its influence,' but in its classification it must bring within its influence all who are under the same conditions. Therefore, if a distinction is to be made between railway corporations and other employers as respects their liability to their employees, it must be based upon some difference in the nature of the employment, and can only extend to cases where such difference exists. Hence most courts, as notably in Iowa and Kansas, have held that similar statutes, although general in their terms, embrace only 'the peculiar hazards of railroading.' But, when we come to examine the adjudicated cases, we confess we are unable to discover any definite, consistent, or logical rule which the courts have applied in determining whether, upon the facts of a particular case, it fell within or without the statute. In some cases it has been held that the statute applied because the duty of the employees required them to ride upon the cars to the place of work, although the injury was not sustained while thus riding, and was not caused by, or in any manner connected with, the operation of the road. Such a position seems to us wholly illogical. Other cases have been held within the statute because the work being performed was necessary to the use and operation of the road, although the injury sustained was not caused by, or connected with, such use and operation. This, we think, is equally illogical. In fact, the proposition is so broad and indefinite as to bring within the act all employees, regardless of the nature of their employment; for the work of all, even clerks in offices, is, in a sense, necessary to the use and operation of the road.

"Therefore, after mature consideration, our conclusion is that, if any limitation is to be placed by the courts upon the application of this statute (and on constitutional grounds there must be) the only one which will furnish any definite or logical rule is to hold that it only applies to those employees *who are exposed to the peculiar hazards incident to the use and operation of railroads*, and whose injuries are the result of such dangers. We do not mean to say that there may not be reasons suggested by some differences in the nature of the employment which would warrant the legislature in placing some other hazards within the provisions of such a law; but if the courts should attempt to impose upon the general language of this statute any other limitation than the one suggested, they would be all at sea, without either rudder or compass. Applying the test suggested, it is plain that plaintiff's case is not within the provisions of the act. * * * As suggested by counsel for defendant, suppose there had been a wagon bridge over the St. Louis River alongside of this railroad bridge, and one of a crew engaged in repairing it had been injured under like circumstances. He could not have recovered from his employer. Yet the actual situation, both as to the nature of the employment and the cause of the injury, would have been the same in either case."

In Jemming *v.* Great Northern Railroad Company (104 N. W., 1079), decided by the supreme court of Minnesota, November 24, 1905, the plaintiff was injured while in the employ of the defendant railway company as a pitman, being one of a crew of nine men, consisting of an engineer, a crane man, a fireman, two jackmen, and four pitmen, who were operating a steam shovel in a gravel pit, operated by the railway company, and was injured by the negligent manner in which the engineer caused the bucket to swing from the ballast car into the pit. Jemming sought a recovery under the Minnesota statute above quoted; but the supreme court of Minnesota held that the statute did not apply, for the reason that plaintiff and the fellow-servant by whose negligence he was injured were not engaged in operating a railway at the time of the accident, and that Jemming was precluded from recovering because on common-law principles the servant whose negligence caused the injury was his fellow-servant. The court quoted approvingly from the Lavallee and Johnson cases, supra, and said of them:

"The rule, as thus established, that the statute includes only the class of servants exposed to injury by the dangers peculiar to the use and operation of railroads has never since been departed from by this court." (Citing many cases.)

The Minnesota statute was before the Supreme Court of the United States in Minnesota Iron Company *v.* Kline (199 U. S., 593). In that case the supreme court of Minnesota adjudged that Kline came within the operation of the statute. The Supreme Court referred to the fact that the Minnesota court had held that the act was confined to the dangers peculiar to railroads, and did not discriminate against railroad companies merely as such, and held that inasmuch as the statute as thus interpreted was not within the prohibition of the fourteenth amendment the court would not interfere with the construction put upon the statute by the supreme court of Minnesota. The Supreme Court of the United States declared in that case:

"Of course there is no objection to legislation being confined to a peculiar and well-defined class of perils."

In M. K. & T. R. Co. *v.* Medaris (60 Kans., 151; 55 Pac., 875), brought under the fellow-servant statute of Kansas of 1874 (Laws, 1874, chap. 93, sec. 1), the supreme court of Kansas held that the statute did not apply. He was employed in setting a curbing around an office building and depot of the railroad company at Parsons, Kans. The curbstones had been prepared elsewhere and shipped to Parsons and unloaded near the building around which they were to be placed. The men employed to set the curbing dug a ditch, and several of the curbstones were brought up and left on the side of the ditch ready to be placed. While setting a curbstone another one, which had been left standing unsupported on the edge of the ditch, was upset and fell upon the leg of Medaris, causing a permanent injury. In reversing a judgment obtained by him in the trial court the supreme court of Kansas said:

"Whether Medaris is entitled to the benefit of this law depends upon the character of the work in which he was engaged and not on the mere fact that he was an employee of a railroad company. The validity of the law has been sustained as against the charge that it was class legislation, on the ground that the hazardous character of the business of operating a railroad justified the passage of the law for the protection of those engaged in that service. The rule of liability applied under the statute is different from that which ordinarily applies between master and servant; but this difference is founded on the hazardous character of the service and is not intended as a discrimination between employers. The statute would certainly be open to objection if a different rule of liability was applied to a railroad company than is applied to other employers under like circumstances and conditions. The hazards incident to the use and operation of railroads is a natural and reasonable classification, which justifies the exceptional legislation, for if the statute was not given that interpretation, and limited in its operation to the protection of those engaged in the hazardous service, it could not be upheld."

And again:

"Here, however, the service which Medaris was performing did not expose him to the hazards peculiar to the business of using and operating a railroad. He was not at work on a railroad, and his injury was not caused by the operation of a railroad or the use of any railroad appliance. It is true there were railroad tracks near the place where he was at work, but no train was passing or near to the place where Medaris was at work at the time the injury was inflicted. It is true, also, that he was at work for a railroad company and upon the land of a railroad company, but this does not entitle him to the benefits of the act. He can only recover by showing that the service in which he was engaged exposed him to the peculiar perils incident to the operation of a railroad. As the jury specially found, the work in which he was engaged involved no more risk or hazard than it would if the same work was being done for an individual at the same time and place. The benefits of the act can no more be claimed by him than they could by the carpenter who laid the floor in the office building or nailed the shingles on its roof. No stronger claim could be made for him than could for a person injured while hauling the rock from the quarry to the place where the curbing was to be set. As was held by the supreme court of Minnesota, one rule of liability can not be established for a railroad company as such and another for other employers under like circumstances and conditions. To avoid the imputation of class legislation, the distinction must be based upon a difference in the nature of the employment: 'But no just reason can be suggested why such difference should be founded, not on the character of the employment nor on the dangers to which those employed are exposed, but on the character only of the employer. We can see why the employer's liability should be greater when the business is that of operating a railroad, but can not see why one individual or corporation should be held to a rule of liability different from that applied to another when the employment and its hazards are precisely the same.' Lavallee *v.* Railway Co. (40 Minn., 249; 41 N. W., 974). See also Johnson *v.* Railway Co. (Minn., 45; N. W., 156); Deppe *v.* Railroad Co. (36 Iowa, 52); Stroble *v.* Railway Co. (70 Iowa, 555; 31 N. W., 63). It is difficult to see how the validity of the law can be sustained unless it is interpreted, as was stated in Railway Co. *v.* Haley, supra, to 'embrace only those persons more or less exposed to the hazards of the business of railroading.' We feel compelled to hold that the plaintiff below was not engaged in that kind of service when the injury was inflicted, and therefore that no liability against the company, under the statute, arises in his favor."

The Kansas statute was before the Supreme Court of the United States in Missouri Pac. Ry. Co. *v.* Mackey (127 U. S., 205). Mackey was a locomotive fireman on one of the engines of the railroad company and was injured in a negligent collision caused by the engineer of another engine. If the statute was to be given any force whatever, it was bound to be applied in favor of Mackey, because he was unquestionably engaged in a hazardous branch of the railroad service. The Supreme Court of the United States construed the statute in the light of the facts of that case and held that it did not violate the fourteenth amendment to the Constitution of the United States. During the course of its opinion the court used this language:

"But the hazardous character of the business of operating a railway would seem to call for special legislation with respect to railroad corporations, having for its object the protection of their employees, as well as the safety of the public."

The statute was again before the Supreme Court of the United States in Railroad Co. *v.* Pontius (157 U. S., 209), and the court met the argument made on behalf of the railroad company that Pontius, a bridge builder, was not entitled to the benefits of the statute, because it only applied to employees exposed to peculiar hazards incident to the use and operation of a railroad, by saying:

"But the difficulty with this argument is that the State supreme court found upon the facts that, although the plaintiff's general employment was that of a bridge carpenter, he was engaged at the time

the accident occurred, not in building a bridge, but in loading timbers on a car for transportation over the line of defendant's road; and Missouri Pac. Co. *v.* Haley (25 Kans., 35); Union Pacific Rwy. Co. *v.* Harris (33 Kans., 416), and Atchison, Topeka, etc., R. Co. *v.* Koehler (37 Kans., 463) were cited, in which cases it was held that a person employed upon a construction train to carry water with the men working with the train and to gather up tools and put them in the caboose or tool car; a section man employed by a railroad company to repair its roadbed and to take up old rails of its track and put in new ones, and a person injured while loading rails on a car to be taken to other portions of the company's road were all within the provisions of the act in question; and the court said: 'In this case the plaintiff was injured while on a car assisting in loading timbers to be transported over the defendant's road to some other point. The mere fact that the plaintiff's regular employment was as a bridge carpenter does not affect the case, nor does it matter that the road was newly constructed, nor whether it was in regular operation or not. The injury happened to the plaintiff while he was engaged in labor directly connected with the operation of the road, and the statute applies even though it should be given the construction counsel places on it.'"

In 1893 the legislature of Indiana enacted an employers' liability statute (sec. 7083, Burns' Ann. St., 1901), which provided that every railroad or other corporation, except municipal, operating in that State should be liable for damages for personal injury suffered by any employee while in its service, the employee so engaged being in the exercise of due care and diligence in the cases enumerated in the statute.

In So. Ind. Ry. Co. *v.* Harrell (68 N. E., 262), the railway company was engaged in the construction of a railroad bridge over White River. A heavy stone was being lifted by a derrick. Three of Harrell's colaborers were holding the stone away from the railroad track by means of a rope after the stone was raised above the course on which it rested. Two of the men let go the rope, and the third, being unable to hold the stone by himself, also abandoned the rope and sought a place of safety. The boom then swung around, and the chain which held the suspended stone caught on the running board of the pile driver. This caused the stone to swing east, and as it swung back it struck appellee, crushing one of his feet and injuring the other. He sought a recovery under the Indiana statute, but the supreme court of that State held that as to him the statute was no broader than the common law, and that he was not entitled to recover either by virtue of the statute or the common law.

In I. & G. R. Co. *v.* Foreman (69 N. E., 669), the plaintiff, an employee of the railroad company, engaged in the construction of a track, was injured while being transported to his home in the work car of the company, by reason of the negligence of the employees of another train, whereby there was a collision between that train and the work train. The court denied Foreman a right to recover, either under the Indiana statute or at common law, for the reason that he was injured by the negligence of a fellow-servant.

In P., C., C. and St. L. Rwy. Co. *v.* Lightheiser (78 N. E., 1033), in affirming a judgment recovered by an engineer under the statute, and in discussing the former decisions of the court construing the statute of that State, the supreme court of Indiana said of them:

"The classification of railroads by themselves was held proper in the cases above cited on account of the dangerous and hazardous character of the business of operating the railroads. This classification is based, not on the difference in employers, but upon a difference in the nature of the employment. (Indianapolis, etc., Rwy. Co. *v.* Houlihan, 157 Ind., 494, 501; 60 N. E., 943; 54 L. R. A., 787.) * * * Under the decisions cited the character of the employers is not a controlling factor. The statute is to be given at least a reasonable interpretation, one that will carry into effect the legislative intent. As we have shown, the basis of the classification of railroads by themselves was the hazardous and dangerous character of the employment of operating railroads, and this does not depend upon whether railroads are operated by corporations or by one or more persons. * * * The spirit and purpose of the statute must be looked to in interpreting the statute in controversy. As we have seen, the spirit and purpose of the employers' liability act of this State, so far as railroads are concerned, was the protection of employees engaged in the dangerous and hazardous work of operating railroads in this State, and we hold that it applies to every corporation, company, copartnership, or person engaged in the dangerous and hazardous business of operating a railroad, and their employees who are engaged in such dangerous and hazardous work."

In Bedford Quarries Co. *v.* Bough (80 N. E., 529), decided March 1, 1907, the court held that the statute, in so far as it applied to other corporations than railroad companies, violated the fourteenth amendment to the Constitution of the United States, as imposing on corporate employers burdens not imposed on individuals and partnerships. Bough was an employee of a quarry company, and was embraced by the terms of the statute. During the course of the opinion the court used this language:

"It is urged by appellant that said employers' liability act, except as applied to railroads, is in violation of the fourteenth amendment of the Constitution of the United States, and therefore void, for the reason that it imposes burdens upon private corporation employers that are not imposed on individuals and copartnerships employers in the same business, under the same circumstances and conditions, and gives a right of action to the employees of private corporations that is not granted to the employees of individuals and corporations under like conditions. Appellee insists that the legislature has the power of classification for legislative purposes, and that the classification in said act was proper. The legislature may make a classification for legislative purposes, but it must have some reasonable basis upon which to stand. It is evident that differences which would serve for classification for some purposes would furnish no reason for a classification for legislative purposes. Such legislation must not only operate equally upon all within the class, but the classification must furnish a reason for and justify the making of the class—that is, the reason for the classification must inhere in the subject-matter and rest upon some reason which is natural and substantial and not artificial. Not only must the classification treat all brought under its influence alike, under the same conditions, but it must embrace all of the class to which it is naturally related. Neither mere isolation nor mere arbitrary selection is proper classification."

And again:

"While the employers' liability act, so far as it affects private corporations, applies to all within the class named therein, it does not include all of the class to which it is naturally related. Employees of individuals and copartnerships are excluded from the benefit of its provisions. It gives a right of action to an employee for injuries received while in the service of a private corporation in certain cases, but denies the employee of an individual or copartnership engaged in the same business a right of action for an injury arising from the same cause and under the same conditions. It imposes new burdens on private corporations, while natural persons carrying on a like business and under like circumstances and conditions are left without any such burden. The right of action is made to depend upon the character of the employer, and not upon the character of the employment."

The opinion goes on to quote from Ballard *v.* Miss. Oil Co. (81 Miss., 507; 34 So., 533; 95 Am. St. Rep., 476; 62 L. R. A., 407), and which decided that a similar statute of Mississippi was unconstitutional, quoted the Minnesota statute, and from the Lavallee, Johnson, Kline, and Jemming cases, supra; the Iowa statute; and from the Akeson case, supra; the Lightheiser case, and Tullis *v.* L. E. and W. R. Co. (175 U. S., 348; Connelly *v.* Union Sewer Pipe Company (184 U. S., 540, supra), and then used this language:

"In view of this everyone must realize that there is a reasonable ground for the essential idea of the employers' liability legislation; but the fact must not be forgotten that the small industry still exists, and that under the convenient form of corporate capacity men still carry on industrial undertakings which are in no essential particular different from those which are carried on by copartnerships and individuals. It is this fact which makes a classification on the basis of the character of the employer inherently vicious. True, the corporation under our laws and industrial system has in it the seeds of tremendous growth, but as the real evil can be reached by a classification which goes to those elements which to some extent have removed the reason for the coservant rule, there is not even a color of an excuse for imposing burdens on the corporate employer, while its competitor, a natural person, who is carrying on under the same conditions like business, is left without any such burden. If said corporations as such are to have legislative burdens put upon them, as by the law in controversy, then all who ought to be put in their class should be included; or if this appears to the legislative mind as improper owing to differences in the character of employments, then legislation should have for its basis a classification which rests on such differences in the various employments as would make a distinction between them appear to be warranted."

In the Tullis case (175 U. S., 348), while it does not appear from the opinion of the Supreme Court that Tullis was engaged in an extrahazardous branch of railroad service, it does appear in the report of the case as decided by the United States circuit court of appeals for the seventh circuit (105 Fed., 554) that Tullis was employed as a freight-train brakeman, and was injured while so employed and while riding in the cupola of a caboose, and that he was injured by the negligence of the engineer of a pusher engine which was to push Tullis's train over a steep part of the railroad and which engine so violently collided with the caboose as to throw it from the track.

In P. C. C. and St. L. R. Co. *v.* Montgomery (152 Ind., 1), referred to in the opinion of the Supreme Court in the Tullis case, the injured employee was a freight brakeman, and was injured while making a coupling between two cars by the negligence of the engineer in reversing his engine without a signal. Therefore there is nothing in the Tullis case, nor in the Montgomery case, the construction of the Indiana statute in which latter case was accepted by the Supreme Court of the United States in the Tullis case, in conflict with our contention that it has been definitely decided by the supreme court of Indiana that in order to be constitutionally applied the statute must be limited to those railroad employments which are extrahazardous—the right of action must be made to depend upon the character of the employment and not upon the character of the employer.

Under these authorities there can be no question as to the construction this act would receive if it were passed by a State legislature.

If, under such circumstances, it was to be held to necessarily include risks other than extrahazardous, it would clearly be unconstitutional. As to Federal legislation, this bill raises the extremely important and interesting question as to whether Congress is subject to the same constitutional limitations and restrictions as are the States in legislating upon this and cognate questions. That it is not in terms is quite clear. The fifth amendment of the Constitution, so far as applicable, provides:

> No person shall be * * * deprived of life, liberty, or property without due process of law;

and the fourteenth, so far as applicable, provides:

> nor shall *any State* deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The fifth amendment is well understood to be applicable only to the Federal Government. That the proposed legislation, unless confined either by legislative language or judicial construction to the extrahazardous part of the commerce, would be a denial of the equal protection of the law, is clear. Whether, at the same time, the carrier would, by reason of such denial of equal protection of the law, be deprived of "property without due process of law," it must be admitted is not so clear. Does the citizen get the benefit of due process of law under the fifth amendment when he is deprived of the equal protection of the law? The most obvious suggestion that occurs with reference to these two constitutional provisions is that, inasmuch as the language of the fifth and the fourteenth amendments is identical in this respect, until the equal-protection clause is reached, evidently the authors of the fourteenth amendment, believing that under the "due process of law" clause equal protection was not guaranteed, found it necessary to add the specific clause guaranteeing it so far as the States are concerned. It is clear that if this clause was necessary to guarantee that result, then "due process of law" does not include the equal protection of the law, and if it was not necessary, the addition of the clause relative to due protection of the law would be entirely unnecessary and mere rhetoric—a conclusion that would not be hastily assumed.

That legislation depriving citizens of the equal protection of the law would be in violation of the fundamental principles of natural justice is clear. Just how far considerations of that kind can be utilized and relied upon in aid of specific constitutional limitations by the courts in determining whether the legislature has exceeded its power is a matter of doubt, and has been the subject of a great deal of interesting discussion by the courts. The books are full of expressions along those lines. For instance, Mr. Justice Jackson, of the supreme court of Massachusetts, in determining the validity of an act of the Massachusetts legislature, said, among other things:

It is manifestly contrary to the first principles of civil liberty and natural justice and of the spirit of our Constitution and laws that any one citizen should enjoy privileges and advantages which are denied to all others under like circumstances, or that anyone should be subjected to losses, damages, suits, or actions from which all others, under like circumstances, are exempted. (Holden *v.* James, 11 Mass., 404.)

Just how far the Supreme Court of the United States would go in applying the "due process of law" clause of the fifth amendment in connection with fundamental principles of natural justice it is impossible to say. We have not been able to make a sufficiently extensive and exhaustive investigation of the authorities to justify us in stating definitely how far, in our opinion, the court will go in construing this clause, but there can be no question but that if the court applies the construction to this clause or to the provisions of the Constitution generally that is in accordance with the great first principles of the social compact, though perhaps beyond its literal terms, this legislation would be held beyond the power of Congress, unless confined to the extrahazardous features of the employment.

In any event, it is very clear that there can be no moral justification for the enactment by the Congress of any legislation that denies to the citizen the equal protection of the law. Certainly what a State is expressly prohibited from doing as a violation of natural justice it would, from a moral standpoint, be highly improper for the Congress to do, though not expressly prohibited. In this connection it is proper to call attention to the fact that the court has expressly left this interesting question for future determination. In the opinion in the Howard case they say:

We deem it unnecessary to pass upon the merits of the contentions concerning the alleged repugnancy of the statute, if regarded as otherwise valid, to *the due process clause* of the fifth amendment to the Constitution, *because the act classifies together all common carriers.* Although we deem it unnecessary to consider that subject, it must not be implied that we question the correctness of previous decisions noted in the margin, wherein State statutes were held not to be repugnant to the fourteenth amendment, although they classified steam railroads in one class for the purpose of applying a rule of master and servant.

It is to be observed that the decisions referred to by the court were decisions that sustained the legislation because the court construed the legislation in question as applying only to the extrahazardous risks in the employment. So that the whole question upon this branch of the case is clearly open for judicial determination hereafter.

We suggest, in order to relieve the bill of this objection, the following amendment: Insert after the word "commerce" in line 10, page 1, section 1, the following: "in service directly connected with the operation of the road." This language is taken from an opinion of the United States Supreme Court and defines in the most concise language the extrahazardous service to which the legislation should be confined. With this amendment we are satisfied that the bill in this respect could not be attacked as being unconstitutional or in violation of fundamental natural rights.

III.

This bill is subject to the same criticism upon the strength of which the court, in the Howard case, held the statute relating to the same subject-matter unconstitutional. The Howard case held the statute under consideration in that case unconstitutional upon the express ground that it included in its general terms a regulation of interstate and State commerce and was, therefore, a regulation of both. Their conclusion was based upon two reasons, each of which is the inseparable legal concomitant of the other, because as a legal proposition it is an impossibility to increase the rights of the employee with reference to his recovery against the master without at the same time impairing the rights of the employer or imposing upon the employer an additional liability, and the court discussed their reasons from both of these points of view. They said in the first instance that the statute was unconstitutional because it was in favor of all the employees of interstate carriers who were engaged in interstate commerce, and therefore operated in favor of employees who were engaged in State commerce as well as those engaged in interstate commerce, as it is clear that the same carrier at the same time and as a part of the same operation may obviously be engaged in both interstate and State commerce, and has employees for the purpose of prosecuting the common enterprise engaged in each kind of commerce; and second, it imposed a new liability upon the carrier who was engaged in both interstate and State commerce without confining the liability of the carrier to such carriers as were engaged in interstate commerce, which alone Congress had the power to regulate, and so the court said, in the first instance:

As the word "any" is unqualified, it follows that liability to the servant is coextensive with the business done by the employers whom the statute embraces—that is, it is in favor of any of the employees of all carriers who engage in interstate commerce.

That is to say, the carrier who is engaged in interstate commerce might, at the same time, be engaged in State commerce, and would therefore have State employees as well as interstate employees, and as the language "any employees" covered all employees, however engaged, it necessarily operated in favor of State as well as interstate employees, and that was one of the concomitant factors of the whole equation making the act unconstitutional.

As to this indispensable factor in the common equation, the pending bill very properly confines the employees in whose favor it operates to such as are engaged in interstate commerce, and thus eliminates from State commerce one factor of the whole equation. Second, and as to the other indispensable factor of the common equation, imposing the new liability, the court said:

This also is the rule as to the one who otherwise would be a fellow-servant, *by whose negligence* the injury or death may have been occasioned, since it is provided that the right to recover on the part of any servant will exist, although the injury for which the carrier is to be held resulted from "*the negligence of any of its officers, agents, or employees.*"

And here again the court find that the liability feature is imposed without any distinction as to whether the negligence is caused by an employee who is engaged in interstate or State commerce, and for that reason also, that being an inseparable factor of the common equation, the statute was held unconstitutional. In other words, they held that the benefits conferred and the liability imposed must both be confined to interstate commerce. Each proposition is indispensably connected with the other, and the limitation is as important in one case as in the other. You can not have one factor without the other. Because the statute in question confined *neither* of these inseparable concomitants to interstate commerce, the act was held unconstitutional. The bill now pending as to the liability imposed upon the employer or carrier is an exact duplicate of that part of the act that was thus held unconstitutional by the court, and is not, as that was not, confined to interstate commerce; and it must be held unconstitutional by the court unless the court reverses itself in the Howard case and holds that it will be sufficient if one of the indispensable concomitant factors of the equation is within the power, while the other factor of the same equation is outside of and beyond the power of Congress, which we do not think they either will or can do.

In this respect the bill provides for liability for "such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier;" and the act in this respect provided for liability "for all damages which may result from the negligence of any of its officers, agents or employees," being identical with the language used in the bill, so far as the character or class of the employees is concerned through which liability is imposed upon the carrier.

In further elaboration of this idea the court said:

The act then being addressed to *all* common carriers engaged in interstate commerce, and imposing a liability upon them in favor of any of their employees, *without qualification or restrictions* as to the business in which *the carriers* or *their employees* may be engaged *at the time of the injury*, of necessity includes subjects wholly outside of the power of Congress to regulate commerce.

A brief analysis of this statement of the court shows that the court said that the act imposed—

a liability upon * * * carriers * * * without *qualification or restriction* as to the business in which the *carriers* * * * may be engaged *at the time of the injury*—

and that was one of the reasons why it was unconstitutional, and that is precisely what this bill does in terms.

The court also said, presenting the other side of the equation, that the liability was—

in favor of any of their employees without *qualification or restriction* as to the business in which * * * their *employees* may be engaged *at the time of the injury.*

In this particular as to the employee, as we have suggested, the defect has been cured by providing that the employee must, *at the time of the injury*, be engaged in interstate commerce, but as to the carrier, as we have already shown, no such limitation is made. The illustration sometimes used of a carrier en-

gaged at the same time in interstate and State commerce, and having, of course, interstate and State employees, with an injury to an interstate employee caused by the negligence of a coservant who was a State employee, is a conclusive demonstration of the unconstitutionality of this bill, because it attempts to regulate the relations between a master and a servant engaged in State commerce and therefore beyond the power of Congress to control. In the case suggested, without any legislation the common carrier would not be liable, for the simple and obvious reason that, although the employee injured was engaged in interstate commerce and the one doing the injury was engaged in State commerce, they would be the coservants of a common master engaged in a common enterprise, and the injured employee would have no remedy, as the carrier would not be liable for the negligence of a fellow-servant. It is proposed by this bill to make the carrier liable under such circumstances, as the carrier is made liable for the "negligence *of any* (that is, all) of its officers, agents, or employees," and it is too clear for argument that the carrier can not be made liable for the negligence of his employee engaged in State commerce, the coservant of his interstate-commerce employee, without changing the common-law rule and eliminating the fellow-servant limitation of liability, that in the absence of the proposed bill would relieve the carrier from liability, thus regulating State commerce.

When the bill applies, as this does, to "any employees" whose negligence cause an injury, it necessarily includes, under the rule laid down in the Howard case, State employees engaged in State commerce, which, as has been repeatedly stated and held, is beyond the power of Congress. We suggest, in order to relieve the bill of this what seems to us obvious criticism, that there be inserted after the word "carrier," in line 4, on page 2, the words, "who at the time of such negligence are engaged in interstate commerce." With the adoption of this amendment the bill, with reference to both of the indispensable factors making up the common equation, would be within the constitutional limitations laid down in the Howard case.

IV.

Inasmuch as this bill very greatly enlarges the rights of the employee and imposes new and onerous burdens upon the employer, making him practically an insurer, it seems to us that in order to prevent malingering, if this bill is to become a law, the carrier should be provided with at least reasonable facilities to enable him to adequately protect his rights, and we therefore think that the following section should be added to this bill, the justice and wisdom of which has been fully established by the report made by Mr. Bannon in the last Congress on H. R. 10, Report No. 7587, which we quote as a part of these views:

[Section.]

That in any action brought under the provisions of this act for physical injuries not resulting in death the court may, in its discretion, upon motion of the defendant, order and require the party injured, at or in advance of the trial, to submit to a personal physical examination with respect to such injuries by the physicians or surgeons of the opposite party, under such restrictions and upon such terms and conditions as may to the court seem reasonable and proper: *Provided, however,* That said party shall have the privilege of being represented at such examination by his own physician or surgeon and such person or persons as he may designate.

[House Report No. 7587, Fifty-ninth Congress, second session.]

The object of this section is to confer a discretionary power upon Federal courts to order the plaintiff in actions brought to recover for personal injuries sustained to submit to a personal physical examination.

The enactment of the bill is made necessary by the opinion of the court in Union Pacific Railway Company *v.* Botsford (141 U. S., p. 250), wherein it is held that—

"The order moved for, subjecting the plaintiff's person to examination by a surgeon, without her consent and in advance of the trial, was not according to the common law, to common usage, or to the statutes of the United States."

Under this rule the Federal courts are not vested with any discretion whatever relative to such examinations, and the defendant is left in practice to offer as a matter of evidence the demand for an examination and its refusal by the plaintiff as reflecting upon the bona fides of the plaintiff's claim as to the nature and extent of such injuries. But this denies the defendant the equal opportunity with the plaintiff of calling a medical witness as to the character of the injuries, and to that extent, at least, is an injustice.

That a majority of the adjudications in this country are not in harmony with Railway Company *v.* Botsford is manifest from the text found in section 202 of Underhill on Evidence (1894), reading as follows:

"SEC. 202. *Physical examination of the party by experts.*—The question whether the court in civil cases can compel the plaintiff to furnish evidence by submitting to a physical examination by a physician has been differently decided. The affirmative is supported by a majority of the cases, which maintain that the courts have an inherent power to do this, basing their reasoning upon the necessity for the inspection, though there are other cases sustaining the proposition that, while such an inspection may be allowed, it can not in the absence of a statute be compelled."

The following States hold that the court may order reasonable physical examination of the plaintiff to be made before trial by competent physicians and surgeons when such an examination is necessary to ascertain the nature, extent, or permanency of the injuries:

Alabama: Railroad Co. *v.* Hill (90 Ala., 71).
Arkansas: Sibley *v.* Smith (46 Ark., 275).
Arkansas: Railroad Co. *v.* Dobbins (60 Ark., 481).
Georgia: Railroad Co. *v.* Childress (82 Ga., 719).
Iowa: Schroeder *v.* Railroad Co. (47 Iowa, 375).
Kansas: Ottawa *v.* Gilliland (63 Kans., 165).
Kentucky: Belt Line Co. *v.* Allen (102 Ky., 551).
Minnesota: Wanek *v.* Winona (78 Minn., 98).
Missouri: Owens *v.* Railroad Co. (95 Mo., 169).
Ohio: Turnpike Co. *v.* Baily (37 O. S., 104).
Pennsylvania: Demenstein *v.* Richardson (2 Pa., Dist., 825).
Washington: Lane *v.* Spokane Falls (21 Wash., 118).
Wisconsin: White *v.* Railroad Co. (61 Wis., 336).

The following States hold that in the absence of a statute there is no such power:

Illinois: Railroad Co. *v.* Call (143 Ill., 177).
Indiana: Pennsylvania Co. *v.* Newmeyer (129 Ind., 401).
Massachusetts: Stack *v.* Railroad Co. (177 Mass., 155).
New York: McQuigan *v.* Railroad Co. (129 N. Y., 50).
South Carolina: Easter *v.* Railroad Co. (60 S. C., 177).
Texas: Railroad Co. *v.* Kluck (73 S. W., 569).

The States of New York and New Jersey now have statutes similar to H. R. 10, and they have been declared to be constitutional:

Lyon *v.* Railroad Co. (142 N. Y., 298).
Mr. Govern *v.* Hope (N. J. L., 76).

In Camden and Suburban Railway Company *v.* Stetson (177 U. S., p. 172) the New Jersey statute was considered by the court in its answer to the following question:

"Had the circuit court the legal right or power to order a surgical examination of the plaintiff?"

The New Jersey statute confers such power, and the question was whether that statute would be enforced in the Federal courts or not. The answer certified by the court was in the affirmative, thus indicating that the court in the Botsford case did not disapprove of the delegation of such power to the judiciary, but only held that legislation was necessary in order to confer the right. The syllabus in the Stetson case is as follows:

"This was an action brought in the circuit court of the United States for the district of New Jersey against a railway company, for an alleged injury to the plaintiff caused by the neglect of the railway company while the plaintiff was a passenger on one of its cars. *Held*, That that court had the legal right or power under the statute of New Jersey and the United States Revised Statutes to order a surgical examination of the plaintiff."

Section 721 of the United States Revised Statutes (sec. 34 of the judiciary act) was held in Boyce *v.* Tabb (85 U. S., p. 546) not to apply to questions of a general nature not based on a local statute or usage; and in Railway Company *v.* Botsford, in discussing the inherent power to order an examination, the court says, at page 256:

"But this is not a question which is governed by the law or practice of the State in which the trial is had."

Consequently, in the absence of a State statute in those jurisdictions where the courts hold a statute is unnecessary, because the power exists without it, the Federal courts therein follow one rule and the State courts another.

The most recent and exhaustive discussion of this subject is found in Wigmore on Evidence (1904), volume 3, section 2220, in which the case of Railroad Company *v.* Botsford is thoroughly discussed by the author. In speaking of the privilege of exemption from examination it is there said in part:

"It has remained for such privilege to be claimed, and in a few jurisdictions to be acknowledged, in a class of cases in which, above all, there is most detriment and least service in its existence, namely, actions for corporal injuries. Why should all analogies fail here, and exemption be accorded to a plaintiff seeking to conceal from the tribunal the true nature and extent of his injuries? * * *

"There is and will be no end to the variety of frauds invented, and it will be an ill day for justice when the courts cease to meet new frauds by new applications of old remedies. Quite apart from the general impolicy of granting to a party the license to conceal truth by any form of refusal, there is, in this class of cases, the added consideration that corporal injuries are to-day notoriously a subject of frequent fraud and misrepresentation, so that the privilege to withhold the exhibition of the alleged injury may amount in such cases to nothing less than a judicial license for fraud.

"These considerations, together with the absurdity of a judicial declaration that a court lacks the power to control those who seek for their fraud the very aid of the law itself, have weighed emphatically with most of our courts. * * *

"Under some such limitations as these the compulsory exhibition of the party's body will now be ordered in the greater number of jurisdictions. Had it not been for the singular notions of judicial impotence early advanced in New York, and the prestige of the court whose majority pronounced the opinion in United States *v.* Botsford, there would perhaps to-day have been a unanimous concurrence in this doctrine."

In view of the greater weight of authority and the fact that the court pointed out the absence of a statute and the belief on the part of the committee that the judiciary may be relied upon to exercise its discretion wisely and to prevent improper shock to the modesty or feelings or delicacy of an injured party, this bill is recommended for passage as amended.

While there are other features of this bill that are subject to criticism both as to principle and detail, we have decided in these views to point out only the salient and fundamental legal objections thereto which we think ought to prevail.

C. E. LITTLEFIELD.
HENRY T. BANNON.

Mr. LITTLEFIELD. Now, Mr. Speaker, in order to raise this precise question presented by the second question raised by the minority views, I ask unanimous consent to now offer, and have considered as pending, the following amendment, in order that it may appear on the RECORD that this question was spe-

cifically called to the attention of the House before it passed the legislation.

Mr. STERLING. I object, Mr. Speaker.

Mr. LITTLEFIELD. I ask unanimous consent to offer and have pending for that purpose, first, this amendment——

Mr. STERLING. I object.

Mr. LITTLEFIELD. Can I not state the amendment? I will state it in my own time. It is as follows:

Insert after the word "commerce," in line 10, page 1, section 1, the words "in service directly connected with the operation of the road."

I understand that is objected to.

Mr. STERLING. I object.

Mr. LITTLEFIELD. And I further ask unanimous consent for the same reason, so that it may appear that the question was specifically presented to the House, to amend by inserting after the word "carrier," in line 4, page 2, the words:

Who, at the time of such negligence, are engaged in interstate commerce.

Mr. STERLING. I object.

Mr. LITTLEFIELD. Very well. Mr. Speaker, how much time have I remaining?

The SPEAKER. The gentleman has two minutes.

Mr. LITTLEFIELD. I will reserve the balance of my time.

Mr. STERLING. Mr. Speaker, I now yield two minutes to the gentleman from Arkansas [Mr. REID].

Mr. REID. I yield my time, Mr. Speaker, to the gentleman from Mississippi.

Mr. WILLIAMS. Mr. Speaker, this side of the House, the country knows, is emphatically in favor of the passage of this bill. We welcome the opportunity to illustrate to the country how quickly and how rapidly we can join in passing genuine remedial legislation. [Applause on the Democratic side.] We will be glad to be furnished with more like it and to repeat the illustration as each remedial bill is furnished to the House. I predict that if there be any opposition to this bill at all it will be upon the Republican side of this Chamber.

Mr. Speaker, this is the first encouragement in some time that the Democratic party has had, and it leads me to read an extract from a newspaper headed "An encouraging revolt."

AN ENCOURAGING REVOLT.

It is a long time since the Democrats in the House have shown the fighting spirit manifested Thursday and yesterday under the leadership of JOHN SHARP WILLIAMS.

They have fallen into the habit of submitting tamely to the fatuous domination of CANNON, PAYNE, and DALZELL. There is little courage or independence on the Republican side. It is too well drilled to subservience. So long as its members disregard conscience and honor and vote solidly, as they did Thursday, against all proposals to consider the repeal of wood-pulp and paper duties and other sound recommendations of President Roosevelt in order to gratify the little clique——

The SPEAKER. The time of the gentleman from Mississippi has expired.

Mr. WILLIAMS. Well, I have got to a good stopping place; everybody knows who the "little clique" is. [Applause on the Democratic side.]

Mr. STERLING. Mr. Chairman, I now yield three minutes to the gentleman from New York [Mr. PAYNE].

Mr. PAYNE. Mr. Speaker, to illustrate the tactics of the other side, they have delayed the consideration of this bill for half an hour this morning by calling the roll on the approval of the Journal at the demand of the gentleman from Mississippi, which approval he voted for after it had been carried by a viva voce vote. Mr. Speaker, he seems to think that he will make the country believe—because every time he says something he says, "I say this to the House and to the country"—he seems to think that he will make the country believe that the way to facilitate legislation is by a useless demand for a roll call, and so delay the House in performing its functions in passing the supply bills that must be passed.

Why, Mr. Speaker, he has not had anything more to do with bringing about the report from this committee and the consideration of this bill than the boy in the street. It has been the settled purpose of this side of the House and the members of the Judiciary Committee of the whole majority to bring this matter before Congress in order that legislation might be passed. [Applause on the Republican side.] If there is opposition on this side of the House it is because one or two Members believe that the bill is unconstitutional, and may be decided so, as the former bill was. When the former bill was before the House I said to gentlemen around me that I feared it was unconstitutional, but it meets the approbation of the counsel for the locomotive engineers, and therefore I voted for it. I say to-day that I fear this bill may receive the same decision from the Supreme Court of the United States when it gets there, but I shall vote to-day as I voted a year and a half ago in favor of passing an employers' liability act. And, gentlemen, we will go on with the legislation of this country, and the majority will decide in their own good time and despite any let or hindrance from the gentleman from Mississippi and his voting trust, which it is reported he had organized on that side last Saturday to stand by him in every obstructive method to stop legislation; notwithstanding that, we will go on and write on the statute book just what we on this side of the House desire. [Applause on the Republican side.]

Mr. STERLING. Mr. Speaker, I will now yield two minutes to the gentleman from Alabama [Mr. CLAYTON].

Mr. CLAYTON. Mr. Speaker, this bill comes from the Committee on the Judiciary with a dissent on the part of three members of that committee. I may call the attention of the House to the fact, because if I call the attention of the country to the fact it might offend our worthy friend from New York. [Laughter on the Democratic side.] I call the attention of the House to the fact that that committee is composed of seventeen members; that six Democrats, if they had joined with the three dissenting Republicans, would have reported adversely on this measure. [Applause on the Democratic side.] So that if this legislation is enacted its favorable report to this House is due to the courage, the patriotism, and the far-sightedness of the Democratic members of the Judiciary Committee. [Applause on the Democratic side.]

I am glad that the gentleman from Maine [Mr. LITTLEFIELD] has printed the minority views of himself and the gentleman from Ohio [Mr. BANNON], and I hope that he will also have printed in the RECORD the minority views of the gentleman from New Jersey [Mr. PARKER], the other Republican member of the Judiciary Committee.

Mr. PARKER of New Jersey. Will the gentleman yield?

Mr. CLAYTON. I have not the time; I can not. I will ask that the gentleman's views be printed in the RECORD. I want them in there. I have not read them; have not had the time. The gentleman writes excellently, always from a Republican standpoint, and I ask that they be printed, not with my indorsement, but to show up the absurdity of the Republican position; and, Mr. Speaker, I ask that the views of the majority, beginning on page 1 of the report, down to and including the words "railroad company, et al.," on page 9, be printed in the RECORD as a part of my remarks.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

Mr. CLAYTON. Now, Mr. Speaker, in order to expedite this measure, I hope my time has expired and that we can vote immediately. [Laughter and applause.]

The views of the majority are as follows:

The Committee on the Judiciary, to whom was referred House bill 20310, have had the same under consideration, and report it to the House with a recommendation that it pass.

This bill relates to common carriers by railroad engaged in interstate and foreign commerce and in commerce in the District of Columbia, the Territories, the Canal Zone, and other possessions of the United States. It is intended in its scope to cover all commerce to which the regulative power of Congress extends.

The purpose of this bill is to change the common-law liability of employers of labor in this line of commerce, for personal injuries received by employees in the service. It abolishes the strict common-law rule of liability which bars a recovery for the personal injury or death of an employee, occasioned by the negligence of a fellow-servant. It also relaxes the common-law rule which makes contributory negligence a defense to claims for such injuries. It permits a recovery by an employee for an injury caused by the negligence of a coemployee; nor is such a recovery barred even though the injured one contributed by his own negligence to the injury. The amount of the recovery, however, is diminished in the same degree that the negligence of the injured one contributed to the injury. It makes each party responsible for his own negligence, and requires each to bear the burden thereof. The bill also provides that, to the extent that any contract, rule, or regulation seeks to exempt the employer from liability created by this act, to that extent such contract, rule, or regulation shall be void.

Many of the States have already changed the common-law rule in these particulars, and by this bill it is hoped to fix a uniform rule of liability throughout the Union with reference to the liability of common carriers to their employees.

Sections 1 and 2 of this bill provide that common carriers by railroad, engaged in interstate and foreign commerce, in commerce in the District of Columbia, the Territories, the Panama Canal Zone, and other possessions of the United States, shall be liable to its employees for personal injuries resulting from its negligence or by reason of any defect or insufficiency due to its negligence in its roads, equipment, or methods. It is not a new departure, but rather goes back to the old law which made the master liable for injury occasioned by the negligence of his servant, either to a coservant or to a third person.

The doctrine of fellow-servant was first enunciated in England in 1837, and since that time it has been generally followed in that country and this, except where abrogated or modified by statute. Whatever reason may have existed for the doctrine at the time it was first announced, it can not be said to exist now, under modern methods of commerce by railroad. It is possible that a century ago, under industrial methods and systems as they then existed, coemployees could have some influence over each other tending to their personal safety. It is possible that they could know something of the habits and characteristics of each other. Under present industrial methods and systems this can not be true. Then they worked with simple tools and were closely associated with each other in their work. Now they work with powerful and complex machinery, with widely diversified duties, and are distributed over larger areas and often widely separated from each other.

Under present methods, personal injuries have become a prodigious burden to the employees engaged in our industrial and commercial systems.

The master should be made wholly responsible for injury to the servant by reason of the negligence of a coservant. He exercises the authority of choosing the employees, and if made responsible for their acts while in line of duty he will be induced to exercise the highest degree of care in selecting competent and careful persons and will feel bound at all times to exercise over employees an authority and influence which will compel the highest degree of care on their part for the safety of each other in the performance of their duties.

These sections make the employer liable for injury caused by defects or insufficiencies in the roadbed, tracks, engines, machinery, and other appliances used in the operation of railroads. Over these things the employee has absolutely no authority. The employer has complete authority over them, both in their construction and in their maintenance. It is a very hard rule, indeed, to compel men, who by the exigencies and necessities of life are bound to labor, to assume the risks and hazards of the employment, when these risks and hazards could be greatly lessened by the exercise of proper care on the part of the employer in providing safe and proper machinery and equipment with which the employee does his work. We believe that a strict rule of liability of the employer to the employee for injuries received by defective machinery will greatly lessen personal injuries on that account. The common-law rules of fellow-servants and assumption of risk still prevail in many of the States, and without any apparent good reason. In recent years many of the countries of Europe have adopted new rules of liability, which greatly relieve the harshness of the common law as it still exists in some of the States.

In 1888 England passed an act which abolished the doctrine of fellow-servant with reference to the operation of railroad trains, and in 1897 it extended this law to apply to many of the hazardous employments of the country.

For many years the doctrine in Germany has been yielding step by step to better rules, until for the last quarter of a century it does not apply to any of the hazardous occupations.

In 1869 Austria passed a law making railroad companies liable for all injuries to their employees except where the injury was due to the victim's own negligence.

The Code Napoleon made the employer answerable for all injuries received by his workmen, and this code is still in force in Belgium and Holland.

Other European countries have from time to time made laws fixing the liability of the master for damages caused by the negligent act of his servant.

Many of the States have passed laws modifying the doctrine as changing conditions required it and justice to the employee demanded it.

Alabama in 1885 eliminated the doctrine so far as it relates to railroads, and in other particulars.

Arkansas in 1893 qualified the doctrine as to railroad employment.

Georgia in 1856 entirely abolished the doctrine as to railroads.

Iowa abolished it as to train operatives in 1862.

Kansas did the same thing in 1874.

The latest statute in Wisconsin on the subject abolished the fellow-servant doctrine as to employees actually engaged in operating trains.

Minnesota did the same thing in 1887.

Florida, Ohio, Mississippi, and Texas have changed the doctrine to the advantage of the employee.

North Carolina, North Dakota, and Massachusetts have practically eliminated the doctrine as regards the operation of railroad trains.

Colorado in 1901 abolished the doctrine in toto.

Other States have either abolished or modified it as regards the operation of railroads.

As compared with the law now in force in other countries and in many of the States, the changes made in the law of fellow-servant by this bill are not radical. The doctrine as regards the hazardous occupations is being relegated everywhere.

A Federal statute of this character will supplant the numerous State statutes on the subject so far as they relate to interstate commerce. It will create uniformity throughout the Union, and the legal status of such employer's liability for personal injuries, instead of being subject to numerous rules, will be fixed by one rule in all the States.

It is thought that the adoption of the rule, as provided in this section, will be conducive to greater care in the operation of railroads. As it is now, where the doctrine of fellow-servant is in force, no one is responsible for the injury or death of an employee if caused by the carelessness of a coemployee. The coservant who is guilty of negligence resulting in the injury may be liable, but as a rule he is not responsible, and hence the injury is not compensated. The employee is not held by the employer to such strict rules of caution for the safety of his coemployee, because the employer is not bound to pay the damages in case of injury. If he were held liable for damages for every injury occasioned by the negligence of his servant, he would impose the same strict rules for the safety of his employees as he does for the safety of passengers and strangers. He will make the employment of his servant and his retention in the service dependent upon the exercise of higher care, and this will be the stronger inducement to the employee to act with a higher regard for the safety of his fellow-workmen.

Section 3 is a modification of the common-law rule of contributory negligence. It does not abolish the law. Under its provisions contributory negligence still bars a recovery for personal injury so far as the injury is due to the contributory negligence of the employee, but entitles the employee to recover for the injury so far as it is due to the negligence of the employer. It differs from the act passed by Congress in June, 1906, on this point, in this: That law provided that contributory negligence did not bar a recovery if the negligence of the employee was slight and that of the employer was gross in comparison. That law modified the common-law rule of contributory negligence and also contained a modification of the common-law doctrine of comparative negligence. We are unable to see any justification whatever in the common-law doctrine of comparative negligence anywhere. It is the only rule of negligence that permits an employee to recover damages for injury to which his own negligence contributed. Comparative negligence is absolutely wrong in principle, for the reason that it permits the employee to recover full damages for injury, even though his own negligence contributed to it. It is true, as the law states it, he can only recover damages when his contributory negligence is slight and that of the employer is gross in comparison. But that rule does not undertake to diminish the verdict in proportion to the negligence of the employee. This may be said in behalf of the doctrine of contributory negligence in its common-law purity, and it is the only reason, so far as we know, that has ever been assigned for its existence: It tends to make the employee exercise a higher degree of care for his own safety.

If that is a good reason for the existence of that rule, then we believe that section 3 of this bill is a very great improvement on that doctrine, for the reason that it imposes the burden of the employer's negligence on the employer, and he will thus be induced to exercise higher care in the selection of his employees, and in other ways, for the safety of persons in his employment. If the law imposes on the employee the burden of his own negligence, that is certainly sufficient, and that is what this section seeks to do, and it also seeks to impose upon the employer the burden of his negligence. It provides that contributory negligence shall not bar a recovery for injury due to the negligence of the employer. It provides that the jury shall diminish the damages suffered by the injured employee in proportion to the amount of negligence attributable to such employee.

It is urged by some that such a provision is impracticable of administration and that juries will not divide the damages in accordance with the negligence committed by each. The same objection can be urged against the provision of the bill passed by Congress in 1906, which provided that only slight negligence should not bar a recovery, but that the jury should diminish damages in proportion to such slight negligence. Under that provision the jury would have the same difficulty, if any, in apportioning the damages according to the negligence of each party. We submit, further, that this section of the bill is free from the very unjust principle contained in the common-law doctrine of comparative negligence which allowed the employee to recover full damages for injury to which his own negligence contributed in some degree. It is not a just criticism of a law, conceding the righteousness of its principles, to say that it is impracticable of administration. We submit that the principle in this section is ideal justice, against which no fair argument can be made. It is better that legislatures pass just and fair laws, even though they may be difficult of administration by the courts, rather than to pass unjust and unfair laws because they may be more easily administered by the courts. Courts ought not to be compelled to administer the common-law doctrine of contributory negligence, which puts upon the employee the whole burden of negligence, even though his negligence was slight and that of the employer was gross. That law might to some extent induce higher care on the part of the employee, but in the same degree, and for the same reason, it induces the employer to have less regard and less care for the safety of his employees.

It is urged that juries under this law will wholly ignore the negligence committed by the employee and charge all the injury to the negligence of the employer. We do not believe that this will be the result of the administration of this section. We believe it will appeal to juries as eminently just and they will undertake to enforce it literally to the best of their skill. If juries under the common-law rule of contributory negligence have been disposed to assess damages in spite of the fact that the defendant contributed to the injury by his own negligence, it may be said that the jury recognizes the injustice of the law and undertakes to correct it by what they consider a just and righteous verdict. There is nothing in this law that will induce such a sentiment in the minds of the jury, but it will appeal to them as the true principle, and, in our judgment, they will seek to apply it fairly in the courts.

Beach, in his work on Contributory Negligence, page 136, comments on the law as provided in this section as follows:

"Much may be said in favor of the rule which counts the plaintiff's negligence in mitigation of the damages in those cases which frequently arise, wherein, on one hand, a real injury has been suffered by the plaintiff by reason of the culpable negligence of the defendant, and yet, where, on the other hand, the plaintiff's conduct was such as to some extent contribute to the injury, but in so small a degree that to impose upon him the entire loss seems not to take a just account of the defendant's negligence. In those cases, which may be denominated 'hard cases,' the Georgia and Tennessee rule in mitigation of damages without necessarily sacrificing the principle upon which the law as to contributory negligence rests is a rule against which, in respect of justice and humanity, nothing can be said. Where the severity of the general rule might refuse the plaintiff any remedy whatever, as the sheer injustice of the rule, as laid down in Davis *v.* Mann, would impose the whole liability upon the defendant, it is quite possible to conceive a case where the application of the rule which mitigates the damages in proportion to the plaintiff's misconduct, but does not decline to impose them at all, would work substantial justice between the parties."

Shearman and Redfield on the Law of Negligence, fifth edition, page 158, in speaking of this rule, say:

"This is substantially an adoption of the admiralty rule, which is certainly nearer ideal justice, if juries could be trusted to act upon it."

The United States has adhered much closer to the common-law doctrine of contributory negligence than the leading countries of Europe. The laws of England, Germany, and Italy go much further to discharge the employee from the responsibility of his own act than does the common-law doctrine of comparative negligence.

The laws of France, Switzerland, and Russia are in practical accord with the provisions of section 3 of this bill.

The rule provided for in this section is recognized to some extent in this country. Maryland and some of the other States have passed statutes seeking to divide the responsibility where both parties are guilty of negligence.

The provisions of this section are certainly just. What can be more fair than that each party shall suffer the consequences of his own carelessness? It certainly appeals more strongly to the fair mind than the proposition that the employee shall have no redress whatever, even though his injury is due mainly to the negligence of another. As a consequence of this legislation, we believe there will be fewer accidents. By the responsibility imposed, both parties will be induced to the exercise of greater diligence, and as a result the public will travel and property will be transported in greater safety.

The proviso in section 3 is to the effect that contributory negligence shall not be charged to the employee if he is injured or killed by reason of the violation, by the employer, of any statute enacted for the safety of employees. The effect of the provision is to make a violation of such a statute negligence per se on the part of the employer. The courts of some States have held this as a principle of the common law. Other States have enacted it into statute.

Section 4 provides, in effect, that the employee shall not be charged with the assumption of risk in case he is injured by reason of the violation by the employer of a statute enacted for the safety of employees. This section likewise makes the violation of such a statute negligence per se on the part of the employer, and is already the law in many of the States of the Union.

Section 5 renders void any contract or rule whereby a common carrier seeks to exempt itself from liability created by this act. Many of the States have enacted laws making void such contracts and regu-

lations, and, so far as we are informed, these statutes have been sustained by the courts. The following States have incorporated into their statutes language similar to the language contained in this bill on this question: Arkansas, California, Colorado, Florida, Georgia, Indiana, Iowa, Massachusetts, Minnesota, Mississippi, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oregon, South Carolina, South Dakota, Texas, Virginia, Wisconsin, and Wyoming. The supreme court of Ohio held that a contract exempting a railroad company from liability for injuries was void under the common law as against public safety. Likewise the supreme court of Arkansas and the court of appeals of Virginia have held the same doctrine. The courts of New York have held that such contracts, though based on a consideration, are void as against public policy. The statutes of Ohio and Iowa fixing the liability of employer to employees, containing provisions similar to this section, have been held constitutional by the Federal courts, although the cases in which these decisions were rendered did not expressly turn on that question. The courts of Alabama have held such contracts void, regardless of statute. In Georgia and Pennsylvania such contracts have been held valid, but since the decision in Georgia that State has adopted a statute making them void.

This provision is necessary in order to make effective sections 1 and 2 of the bill. Some of the railroads of the country insist on a contract with their employees discharging the company from liability for personal injuries.

In any event, the employees of many of the common carriers of the country are to-day working under a contract of employment which by its terms releases the company from liability for damages arising out of the negligence of other employees. As an illustration we quote one paragraph from a blank form of application for a situation with the American Express Company, and entitled "Rules governing employment by this company:"

"I do further agree, in consideration of my employment by said American Express Company, that I will assume all risks of accident or injury which I shall meet with or sustain in the course of such employment, whether occasioned by the negligence of said company or any of its members, officers, agents, or employees, or otherwise; and that in case I shall at any time suffer any such injury, I will at once execute and deliver to said company a good and sufficient release, under my hand and seal, of all claims, demands, and causes of action arising out of such injury or connected therewith or resulting therefrom; and I hereby bind myself, my heirs, executors, and administrators, with the payment to said express company, on demand, of any sum which it may be compelled to pay in consequence of any such claim or in defending the same, including all counsel fees and expenses of litigation connected therewith."

While many of the States have enacted statutes making such contracts void, yet the United States Supreme Court, there being no Federal statute on the subject, have held a similar contract valid in the case of Voigt *v.* Baltimore and Ohio Southwestern Railroad (176 U. S., p. 498). In this case the railroad company entered into a contract with an express company whereby it agreed to carry the business of the express company, to furnish it with cars and certain facilities over its road, and to carry its messengers, in consideration of which the express company agreed to save harmless the railroad company from all claim for damages for personal injury received by its employees, whether the injuries were caused by the negligence of the railroad company or otherwise.

Voigt entered the service of the express company as messenger, and by the contract of his employment he agreed to assume all the risk of accident and injury and to indemnify and save harmless the express company from all claims that might be made against it for injury he might suffer, whether resulting from negligence or otherwise, and to execute a release for the same.

Voigt was injured and sued. The court said:

"He was not constrained to enter into the contract whereby the railroad company was exonerated from liability to him, but entered into the same freely and voluntarily, and obtained the benefit of it by securing his appointment as such messenger, and that such a contract did not contravene public policy."

In the case of O'Brien *v.* C. and N. W. Ry. Co. (Fed. Rep., vol. 116, p. 502), which involved the statute of Iowa making such contracts invalid, the court said:

"That while such contracts would be effective to protect the railroad company from liability at common law, under such statutory provisions declaratory of the public policy of the State they were invalid and constituted no defense to an action against it for the death of the messenger occurring in the State of Iowa by reason of the wrecking of the express car in which he was employed, through the negligence and want of ordinary care of defendant or its servants, whether the messenger be regarded as an employee of the defendant or not."

This section of the bill, however, provides that the common carrier may set off against any claim for damages whatever it has contributed toward such insurance, relief benefit, or indemnity that may have been paid to the injured employee, which would seem to be entirely fair and all that ought to be required of the employee.

Some of the roads of the country have established what are called "relief departments," which seek to operate a species of insurances for the employee against the hazards of the employment, but, so far as we know, all their forms of contracts, used by these relief departments to insure the employee, discharge the company from every possible liability for personal injuries to the employee. This release is made by its terms of agreement in consideration of the contributions of the company to the relief fund.

The following is one of the paragraphs from the form of application for membership in the relief department used by the Baltimore and Ohio Railroad Company:

"I further agree that, in consideration of the contributions of said company to the relief department and of the guaranty by it of the payment of the benefits aforesaid, the acceptance of benefits from such relief feature for the injury or death shall operate as a release of all claims against said company, or any company owning or operating its branches or divisions, or any company over whose railroad, right of way, or property the said Baltimore and Ohio Railroad Company or any company owning or operating its branches or divisions shall have the right to run or operate its engines or cars or send its employees in the performance of their duty, for damages by reason of such injury or death which could be made by or through me; and that the superintendent may require, as a condition precedent to the payment of such benefits, that all acts by him deemed appropriate or necessary to effect the full release and discharge of the said companies from all such claims be done by those who might bring suit for damages by reason of such injury or death; and also that the bringing of such a suit by me, my beneficiary or legal representative, or for the use of my beneficiary alone or with others, or the payment by any of the companies aforesaid of damages for such injury or death recovered in any suit or determined by a compromise or any costs incurred therein, shall operate as a release in full to the relief department of all claims by reason of membership therein."

The form of application used by other companies are similar in terms to the one cited, and make acceptance of benefits from said fund a release of all claims for damages for injury or death.

By an act concerning common carriers engaged in interstate commerce and their employees, approved June 1, 1898, known as the "arbitration law," it is made a misdemeanor on the part of any employer subject to the provisions of that act—

"To require any employee or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, sociable, or beneficial purposes; to release such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of benefit arising from the employer's contribution to such fund."

The following is a copy of the bill as reported by the committee:

"[H. R. 20310, Sixtieth Congress, first session.]

"A bill relating to the liability of common carriers by railroad to their employees in certain cases.

"*Be it enacted, etc.*, That every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

"SEC. 2. That every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

"SEC. 3. That in all actions hereafter brought against any such common carrier by railroad to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided*, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

"SEC. 4. That in any action brought against any common carrier under or by virtue of any of the provisions of this act to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

"SEC. 5. That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this act, shall to that extent be void: *Provided*, That in any action brought against any such common carrier under or by virtue of any of the provisions of this act, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled thereto on account of the injury or death of which said action was brought.

"SEC. 6. That no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued.

"SEC. 7. That the term 'common carrier' as used in this act shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

"SEC. 8. That nothing in this act shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other act or acts of Congress, or to affect the prosecution of any pending proceeding or right of action under the act of Congress entitled 'An act relating to liability of common carriers in the District of Columbia and Territories, and to common carriers engaged in commerce between the States and between the States and foreign nations to their employees,' approved June 11, 1906."

We believe this bill meets the objections of the Supreme Court to the act of June 11, 1906, known as the "employers' liability act," in the case of Howard, administratrix, etc., *v.* Illinois Central Railroad Company et al.

Mr. STERLING. Mr. Speaker, I yield half a minute to the gentleman from New York [Mr. ALEXANDER].

Mr. ALEXANDER of New York. Mr. Speaker, I simply rise to correct the statement of the gentleman from Alabama [Mr. CLAYTON], my colleague on the committee. The membership of our committee is eighteen instead of seventeen, as he said, six Democrats and twelve Republicans. One Democrat was absent. The support of the Democrats present, therefore, was entirely unnecessary to report the bill favorably.

Mr. CLAYTON. But, Mr. Speaker, if the gentleman deducts the one who was absent, that would be eight out of sixteen.

Mr. ALEXANDER of New York. Eight out of seventeen you mean.

The SPEAKER. The time of the gentleman has expired. The Chair did not call to order the gentleman from New York, because the Chair had not called to order the gentleman from Alabama. It is clearly a violation of the rules to state what occurred in committee.

Mr. WILLIAMS. Mr. Speaker, I rise to a parliamentary inquiry. Is it out of order when a report of a committee has been made, and when minority reports have been made and filed in the House, to refer to them in a speech upon the floor? Is that subject to the objection that one is disclosing the secrets of the committee?

The SPEAKER. Committee reports are official, but it is out of order to state what transpired in the committee, and that is all the Chair held.

Mr. WILLIAMS. The gentleman from Alabama clearly referred to the fact that three Republicans signed reports against this bill. [Cries of "Regular order!"] Mr. Speaker, I ask for order. I can not talk to the Speaker while other gentlemen are talking.

Mr. PAYNE. Mr. Speaker, I ask for the regular order.

The SPEAKER. The gentleman rises to a parliamentary inquiry, and proceeds to make a speech——

Mr. WILLIAMS. I am not making a speech.

The SPEAKER. Touching a matter not before the House. He is, therefore, out of order.

Mr. WILLIAMS. Very well, then, I submit; but I never heard before that the minority reports constituted secrets of a committee.

Mr. LITTLEFIELD. Mr. Speaker, I yield the balance of my time to the gentleman from New Jersey [Mr. PARKER].

Mr. PARKER of New Jersey. Mr. Speaker, if the gentleman from Alabama, who referred to my minority views, had read those views, which he said he had not, he would have found that those minority views expressed a desire that this bill in certain respects should be made far stronger. Men who are engaged in hazardous occupations like railroading and mining, in my opinion, should be afforded a definite compensation in case of accident from any cause resulting from that hazardous occupation. Their rights should not be confined, as they are by this bill, to accidents occurring by reason of the negligence of their fellow-servants. On the other hand, I think the bill, as stated by the gentleman from Maine [Mr. LITTLEFIELD], must constitutionally be confined to accidents resulting from the hazardous occupation, and that the employer shall not be distinguished from other employers as to any sort of accident that occurs. There are great questions connected with this whole matter, great questions which ought to have been decided in this House in a long and careful consideration of the bill, wherein we could determine what should be best done, and wherein we would not have been forced to our present action by dilatory tactics, which have forced us to consider this bill under suspension of the rules. I shall vote for the bill. [Applause on the Republican side.] I shall vote for the bill in the hope that it will be amended before it is finally passed, so as to be constitutional and so as to go further in certain matters where it ought to go further.

The SPEAKER. The time of the gentleman has expired.

The dissenting views of Mr. PARKER of New Jersey are as follows:

As I remarked last year on the consideration of the act for employers' liability, lately declared unconstitutional, I sympathize deeply with the movement for a proper extension to an employee of the right to recover a fair compensation for accidents that occur in a dangerous occupation, employing hosts of men, whose negligence may cause irremediable personal injuries to each other. Some modification of the common law should be and will be provided in the various States. While such modification involves important questions as to how far employers should be liable to their employees for the acts of their fellow-servants, the degree of contributory negligence on the part of the person injured that should bar recovery, and the extent to which the contract of employment should govern, the strong considerations in favor of some relaxation of the strict rules of the common law as to such an occupation have caused the passage and amendment of numerous State statutes, in which experience is teaching how the good of the community may be best obtained.

The United States have a full and exclusive jurisdiction in this matter in its Territories and possessions and in the District of Columbia, and for this exclusive jurisdiction we should, if possible, pass a law.

In morals each man is responsible for his own acts and negligence and not for those of another. It is by a fiction of the law adopted for the protection of the community that the employer is held responsible to outsiders hurt by the negligence of his servants. Within the employment itself, as indeed in life, each man assumes all ordinary hazards and answers for what he does or fails to do. He assumes the dangers of his occupation, and no other rule could prevail in small trades where only a few hands are employed. Each must take his own risk.

It is difficult and generally dangerous to modify the rules of the common law, but it is a matter of general consent that some such modification must be attempted in the great and hazardous enterprises of modern times employing dangerous machinery and thousands of men, and that those who work in these enterprises should receive some sort of insurance against accident analogous to the plan by which a pension is given in case of death or disability in the Army or Navy. In most countries this has been done by a compensation act, allowing rates of compensation that are based upon the wage-earning power of the man injured, his expectation of life, and other circumstances, and are adjusted sometimes by pension and sometimes by a single payment. In occupations which are dangerous not only to the workmen, but to others, such as the carriage of passengers, it is against the policy of the law that the negligence of the employee should be wholly excused and, as it were, encouraged, and that he should receive full compensation for damages to himself caused by his own negligence, and yet the risks of such occupations are so constant, varying, and tremendous, the strain of the work is so intense, and human nature is so fallible that it has been in many States found advisable to excuse negligence when it is slight, but not when it is so gross that it seems, as it were, willful, and to allow fixed or limited compensation in the nature of insurance. These compensation acts do not in their essence establish a liability, but are rather in the nature of a mutual insurance, which the profits of the business will have to stand and which must be made up either by an increase of receipts or a decrease of expenses in wages or other lines. Such allowances in the case of accident are made by way of part compensation. In some cases this result has been obtained by the voluntary action of the employer, as in the case of the Krupp Gun Works in Germany; it is more or less secured by means of accident insurance companies and voluntary beneficial associations; it has been attempted with more or less success in agreements between employer and employee, sometimes voluntary and sometimes compulsory, and, as above stated, it has become in many States and countries a matter of careful legislative provision. We must all sympathize with every endeavor in some measure to provide against the accidents of hazardous occupations if thereby we can avoid litigation and settle the amount which should be allowed in each particular case at such sum as will be a fair compensation without encouraging negligence or going beyond the ability of the business to stand.

I. To come to this specific bill, dealing with the hazardous occupation of railroading, it does not seem to me properly to meet the requirements above stated, even as to the territory entirely within United States jurisdiction.

1. It limits compensation to cases of injury by the negligence of coemployees, or defects of machinery, and does not provide for the ordinary hazards and accidents of a hazardous occupation, which are the real reason for making railroads an exception to the ordinary rule.

2. It does not limit recovery to accidents while actually engaged in this hazardous occupation, and the act is likely to be held unconstitutional because in many decisions the difference of hazard is held to be the only ground for any different rule as to master and servant.

3. It leaves the amount of compensation utterly undefined, to the encouragement of litigation and speculative claims.

4. It establishes a rule as to the division of damages in case of contributory negligence, which seems utterly unpractical.

5. It makes void all arrangements for settlement of such insurance as between employer and employee, and such systems, however much abused in the past, are susceptible of great good and should be regulated rather than abolished.

In my opinion section 2 should apply to all accidents, from whatever cause, occurring in the actual operation of the railroad to employees engaged in such operation. The cause of the accident should not be a matter of dispute, and the amount to be recovered by way of pension during temporary disability, or damages for permanent disability or death, should be limited so as to bear some relation to the wage of the employee.

The subject is of no small importance, even as to the exclusive jurisdiction of the United States, which contains large railroad mileage, and the settlement of these principles in this bill must bear upon future legislation as to mines, Government navy-yards, machine shops, and great enterprises like the Panama Canal, where tens of thousands of men, of various races and degrees of intelligence, are working together in a hostile climate. The subject is too complicated for me or anyone else to be sure that his views are right, but it is too important for any legislation to be passed which is manifestly imperfect. It is better to do nothing than to create any system where most of the money paid shall go into the profits of an insurance company or legal expenses or to pass a law which may be held unconstitutional.

II. With reference to territory not within the exclusive jurisdiction of the United States, and the mutual relations of employees and employers engaged in interstate commerce, I have seen no cause to change my opinion, as expressed upon the bill that was held unconstitutional by the Supreme Court. I believe that the question should be left to the law of the State having jurisdiction of the employment, and that the jurisdiction of the contract of service should not be made national because the employer is engaged in interstate commerce. My opinion, as expressed then, was as follows:

"The questions as to how far employers should be liable to their employees for the acts of fellow-servants, the degree of contributory negligence on the part of the person injured that should bar a recovery, and the extent to which the contract of employment should govern, are of the utmost importance, and the considerations in favor of a relaxation of the strict rules of the common law have caused the passage and amendment of numerous State statutes, under which experience is teaching how the good of the community may be best obtained.

"But these questions should be governed by the law of the State having jurisdiction of the employment, and the jurisdiction of the contract of service should not be made national because the employer is engaged in interstate commerce. The attempt to pass such a law will cause inextricable confusion as to where the State and national law should govern, especially in the case of local employees. It will abolish the advantage of practical experience, testing the value of the various State provisions, and the plaintiff will be sent to the distant, crowded, and expensive forum of United States courts, and the cause of the employee is more likely to be hurt thereby than aided by anything contained in this bill."

I sympathize with proper expansion of the right of an employee to recover for accidents in a dangerous occupation, employing hosts of men whose negligence may cause irremediable personal injury to each other; but I think this modification of the common law should and will be provided by the various States and that this bill will be an injury to those that it attempts to benefit. It is a question whether we can legislate as to all employees, as, for example, if a couple of men are shoveling dirt into a railroad car and one happens to hit the other with a shovel. But even in the most pitiful cases of injury it will not help the parties that the railroad should have the right to remove the suit

to a United States court, and thereby to take that suit to a distant court with a crowded calendar which may not be called for years. Pass this bill and it would add 20,000 cases in the United States courts and subject plaintiffs to appeals to the United States courts of appeal which, if these cases be added, might take ten years. I do not believe in that legislation which will cause this result, and I doubt also whether it be constitutional to take all questions between employer and employee away from the State.

Mr. Speaker, there is no contract, except perhaps that of marriage, which goes deeper into those personal rights of man and man which are reserved to the States than the contract of employment and the rights as between employer and employee, as well as the right of suit for personal injury caused by the negligence of another. I can not believe that it is for the benefit of the people of the United States that the jurisdiction of the States over these matters should be infringed. I doubt whether the power to regulate interstate commerce carries with it the power to change this relation between employer and employee. If it be so, and if this were the best bill in the world, the confusion that would take place on a railroad which does some of its business outside of a State and some of its business inside of a State would be inextricable. It would lead to various decisions, varying judgments, and to difficulties which would not tend to the benefit of those whom this legislation attempts to benefit. I therefore am opposed to this legislation, believing that all these questions are being worked out in the various States by various statutes; that the best statute will prove its right to remain, and that the worst will be amended so as to be like the best.

I repeat, that the attempt to pass such a law will cause inextricable confusion as to where the State and national law should govern, especially in the case of local employees. The Supreme Court in their opinion seem to limit any right to employees engaged in interstate commerce at the time of the injury, and possibly to those who are injured by other employees likewise so engaged. The opinion seems to exclude so many cases that there is almost nothing left. I quote from their decision:

"* * * Take a railroad engaged in interstate commerce, having a purely local branch operated wholly within a State. Take, again, the same road having shops for repairs, and it may be for construction work, as well as a large accounting and clerical force, and having, it may be, storage elevators and warehouses, not to suggest besides the possibility of its being engaged in other independent enterprises. Take a telegraph company engaged in the transmission of interstate and local messages. Take an express company engaged in local as well as interstate business. Take a trolley line moving wholly within a State as to a large part of its business and yet as to the remainder crossing the State line.

"As the act thus includes many subjects wholly beyond the power to regulate commerce * * *."

There can be no advantage to the employee in creating so many subjects of litigation as to where the State law should govern and where the United States law, nor in providing Federal questions in each case which will enable appeals to be taken to the United States Supreme Court. I want to aid the many thousands of honest Americans who are working upon our railroads. I think that the United States in its sphere and the various States in theirs should pass statutes granting definite relief in case of accident in such dangerous occupation as work on railroads and in mines. This bill does not cover these hazards, but only part of them. It is not confined to these hazards, but includes others, and the relief provided is not definite, but by uncertain suits on new and uncertain principles for unliquidated damages. I regret that the bill does not come into the House in proper shape. It is to be hoped that this or some measure may be so perfected in the House or in the Senate as to really meet the demands of the time.

RICHARD WAYNE PARKER.

Mr. STERLING. Mr. Speaker, how much time have I remaining?

The SPEAKER. Three minutes and a half.

Mr. STERLING. Mr. Speaker, I yield that time to the gentleman from Ohio [Mr. KEIFER].

Mr. KEIFER. Mr. Speaker, I shall vote for this bill with some mental reservations. As I recollect now, I am the only Member of the House here who spoke and voted in the Fifty-ninth Congress against the employers' liability bill, and I had the good fortune, though without having time for reflection, to then state substantially every ground upon which that bill was declared unconstitutional by the Supreme Court of the United States. That is my justification for thus speaking and voting then. Now, an honest attempt has been made by the Committee on Interstate and Foreign Commerce to make this bill constitutional, and I believe that the first section of the bill standing alone will be held to be constitutional. I also believe that unless the third section of the bill is amended before it becomes a law, it is baldly unconstitutional, as was the other bill, for it applies generally to injuries and requires damages against a railroad, although not suffered while the employee was engaged in interstate commerce. That, I hope, will be amended somewhere before the bill becomes a law. I also have an objection——

Mr. STERLING. Will the gentleman permit a question? Do you say you get that proposition from this bill?

Mr. KEIFER. Absolutely from this bill.

Mr. STERLING. I submit that it is not there; it is expressly limited in the words of the Supreme Court and says, "while such common carrier is engaged in interstate commerce."

Mr. KEIFER. Then the print you have is different from the print I have.

Mr. STERLING. That is in all the prints, every one that has been made, and it says that the servant of the common carrier must be injured while he is employed by such carrier in such commerce in order to entitle him to recover.

Mr. KEIFER. But the gentleman refers to section 1 of the bill. The language he has just quoted is not in section 3 of the bill. Section 3 says:

That in all actions hereafter brought against any such common carrier by railroads to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, etc.

And there are no words in section 3 which relate to the injuries resulting while the common carrier is engaged in interstate commerce. Section 1 of the bill is properly limited to damages incurred by an employee while engaged in interstate commerce; not so in the section relating to contributory negligence.

Mr. STERLING. Now, will the gentleman yield to another statement?

Mr. KEIFER. Yes; but my time is very short.

Mr. STERLING. The very first line says, "that every common carrier by railroad while engaged in commerce."

Mr. DIEKEMA. And then says, "such common carrier."

Mr. KEIFER. That is in section 1, but I am reading from section 3.

Mr. STERLING. It says, "such common carrier," limiting it to the same common carrier.

Mr. KEIFER. Mr. Speaker, if I had the time——

Mr. HENRY of Texas. Perhaps the gentleman has a last year's bird's nest that is causing the trouble.

Mr. KEIFER. Well, that is a very cheap, weak thing with which to take up a Member's time when he only has about four minutes.

Mr. HENRY of Texas. Well, I take it back, then.

Mr. KEIFER. I objected before, not on constitutional grounds, to the other bill, but I criticised it because it undertook to make a law relating to actions against common carriers that applied in State courts, which would drive every one of those cases from the State courts by petitions for removal, to the Federal courts where the employees can not afford to go——

The SPEAKER. The time of the gentleman has expired.

Mr. STERLING. Has the time been exhausted on both sides of the House?

The SPEAKER. It has.

Mr. STERLING. I ask unanimous consent for leave for all Members to print on the subject-matter of this bill for three days.

The SPEAKER. The gentleman from Illinois asks unanimous consent for leave of Members to print on the subject-matter of this bill for three days.

Mr. WILLIAMS. Mr. Speaker, I object.

The SPEAKER. The gentleman from Mississippi objects.

Mr. STERLING. Mr. Speaker, I call for a vote.

Mr. SULZER. The ayes and noes, Mr. Speaker.

The SPEAKER. The gentleman from New York demands the yeas and nays.

The yeas and nays were ordered.

The question was taken, and there were—yeas 302, nays 1, answered "present" 7, not voting 79, as follows:

YEAS—302.

| | | | |
|---|---|---|---|
| Adair | Calder | Ellis, Mo. | Hamill |
| Adamson | Calderhead | Ellis, Oreg. | Hamilton, Mich. |
| Aiken | Caldwell | Englebright | Hamlin |
| Alexander, Mo. | Campbell | Esch | Hammond |
| Alexander, N. Y. | Candler | Fassett | Harding |
| Allen | Capron | Favrot | Hardy |
| Ames | Carlin | Ferris | Harrison |
| Ansberry | Carter | Fitzgerald | Haskins |
| Anthony | Cary | Flood | Haugen |
| Ashbrook | Caulfield | Floyd | Hawley |
| Barclay | Chaney | Focht | Hay |
| Bartholdt | Chapman | Fornes | Heflin |
| Bartlett, Ga. | Clark, Mo. | Foss | Helm |
| Bartlett, Nev. | Clayton | Foster, Ill. | Henry, Conn. |
| Bates | Cockran | Foster, Ind. | Henry, Tex. |
| Beale, Pa. | Cocks, N. Y. | Foster, Vt. | Higgins |
| Beall, Tex. | Conner | Foulkrod | Hill, Conn. |
| Bede | Cook, Colo. | Fowler | Hill, Miss. |
| Bell, Ga. | Cook, Pa. | Fuller | Hitchcock |
| Bennet, N. Y. | Cooper, Tex. | Fulton | Hobson |
| Birdsall | Cooper, Wis. | Gaines, Tenn. | Holliday |
| Bonynge | Cox, Ind. | Gaines, W. Va. | Houston |
| Booher | Cravens | Gardner, Mass. | Howell, N. J. |
| Boutell | Crawford | Gardner, Mich. | Howell, Utah |
| Bowers | Crumpacker | Garner | Howland |
| Boyd | Cushman | Garrett | Hubbard, Iowa |
| Bradley | Dalzell | Gillespie | Hubbard, W. Va. |
| Brodhead | Darragh | Gillett | Huff |
| Broussard | Davidson | Goebel | Hughes, N. J. |
| Brownlow | Davis, Minn. | Gordon | Hull, Iowa |
| Brumm | Dawson | Goulden | Hull, Tenn. |
| Brundidge | Denby | Graham | Humphrey, Wash. |
| Burgess | Denver | Granger | Humphreys, Miss. |
| Burke | Diekema | Greene | James, Ollie M. |
| Burleigh | Dixon | Gregg | Jenkins |
| Burleson | Douglas | Griggs | Johnson, S. C. |
| Burnett | Draper | Hackett | Jones, Va. |
| Burton, Ohio | Driscoll | Hackney | Jones, Wash. |
| Butler | Dwight | Haggott | Kahn |
| Byrd | Ellerbe | Hale | Keifer |

| | | | |
|---|---|---|---|
| Kelliher | Macon | Pujo | Steenerson |
| Kennedy, Iowa | Madden | Rainey | Stephens, Tex. |
| Kennedy, Ohio | Madison | Randell, Tex. | Sterling |
| Kinkaid | Malby | Ransdell, La. | Stevens, Minn. |
| Kitchin, Claude | Mann | Rauch | Sturgiss |
| Knopf | Marshall | Reeder | Sulloway |
| Knowland | Maynard | Reid | Sulzer |
| Kustermann | Miller | Richardson | Tawney |
| Lafean | Moon, Tenn. | Roberts | Taylor, Ala. |
| Lamar, Mo. | Moore, Pa. | Robinson | Taylor, Ohio |
| Lamb | Moore, Tex. | Rodenberg | Thistlewood |
| Landis | Morse | Rothermel | Thomas, N. C. |
| Langley | Mouser | Rucker | Thomas, Ohio |
| Laning | Mudd | Russell, Mo. | Tirrell |
| Lassiter | Murdock | Russell, Tex. | Tou Velle |
| Law | Murphy | Ryan | Underwood |
| Lawrence | Needham | Saunders | Volstead |
| Leake | Nelson | Scott | Vreeland |
| Lee | Nicholls | Shackleford | Waldo |
| Legare | Norris | Sheppard | Wallace |
| Lewis | Nye | Sherley | Wanger |
| Lindbergh | O'Connell | Sherwood | Washburn |
| Lloyd | Olcott | Sims | Watkins |
| Longworth | Olmsted | Slayden | Watson |
| Loud | Overstreet | Slemp | Weeks |
| Loudenslager | Padgett | Small | Weems |
| Lovering | Page | Smith, Cal. | Wiley |
| Lowden | Parker, N. J. | Smith, Iowa | Williams |
| McCreary | Parsons | Smith, Mich. | Wilson, Ill. |
| McGuire | Patterson | Smith, Tex. | Wolf |
| McKinlay, Cal. | Payne | Snapp | Wood |
| McKinley, Ill. | Pearre | Southwick | Woodyard |
| McLachlan, Cal. | Perkins | Sparkman | Young |
| McLain | Peters | Sperry | The Speaker |
| McLaughlin, Mich. | Pou | Stafford | |
| McMillan | Pray | Stanley | |

NAYS—1.

Littlefield

ANSWERED "PRESENT"—7.

| | | | |
|---|---|---|---|
| Cousins | Hamilton, Iowa | Lever | Prince |
| Currier | Hardwick | McGavin | |

NOT VOTING—79.

| | | | |
|---|---|---|---|
| Acheson | Edwards, Ga. | Jackson | Parker, S. Dak. |
| Andrus | Edwards, Ky. | James, Addison D. | Pollard |
| Bannon | Fairchild | Johnson, Ky. | Porter |
| Barchfeld | Finley | Kimball | Powers |
| Bennett, Ky. | Fordney | Kipp | Pratt |
| Bingham | French | Kitchin, Wm. W. | Reynolds |
| Brantley | Gardner, N. J. | Knapp | Rhinock |
| Brick | Gilhams | Lamar, Fla. | Riordan |
| Burton, Del. | Gill | Lenahan | Sabath |
| Clark, Fla. | Glass | Lilley | Sherman |
| Cole | Godwin | Lindsay | Smith, Mo. |
| Cooper, Pa. | Goldfogle | Livingston | Spight |
| Coudrey | Graff | Lorimer | Talbott |
| Craig | Gronna | McCall | Townsend |
| Davenport | Hall | McDermott | Webb |
| Davey, La. | Hayes | McHenry | Weisse |
| Dawes | Hepburn | McKinney | Wheeler |
| De Armond | Hinshaw | McMorran | Willett |
| Dunwell | Howard | Mondell | Wilson, Pa. |
| Durey | Hughes, W. Va. | Moon, Pa. | |

So, two-thirds having voted in favor thereof, the rules were suspended and the bill was passed.

The Clerk announced the following additional pairs:

Until further notice:

Mr. COUSINS with Mr. HOWARD.

Mr. REYNOLDS with Mr. CLARK of Florida.

Mr. TOWNSEND with Mr. MCDERMOTT.

Mr. MCCALL with Mr. SABATH.

For the balance of the day:

Mr. GILHAMS with Mr. WILLETT.

Mr. BURTON of Delaware with Mr. HARDWICK.

Mr. PEARRE with Mr. GILL.

Mr. GRAFF with Mr. WEISSE.

Mr. COLE with Mr. JOHNSON of Kentucky.

Mr. GAINES of West Virginia. Mr. Speaker, my colleague from West Virginia [Mr. HUGHES] is absent. I am informed if he was present he would vote "aye."

The result of the vote was announced as above recorded.

RAILROAD PASSES AND FREE TRANSPORTATION.

Mr. STEVENS of Minnesota. Mr. Speaker, I move that the rules be suspended and that the bill S. 4260 be put upon its passage.

The CHAIRMAN. The gentleman from Minnesota moves to suspend the rules and pass the bill which the Clerk will report.

The Clerk read as follows:

An act (S. 4260) to amend an act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June 29, 1906.

*Be it enacted, etc.*, That paragraph 4 of section 1 of an act entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June 29, 1906, be amended so that said paragraph as so amended will read as follows:

"No common carrier subject to the provisions of this act shall, after January 1, 1907, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of Railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge and boards of managers of such Homes; to necessary care takers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitations: *Provided further*, That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than $100 nor more than $2,000, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an act entitled 'An act to further regulate commerce with foreign nations and among the States,' approved February 19, 1903, and any amendment thereof."

The SPEAKER. Is a second demanded?

Mr. WILLIAMS. Mr. Speaker, in order to have an explanation of the bill, I demand a second.

Mr. STEVENS of Minnesota. Mr. Speaker, I ask unanimous consent that a second may be considered as ordered.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. The gentleman from Minnesota [Mr. STEVENS] is entitled to twenty minutes and the gentleman from Mississippi [Mr. WILLIAMS] to twenty minutes.

Mr. STEVENS of Minnesota. Mr. Speaker, this is a bill to amend the rate law as to the pass provision by extending somewhat the exceptions, allowing the issuance of passes to the railroad employees. The law as it now stands provides that passes may be issued by common carriers by railroad to the officers, agents, and employees of such common carriers and their families. That is the law as it stands now and has existed for more than twenty years. This measure amends that provision by adding the second proviso on page 3 of this bill, which reads as follows, and I will read the only change that this bill makes in the present law:

*Provided further*, That the terms "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of any such common carrier.

That is the only change in the existing law made by this bill. You will note that there are substantially four different classes of persons added by this provision—first, the term "employees" shall include "furloughed, pensioned, and superannuated employees." My own impression is that all those are already covered by the present law if it be fairly and liberally construed.

Mr. COX of Indiana rose.

The SPEAKER. Does the gentleman yield?

Mr. STEVENS of Minnesota. I yield.

Mr. COX of Indiana. The railroad men in my district, I may state, have been requesting that this law be amended along this line to permit employees who are really out of a job, or work——

Mr. STEVENS of Minnesota. I will come to that in a moment, if the gentleman will just allow me.

Mr. COX of Indiana. Very well.

Mr. STEVENS of Minnesota. The first provision, as I said, covers furloughed, pensioned, and superannuated employees, which, I think, is covered by the present law. The second provision is for persons who have become disabled or infirm in the service of any such common carrier. My own impression is that this class also might be covered by a liberal construction of the present law; but this line makes certain what before was doubtful. The third provision is as to the "remains of a person killed in the employment of a common carrier." That is not covered by existing law, and no one can doubt that it ought to be. There needs to be no further argument on that proposition. Now, the fourth provision is the one mentioned by the gentle-

man from Indiana [Mr. Cox], namely, "ex-employees traveling for the purpose of entering the service of any such common carrier."

The reason for that is this: In different sections of the country there is a much larger business at one time of the year than in another. For example, in the Southwest men may be employed in the spring or in the late fall, and out of employment in the middle of the summer, and the railroad men would then travel from the Southwest to the Northwest and the Northeast, where they could find ample employment during the summer. This is desirable for the men themselves. It is also desirable for the railroads. It is desirable for the localities in which those railroads operate, because it enables those roads to give the best possible service to the public.

Mr. CRUMPACKER. Will the gentleman answer a question?

Mr. STEVENS of Minnesota. I yield to the gentleman from Indiana.

Mr. CRUMPACKER. The provision the gentleman is now discussing, I understand, is limited to ex-employees of the road or the carrier that is authorized to give the pass. Would not that be the construction? What I would like to know is, if an ex-employee of another common carrier could receive a pass in going to seek employment from a road he never has worked upon—a carrier he has never worked for?

Mr. STEVENS of Minnesota. Mr. Speaker, of course the word "ex-employees," in line 13 of the bill, is not particularly limited except as it may refer to the word "employees," in line 3 of the bill. Now, a practical construction of that would be that the railroad would only issue passes to any railroad employees upon a card or certificate that would satisfactorily show that these men were such employees. In practice this is always carefully guarded both by the carriers and by the railroad men themselves. Now, whether or not it would be confined to employees of the railroad issuing the pass, I confess that I have some doubt; but there would be required a satisfactory identification of the man as being an ex-employee of a common carrier to entitle him to have any courtesy from the initial carrier.

Mr. CRUMPACKER. In my judgment the Interstate Commerce Commission, and perhaps the courts, would limit the issue of passes under that provision to ex-employees of the carrier that proposed to issue the pass.

Mr. STEVENS of Minnesota. The only limitation would be by construing it in connection with the words "employees of common carriers," in line 3, and that is not clear as to whether the employees outside of the carrier issuing the pass would be included.

Mr. PADGETT. May I ask the gentleman a question about line 13, where it says "for the purpose of entering the service of such common carrier?" Does not the word "such" limit it?

Mr. STEVENS of Minnesota. It limits it to the common carriers described in this bill—railroads, not steamboats or stagecoaches.

Mr. PADGETT. Would it not have a tendency to limit it to the common carrier issuing the pass?

Mr. STEVENS of Minnesota. No; I think not, Mr. Speaker. My own impression is that it would not work that way. My own impression is that it would work this way: That a railroad man, being an ex-employee, an engineer, who desired employment, applying to a Southwestern road, seeking to go to the Northeast, belonging to some railroad organization or some employment agency of them, and being identified by some of the known employees as in the former service of some carrier by those who knew him, who would personally identify him before an officer of the company, that he would then be given the courtesy provided by this amendment.

Mr. KEIFER. If the gentleman will allow me to state a case, I will ask him whether the bill covers it? It is common for all railroads who have to let contracts for the building of bridges, and perhaps other structures, for the contractor who hires his people to do his work and his machinery—part of it heavy—to have it carried out to the place. Now, does the bill allow the railroad to carry the employees of the contractor who is going to perform that work on their own line of road?

Mr. MANN. That is now authorized by a ruling of the Commission.

Mr. KEIFER. It is not authorized under the former law, because I had a case arising in my own State where the contractor hired his people and took them to Cincinnati, and paid their fare, and they ran away after they had gone down there, and he had to go elsewhere to get more people.

Mr. STEVENS of Minnesota. I think they have changed their ruling on that subject. That would not be covered by this amendment.

Mr. KEIFER. Well, it ought to be covered by it.

Mr. PERKINS. I would like to ask the gentleman a question.

Mr. STEVENS of Minnesota. I yield to the gentleman.

Mr. PERKINS. I would like to ask this question: Suppose a man who had been an employee, say, of the New York Central Railroad, who has become superannuated and is a pensioned employee. Under the provisions of the bill, could he receive a pass from the New York Central? Suppose he wanted to go from Albany to Chicago, could he also receive a pass over the Lake Shore Road, or would this apply only to the company of which he was a superannuated employee?

Mr. STEVENS of Minnesota. The present provision only covers an issue of the pass on the line to whom the application is made. But there is a provision of the act of 1887 which allows an interchange of passes, which has never been changed by any subsequent legislation.

Mr. PERKINS. So that would cover such a case.

Mr. STEVENS of Minnesota. That would cover that case.

Mr. COX of Indiana. I desire to ask the gentleman a question simply for information. I am for his bill and the amendment as presented here. Is it the judgment of the committee that it must be either an employee or ex-employee, or would it be broad enough to allow the issuing of a pass to one who is seeking employment?

Mr. STEVENS of Minnesota. No. This is very clear. The man must either have had previous employment or be an ex-employee of the common carrier, coming under the provisions of this general bill. Now, Mr. Speaker, these four classes——

Mr. MONDELL. I would like to ask the gentleman a question.

Mr. STEVENS of Minnesota. I yield to the gentleman.

Mr. MONDELL. I should like to know whether the Committee discussed the advisability of allowing passes to be given to employees of contractors of a railroad company to a work going to be carried on, along the line of the inquiry of the gentleman from Ohio?

Mr. STEVENS of Minnesota. Yes; we did discuss that, and we discussed a good many other propositions in connection with the pass provision, but we did not think, on the whole, that it was wise to amend the bill as it stands now.

Mr. MONDELL. My understanding is that the railroad companies desire to have authority to carry the employees of those with whom they make contracts for construction and repairs. Is that not true?

Mr. STEVENS of Minnesota. Yes, there is no question about the advisability of it from their standpoint.

Mr. MONDELL. What objection would there seem to be to legislation of that character?

Mr. STEVENS of Minnesota. We did not care to extend these exceptions to the pass law any further than was necessary right now, and as I have said, practically the only extension of this bill is the one that I have just gone over. That is the real substance of this bill.

Mr. WILLIAMS. And their families go, too.

Mr. STEVENS of Minnesota. Yes.

Mr. KEIFER. This is the Senate bill.

Mr. STEVENS of Minnesota. Yes; this is the Senate bill.

Mr. KEIFER. We have not amended it at all.

Mr. STEVENS of Minnesota. The gentleman from Mississippi [Mr. WILLIAMS] asks if the families go, too, and I say, yes. The remaining four lines of the amendment cover the families of these various classes that I have named, as well as the families of persons killed while in the service. Up to this time the families of killed employees were obliged to pay fare, and we thought it only an act of common humanity to allow them to be carried free under this provision.

Mr. Speaker, I reserve the balance of my time.

Mr. WILLIAMS. I yield four minutes to the gentleman from Missouri [Mr. HACKNEY.]

Mr. HACKNEY. Mr. Speaker, I will address myself to the paragraph that is found on page 3, lines 15, 16, and 17. I very much regret that this bill does not go further in extending the benefits to the families of deceased employees. It does go to the extent of allowing transportation to be issued to the families of those persons who are killed in the service, but I presume almost every Member on the floor of this House has in mind some instance where a man has given his life to the service of a railroad company in some capacity that did not necessarily draw him onto the road all of his time whose death was not caused by any casualty, and at the end of his life has left his family practically helpless, and the widow and the minor children are at present barred from the benefits of this privilege.

At the opening of this Congress I introduced a bill to extend the exemption to the widow during her widowhood and to the

minor children of any deceased employee. It seems to me that provision ought to have been engrafted in this bill, and I should like to request unanimous consent now to add an amendment of that kind to this bill. Of course I recognize that it can not be done except by unanimous consent.

In my own district I know of three cases, one particularly of a division superintendent who gave his life to the service of the railroad company, who left his family helpless, and his widow, who had been in the habit of going over the line the greater part of her married life, is unable to go with her little children on the road now without paying fare. The sentiment there in that community is very much in favor of the amendment I suggest. I would not vote against this bill, because I believe it goes far to meet cases that address themselves to the favorable consideration of this legislative body in every section of the country, but I regret that I can not get the provision extended in the direction I suggest. I now renew the request that I be allowed to offer that amendment, to extend this proviso by adding, after the word "carrier," in lines 16 and 17, the words "and the widow during widowhood, and minor children of any deceased employee of such carrier."

Mr. STEVENS of Minnesota. Mr. Speaker, I very much regret that I must object, but the committee does not think it wise that this bill should be amended.

The SPEAKER. What was the request of the gentleman?

Mr. HACKNEY. A request for unanimous consent to amend the bill; and the gentleman from Minnesota has said he could not consent to it. I am not quarreling with the gentleman, but I regret that he can not see his way clear to go to that extent. I think the bill is good as far as it goes. I favor it for what it does, but I regret that we can not go a little further.

Mr. WILLIAMS. I now yield five minutes to the gentleman from Illinois [Mr. MANN].

Mr. MANN. Mr. Speaker, the Committee on Interstate and Foreign Commerce, as well as the other Members of the House and Senate, are constantly besieged with propositions to change the existing pass prohibition in the rate law. Up to the present time neither the Committee on Interstate Commerce of the Senate nor the committee of the House having jurisdiction have been willing to make any report upon any bill which will change the existing provisions, except the bill now before the House.

When the rate law went into effect containing the prohibition against granting passes, it was the expectation that the railroad employees, themselves dependent upon the railroads for their livelihood, might properly be granted free transportation. It was not one of these cases where the railroads grant something to somebody entirely disconnected with the railroad service, but is something in the way of compensation given by the railroad to the employee.

The pending bill, including the item which has been explained so well by the gentleman from Minnesota [Mr. STEVENS], has been prepared and presented by the railroad employees in the country. The gentleman from Missouri [Mr. HACKNEY] thought that something ought to be added. In my judgment, the provision which he refers to is now in the bill, but if it be not in the bill, then the bill as it stands is asked for by the railroad employees. After this bill had passed the Senate the gentleman representing the Conductors' Association and gentlemen representing other associations appeared before our committee and there, so far as they were concerned, asked that this bill might be reported and passed as it now stands, without the crossing of a "t" or the dotting of an "i."

Mr. COX of Indiana. Will the gentleman yield?

Mr. MANN. I will yield to the gentleman for a question.

Mr. COX of Indiana. Suppose an ex-employee starts from New York to San Francisco in the West seeking employment; does the gentleman believe that this bill is broad enough to allow the road to issue a pass to him?

Mr. MANN. I do not know. I have read the section in the bill three or four times and I do not know. It is like all legislation prepared outside of this body. I do not know. I shall vote for the bill on the same theory that I voted for the employers' liability bill—nobody knows whether it is constitutional or not. I doubt if anybody can read the employers' liability bill and tell what it means. I am sure nobody can tell exactly what this means, but in the main it covers the question. It is in the form that the gentlemen asked for it. If this be enacted into law it covers almost every case that can arise. If it shall be construed that it does not cover the case referred to by the gentleman from Indiana [Mr. Cox] and Congress wishes to cover it, it can be done hereafter.

I have been in this body too long to believe that it is possible to enact perfect legislation. I have never seen a bill passed here that did not require construction, amendment, or repeal, and I never expect to. Now, we have not gone outside of the question of employees and their families. There are other classes that properly might be granted passes and exchange of service. These matters are still under consideration by the committee, but in view of the attitude of the Interstate Commerce Commission, properly enough, in construing the law, we thought that the railroad companies might be permitted as a part of the compensation to grant passes to their employees and their families.

Mr. COOPER of Wisconsin. Will the gentleman yield for a question?

Mr. MANN. Certainly.

Mr. COOPER of Wisconsin. In the original act does there appear the word "agents," in line 7, page 2?

Mr. MANN. There is no change in the law whatever in this bill except the insertion, on page 3, of the proviso beginning on line 7, down to the word "carrier," in lines 16 and 17. That is added to the law, but there is no other change in the law.

Mr. GAINES of Tennessee. Will the gentleman yield for a question?

Mr. MANN. I will yield to the gentleman.

Mr. GAINES of Tennessee. It says "attorneys at law." It does not say the road's attorneys.

Mr. MANN. That is existing law. We have not amended that provision in regard to anybody except certain classes of railroad employees.

The SPEAKER pro tempore. The time of the gentleman from Illinois has expired.

Mr. WILLIAMS. Mr. Speaker, I now yield five minutes to the gentleman from Kentucky [Mr. SHERLEY].

Mr. SHERLEY. Mr. Speaker, so far this day has been given, and wisely given, to legislation touching the status of railroad employees of the country. It is to me a matter of extreme regret that bills as important as the one just preceding this should have been considered under a suspension of the rules when debate was limited to twenty minutes on a side and no amendment was in order.

Somewhat of what the gentleman from Illinois has stated, I agree to. Some of it, however, I agree to not as a necessary condition of legislation in Congress, but as a present condition brought about by the way we do legislate, not by the way we ought to or have to legislate. I should like to have called attention in the consideration of the previous bill to the fact that it does not deal, except in a very limited way, with one of the most iniquitous legal rules which, while logical from the standpoint of the logician, is brutal from the standpoint of the humanitarian, and that is the doctrine of assumed risk.

We have just passed a law which provides that the employee shall not be held to have assumed a risk relative to any matter where a statute requires the railroad to do some special thing looking to the safety of employees, but it leaves in full force and effect the doctrine of assumed risk as to other matters not covered by statute. Let me illustrate how harsh that rule is by citing a leading case in Kentucky. The case was that of an Irishman who was working on the stonework of a bridge over the Ohio River. He was wheeling in a wheelbarrow stone over a narrow plank walk one or two feet wide. He went to his boss and said to him, "This is a dangerous plank, a man is liable to be overweighted and thrown into the river and drowned." The boss answered him, "If you don't like your job, you can quit." He went back to work. Within a few hours what he had predicted did happen. The stone overweighted him and he was thrown into the river below and drowned. Upon suit being brought the court held, and rightly held according to that rule, that he had assumed the risk and that his personal representative could not recover. That is good law, but it is barbarous justice. [Applause.] I would like to have seen the employers' liability bill do away with such a rule. I would like to have seen the proper discussion of one of the phrases in the first paragraph of that bill. I do not believe that we are so cramped for time that we can not afford to give a proper consideration to important matters. If we had properly considered the employers' liability bill in the first instance, we would never have had to repass it now. If we had not waited three months since the decision of the Supreme Court before we have a bill presented to us for consideration now, we would not have to put it through under suspension of rules. [Applause on the Democratic side.] I could not let the opportunity pass without making my protest against the unnecessary way that we are legislating upon important matters. I had rather Congress would pass two or three bills that constitute a real equity, that reform a real evil, fully, completely, and constitutionally, than that we should try to humbug the public and the voters by passing through half-baked, undigested legislation. [Applause.]

Mr. WILLIAMS. Mr. Speaker, I now yield three minutes to the gentleman from Texas [Mr. RANDELL].

Mr. RANDELL of Texas. Mr. Speaker, I wish to add my voice to the protest against passing legislation like this bill in the manner in which it is being passed. There is no opportunity to amend it. It must be rushed through in this manner because the Republican management in this House says it must be done, with only twenty minutes to discuss it and no opportunity to improve it. In reference to the granting of passes prohibited in this bill, the guilty party is denounced and punished by a fine of not less than $100 nor more than $2,000. But the same penalty that would be applied to the railroad company is applied to the party who takes the pass—a very unequal penalty, when you consider the situation—the ability of the parties to pay. It may force the man that rides upon the pass to go to jail. The railroad company would not feel the amount of the fine. It ought, in addition, to provide that, if the violation is willful, the party guilty of issuing the pass should be sent to jail and the penalty for the one receiving the pass ought to be less than is prescribed in this bill. Of course the punishment of those receiving passes protects the railroad company against the information being given against it, because no man will admit that he received or used any such pass, and the guilty companies will escape for lack of evidence. Again, this bill provides that attorneys of the railroad companies can receive passes, can receive the advantages prohibited by other people by the provisions of this bill. Therefore a Member of Congress can simply be an attorney for a railroad and he can have his passes the same as he used to. The Republican party in this House has made a party issue, that a law denouncing the employment of Members of Congress by public-service companies shall not be enacted. You propose to hold that privilege, and now you give yourselves, you that are the representatives of these corporations, the privilege of riding on passes without violating this law. It ought not to be. It is contrary to the principle and spirit of such legislation. It is unfair to the people; it is wrong in its tendency. It ought to be stated in this bill that a Member of Congress riding upon a pass, receiving one in violation of this law, would be subject to penalty, not only of a fine, but by imprisonment, and be deprived of the right to hold office. Such an amendment you would vote down.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. WILLIAMS. I yield two minutes to the gentleman from North Carolina [Mr. HACKETT].

Mr. HACKETT. Mr. Speaker, representing, as I do, a large constituency of railroad employees, I desire to add my voice and vote in advocacy of the bill providing for free transportation to railroad employees and their families. As I nuderstand it, this is a bill prepared by the representatives of the railroad employees and of the various organizations and unions with which they have allied themselves, and these men, together with those who represent their interests on this floor and in the Senate of the United States, have among them men of such a high class of ability and probity that they undoubtedly could draft and have drafted a bill which will meet their necessities and give them the well-merited relief. They are asking Congress that this legislation be not delayed. They request that this bill be passed by the House of Representatives immediately, as it has been by the Senate, without the dotting of an "i" or the crossing of a "t," in order that they may have the benefit of the privileges therein contained at once. Mr. Speaker, I favor this course. I am desirous that the railroad employees may know to-morrow that the Congress of the United States realizes the position in which they have been placed by former legislation and stands ready to correct it, so that the railroads may be permitted to give these employees and their families free transportation in the broadest sense, as provided for in this bill.

In view of the fact that, by reason of a Republican panic and the hard times caused thereby, there are now within the United States over 250,000 ex-railroad employees out of a job, without means to support themselves and their families, I especially favor that clause in the bill which permits free transportation to any ex-employee and his family, traveling for the purpose of entering the service of any common carrier, wherever he may be able to find a position. The men at the throttle who, with watchful eyes, fearless hearts, and steady nerves, hold the lives of millions in their safe-keeping, as the vast engines go racing across the country, freighted with their burdens of humanity; the telegraph operators, whose quick ears catch the movements of the swiftly running trains and guide them safely on their way; the mechanics and laborers in the shops, whose skilled training enables them to detect the slightest defect in the machinery and groom the iron horse for another race; the kind-hearted and polite conductors and agents, and all the vast army of railway employees, whose lives are lived in furthering the great transportation facilities of the country and in serving the public equally as well as their employers, deserve the best that their Representatives and Senators in Congress can give them, and I hope this bill will pass without a dissenting vote, so that when the well-earned vacation comes, they can go whithersoever their minds may lead them, whether to the old homestead, or the pleasure resort, carrying their families with them free of cost, thus giving them rest and recreation amid the most pleasant surroundings and enabling them to return to their labors with renewed strength and rejuvenated hearts. [Applause.]

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. WILLIAMS. Mr. Speaker, in the one minute of time left to me I desire merely to say I am very much in favor of the passage of this bill. I can not quite altogether agree with my friend from Illinois [Mr. MANN] when he said that he never saw a bill pass, and never expected to see one pass, that would not have to be either amended or revised later on——

Mr. MANN. Or construed, I said.

Mr. WILLIAMS. Or construed. I think that a bill of just one section repealing the duty on wood pulp, if passed to-morrow, would never have to be construed, or amended, or revised.

Mr. MANN. And the gentleman has never seen it passed.

Mr. STEVENS of Minnesota. How much time have I remaining, Mr. Speaker?

The SPEAKER pro tempore. Seven minutes.

Mr. STEVENS of Minnesota. I yield four minutes to the gentleman from Ohio [Mr. KEIFER].

Mr. KEIFER. Mr. Speaker, I do not complain of the committee coming in here through one of its members and moving to suspend the rules and passing this bill. It is a good one, but falls a little short of perfection. It ought to have provided for the carriage free of employees who go upon the lines of railroads for the purpose of doing work for a contract or in building bridges or other structures, but this could not be now done. I agree with my friend from Kentucky [Mr. SHERLEY] that we ought to be more deliberate in passing bills, but he will see, and I hope agrees with me, that so long as Members on that side of the House take up a great deal of our time in calling the roll after 5 o'clock or 6 o'clock to adjourn and otherwise bother us with calls all the time unless they are permitted to select the kind of bills they want, and therefore we are obliged to resort to just this kind of legislation we are now voting for.

Mr. WILLIAMS. Mr. Speaker, will the gentleman permit me a question?

Mr. KEIFER. Certainly.

Mr. WILLIAMS. How much time was wasted in the committee in getting these two bills into the House?

Mr. KEIFER. Mr. Speaker, every Member of any intelligence at all on this floor learned long since that the employers' liability bill was to be submitted this day in the House, and they occupied hours and hours of time calling the roll last week for the purpose of forcing us to bring this bill up now the very time it was known it was to come up.

Mr. WILLIAMS. This is not the only bill we want to bring up.

Mr. KEIFER. Well, the other bills stand in the same relation, I agree with my friend from Kentucky——

Mr. SHERLEY. Will the gentleman yield? The gentleman from Kentucky does not agree with his friend from Ohio——

Mr. KEIFER. I have no time to yield.

Mr. SHERLEY. You can either yield or decline to yield. Do not you know that bringing this bill up under suspension of the rules necessarily limits both debate and the power to amend?

Mr. KEIFER. Both debate and power to amend, but we are obliged to hasten our legislation——

Mr. SHERLEY. Does not the gentleman know it is child's talk now about our saving time——

Mr. KEIFER. Because you have forced us to spend about a week calling the yeas and nays.

Mr. WILLIAMS. I had rather see you get them through by suspension than not get them through at all.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. STEVENS of Minnesota. Mr. Chairman, there has been some criticism that the Committee on Interstate and Foreign Commerce was not diligent in reporting this bill. It passed the Senate on the 13th day of February, and it was referred to the Committee on Interstate and Foreign Commerce on the 14th day of February. Hearings were had on it about the 12th of March, in due course. The committee and the House are familiar with the fact that there are about 100 bills on the Calendar of the Committee on Interstate and Foreign Commerce intro-

duced by Members, and every Member has been interested in his bill, and every Member who desired has had a hearing on his bill, and it does not lie in the mouths of Members on either side of this House to rebuke the members of the Committee on Interstate and Foreign Commerce for not properly reporting this legislation. We did give hearings, and have acted with more than due diligence, considering the pressure upon us by the Members of this House. We did report it on the 2d day of April. We have brought it before this House at the first opportunity. Now, Mr. Speaker, there is one thing——

Mr. BARTLETT of Georgia. May I interrupt the gentleman just a moment?

Mr. STEVENS of Minnesota. I yield to my colleague from Georgia.

Mr. BARTLETT of Georgia. I want the gentleman to state whether there has been any opposition from anybody on that committee to this bill.

Mr. STEVENS of Minnesota. Mr. Speaker, I am glad the gentleman from Georgia made that statement. Every member on the committee favored this bill, every member voted for it and expedited its consideration, and we have had the satisfaction this day of bringing it up by unanimous consent with the evident approval of every Member of the House.

Mr. HARDY. I would like to ask the gentleman, inasmuch as there is a controversy here as to whether Members of Congress might, under this bill, accept free passes, we might not, by unanimous consent, add to this bill, "who shall not be judicial or legislative officers of the United States or of any State of the United States."

Mr. STEVENS of Minnesota. I could not, under instructions from the committee, yield unanimous consent for any amendment to this bill. What the gentleman desires is prohibited now. This bill is only designed to cover one particular thing, to extend the construction of the word "employee," and that is the only object to be desired. It is the only thing that ought to be legislated by this bill. It was for that purpose only that this bill was prepared and has been given consideration.

Mr. HARDY. What I wanted to ask the gentleman was, Does not the bill as it is now really amend the current law so as to let in exceptions to the antifree-pass law, in the nature of attorneys and Members of Congress, that the present law would not permit?

Mr. STEVENS of Minnesota. Not at all. It only covers a certain class of employees really seeking jobs, the bodies of their dead, and their families. That is the only object of this bill. It is the only provision which is covered by it. There ought to be no pass legislation extending the provisions of the present law unless it is clearly in the public interest. Pass legislation ought not to make special classes or separate classes of our people unless it is clearly for the public interest and for the broadest public welfare.

Mr. HARDY. Will the gentleman yield for one question?

Mr. STEVENS of Minnesota. No class of people ought to seek or be permitted to have special privileges like these unless it is clearly evident that the general good is promoted by means of such legislation. It is for the advantage of the public, for the advantage of those running the railroads, that these men and their families should be carried as may be necessary. That it helps the favored individual goes without saying; but beyond that it is a very great convenience to the carriers, and more than all, promotes the public interest by supplying needed and timely labor, distributes it easily and without friction, assists in moving our products, and generally contributes to the public welfare. I yield to the gentleman from Tennessee [Mr. GAINES].

Mr. GAINES of Tennessee. Under the language on page 2, line 8, "attorneys at law," does not that permit any attorney——

Mr. STEVENS of Minnesota. No; Mr. Speaker, it has been settled that it is only the attorneys of the railroad companies, and actually engaged at the time in railroad employment.

Mr. WILLIAMS. That is a repetition of the existing law?

Mr. STEVENS of Minnesota. Certainly. It is the law as it has stood for over twenty years, and is subject to well-known construction and application. Mr. Speaker, I ask for a vote.

The SPEAKER pro tempore (Mr. TAWNEY in the chair). The question is, Shall the rules be suspended and the bill be passed?

The question was taken, and in the opinion of the Chair, two-thirds having voted in favor thereof, the rules were suspended and the bill was passed.

### NAVAL STATION AT PEARL HARBOR.

Mr. BATES. Mr. Speaker, I move that the rules be suspended and the bill H. R. 20308, a bill to establish a naval station at Pearl Harbor, Hawaii, be passed.

The SPEAKER. The gentleman from Pennsylvania moves to suspend the rules and pass the bill, which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 20308) to establish a naval station at Pearl Harbor, Hawaii.

*Be it enacted, etc.*, That the Secretary of the Navy is hereby authorized and directed to establish a naval station at Pearl Harbor, Hawaii, on the site heretofore acquired for that purpose; and to erect thereat all the necessary machine shops, storehouses, coal sheds, and other necessary buildings, at an aggregate cost of not to exceed $500,000, and to build thereat one graving dry dock capable of receiving the largest war vessels of the Navy, at a cost not to exceed $2,000,000.

SEC. 2. That the sums hereinafter stated are hereby appropriated and made immediately available, to be expended at the discretion of the Secretary of the Navy, to wit: Toward dredging an entrance channel of a depth of 35 feet, $200,000; toward construction of dry dock, $300,000; toward erecting machine shops, storehouses, coal sheds, and other necessary buildings, $100,000; toward yard development, $50,000; in all, $650,000.

SEC. 3. That the Secretary of the Navy may, in his discretion, enter into contracts for any portion of the work, including material therefor, within the respective limits of cost herein stipulated, subject to appropriations to be made therefor by Congress.

The SPEAKER. Is a second demanded?

Mr. PADGETT. Mr. Speaker, I demand a second.

The SPEAKER. The Chair thinks it proper to ask the gentleman from Tennessee [Mr. PADGETT] if he is against the bill?

Mr. PADGETT. I am not.

The SPEAKER. Or the gentleman from Mississippi [Mr. WILLIAMS] if he is against the bill?

Mr. PADGETT. I am a member of the committee, and ask for a second in order to have debate upon the matter.

The SPEAKER. Is the gentleman from Mississippi [Mr. WILLIAMS] against the bill?

Mr. WILLIAMS. The gentleman from Mississippi was not against the bill some time ago.

The SPEAKER. The Chair desires to say that if anybody is against the bill and desires to be recognized, he should be recognized to control the time. Does any gentleman desire to be recognized in opposition to the bill? [After a pause.] In the absence of that the Chair will recognize the gentleman from Tennessee [Mr. PADGETT].

Mr. BATES. The gentleman from Tennessee [Mr. PADGETT] is the ranking minority member of the committee.

The SPEAKER. Precisely. Is a second demanded?

Mr. BATES. Mr. Speaker, I ask unanimous consent that a second may be considered as ordered.

The SPEAKER. Is there objection. [After a pause.] The Chair hears none. The gentleman from Pennsylvania [Mr. BATES] is entitled to twenty minutes and the gentleman from Tennessee [Mr. PADGETT] to twenty minutes.

Mr. BATES. Mr. Speaker, this bill is a complete authorization and partial appropriation for the establishment of a naval station at Pearl Harbor, Hawaii. I believe, Mr. Speaker, that the people of this country fully realize at this time the necessity of not only strengthening and confirming our hold upon the Hawaiian Islands, but also that we should make them the means of protection for the whole Pacific coast against any possible enemy in the Far East. The Hawaiian Islands afford the only possible base for a naval station for a distance of 4,000 miles from the Pacific coast. They are located at a distance of 2,100 miles, a little south of west of San Francisco, in an ideal climate, and presenting a splendid harbor for fortifications and naval base. For the past sixty-five years this position has been officially recommended to the United States Government for a fitting naval station and military and naval outpost of the United States.

Mr. TAWNEY. Will the gentleman permit me to ask him a question?

Mr. BATES. Certainly.

Mr. TAWNEY. Can the gentleman state to the House whether prior to this year the Navy Department has ever made any specific recommendation in regard to the establishment of a naval station at Pearl Harbor?

Mr. BATES. I think not. I never heard of any specific recommendation; but this year the President of the United States, the joint committees of defense for both the Army and Navy, and the unanimous vote of the Naval Affairs Committee present and recommend this bill for the consideration of the House and Senate. I was speaking chronologically of the presentation of this matter to the United States Government. Some twenty-two years ago, by a treaty with King Kalakaua, we acquired the right to a naval base. After the annexation of the islands and they became an organized Territory of the United States we acquired some 600 acres of land for a naval base and for fortifications. We have owned the islands absolutely for ten years, Mr. Speaker, and they are as much a part of the United States as is the Territory of Arizona or the Territory of New Mexico,

having complete Territorial government and a full allegiance to the United States of America, of which they are an integral part; and about the time they became an organized Territory of the United States we acquired 600 acres of land in this harbor for the purpose of coast defense and a naval base, for machine shops and a dry dock and the facilities for repairing and coaling vessels of the United States.

The bill proposes, Mr. Speaker, that we take the final step to render this an outpost of the Pacific, for these islands are not only crossroads, but the key to the whole Pacific Ocean. This bill proposes that we should take advantage of the splendid opportunity afforded us of not only strengthening and confirming our grasp upon the Hawaiian Islands and keeping them forever from falling into the hands of any possible maritime enemy, but also to insure against and to possibly prevent any war with any countries in the Far East.

I now, Mr. Speaker, yield three minutes to the gentleman from California [Mr. KAHN].

Mr. KAHN. Mr. Speaker, as one of the Representatives from one of the Pacific coast States, I desire to congratulate the Committee on Naval Affairs on having reported this bill. We on the coast feel that the proper fortification of Pearl Harbor and the establishment of a naval station there renders us practically safe from foreign attack. The islands are about 2,500 miles from San Francisco. It is improbable that any foreign foe, unless they held these islands, could ever make a successful attack upon the cities of the Pacific coast, for in order to do so they would have to either carry great numbers of colliers or they would have to travel from 6,000 to 8,000 miles in order to replenish their coal supply and go back again to the attack on the cities of the coast. According to the best naval authorities that is practically an impossibility.

Mr. BARTHOLDT. Will the gentleman permit me to ask him a question?

Mr. KAHN. Certainly.

Mr. BARTHOLDT. Does the gentleman believe that the establishment of a naval station at Pearl Harbor would render unnecessary further fortification on the Pacific coast?

Mr. KAHN. Not at all. I think that the fortification of the Pacific coast ports should still be continued.

Mr. BARTHOLDT. Will the gentleman allow me to ask him a question right there?

Mr. KAHN. Certainly.

Mr. BARTHOLDT. The gentleman undoubtedly is aware of the agreement reached at The Hague recently, according to which no unfortified city, town, village, place, or building can be bombarded in the future by an enemy, and consequently will be absolutely immune if not fully fortified?

Mr. TAWNEY. Will the gentleman from California permit me at this place to state to the gentleman from Missouri that it is not the result of any action of The Hague conference, but it is a principle of international law recognized by all countries.

Mr. BARTHOLDT. Not at all.

Mr. KAHN. In addition to that, I want to say to the gentleman from Missouri that all these international agreements only last so long as it is to the interest of the parties to the agreement to adhere to them. They are frequently abrogated. [Applause.]

Mr. BARTHOLDT. Until repealed by all of the parties to the agreement.

Mr. KAHN. Oh, no; by force of arms. In the world's history treaty after treaty has been broken when it has become convenient for one or the other of the high contracting powers to break it.

Mr. BATES. Mr. Speaker, I yield three minutes to the gentleman from Missouri [Mr. CLARK].

Mr. CLARK of Missouri. Mr. Speaker, there is an old saying that "it is better late than never." What is being done by this bill ought to have been done nine or ten years ago. The argument with which the advocates of the annexation of the Sandwich Islands overrode all opposition in this House in 1898 was that we needed Pearl Harbor in our business; that by the expenditure of a reasonable amount of money it could be made stronger than Gibraltar; that the Sandwich Islands are the key to the Pacific. If those propositions were true then, they are true now. I voted against the annexation of the Sandwich Islands, and did everything on earth I knew how to defeat that measure, and if we had it to do over again I would do the same. But that is not the question at the present time. We have the Sandwich Islands, and it is violating no sort of confidence to say that the chances are we will have them when Gabriel blows his trumpet, unless somebody takes them away from us, which is not very probable. [Applause.] Yet, having annexed them because it was believed we needed them, ten years have elapsed without much being done to make another Gibraltar of Pearl Harbor—a fact which I have urged upon the House from year to year during the last decade. I believe one of two things is true—that we will have a naval base at Pearl Harbor or somebody else will have it there. That being the case, I am in favor of a bill like this, or this bill. I have been in favor of it ever since we annexed those islands. I do not know whether it carries enough money or too much money or too little money. I do not pretend to know anything about engineering. I never saw Pearl Harbor. But engineers say, and those who have been there say, that it is easily susceptible of being made one of the strongest places for a naval base on the face of the globe. That being the case, while we are at peace with all the world we had better place it in such impregnable condition that we will remain at peace with certain people that live over on the other side of the world—nameless here for evermore. I am glad that the Congress is waking upon this subject at last. It is much easier to retain Pearl Harbor by fortifying it adequately than to regain it should anybody take it from us because we have not fortified it. It's another case where an ounce of preventive is worth a pound of cure.

That is all I have to say about it one way or the other. Nearly every American citizen will indorse the proposition of making at Pearl Harbor a naval station and a naval base as strong as it can be made and as speedily as it can be done. [Applause.]

Mr. BATES. Mr. Speaker, I now ask the minority member of the committee [Mr. PADGETT] to use a portion of his time, and I reserve the remainder of my time.

Mr. PADGETT. Mr. Speaker, I do not desire to consume any time personally. The committee considered this very carefully. To look at the map is a demonstration of the need of it and the wisdom of it, and that is all I want to say about it. The committee are unanimous in favor of it. I now yield four minutes to the gentleman from Minnesota [Mr. TAWNEY].

Mr. TAWNEY. Mr. Speaker, I want to congratulate the Committee on Naval Affairs on reporting this bill for the establishment of a naval station at Pearl Harbor on the island of Oahu in the Hawaiian Islands. The gentleman from Missouri [Mr. CLARK], who, I distinctly remember, opposed very bitterly the annexation of the Sandwich Islands, complains now that this work ought to have been done long ago, and I heartily concur with him in that complaint. But I want to call his attention and the attention of the House to the fact that, although we have had Pearl Harbor ever since 1884, twenty-four years, the Navy Department has never recommended to the Congress of the United States the establishment of a naval base at Pearl Harbor.

Notwithstanding this fact, Mr. Speaker, Congress has appropriated for the defense of this harbor, and for the defense of Honolulu, in the neighborhood of $3,000,000, and it is a matter of exceeding gratification to me to know that we are at last to begin the work of establishing a naval base on the islands of Hawaii, the buttress of the Pacific coast. When this is fully completed and fortified there will be no longer any necessity for the fortification of the Pacific coast. The fortification of Hawaii and the establishment of a naval base there is the best fortification for the Pacific coast that it can possibly have, because there is no naval vessel afloat to-day that can sail from any oriental country to the Pacific coast and return again with its own coal.

Mr. KAHN. Will the gentleman yield?

Mr. TAWNEY. I will yield to the gentleman from California.

Mr. KAHN. The gentleman says there will be no necessity for fortifying any mainland ports in case this bill goes through. I want to call his attention to the fact that England is in alliance with Japan. Suppose England with Japan got into a war which would involve this country, and suppose the naval station of Great Britain at Esquimault were to be used as a base to send British ships against our ports on the Pacific coast, does not the gentleman think that those ports would have to be fortified?

Mr. TAWNEY. Suppose the world should come to an end to-morrow. There would be no need of fortifying any ports, and one supposition is just as likely to happen as the other. [Laughter.]

Mr. Speaker, I say although it is a matter of gratification that we are about to begin the work, it is a matter of regret that we are not beginning the work on more intelligent, specific estimates for the work than has been presented to this House. After careful investigation I was unable to find that the Department had even submitted any estimate. This movement for the establishment of this base originates with the House of Representatives, with the Committee on Naval Affairs, and I commend the committee for its action. When this naval base is established, equipped, and fortified as proposed no power

on earth can successfully attack that part of our coast that is washed by the surf billows of the Pacific. [Applause.]

Mr. PADGETT. Mr. Speaker, I yield five minutes to the gentleman from New York [Mr. SULZER].

Mr. SULZER. Mr. Speaker, this is a most important matter to the people of the country, and I hope the bill will pass. In 1898 I was one of the few Democrats that advocated on the floor of this House the annexation of the Hawaiian Islands. I then pointed out their strategic importance and suggested that we should own them and establish a strong naval base at Pearl Harbor. The situation of the island makes them the key to the Pacific—the door to the Orient—and the establishment of a strong naval base there will accomplish more in the interest of the peace and the commerce of the United States than any other single thing that can be devised to-day, in my opinion.

Now, sir, when the question of the annexation of the Hawaiian Islands was before this House on the 14th day of June, 1898, I said, among other things:

"In my judgment the Hawaiian Islands are the key to the Pacific and are, and of right ought to be, a part of the sovereign territory of the United States. Their acquisition is absolutely necessary for the protection of our great Pacific coast. They constitute the sentinel of the North Pacific and to us a Gibraltar indispensable to the protection of our Pacific interests. All our great naval and military authorities say this, and there can be no doubt about it in the opinion of any person who will give the question investigation. Our possession of these islands will give us a strategical position in the Pacific that will always be of incomparable advantage to us in case of trouble. The question of the annexation of the Hawaiian Islands is one in which I have taken a very deep interest, and I have given some study and some thought to the matter. For many years I have been a consistent and ardent advocate of the annexation of these Pacific islands. They should have been annexed long ago. There is no good reason why they should not be annexed now; and I congratulate this House and the country upon the fact that they soon will be annexed, forever to remain under the American flag.

"All the military and naval authorities in this country are of the same opinion, and have always been in accord on this subject. To my mind it seems apparent that we must annex these islands as a protection, from a military and naval standpoint, to our Pacific coast. We must hold and govern them for our own preservation. No halfway measures will suffice. The Government must take these islands or else some other great nation will do it.

"Let me say to the business men of America, look to the land of the setting sun, look to the Pacific! There are teeming millions there who will ere long want to be fed and clothed the same as we are. There is the great market that the continental powers are to-day struggling for. We must not be distanced in the race for the commerce of the world. In my judgment, during the next hundred years the great volume of trade and commerce, so far as this country is concerned, will not be eastward, but will be westward; will not be across the Atlantic, but will be across the broad Pacific. The Hawaiian Islands will be the key that will unlock to us the commerce of the Orient and, in a commercial sense, make us rich and prosperous.

"I shall cast my vote in favor of the annexation of the Hawaiian Islands, because we need them as a naval and military necessity now and in the future for the purpose of protecting and defending the territory which we already own. We need the Hawaiian Islands for national defense. They are the key to the Pacific, and the only coaling station in the Pacific between the Arctic Ocean and the Equator, between the continent of Asia and the coast of North America. Not to annex them now would be national folly; to annex them, security, peace, and national insurance."

Mr. Speaker, that is what I said when the question was before this House as to whether or not we should annex the Hawaiian Islands. Time has justified all that I said then. Every prediction I made in that speech in 1898 has come true, or will come true, before this century ends. To-day I want to say—and I regret that my time is so limited—that we not only need a strong naval base at Pearl Harbor, in the Hawaiian Islands, but I agree with the gentleman from California [Mr. KAHN] that we need all the protection that the engineering ingenuity of our military and naval experts can invent for the protection of our great Pacific coast.

We do not want war. We want peace. And the best way to command peace—and lasting peace—is by being prepared for war. We need strong military fortifications and naval bases for protection on the Pacific as well as on the Atlantic. I deprecate the narrow view some of my friends take in regard to this great question of coast defense. I believe in so far as possible all of our great coast line should be protected, and it is just as important to me whether it is on the Atlantic or on the Pacific. We need a strong military and naval base in the neighborhood of San Francisco. We need a naval and military base on Puget Sound. And we should have a strong naval base in the neighborhood of Cordova Bay, in southeastern Alaska. Those who are familiar with our great interests on the Pacific coast know this, and I know whereof I speak. The Pacific will be the theater of the world's events for this century as the Atlantic was during the last century. If anything should happen to our North Pacific fleet, it would have to go for safety and repair to the Hawaiian Islands, or to San Francisco, or to Puget Sound, or to some place in southeastern Alaska. If the American battle ships were crippled in the North Pacific there is no place at present where they could go for shelter and protection and repair unless they could make Pearl Harbor or Puget Sound or San Francisco.

The loss if they could not make one of these ports would be incalculable. A decisive defeat on the Pacific might settle our destiny for years to come. We need a naval base in southeastern Alaska. It has every advantage. In Cordova Bay our entire fleet could ride at anchor and defy the squadrons of the world. It is a natural harbor well suited for a naval base, and sooner or later we will be compelled to establish one there. In northern Pacific waters there is no place now where our fleet in case of necessity could go and be protected. In southeastern Alaska there are several places that would be advantageous for the building of a great naval base, and the Government should build one there as well as in the Hawaiian Islands. [Applause.]

The SPEAKER. The time of the gentleman from New York has expired.

Mr. PADGETT. I now yield two minutes to the gentleman from Kansas [Mr. CAMPBELL].

Mr. CAMPBELL. Mr. Speaker, it has been a long time since this Congress has considered a more important matter than the one now before the House. If a great navy is important to the people of this Republic the improvement of Pearl Harbor is of great importance. If we shall have need for a navy or an important naval base within the lifetime of those now living it will be in the waters of the Pacific. The enemy that shall come against the United States shall come from the Orient. We are at peace with the world to-day. There is no probability that we shall ever have war with any nation on our Atlantic side.

We sustain commercial relations with all European countries that makes it highly improbable that these relations shall be broken by war. So I say, therefore, that if a navy is important to the United States, a naval station 2,200 miles out from the Pacific coast is important to the people of the mainland as well as to that part of the people of the United States who live on the Hawaiian Islands. No people of this country are more loyal or patriotic than those citizens who live under the Stars and Stripes in the islands of Hawaii. [Applause.]

Mr. PADGETT. Mr. Speaker, I now yield eight minutes to the gentleman from Alabama [Mr. HOBSON] a member of the committee.

Mr. HOBSON. Mr. Speaker, I expect to see Pearl Harbor, if I live to the average span of human life, not only the greatest naval station in the Pacific Ocean, but the greatest naval station in the world; not only the greatest station of to-day, but the greatest station of all time. I make the statement because I see that that harbor in Oahu presents the one combination of physical conditions that makes a great naval station possible within a radius of 2,500 miles on the Pacific Ocean as a center. It makes it thus not only an outpost for America, but the outpost for the white man. The annihilation of space has suddenly brought all nations and all races together. There must be worked out some basis upon which these nations and these races can live together in peace. The change is sudden. Before this, nations have believed that they lived as natural enemies, according to the law of nature, where one survives by the destruction of the other.

I believe that the same cause that brought about the annihilation of space that has given man control of nature's forces has put him above the great law of destroying his own kind. I believe that man is now finding out that he does not have to destroy his kind in order to live; that the test for survival, in other words, is not might and brute force to destroy, but is the capacity and the willingness to cooperate and serve to control nature's great forces for the common good. The effect of the annihilation of space has been primarily to cause the nations of the earth to leap to arms. We are now in a transition period, a very critical period. All nations realize that those other nations they have regarded as their enemies are at their very

doors. I believe, however, that in the progress of civilization the great nations of the white race have come to realize that they can find a basis upon which they can live in peace. I believe the fact that Germans and French, that English and Dutch, that all the peoples of the earth that hate each other there in their old habitats have come together and mingled their blood in America in a perfect reconciliation, and the fact that here with such a reconciliation we have built up a mighty system, combining the great principle of local self-government with the principle of joint and just cooperation in a common government—I believe that these are leading the white race rapidly to the point where the nations will evolve an international organization that will be adequate for the purposes of peace in the world. But we must not ignore the fact that this same annihilation of space has also brought the white race and the yellow race together. Every page of the world's history shows that when races so far apart, that they are different in color, have met each other, they have invariably met in war, war to extermination. I will not follow these cases in history, but will simply point out that there has never been one exception, and right under our own eyes we have seen a recent instance in the meeting of the Japanese and the Russians in Manchuria. I simply desire to point out that Japan, now heading the yellow race, is just emerging from mediævalism; that feudalism existed in Japan when I was a boy, and the history of the world shows that following the termination of feudalism there always follows a long period of war and conquest.

I simply submit that there is a natural movement on the part of Japan, not only to organize her own people, but the peoples of China and all the peoples of Asia and the yellow races, to move out to what they believe is inevitable, a struggle for the supremacy of the world. I believe, Mr. Speaker, that it is of the utmost importance to mankind, to the future of civilization, that there should be placed, if necessary, a constraining power that will keep the yellow man in his habitat and have him meet the white man in commerce and industry as a friend, not in war as an enemy. [Applause.] I believe that down the march of the ages there goes the hand of Providence. I believe that America has been raised up and placed here between the white race and the yellow race. We do not desire conquest. We have not sought distant islands, and yet by a strange destiny America's feet are placed in the Sandwich Islands, in the Aleutian Islands, in Alaska, in Panama, in Samoa, in Guam, in the Philippine Islands, so that this great nation, the one mighty nation of peace, now spreads out over that whole ocean. I believe that this great continent of America was given to the peoples that have made this nation because they were to be a peace people. I believe that this continent has the mighty resources that produce the world's staples of clothing and food, and ultimately from its iron and coal the great manufactured staples, so that its influence may go to all lands, carrying policies and institutions based on justice and right that may cause the other peoples to meet each other as friends. I believe that America, standing upon the Hawaiian Islands, and with a Navy controlling the Pacific Ocean, can keep the peace there long enough until the white race and the yellow race can get together and work out a system upon which they can live in permanent peace. Therefore, I am in favor of the adoption of this bill. [Applause.]

Mr. PADGETT. Mr. Speaker, I yield the remainder of my time, three and one-half minutes, to the gentleman from Texas [Mr. SLAYDEN].

Mr. SLAYDEN. Mr. Speaker, to those American citizens of pessimistic nature who think that the country is going to the devil through partisanship, it would be a gratifying spectacle to see how quickly the clouds of partisanship roll aside when a measure is proposed which is as broad in its patriotism as the country. When a committee comes forward with a suggestion that we should establish a much-needed naval station at a point that will make for the protection of the entire country, and which, let me say in passing, I hope will allay the nervousness of my Pacific coast friends, every man in this House, whether he come from Maine or from California, from the Gulf or from the Great Lakes, works shoulder to shoulder with every other man in order to carry out that suggestion. Like my friend from Missouri [Mr. CLARK] I opposed the annexation of the Hawaiian Islands, because it brought me and brought my country into contact with the yellow race. I knew that the white and the yellow race could not get together without a spirit of antagonism being present, and I dreaded the contact.

I favor the erection of these great fortifications upon the island because it will put a barrier between them and us which, I think, they can not get around. I sincerely hope, Mr. Speaker, and I believe, too, that the great coast-defense scheme inaugurated under the Administration of Mr. Cleveland when Mr. Endicott was Secretary of War will be prosecuted until every port and every harbor on both the oceans will be completely defended. And that, sir, supplementing this defense placed on the Hawaiian Islands, will remove, as was suggested here the other day by an eminent and venerable Member, the necessity for an exaggerated and costly development of the Navy. I believe that when we have prepared the coast defenses, as undoubtedly they will be prepared, and when we shall have completed the fortifications upon the island of Oahu there will no longer be the necessity for putting upon the people of this country the vast burden for militarism which we have imposed upon them in the last few years. I think, sir, that the mere fact that the Government of the United States, with a Treasury being depleted from day to day, I regret to say, but still overflowing, is prepared to protect every inch of its continental territory against assaults from all the people in the world who may have the audacity to undertake it of itself will operate as a measure for peace and prevent any such assaults. [Applause.] Mr. Speaker, I yield back the balance of my time to the gentleman.

Mr. BATES. Of the nine minutes remaining, I yield one minute to the gentleman from Ohio [Mr. KEIFER].

Mr. KEIFER. Mr. Speaker, one minute is not long enough in which to say much, but this is an old hobby of mine. I do not come within the censure of the gentleman from Missouri, for ever since I have been in the Congress of the United States, since the Territory of Hawaii has been acquired, I have been begging the Committee on Appropriations not to waste money by building fortifications where they were not needed, but to build a great central fortification at Pearl Harbor, and I believe now that we can protect the coast better by fortifying Pearl Harbor than we can by any other method. My understanding is that the coast of California is not now protected, but it will be when we fortify Pearl Harbor.

The SPEAKER. The time of the gentleman has expired.

Mr. BATES. I yield two minutes to the gentleman from Washington [Mr. CUSHMAN].

Mr. CUSHMAN. Mr. Speaker, the bill now before this House for consideration, and I hope for passage, is H. R. 18120, which bill provides for the establishment of a naval station at Pearl Harbor, Hawaii. This bill appropriates $700,000 and practically authorizes the expenditure of a further sum of $2,150,000. While this seems like a large sum of money, in reality the amount is insignificant in comparison with the benefits which, in my judgment, our country will reap from the passage of this bill. I regard this measure as one of the most important that will come before this Congress for determination.

This bill does not merely contemplate the establishment of an ordinary naval station in Hawaii, but a great naval base for the American Navy, including adequate dry-dock facilities, a vast coal depot, and such small amount of dredging as shall be necessary to make the entrance to this harbor easy and safe.

Every American citizen, regardless of political affiliations, is proud of the American Navy. Few more impressive sights have occurred in this nation than that stately line of sixteen American battle ships which a few months ago steamed seaward from the Atlantic coast to circle the world with a display of power, but on a mission of peace. Every American heart throbbed in patriot time an accompaniment to that spectacle.

A great navy is indeed typical of strength, and yet there is nothing more helpless in the world than a battle ship without the accessories that make it effective. A railroad engine is the most helpless thing on earth when it gets off the rails, and an American battle ship, or any battle ship, is the most helpless thing imaginable when separated from dry-dock facilities and from fuel supplies.

This bill is designed, in my judgment, to save the American people humiliation if not defeat some time in the future. Some men there are who think that a conflict is imminent between the American nation and the Asiatic races. Mr. Speaker, I am not one of those. I am not seeing any "yellow" visions these days. The American nation is now at peace with all the world, and I expect it to continue in those friendly relations. But it is the part of prudence to prepare in times of peace for emergencies.

No man who ever studied the map of the Pacific Ocean can have failed to notice the commanding position occupied by the Hawaiian Islands, situated in the very center thereof. These islands have been aptly styled the "Crossroads of the Pacific." They are situated some 2,200 miles west of San Francisco and about an equal distance from the entrance of Puget Sound. An American fleet stationed at that point with adequate facilities would be a great protection to the entire Pacific coast line of the

American continent and a tower of strength to our American possessions in the Philippine islands.

However, I do not agree with the distinguished gentleman from Minnesota [Mr. TAWNEY] that the creation of a naval base in Hawaii would do away with all necessity for the further fortification of the Pacific coast line of the American continent. The establishment of this naval base in Hawaii will be a powerful protection to our entire Pacific coast line, but it will not entirely supersede the necessity for the maintenance of proper fortifications at both San Francisco and the entrance to Puget Sound.

The SPEAKER. The time of the gentleman has expired.

Mr. BATES. Mr. Speaker, I yield two minutes to the gentleman from Massachusetts [Mr. WEEKS].

Mr. WEEKS. Mr. Speaker, this bill has been correctly described as one of the most important bills before the House. It is the most important military measure which Congress has to consider at this session, in my opinion. The merest tyro in military or naval strategy must see the importance of maintaining a proper base on the Hawaiian Islands, not only as a protection for our own coast, but as a preventive of that base falling into the hands of an enemy. It is in almost exactly a similar position to Malta in the Mediterranean Sea. England has spent tens of millions of dollars in constructing proper fortifications on Malta for exactly the same purpose that we should spend tens of millions of dollars for the proper protection of this great naval base.

It is not only an important matter itself, but, in my judgment, while it will not prevent the necessity of erecting fortifications on the Pacific coast, it will prevent the necessity of making expenditures so large compared with what it will require to fortify Hawaii that they will seem to be immeasurable. For every reason—and I am glad to see the House is in favor of this measure, basing my opinion on what has been said—for every reason this appropriation ought to be passed, and I wish it was much larger than the amount which has been reported by the committee. [Applause.]

Mr. BATES. Mr. Speaker, I yield two minutes to the gentleman from New York [Mr. FITZGERALD].

Mr. FITZGERALD. Mr. Speaker, some years ago Congress appropriated $645,000, with which a site was acquired at Pearl Harbor for a naval station. Since that time Congress has provided practically all the guns required for the defense of Pearl Harbor and of the proposed naval station, and yet so inharmonious has been the plan upon which the Government has proceeded that to-day it is impossible for a larger vessel than a good-sized tug to enter that harbor. If any criticism could be made of the proposed bill, it is that the amounts carried are insufficient for the purposes proposed. I am inclined to believe that the bill carries as much money as it will be possible to utilize during the next fiscal year. But when it is realized that it will require about $2,000,000 to dredge an adequate channel into Pearl Harbor, it is not difficult to see how insignificant an appropriation of $200,000 for that purpose is. For some mysterious reason it has been impossible to obtain a favorable recommendation from the Navy Department to proceed with the work of building this necessary outpost of the United States since the site has been acquired. It is to be hoped that with this bill, Mr. Speaker, that hereafter the Department will submit estimates and that Congress will appropriate all that can be utilized in each succeeding year. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. BATES. Mr. Speaker, I yield one minute to the gentleman from Iowa [Mr. DAWSON], a member of the committee.

Mr. DAWSON. Mr. Speaker, as has been so frequently said here this afternoon, this bill takes the first step in one of the most important military movements under the Government. I hope that great speed will occur in the passage of this bill. The real reason for haste in acting favorably on this bill has not been stated, but the fact remains that those islands of Hawaii, the key to the Pacific, the crossroads of the Pacific, lie there now practically defenseless. It was stated before the Committee on Naval Affairs that a single hostile battle ship could come to those islands and in half a day could capture them, occupy them, and hold them. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. BATES. Mr. Speaker, in the moment remaining I wish to call the attention of the House to what a disadvantage it would be, taking up the line of argument of the gentleman who preceded me, if some hostile fleet or some hostile battle ship should take possession of Pearl Harbor and of the Hawaiian Islands, to have a coaling station of a possible maritime enemy within 2,100 miles of our coast, and, on the other hand, what an advantage it is that now they must traverse 4,000 miles there and 4,000 miles back again from a coaling base. Any maritime enemy would think twice before approaching our coast under such conditions, especially when our fleet could coal and repair in this almost perfect harbor at Honolulu, namely, Pearl Harbor. I call for a vote.

The SPEAKER. The question is on suspending the rules and passing the bill.

The question was taken, and the Speaker announced that, in the opinion of the Chair, two-thirds had voted in favor thereof.

Mr. WILLIAMS. Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken, and there were—yeas 246, nays 1, answered "present" 13, not voting 128, as follows:

YEAS—246.

| | | | |
|---|---|---|---|
| Adair | Denver | Hubbard, W. Va. | Parker, N. J. |
| Adamson | Diekema | Huff | Parsons |
| Aiken | Dixon | Hughes, N. J. | Patterson |
| Alexander, Mo. | Douglas | Hull, Iowa | Payne |
| Allen | Draper | Hull, Tenn. | Perkins |
| Ames | Dwight | Humphrey, Wash. | Peters |
| Ansberry | Ellerbe | Humphreys, Miss. | Pou |
| Ashbrook | Ellis, Mo. | Johnson, Ky. | Pray |
| Bartholdt | Englebright | Jones, Va. | Pujo |
| Bartlett, Ga. | Esch | Jones, Wash. | Rainey |
| Bartlett, Nev. | Fassett | Kahn | Randell, Tex. |
| Bates | Ferris | Keifer | Rauch |
| Beale, Pa. | Fitzgerald | Keliher | Reeder |
| Beall, Tex. | Flood | Kennedy, Iowa | Richardson |
| Bede | Floyd | Kinkaid | Robinson |
| Bell, Ga. | Focht | Kitchin, Claude | Rodenberg |
| Bennet, N. Y. | Fornes | Knowland | Rothermel |
| Birdsall | Foss | Küstermann | Rucker |
| Bonynge | Foster, Ill. | Lafean | Russell, Mo. |
| Booher | Foster, Vt. | Lamar, Mo. | Russell, Tex. |
| Bowers | Foulkrod | Lamb | Ryan |
| Boyd | Fuller | Landis | Scott |
| Brodhead | Fulton | Langley | Shackleford |
| Brownlow | Gaines, Tenn. | Laning | Sheppard |
| Brumm | Gardner, Mass. | Lassiter | Sherley |
| Brundidge | Gardner, Mich. | Lawrence | Sims |
| Burke | Garner | Leake | Slayden |
| Burleigh | Garrett | Lee | Small |
| Burleson | Gillespie | Legare | Smith, Cal. |
| Burnett | Gillett | Lindbergh | Smith, Iowa |
| Butler | Goebel | Lloyd | Smith, Tex. |
| Byrd | Gordon | Longworth | Southwick |
| Calder | Graham | Loud | Sperry |
| Calderhead | Granger | Loudenslager | Spight |
| Caldwell | Gregg | Lovering | Stafford |
| Campbell | Griggs | Lowden | Stanley |
| Candler | Hackney | McLachlan, Cal. | Steenerson |
| Capron | Haggott | McLaughlin, Mich. | Sturgiss |
| Carlin | Hale | Macon | Sulloway |
| Carter | Hamill | Madden | Sulzer |
| Cary | Hamilton, Mich. | Madison | Tawney |
| Caulfield | Hamlin | Mann | Taylor, Ohio |
| Chaney | Harding | Maynard | Thistlewood |
| Chapman | Hardy | Miller | Thomas, N. C. |
| Clark, Mo. | Harrison | Mondell | Tirrell |
| Clayton | Haskins | Moon, Tenn. | Tou Velle |
| Cockran | Haugen | Moore, Tex. | Underwood |
| Cocks, N. Y. | Hawley | Morse | Volstead |
| Conner | Hay | Mouser | Wallace |
| Cook, Colo. | Heflin | Mudd | Wanger |
| Cook, Pa. | Helm | Murdock | Washburn |
| Cooper, Tex. | Henry, Conn. | Murphy | Watkins |
| Cooper, Wis. | Henry, Tex. | Needham | Watson |
| Cox, Ind. | Higgins | Nelson | Weeks |
| Cravens | Hill, Conn. | Nicholls | Weems |
| Crumpacker | Hill, Miss. | Norris | Wiley |
| Cushman | Hobson | Nye | Williams |
| Dalzell | Holliday | O'Connell | Wilson, Ill. |
| Darragh | Houston | Olcott | Wood |
| Davis, Minn. | Howell, N. J. | Overstreet | Woodyard |
| Dawson | Howell, Utah | Padgett | |
| Denby | Howland | Page | |

NAYS—1.

Sherwood

ANSWERED "PRESENT"—13.

| | | | |
|---|---|---|---|
| Currier | Hardwick | Knopf | Roberts |
| Foster, Ind. | James, Ollie M. | Lever | |
| Goulden | Jenkins | McGavin | |
| Hamilton, Iowa | Johnson, S. C. | Prince | |

NOT VOTING—128.

| | | | |
|---|---|---|---|
| Acheson | Crawford | Godwin | Law |
| Alexander, N. Y. | Davenport | Goldfogle | Lenahan |
| Andrus | Davey, La. | Graff | Lewis |
| Anthony | Davidson | Greene | Lilley |
| Bannon | Dawes | Gronna | Lindsay |
| Barchfeld | De Armond | Hackett | Littlefield |
| Barclay | Driscoll | Hall | Livingston |
| Bennett, Ky. | Dunwell | Hammond | Lorimer |
| Bingham | Durey | Hayes | McCall |
| Boutell | Edwards, Ga. | Hepburn | McCreary |
| Bradley | Edwards, Ky. | Hinshaw | McDermott |
| Brantley | Ellis, Oreg. | Hitchcock | McGuire |
| Brick | Fairchild | Howard | McHenry |
| Broussard | Favrot | Hubbard, Iowa | McKinlay, Cal. |
| Burgess | Finley | Hughes, W. Va. | McKinley, Ill. |
| Burton, Del. | Fordney | Jackson | McKinney |
| Burton, Ohio. | Fowler | James, Addison D. | McLain |
| Clark, Fla. | French | Kennedy, Ohio | McMillan |
| Cole | Gaines, W. Va. | Kimball | McMorran |
| Cooper, Pa. | Gardner, N. J. | Kipp | Malby |
| Coudrey | Gilhams | Kitchin, Wm. W. | Marshall |
| Cousins | Gill | Knapp | Moon, Pa. |
| Craig | Glass | Lamar, Fla. | Moore, Pa. |

| | | | |
|---|---|---|---|
| Olmsted | Reynolds | Snapp | Vreeland |
| Parker, S. Dak. | Rhinock | Sparkman | Waldo |
| Pearre | Riordan | Stephens, Tex. | Webb |
| Pollard | Sabath | Sterling | Weisse |
| Porter | Saunders | Stevens, Minn. | Wheeler |
| Powers | Sherman | Talbott | Willett |
| Pratt | Slemp | Taylor, Ala. | Wilson, Pa. |
| Ransdell, La. | Smith, Mich. | Thomas, Ohio. | Wolf |
| Reid | Smith, Mo. | Townsend | Young |

So (two-thirds having voted in favor thereof) the rules were suspended, and the bill was passed.

The following additional pairs were announced:

Until further notice:

Mr. SLEMP with Mr. WOLF.

Mr. JENKINS with Mr. CLARK of Florida.

Mr. ALEXANDER of New York with Mr. FAVROT.

Mr. DAVIDSON with Mr. CRAWFORD.

Mr. DRISCOLL with Mr. HAMMOND.

Mr. DUREY with Mr. MCLAIN.

Mr. HUBBARD of Iowa with Mr. REID.

Mr. MCCREARY with Mr. TALBOTT.

Mr. MOON of Pennsylvania with Mr. RANSDELL of Louisiana.

Mr. MOORE of Pennsylvania with Mr. STEPHENS of Texas.

Mr. THOMAS of Ohio with Mr. SAUNDERS.

Mr. WALDO with Mr. HITCHCOCK.

Mr. VREELAND with Mr. TAYLOR of Alabama.

For the balance of the day:

Mr. ANTHONY with Mr. JOHNSON of South Carolina.

Mr. MCCALL with Mr. SABATH.

Mr. SMITH of Michigan with Mr. OLLIE M. JAMES.

Mr. GREENE with Mr. HACKETT.

Mr. MCKINLEY of Illinois with Mr. LEWIS.

The result of the vote was then announced as above recorded.

GRANT MEMORIAL.

Mr. MCCALL. Mr. Speaker, I move to suspend the rules and pass the joint resolution which I send to the Clerk's desk, as amended.

The Clerk read as follows:

House joint resolution 117 concerning the location of the Grant Memorial in the District of Columbia.

*Resolved, etc.*, That the Grant Memorial is hereby located upon the site with reference to which the designs for the memorial were invited and submitted and accepted, being the large circular or elliptical plat between the White House grounds and the Washington Monument.

The SPEAKER. Is a second demanded?

Mr. CONNER. I demand a second.

Mr. MCCALL. I ask unanimous consent that a second may be considered as ordered.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. The gentleman from Massachusetts [Mr. MCCALL] is entitled to twenty minutes and the gentleman from Iowa [Mr. CONNER] is entitled to twenty minutes.

Mr. MCCALL. Mr. Speaker, I regret that in offering this resolution I have against me the adverse report of a committee for which I have very great respect, the Committee on the Library. At the same time I regard the matter of such importance that it should be passed upon by the House of Representatives. Of course with whatever verdict you may render I shall be entirely satisfied. I shall not go into the somewhat complicated history of the location of this memorial. The Commission having the matter in charge invited artists to submit designs, and in their invitation they asked that those designs should be especially adapted to the so-called "White Lot," which is the large elliptical tract of land between the White House and the Washington Monument. The designs were made by artists for that location and they were accepted, although the location was not at that time finally decided upon by the Commission. Very shortly a strenuous opposition from some source appeared against having the memorial placed between the White House and the Washington Monument. The committee had accepted the design. They yielded to the opposition, and they then had upon their hands the longest, if not the greatest, work of art in the world.

Mr. Casey and Mr. Shrady, the one the architect and the other the sculptor, had planned this particular memorial for a broad open field, and that means that the memorial was proportioned to the ample sweep of that location. The memorial itself, I should say, is 250-odd feet long by 70 feet wide and covers about 17,000 feet of land, and as one of the Commission, General Dodge, testified before the committee, in order to give it a proper setting it should have an area of 500 by 300 feet, amounting in all to about 150,000 square feet, or nearly 4 acres of land. I think you can see, having a memorial of that sort accepted and having the site for which it was designed taken away from it, that the Commission had a difficult task to find an adequate site. I do not think the gentleman from Iowa [Mr. SMITH], who appeared before the committee, at all overstated the matter when he said that this memorial had been buffeted all about the city; that it was to go back of the State Department and was buffeted out of there; it was to go back of the White House, and it was kicked out of there, and then it was to go out by the new station, and it was kicked out of there. The architect of the station protested that it ought not to be there, probably for the reason that strangers to the city might mistake such a colossal structure for the depot [laughter], and as a result, finally, of this buffeting around of the memorial and the crying demand of room, room, above all things 4 acres of room, it was found that the Botanic Garden, if given up to this purpose, would have the element of room, and, in my opinion, that is the only element that they do possess suitable for a memorial to General Grant.

Then the matter was finally settled, so far as the authority of law was concerned, upon an appropriation bill, on an amendment which first appeared in this House in a conference report in the last hours of a long session of Congress. I do not charge that there was anything at all underhanded in the way that report was put through the House. The fact that it was in charge of my friend from Iowa [Mr. SMITH] would be ample evidence that it was entirely aboveboard and all right as far as he was concerned; but we know that in the last nights of a session all of the various amendments, possibly 100 of them, can not be stated to the House, and there was no debate whatever upon this proposition. So that the first thing the public knew operations were begun in the Botanical Garden, some of the trees were threatened with destruction and a protest arose against the action it was intended to take.

Now, Mr. Speaker, as I have said, the only qualification that this position has for the monument for Grant is that it has the requisite room. It reminds me of a neighbor of mine, Mr. Thomas W. Lawson, who did something that engaged the attention of one of the Russian grand dukes, and this Russian grand duke wished to show Mr. Lawson a courtesy, and so he sent him to Boston a fine speciment of a young polar bear and notified him that it would arrive at a certain time.

One day Mr. Lawson looked out of his office window and saw the streets blockaded in every direction, and a monstrous polar bear engaging the attention of all the boys in that section of the city. The streets were blockaded and the crowd rapidly increasing. He realized that he had something colossal upon his hands. He set men to work upon the telephones to find some place to put the bear, and then he sent out word "For heaven's sake keep him moving until I can find a place to put him in." [Laughter.] It was on that theory that the Grant Memorial was located in the Botanic Garden.

I do not think that is a location that should be given to perhaps the greatest general who has ever commanded the armies of the Republic. It is almost the lowest land in the District of Columbia. It is used for a purpose quite out of keeping with having a monument there, and it will either require the ultimate extinction of that Garden, or the memorial will have surroundings that are most incongruous.

Now, let me say one word as to the Garden. We all know the superintendent, that old Scotchman who has so nobly done his duty there for nearly sixty years, W. R. Smith. It does not pretend to be a national garden. With the Department of Agriculture conducting experiments, either directly or through the different State boards in every State of the Union, and which has every natural variety of climate and soil, we do not want a national garden to do these things at great expense artificially. But this Garden is of great use to the country and to Members of Congress.

We are given each year two or three boxes of plants, and there are hundreds of thousands of trees and rare plants growing in different parts of the country as a result of that work. They are growing in every Congressional district of the United States. I believe that the cost of maintaining that garden is very little more than the cost of maintaining the hothouses in connection with the executive department. This garden is peculiarly for the use of Members of Congress, just as those hothouses are peculiarly for the use of the executive department.

Then, Mr. Speaker, there is the Crittenden oak. I know it is said that that oak was not planted in accordance with an act of Congress, and that in order to make a tree historical there should be some form of legal action in connection with it; but it was planted there by one of the great men of this country, Senator Crittenden, of Kentucky, planted especially to commemorate those famous and well-meant but not successful efforts associated with his name—to preserve the Union without a war between the States. It has grown up there into a beautiful tree, but under a contract which has been made for its removal the soil is completely girdled 30 feet from its base and

they are simply awaiting the action of this House to see whether they shall remove it entirely and possibly destroy it.

Now, I think that oak is more of a monument to peace than this memorial, which in all its bulk and throughout its whole 250 feet of longitude breathes of nothing but war. That tree will be a better monument to the cause for which Grant fought than the memorial it is proposed to erect.

Now, Mr. Speaker, I should hope that if the pending resolution, which was introduced by my friend from Illinois Mr. MANN, were adopted, and if the memorial was ordered to be put upon the site for which it was designed, forces might be put in motion which would result in producing a monument to Grant upon possibly another location, which would speak of him not merely as a soldier, but also as a man and a statesman. Take that battery of cannon, the troop of soldiery, the whole structure; it speaks of war.

There is nothing to indicate that he was ever for eight years the Chief Magistrate at a most important period in the country's history. There is nothing there to indicate that it was under his Administration that the first great step was taken in the cause of international peace, and that the Geneva tribunal was established, that great landmark upon the pathway toward the peaceably settling of international differences and toward doing away with the arbitrament of war. It does not recall in any degree those magnificent words of his—grander than any of his victories—"Let us have peace," or those other words, when he said to the heroes who were surrendering to him, "Keep your horses, boys; you will need them for your spring plowing." [Applause.]

I say that such a memorial does no credit to General Grant, and I care not whether it has been passed upon by fifty Secretaries of War or fifty commissions. I can not give my consent as a Member of the House of Representatives to have such a memorial sanctioned and placed in the location in which it is proposed it shall be placed. [Applause.]

Mr. OLCOTT. Will the gentleman yield?

Mr. McCALL. I will yield to the gentleman from New York.

Mr. OLCOTT. Have not contracts been already entered into in relation to this memorial?

Mr. McCALL. It is undoubtedly true that contracts have been made, and I think the Government might have to pay damages if the work did not go on elsewhere under these contracts. I do not care whether it is true or not; when Congress has its attention called to this matter, it should do the right thing, regardless of a little claim for damages. Mr. Speaker, how much time have I remaining?

The SPEAKER. The gentleman has seven minutes.

Mr. McCALL. I will reserve the balance of my time, and yield two minutes of it to the gentleman from Ohio [Mr. DOUGLAS].

Mr. DOUGLAS. Mr. Speaker, I yield to no man in this House or this country in reverence for the name of Ulysses S. Grant. This matter has come to me to-day most unexpectedly, but I would consider myself derelict if I did not plead for the cause that the gentleman from Massachusetts has pleaded for.

It is our sentiments after all that move us most, appeal as we will to our reason. It is a sentiment with me that compels me to arise, and to speak for these two minutes in behalf of this bill. For many many years I have cherished the kindliest regard for that venerable old gentleman who makes his home in the Botanic Garden, and who has made it there for fifty-odd years. The destruction of this garden, for that is what it is, means almost death. He has dwelt upon this matter; he has worried sadly over it; he has appealed to Members of Congress about it until it has become almost a matter with him of life and death.

Who is this man that it is proposed to wound so willfully by the location of this memorial in the garden and by tearing up the ground and tearing down the trees he has planted; trees which he has cherished with all that love he is capable of feeling? He is a man that has done more, in my judgment, for the shade trees of this country, more to inculcate in every quarter a love of trees and of nature, than any man in the country. I do hope before anyone votes to destroy what has become to him the dearest spot on earth by locating there this great 250-foot monument, that you will consider the matter with kindly care.

Mr. CONNER. Mr. Speaker, it is true that the Committee on the Library made a very thorough investigation of all the facts surrounding this transaction. It is true that it made a unanimous report, excepting the one member who filed a minority report, and who is in favor of the resolution which has been presented here to-day.

Mr. Speaker, I think the House should understand what is involved in this contention. If favorable action is taken on this resolution, it means the undoing of all that has been done. A commission, made up of very able gentlemen, General Dodge, the Secretary of War, and the chairman of the Committee on the Library of the Senate, undertook to find a suitable place to locate this memorial. Their first thought was to locate it south of the State, War, and Navy building, but they found objections were made to that location. They then undertook to locate it south of the White House, on the White Lot, and objections were made by prominent people to its location at that place. They then sought various other places in the city, and wherever they found one they found objections. They undertook to locate it on the Union Station grounds and objections were made to its location there. Finally, after consultation with artists, architects, and experts, they selected the ground down here in the Botanic Garden. The opinion of the experts, the Secretary of War, General Dodge, and all of the witnesses that appeared before the committee, was to the effect that this was the best location in the District of Columbia. It has already been located there, according to law. The contract has been let for the work and the work is proceeding. Even the contract has been let for the removal of the trees, which the testimony shows can be removed in almost absolute safety. Mr. Speaker, we have a condition existing to-day which argues against the adoption of this resolution and makes it appear unreasonable in the extreme.

I now yield four minutes to the gentleman from North Carolina [Mr. THOMAS].

Mr. THOMAS of North Carolina. Mr. Speaker, I propose simply to make a very plain statement of my attitude as a member of the Committee on the Library, which made the report against the removal of the Grant Memorial. The report was prepared and filed by the gentleman from Georgia [Mr. HOWARD] and concurred in by me. The members of the committee, except the chairman, the gentleman from Massachusetts [Mr. McCALL], were of opinion that the Grant Memorial should remain where it is located now under existing law, the sundry civil act of 1907, namely, in the National Botanic Garden. The gentleman from Georgia and I did not want to interfere with any trees. We were unwilling, however, to vote any money out of the Federal Treasury for the purpose of removing trees. We could not justify that before our constituents, we thought, and declined to do so. We found, however, that money was available which would authorize the Grant Commission to remove the trees, and take care of them, and permit the Grant Memorial to remain upon the site in the Botanic Garden selected by the Grant Commission. The testimony was abundant before our committee that the trees could be removed by tree-moving machinery without injuring them at all.

The weight of the testimony before the committee, and the action of the Grand Army of the Republic favoring the location in the Botanic Garden, added to the testimony of the Secretary of War, Mr. Taft, and former Secretary of War, Mr. Root, both of whom were in favor of keeping the location where it is, combined with the fact that the trees could be removed without injury, or additional expense to the Government, decided me to join in the report to keep the memorial in the Botanic Garden. Personally, I could not see my way clear to vote for its removal to the White Lot. That is the lot in which is located the Executive Mansion, which is occupied by all the Presidents of the country of whatever political faith.

I was averse to placing the memorial in front of the Union Station, because I did not think that was the proper location for many reasons which it is not necessary for me to enumerate, and I do not care to enumerate. Therefore, the trees not being destroyed, because they could be removed by proper machinery without one dollar of further tax or expense upon the Federal Treasury, by using a small part of the money which is now appropriated, and the weight of the testimony being in favor of permitting the Grant Memorial to stay where it is now located, under the law, in the Botanic Garden, I voted with my colleague [Mr. HOWARD] and other members of the committee to table the Sherley bill and also the Mann bill. I did not wish to put the memorial on the White Lot occupied by our Presidents.

Mr. SHERLEY. Will the gentleman yield?

Mr. THOMAS of North Carolina. I have not the time.

Mr. SHERLEY. But the gentleman does not want to mislead the House.

Mr. THOMAS of North Carolina. Certainly not. I was also against putting the memorial in front of the Union Station, and hence I voted with the other members, except the chairman, in the committee and decided the memorial ought to remain where it is now located by law.

The SPEAKER. The time of the gentleman has expired.

Mr. SHERLEY. The gentleman knows it is not proposed to put it inside the White Lot.

Mr. MANN. He does not know it and that is the reason he made this bad report.

Mr. THOMAS of North Carolina. I ask to have sufficient time to reply to that statement.

Mr. CONNER. I will yield the gentleman half a minute.

Mr. THOMAS of North Carolina. If it is a bad report it was agreed to by Republicans and Democrats, and was a unanimous report, except the chairman. I know exactly, I will say to my friend from Illinois [Mr. MANN], where the memorial is to go under his bill. The gentleman's bill proposes to locate it between the White House and the Washington Monument. Now, that is putting it in the lot which is occupied by the Executive Mansion.

Mr. MANN. But it does not provide for putting it in the White House lot at all.

Mr. THOMAS of North Carolina. It is the ellipse, and that is a part of the White House lot, as I understand it, though I may be mistaken.

The SPEAKER. The time of the gentleman has expired.

Mr. CONNER. How much time have I remaining, Mr. Speaker?

The SPEAKER. Twelve and one-half minutes.

Mr. CONNER. I yield three minutes to the gentleman from Michigan [Mr. HAMILTON].

Mr. HAMILTON of Michigan. Mr. Speaker, it is with some reluctance that I differ with the chairman of the committee on which I have the honor to serve. As a committee we approached this subject, I think, all of us, with absolutely unbiased minds, and in the short time at my disposal I would like to be able to present to the House some of the reasons which actuated the committee in arriving at the conclusions we have arrived at. In the first place, Mr. Speaker, a Commission was originally created composed of the Secretary of War, the chairman of the Senate Committee on the Library, Senator WETMORE, and General Dodge. That Commission was authorized to select design for a memorial and to locate that memorial. First, it was proposed that the memorial be erected upon the ellipse between the White House and the Monument. Objection was made. Thereupon, after careful consideration, the Commission decided that the Botanic Garden was the best site for the location of this memorial. I can do no better, I think, than to state to the Members of this House something of the testimony which influenced our committee. First, Mr. Secretary Root, who was at the time this memorial was selected the chairman of the Commission by virtue of his position as Secretary of War, says:

> Our work was not at all perfunctory; it went rather beyond the ordinary interest of the performance of a statutory duty. We had a competition for design, got some gentlemen to help us to select a design, and canvassed the subject of site very fully. We first thought of the site immediately south of the State, War, and Navy building, and we thought of a site on the White Lot south of the White House, but we were not fully satisfied with either of those, and went all over Washington and looked at every place we could think of, and we discussed every place that we looked at, until finally we came to the conclusion that the monument, or the memorial, as I think the statute calls it, ought to have a definite relation to the public buildings of Washington, and we settled upon a site directly in front of the Capitol as being the best possible site. We considered that we were authorized by the statute to select that site because, although it was within the fence which surrounds the Botanic Garden—the grounds of the Botanic Garden—it was unoccupied. So we selected that by a formal resolution.
>
> In selecting that site, we had a good many things in view. We considered that the statue, which made an appropriation of $250,000 for a memorial to General Grant, meant something more than the ordinary statue which, as Secretary of War, I have been engaged in putting up around the city as a member of similar commissions. We felt that it was the intention of Congress, plainly exhibited by the difference between that statute and the ordinary monument appropriations, to indicate a distinction, and that it was our duty to secure a design and to select a site which would be distinguished, and which would put the memorial to General Grant on a different footing from the memorials to many generals and public men of inferior place in history.

The SPEAKER. The time of the gentleman has expired.

Mr. CONNER. Mr. Speaker, I yield four minutes to the gentleman from Illinois [Mr. LOWDEN].

Mr. LOWDEN. Mr. Speaker, I have the honor to represent the district in which General Grant lived before the war and from which he went to the front. Out in Galena, at Grant's old home, each year on his birthday—a most impressive ceremony—is a celebration in honor of the first soldier of the nineteenth century. Naturally I have been very much interested in this question. I have read the testimony that was given at the hearings carefully, and I have been impelled to the conclusion that it would be a great mistake to move this monument from the Botanic Garden. The Commission that placed it there did so by a unanimous vote, and this was not a perfunctory Commission, but it was a labor of love on the part of its distinguished members, as is perfectly apparent from the testimony that was taken at the hearings. Gen. Grenville M. Dodge, chairman of that Commission, a trusted lieutenant of Grant's, a lifelong friend of Grant's, has given generously of his time to the cause. William H. Taft is a member of the Commission; Elihu Root was a member of the Commission; Senator Wetmore was the other member; and these distinguished gentlemen all unite in favor of the site in the Botanic Garden. At this late day to attempt a removal would be a great mistake.

It is urged that the Botanic Garden contains a historic tree—the Crittenden tree—which should be preserved as a suggestion of peace to the people of this country. I admire the history of the distinguished Senator from Kentucky whose name is associated with this tree. However, I submit that *any* memorial to Grant suggests peace between the North and the South more than any tree that was ever grown. [Applause.] The efforts of Senator Crittenden were abortive, because it was destined that peace should not dawn until Grant and Lee should meet at Appomattox. The Crittenden tree can but suggest the awful years of war in which Americans faced their countrymen. A memorial to Grant, even though the genius who created it should depict scenes of war, as stated by the gentleman from Massachusetts, would speak of peace in all sections of our common country. Strange paradox! The man who planted this tree and who wrought for peace failed. The man of war, whose memorial we seek to erect, brought peace. No monument to Ulysses S. Grant which human hands can make will ever stand for aught but peace.

I also observe from a study of the hearings that nobody except this committee and a few others know or can learn which the Crittenden tree is. For the superintendent of the Botanic Garden stated that if he indicated to the people which it was the leaves would be plucked from it, one by one, until the tree was dead.

I trust, Mr. Speaker, that, in view of the fact that the wishes of the Commission; the Army of the Tennessee, which first brought fame to Grant; the Army of the Cumberland; the Army of the Potomac; the Loyal Legion of Illinois and other States, and the family of General Grant, as I am informed, have united upon a site, this body will acquiesce. [Loud applause.]

Mr. CONNER. Mr. Speaker, I reserve the balance of my time.

Mr. McCALL. Mr. Speaker, how much time have I remaining?

The SPEAKER. The gentleman from Massachusetts has five minutes and the gentleman from Iowa has five and a half minutes.

Mr. McCALL. I yield one minute to the gentleman from Alabama [Mr. CLAYTON].

Mr. CLAYTON. Mr. Speaker, proud of the fact that I am a son of a Confederate soldier who commanded a division in one of the greatest armies that ever fought for its convictions, I rise, sir, in behalf of the resolution offered by the gentleman from Massachusetts. I wish I had time to pay just tribute to the great man whose memory this monument proposes to perpetuate—a man great in war. I should like to speak of his distinguished career as a military commander; I should like to refer to his career in peace; but, Mr. Speaker, in this short discussion we can only recall in a summarized way his achievements as a military commander and we can only remember that sublimest utterance that he ever spoke, when he said from the bottom of his great heart to his distressed country, "Let us have peace." [Applause.] But, sir, not having the time to pay his memory a just tribute by words, I will seek as best I can at this time to do so by voting to give his monument a conspicuous and elevated place, and not to put that memorial to this great general, to this great man, in an obscure corner in a hole in the ground. [Applause.]

Mr. McCALL. Mr. Speaker, I yield one minute to the gentleman from Kentucky [Mr. SHERLEY].

Mr. SHERLEY. Mr. Speaker and gentlemen, a minute does not permit any real discussion, but I shall try to make it sufficient for a summary. This is not a contest between the admirers of General Grant and those who want to preserve certain trees and to keep the Botanic Garden as it is, for it is not the desire of any man to do aught that might disparage the fame and the memory of that great leader. It would be useless; it would be impossible so to do; but we believe that there ought not to be the need of the destruction of these trees in order to place this memorial. We further believe that the Botanic Garden does not afford a proper site for a memorial to General Grant, and it is not doing his name and his fame justice to place it there. We further believe that one of the chief motives that underlay the selection of this site was a

desire to commit Congress to a proposed plan for the beautifying of the whole of Washington, and that had nothing to do with the honoring of General Grant's memory, but simply used the fact of putting this monument there as a means to start a programme along such lines. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. McCALL. Mr. Speaker, I yield two minutes to the gentleman from New York [Mr. SULZER].

Mr. SULZER. Mr. Speaker, yesterday in this city memorial services were held to pay tribute to a great man—the late Crosby S. Noyes. Every speaker who referred to him spoke eloquently of the great work he did to beautify Washington and make this Capital a "City Beautiful." If he were alive to-day he would be with us in this fight to place the Grant Memorial in a more fitting place than the Botanic Garden—the most obscure and inappropriate place in all Washington.

This great memorial to General Grant should not be erected in the Botanic Garden. The most suitable place in all Washington for it is in the ellipse between the White House and the Washington Monument. There is where it was originally intended to be built; there is where it should be built. There is a great field; plenty of room—just the place for this great memorial. It was General Grant's field. It was his recreation ground. He planned it, and if his spirit could speak to us to-day it would be in favor of this most suitable location. There is no monument there to-day, and the greatest monument that we Members of Congress can put there is this magnificent memorial to General Grant to commemorate his brilliant military victories and patriotic civic achievements. Why were the plans changed? I do not know. A great mistake—a great blunder was made in doing so. But I intend to do all that I can now to rectify that mistake and to carry out the first idea—the original plan—of the men who initiated this memorial as a part of the scheme to beautify the city of Washington. To do this we must protect the Botanic Garden and build this memorial in the ellipse where it properly belongs. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. CONNER. I now yield to the gentleman from Iowa [Mr. SMITH].

Mr. SMITH of Iowa. Mr. Speaker, the Army of the Tennessee was the first army commanded by General Grant. In his lifetime there was organized a society composed of all the officers of that army. He was the president of that society. As early as thirteen years ago this society commenced the agitation for the erection of a suitable memorial to General Grant in the city of Washington. There was delay after delay in getting their bill through Congress, but finally it was passed in 1901. Then plans were called for and submitted to an advisory commission to the memorial commission. This advisory commission was headed by St. Gaudens, who has been lauded by the gentleman from Massachusetts [Mr. McCALL], who makes this motion, who approved this design, and there is no question pending at all before the House as to getting a new design. It is solely a question of the location of this memorial.

Now, who put it down here? It was never located anywhere else. It is true that some thought existed of locating it in the ellipse. Objection was made——

Mr. SULZER. By whom?

Mr. SMITH of Iowa. The architect who drew the design said it was unfit for the ellipse; that the site selected was the best suited of any available in the city of Washington.

Congress vested the power to select the site in the Commission composed of General Dodge, Senator WETMORE, and Secretary Root, and subsequently this Commission included Secretary Taft in lieu of Secretary Root. This Commission was not ordered to report back to Congress upon locating the memorial. It located it in 1903—five years ago. The contracts were let. The bronze work is largely done and upon the ground. They are ready to put in the foundations and to construct the base for this gigantic memorial. After it was decided to locate it here the plans were revised and the memorial cut down in length and stairs put up from the rear to adapt it to this location. It is not designed, as even originally proposed, for the ellipse. Who is it that say it ought to go down here in the Botanic Garden? The Society of the Army of the Tennessee, the army from leading which he first won fame. Who signs the committee's report in that society? Gen. O. Howard, who, with General Dodge, constitute the only two surviving Army commanders of the entire Union Army. Who else indorses this site? The Commandery of the Loyal Legion of New York, of which he was president and a member, and the Commandery of the Loyal Legion of Illinois, the State that furnished him to his country. Who else? A collection of experts, summoned to advise the Commission, unanimously located it there. Who else? The American Institute of Architects has declared this as the best location in the city. Who else? The resident members of the International Society of Sculptors say this is the best location in Washington. Who else? The surviving members of the family of General Grant.

These gentlemen have gone over this city with fidelity trying to locate this statue in a suitable place to honor Grant, and everybody who has given substantial investigation agrees that this is the best in the city of Washington. Finally, when the gentleman from Massachusetts offered his resolution here in the early days of this session for its removal, and the resolution went to his own committee, that committee, after a patient and painstaking investigation, by a vote of 4 to 1, said that it ought to remain in the Botanic Garden. I want it to stand there; I want it to be built while Grant's old comrades in arms are living, so that they may participate in its construction and dedication. I protest against continuing these changes and these delays that have for thirteen years continued in opposition to the wishes of the officers of the Society of the Army of the Tennessee. [Loud applause.] If I have any time remaining, I yield it back to my colleague [Mr. CONNER].

The SPEAKER. The gentleman has one minute remaining.

Mr. CONNER. I yield that to the gentleman from Michigan.

Mr. GARDNER of Michigan. Mr. Speaker, they say the place chosen by a majority of the committee at the foot of Capitol hill is an obscure position upon which to locate a monument to General Grant. Is the Capitol of the Republic an obscure building? The patriots who will come to this city for a thousand years, if the Government shall so long endure, will make this building the Mecca of their visits, and of necessity will come close by the monument of the man who, next to Abraham Lincoln, made possible that this building should stand, the magnificent Capitol of a reunited nation. It is not obscure unless the site of the Capitol building itself is obscure. [Loud applause.]

Mr. McCALL. I yield two minutes to the gentleman from Illinois [Mr. MANN].

Mr. MANN. Mr. Speaker, I do not wonder that the majority of the Committee on the Library reported against the resolution which I introduced if they had the attitude of mind which the gentleman [Mr. THOMAS] who spoke here this afternoon had when he stated that my resolution proposed to place the memorial in the White House lot. Of course that is not the proposition. Nor do I wonder at the attitude of my distinguished colleague from Illinois, who represents the old Galena district, if he confuses in his mind the difference between the construction of a memorial to General Grant and the location of that memorial. All of those societies which are urging this location have had in mind the construction of a memorial to Grant. Like them, I want to see Grant honored. Mr. Speaker, I was born in Illinois, raised in Illinois, educated in Illinois, have lived in Illinois all my life, and expect to die in Illinois; and I believe that the nation owes to the great men whom Illinois contributed to the country—Abraham Lincoln and Ulysses S. Grant—a proper place for the location of the memorial. [Loud applause.] In the name of Illinois, in the name of the services rendered by the great men of that State, I protest against the burial of this memorial and the dwarfing of it, as it will be, under the Dome of the Capitol, in the lowest spot in the District of Columbia. I appeal to you to locate this memorial up alongside the great monument to Washington, near to the White House, where Grant served his country in a conspicuous and a fitting position, doing honor to a great man who honored his country, who is beloved in the North and in the South. Give him the right place. [Loud applause.]

The SPEAKER. The question is on suspending the rules and passing the resolution.

The question was taken, and the Speaker announced that he was in doubt.

Mr. MANN. Division, Mr. Speaker.

The House divided, and there were—ayes 128, noes 104.

Mr. WILLIAMS. Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken, and there were—yeas 134, nays 129, answered "present" 14, not voting 111, as follows:

YEAS—134.

| | | | |
|---|---|---|---|
| Aiken | Bennet, N. Y. | Calderhead | Davis, Minn. |
| Alexander, Mo. | Booher | Caldwell | Denver |
| Alexander, N. Y. | Bowers | Candler | Douglas |
| Allen | Brodhead | Carter | Draper |
| Ames | Brumm | Clark, Mo. | Favrot |
| Ashbrook | Brundidge | Clayton | Ferris |
| Bartholdt | Burke | Cockran | Floyd |
| Bartlett, Ga. | Burleigh | Cook, Pa. | Focht |
| Bartlett, Nev. | Burnett | Cooper, Tex. | Foulkrod |
| Bates | Butler | Cravens | Fulton |
| Beall, Tex. | Calder | Crawford | Gaines, Tenn. |

| | | | |
|---|---|---|---|
| Garner | Howell, N. J. | Mann | Sherwood |
| Garrett | Hubbard, W. Va. | Miller | Sims |
| Gordon | Huff | Moon, Tenn. | Slayden |
| Griggs | Hughes, N. J. | Moore, Tex. | Smith, Cal. |
| Hackett | Hull, Tenn. | Murphy | Spight |
| Hackney | Humphreys, Miss. | Nicholls | Stanley |
| Hale | Johnson, Ky. | Nye | Sterling |
| Hamill | Jones, Va. | O'Connell | Sturgiss |
| Hamlin | Kellher | Page | Sulloway |
| Hammond | Kitchin, Claude | Parker, N. J. | Sulzer |
| Harding | Lamar, Mo. | Perkins | Taylor, Ohio |
| Hardy | Lamb | Peters | Tirrell |
| Harrison | Landis | Pou | Tou Velle |
| Haskins | Langley | Pujo | Underwood |
| Hawley | Lassiter | Rainey | Wallace |
| Hay | Leake | Reeder | Washburn |
| Heflin | Lee | Reid | Watkins |
| Helm | Littlefield | Robinson | Weeks |
| Henry, Conn. | Lovering | Russell, Mo. | Weems |
| Henry, Tex. | McCall | Russell, Tex. | Williams |
| Hill, Miss. | McCreary | Scott | Wood |
| Hobson | McHenry | Shackleford | |
| Houston | McLaughlin, Mich. | Sherley | |

NAYS—129.

| | | | |
|---|---|---|---|
| Adair | Driscoll | Hull, Iowa | Nelson |
| Ansberry | Dwight | Humphrey, Wash. | Norris |
| Barclay | Ellerbe | Jones, Wash. | Olcott |
| Bede | Ellis, Mo. | Kahn | Overstreet |
| Bell, Ga. | Englebright | Kelfer | Padgett |
| Birdsall | Esch | Kennedy, Iowa | Parsons |
| Bonynge | Fassett | Kennedy, Ohio | Payne |
| Boyd | Fitzgerald | Kinkaid | Pray |
| Bradley | Flood | Knopf | Randell, Tex. |
| Brownlow | Fornes | Knowland | Ransdell, La. |
| Burleson | Foss | Lafean | Rauch |
| Byrd | Foster, Ill. | Laning | Richardson |
| Campbell | Foster, Vt. | Legare | Rodenberg |
| Capron | Fuller | Lindbergh | Rothermel |
| Carlin | Gaines, W. Va. | Lloyd | Sheppard |
| Cary | Gardner, Mass. | Longworth | Small |
| Caulfield | Gardner, Mich. | Loud | Smith, Iowa |
| Chaney | Gillespie | Loudenslager | Smith, Tex. |
| Chapman | Gillett | Lowden | Snapp |
| Cocks, N. Y. | Goebel | McGuire | Southwick |
| Conner | Goulden | McKinley, Ill. | Sperry |
| Cook, Colo. | Graham | McLachlan, Cal. | Stafford |
| Cooper, Wis. | Granger | Macon | Steenerson |
| Cox, Ind. | Gregg | Madden | Tawney |
| Crumpacker | Haggott | Madison | Thistlewood |
| Cushman | Hamilton, Mich. | Marshall | Thomas, N. C. |
| Dalzell | Haugen | Maynard | Volstead |
| Darragh | Higgins | Mondell | Vreeland |
| Davidson | Hill, Conn | Morse | Woodyard |
| Dawson | Holliday | Mouser | Young |
| Denby | Howell, Utah | Mudd | |
| Diekema | Howland | Murdock | |
| Dixon | Hubbard, Iowa | Needham | |

ANSWERED "PRESENT"—14.

| | | | |
|---|---|---|---|
| Currier | James, Ollie M. | Patterson | Wanger |
| Foster, Ind. | Jenkins | Prince | Wiley |
| Hamilton, Iowa | Lever | Roberts | |
| Hardwick | McGavin | Rucker | |

NOT VOTING—111.

| | | | |
|---|---|---|---|
| Acheson | Edwards, Ga. | Kipp | Pratt |
| Adamson | Edwards, Ky. | Kitchin, Wm. W. | Reynolds |
| Andrus | Ellis, Oreg. | Knapp | Rhinock |
| Anthony | Fairchild | Küstermann | Riordan |
| Bannon | Finley | Lamar, Fla. | Ryan |
| Barchfeld | Fordney | Law | Sabath |
| Beale, Pa. | Fowler | Lawrence | Saunders |
| Bennett, Ky. | French | Lenahan | Sherman |
| Bingham | Gardner, N. J. | Lewis | Slemp |
| Boutell | Gilhams | Lilley | Smith, Mich. |
| Brantley | Gill | Lindsay | Smith, Mo. |
| Brick | Glass | Livingston | Sparkman |
| Broussard | Godwin | Lorimer | Stephens, Tex. |
| Burgess | Goldfogle | McDermott | Stevens, Minn. |
| Burton, Del. | Graff | McKinlay, Cal. | Talbott |
| Burton, Ohio | Greene | McKinney | Taylor, Ala. |
| Clark, Fla. | Gronna | McLain | Thomas, Ohio |
| Cole | Hall | McMillan | Townsend |
| Cooper, Pa. | Hayes | McMorran | Waldo |
| Coudry | Hepburn | Malby | Watson |
| Cousins | Hinshaw | Moon, Pa. | Webb |
| Craig | Hitchcock | Moore, Pa. | Weisse |
| Davenport | Howard | Olmsted | Wheeler |
| Davey, La. | Hughes, W. Va. | Parker, S. Dak. | Willett |
| Dawes | Jackson | Pearre | Wilson, Ill. |
| De Armond | James, Addison D. | Pollard | Wilson, Pa. |
| Dunwell | Johnson, S. C. | Porter | Wolf |
| Durey | Kimball | Powers | |

So (two-thirds not voting in favor thereof) the motion to suspend the rules and pass the resolution was rejected.

The Clerk announced the following additional pairs:

For the remainder of this session:

Mr. WANGER with Mr. ADAMSON.

For the remainder of this day:

Mr. GREENE with Mr. TAYLOR of Alabama.

Mr. BEALE of Pennsylvania with Mr. SABATH.

Mr. MCMORRAN with Mr. RYAN.

Mr. MCKINNEY with Mr. PATTERSON.

Mr. MCKINLAY of California with Mr. WILEY.

The result of the vote was announced as above recorded.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. CROCKETT, its reading clerk, announced that the Senate had passed bills of the following titles, in which the concurrence of the House of Representatives was requested:

S. 6290. An act to amend section 4414 of the Revised Statutes of the United States, relating to steamboat inspectors;

S. 6291. An act to amend section 4438 of the Revised Statutes of the United States, relating to the licensing of officers of steam vessels;

S. 6293. An act for the relief of Robert Davis;

S. 6437. An act authorizing the construction of a bridge across the Okanogan River, Washington;

S. 6441. An act granting to Percival Lowell certain land within the San Francisco Mountains National Forest, in the Territory of Arizona, for observatory purposes; and

S. R. 76. Joint resolution relating to homestead designations, made and to be made, of members of the Osage Tribe of Indians.

The message also announced that the Senate had passed without amendment a bill (H. R. 4780) to authorize the Secretary of War to make certain disposition of obsolete Springfield rifles, caliber .45, bayonets and bayonet scabbards for same; and

H. R. 18689. An act to authorize the Secretary of War to furnish two condemned brass or bronze cannon and cannon balls to the city of Winchester, Va.

SENATE BILLS AND JOINT RESOLUTIONS REFERRED.

Under clause 2 of Rule XXIV, Senate bills and joint resolution of the following titles were taken from the Speaker's table and referred to their appropriate committees, as indicated below:

S. 6441. An act granting to Percival Lowell certain lands within the San Francisco Mountains National Forest, in the Territory of Arizona, for observatory purposes—to the Committee on the Public Lands.

S. 6293. An act for the relief of Robert Davis—to the Committee on Claims.

S. 6291. An act to amend section 4438 of the Revised Statutes of the United States, relating to the licensing of officers of steam vessels—to the Committee on the Merchant Marine and Fisheries.

S. 6290. An act to amend section 4414 of the Revised Statutes of the United States, relating to steamboat inspectors—to the Committee on the Merchant Marine and Fisheries.

S. R. 76. Joint resolution relative to homestead designations, made and to be made, of members of the Osage tribe of Indians—to the Committee on Indian Affairs.

ENROLLED BILLS SIGNED.

Mr. WILSON of Illinois, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles, when the Speaker signed the same:

H. R. 4780. An act to authorize the Secretary of War to make certain disposition of obsolete Springfield rifles, caliber .45, bayonets and bayonet scabbards for same; and

H. R. 18689. An act to authorize the Secretary of War to furnish two condemned brass or bronze cannon and cannon balls to the city of Winchester, Va.

ENROLLED BILLS PRESENTED TO THE PRESIDENT FOR HIS APPROVAL.

Mr. WILSON of Illinois, from the Committee on Enrolled Bills, reported that this day they had presented to the President of the United States, for his approval, the following bills:

H. R. 15444. An act extending the time for the construction of a dam across Rainy River;

H. R. 1815. An act for the relief of the estate of D. S. Phelan;

H. R. 13735. An act to correct the military record of Micaiah R. Evans; and

H. R. 19955. An act making appropriations to supply certain additional urgent deficiencies in the appropriations for the fiscal year ending June 30, 1908.

WILLIAM H. FONDA.

By unanimous consent, on motion of Mr. GARDNER of Michigan, leave was granted to withdraw from the files of the House without leaving copies the papers in the case of William H. Fonda (H. R. 17918), Sixtieth Congress, no adverse report having been made thereon.

FERDINAND HANSEN.

By unanimous consent, on motion of Mr. HUBBARD of Iowa, leave was granted to withdraw from the files of the House without leaving copies the papers in the case of Ferdinand Hansen (H. R. 2848), Fifty-eighth Congress, no adverse report having been made thereon.

RECESS.

Mr. PAYNE. Mr. Speaker, I move that the House now take a recess until to-morrow morning at half past 11 o'clock.

The question was taken (and on a division, demanded by Mr. WILLIAMS) there were—ayes 140, noes 92.

Mr. WILLIAMS. Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken, and there were—yeas 137, nays 105, answered "present" 10, not voting 136, as follows.

YEAS—137.

| | | | |
|---|---|---|---|
| Alexander, N. Y. | Denby | Hubbard, W. Va. | Needham |
| Allen | Diekema | Huff | Nelson |
| Ames | Douglas | Hull, Iowa | Norris |
| Barclay | Draper | Humphrey, Wash. | Nye |
| Bartholdt | Driscoll | Jones, Wash. | Overstreet |
| Bates | Dwight | Kahn | Parker, N. J. |
| Bennet, N. Y. | Englebright | Keifer | Parsons |
| Birdsall | Esch | Kennedy, Iowa | Payne |
| Bonynge | Fassett | Kennedy, Ohio | Perkins |
| Boyd | Focht | Kinkaid | Pray |
| Bradley | Foss | Knowland | Reeder |
| Brownlow | Foster, Vt. | Küstermann | Rodenberg |
| Brumm | Foulkrod | Lafean | Scott |
| Burke | Fuller | Langley | Smith, Cal. |
| Burleigh | Gaines, W. Va. | Laning | Smith, Iowa |
| Butler | Gardner, Mass. | Lawrence | Snapp |
| Calder | Gardner, Mich. | Lindbergh | Southwick |
| Calderhead | Gardner, N. J. | Loudenslager | Stafford |
| Campbell | Gillett | Lovering | Steenerson |
| Capron | Goebel | Lowden | Sturgiss |
| Cary | Graham | McCreary | Sulloway |
| Caulfield | Haggott | McGuire | Tawney |
| Chaney | Hale | McKinley, Ill. | Taylor, Ohio |
| Chapman | Hamilton, Mich. | McLachlan, Cal. | Thistlewood |
| Cocks, N. Y. | Harding | McLaughlin, Mich. | Tirrell |
| Conner | Haskins | Madden | Volstead |
| Cook, Colo. | Haugen | Madison | Vreeland |
| Cook, Pa. | Hawley | Malby | Washburn |
| Cooper, Wis. | Higgins | Mann | Weeks |
| Crumpacker | Hill, Conn. | Miller | Wilson, Ill. |
| Cushman | Holliday | Moore, Pa. | Wood |
| Dalzell | Howell, N. J. | Morse | Young |
| Darragh | Howell, Utah. | Mouser | |
| Davidson | Howland | Mudd | |
| Dawson | Hubbard, Iowa | Murdock | |

NAYS—105.

| | | | |
|---|---|---|---|
| Adair | Favrot | Hill, Miss. | Rainey |
| Aiken | Ferris | Hobson | Randell, Tex. |
| Alexander, Mo. | Fitzgerald | Houston | Ransdell, La. |
| Ansberry | Flood | Hughes, N. J. | Rauch |
| Ashbrook | Floyd | Hull, Tenn. | Reid |
| Bartlett, Ga. | Fornes | Humphreys, Miss. | Richardson |
| Beall, Tex. | Foster, Ill. | Jones, Va. | Robinson |
| Bell, Ga. | Fulton | Kelliher | Rothermel |
| Bowers | Gaines, Tenn. | Kitchin, Claude | Rucker |
| Brodhead | Garner | Lamar, Mo. | Russell, Mo. |
| Brundidge | Garrett | Lamb | Russell, Tex. |
| Burgess | Gillespie | Leake | Sheppard |
| Burleson | Gordon | Legare | Sherley |
| Burnett | Goulden | Lloyd | Sherwood |
| Byrd | Granger | McHenry | Sims |
| Caldwell | Gregg | Macon | Small |
| Candler | Griggs | Moon, Tenn. | Smith, Tex. |
| Carlin | Hackett | Moore, Tex. | Spight |
| Carter | Hackney | Murphy | Stanley |
| Clark, Mo. | Hamill | Nicholls | Thomas, N. C. |
| Clayton | Hamlin | O'Connell | Tou Velle |
| Cooper, Tex. | Hammond | Padgett | Wallace |
| Cox, Ind. | Harrison | Page | Watkins |
| Cravens | Hay | Patterson | Williams |
| Crawford | Heflin | Peters | |
| Dixon | Helm | Pou | |
| Ellerbe | Henry, Tex. | Pujo | |

ANSWERED "PRESENT"—10.

| | | | |
|---|---|---|---|
| Currier | James, Ollie M. | McGavin | Wanger |
| Foster, Ind. | Jenkins | Prince | |
| Hamilton, Iowa | Johnson, S. C. | Shackleford | |

NOT VOTING—136.

| | | | |
|---|---|---|---|
| Acheson | Edwards, Ky. | Lamar, Fla. | Reynolds |
| Adamson | Ellis, Mo. | Landis | Rhinock |
| Andrus | Ellis, Oreg. | Lassiter | Riordan |
| Anthony | Fairchild | Law | Roberts |
| Bannon | Finley | Lee | Ryan |
| Barchfeld | Fordney | Lenahan | Sabath |
| Bartlett, Nev. | Fowler | Lever | Saunders |
| Beale, Pa. | French | Lewis | Sherman |
| Bede | Gilhams | Lilley | Slayden |
| Bennett, Ky. | Gill | Lindsay | Slemp |
| Bingham | Glass | Littlefield | Smith, Mich. |
| Booher | Godwin | Livingston | Smith, Mo. |
| Boutell | Goldfogle | Longworth | Sparkman |
| Brantley | Graff | Lorimer | Sperry |
| Brick | Greene | Loud | Stephens, Tex. |
| Broussard | Gronna | McCall | Sterling |
| Burton, Del. | Hall | McDermott | Stevens, Minn. |
| Burton, Ohio | Hardwick | McKinlay, Cal. | Sulzer |
| Clark, Fla. | Hardy | McKinney | Talbott |
| Cockran | Hayes | McLain | Taylor, Ala. |
| Cole | Henry, Conn. | McMillan | Thomas, Ohio |
| Cooper, Pa. | Hepburn | McMorran | Townsend |
| Coudrey | Hinshaw | Marshall | Underwood |
| Cousins | Hitchcock | Maynard | Waldo |
| Craig | Howard | Mondell | Watson |
| Davenport | Hughes, W. Va. | Moon, Pa. | Webb |
| Davey, La. | Jackson | Olcott | Weems |
| Davis, Minn. | James, Addison D. | Olmsted | Weisse |
| Dawes | Johnson, Ky. | Parker, S. Dak. | Wheeler |
| De Armond | Kimball | Pearre | Wiley |
| Denver | Kipp | Pollard | Willett |
| Dunwell | Kitchin, Wm. W. | Porter | Wilson, Pa. |
| Durey | Knapp | Powers | Wolf |
| Edwards, Ga. | Knopf | Pratt | Woodyard |

So the motion was agreed to.

The following additional pairs were announced:

Until further notice:

Mr. LONGWORTH with Mr. COCKRAN.

On this vote:

Mr. WOODYARD with Mr. SLAYDEN.

Mr. HUGHES of West Virginia with Mr. UNDERWOOD.

Mr. MOON of Pennsylvania with Mr. LEE.

Mr. OLCOTT with Mr. SULZER.

Mr. LOUD with Mr. LASSITER.

Mr. BOUTELL with Mr. HARDY.

Mr. DAVIS of Minnesota with Mr. BARTLETT of Nevada.

Mr. LAW with Mr. DENVER.

Mr. HENRY of Connecticut with Mr. BOOHER.

The result of the vote was then announced as above recorded.

Accordingly (at 5 o'clock and 15 minutes p. m.) the House was in recess until to-morrow at 11.30 a. m.

## REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. HULL of Iowa, from the Committee on Military Affairs, to which was referred the joint resolution of the Senate (S. R. 9) authorizing the Secretary of War to furnish a condemned cannon to the board of regents of the University of South Dakota, at Vermilion, S. Dak., to be placed on the campus of said institution, reported the same without amendment, accompanied by a report (No. 1390), which said resolution and report were referred to the Committee of the Whole House on the state of the Union.

## PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

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

By Mr. ENGLEBRIGHT: A bill (H. R. 20382) directing the Secretary of War to cause a survey and examination to be made of the Sacramento River from the mouth of Feather River to Red Bluff, with a view to the improvement of said river for navigation—to the Committee on Rivers and Harbors.

By Mr. CALE: A bill (H. R. 20383) to authorize the Copper River Railway Company to construct two bridges across the Copper River, in the Territory of Alaska—to the Committee on Interstate and Foreign Commerce.

Also, a bill (H. R. 20384) to authorize the Copper River and Northwestern Railway Company to construct a bridge across Bering Lake, in the Territory of Alaska—to the Committee on Interstate and Foreign Commerce.

By Mr. BOYD: A bill (H. R. 20385) to enable the Omaha Indians to protect from overflow their tribal and allotted lands located within the boundaries of any drainage district in Nebraska—to the Committee on Indian Affairs.

By Mr. CHANEY: A bill (H. R. 20386) to establish a court of patent appeals—to the Committee on Patents.

By Mr. PRAY: A bill (H. R. 20387) appropriating money for the improvement of the Missouri River in the State of Montana—to the Committee on Rivers and Harbors.

By Mr. CAMPBELL: A bill (H. R. 20388) suspending the patent and copyright laws of the United States when a patent or copyright on any article or product protected by a patent or copyright is owned, used, or leased by any trust or monopoly in violation of any law in restraint of trade—to the Committee on Patents.

By Mr. HOBSON: A bill (H. R. 20389) to equalize the rank, pay, and allowances of the bandmaster and sword master at the Naval Academy with corresponding positions at the Military Academy—to the Committee on Naval Affairs.

By Mr. SMITH of Michigan: A bill (H. R. 20390) to provide for the removal of certain railroad sidings in the District of Columbia, and for other purposes—to the Committee on the District of Columbia.

By Mr. LINDBERGH: A bill (H. R. 20391) to amend the land laws of the United States so as to reserve the minerals to the States and Territories—to the Committee on the Public Lands.

By Mr. GREENE: A bill (H. R. 20392) to govern seagoing barges—to the Committee on the Merchant Marine and Fisheries.

By Mr. BRADLEY: A bill (H. R. 20430) to authorize the Secretary of War to donate to the Veteran Relief Guard of Newburg, N. Y., fifty obsolete Springfield rifles, with bayonets, bayonet scabbards, and ammunition belts for same—to the Committee on Military Affairs.

By Mr. PRAY: A bill (H. R. 20431) for the purchase of a site for a Federal building for the United States post-office and land office at Miles City, Mont.—to the Committee on Public Buildings and Grounds.

By Mr. BENNET of New York: Resolution (H. Res. 327) requesting the President to transmit to the House certain information relative to dining rooms in public buildings in Washington—to the Committee on Public Buildings and Grounds.

By Mr. HITCHCOCK: Resolution (H. Res. 328) directing the Secretary of Commerce and Labor to transmit to the House certain information concerning live stock and meat products—to the Committee on Interstate and Foreign Commerce.

## PRIVATE BILLS AND RESOLUTIONS.

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

By Mr. ALEXANDER of New York: A bill (H. R. 20393) granting an increase of pension to Ebenezer N. White—to the Committee on Invalid Pensions.

By Mr. ASHBROOK: A bill (H. R. 20394) granting an increase of pension to Edward P. L. Jones—to the Committee on Pensions.

By Mr. BRUNDIDGE: A bill (H. R. 20395) granting an increase of pension to Thomas B. Stallings—to the Committee on Invalid Pensions.

By Mr. CHANEY: A bill (H. R. 20396) granting a pension to Benjamin McCleare—to the Committee on Invalid Pensions.

Also, a bill (H. R. 20397) granting a pension to James R. Bennett—to the Committee on Invalid Pensions.

By Mr. CHAPMAN: A bill (H. R. 20398) granting a pension to Elizabeth Kearney—to the Committee on Invalid Pensions.

Also, a bill (H. R. 20399) granting an increase of pension to Samuel Burkett—to the Committee on Invalid Pensions.

By Mr. COOK of Pennsylvania: A bill (H. R. 20400) for the removal of the charge of desertion from the record of Timothy A. Maher—to the Committee on Military Affairs.

By Mr. FLOYD: A bill (H. R. 20401) granting an increase of pension to James Burkett—to the Committee on Invalid Pensions.

By Mr. FORNES: A bill (H. R. 20402) granting a pension to Rienzi Le Valley—to the Committee on Invalid Pensions.

By Mr. FOSTER of Illinois: A bill (H. R. 20403) granting an increase of pension to Charles M. Meeker—to the Committee on Invalid Pensions.

Also, a bill (H. R. 20404) granting pensions to Ausby D. McCoy, William V. McCoy, Charles McCoy, and Martha B. McCoy—to the Committee on Invalid Pensions.

By Mr. FULLER: A bill (H. R. 20405) granting an increase of pension to Richard S. Hambridge—to the Committee on Invalid Pensions.

By Mr. GORDON: A bill (H. R. 20406) for the relief of heirs of A. Worley Patterson, deceased—to the Committee on War Claims.

By Mr. HACKETT: A bill (H. R. 20407) for the relief of J. A. Denny—to the Committee on Claims.

Also, a bill (H. R. 20408) granting an increase of pension to John Robinson—to the Committee on Invalid Pensions.

Also, a bill (H. R. 20409) granting a pension to James W. Culler—to the Committee on Pensions.

By Mr. JONES of Washington: A bill (H. R. 20410) granting an increase of pension to Phineas M. Hoisington—to the Committee on Invalid Pensions.

By Mr. KENNEDY of Iowa: A bill (H. R. 20411) granting an increase of pension to Silas R. Nugen, jr.—to the Committee on Invalid Pensions.

By Mr. LIVINGSTON: A bill (H. R. 20412) granting a pension to Charles S. Kinman—to the Committee on Invalid Pensions.

Also, a bill (H. R. 20413) granting a pension to Andrew Dine—to the Committee on Invalid Pensions.

Also, a bill (H. R. 20414) granting an increase of pension to Joseph Case—to the Committee on Invalid Pensions.

By Mr. McGUIRE: A bill (H. R. 20415) for the refunding of certain moneys—to the Committee on Indian Affairs.

By Mr. PARKER of New Jersey: A bill (H. R. 20416) granting a pension to Frances T. Gaddis—to the Committee on Invalid Pensions.

By Mr. PRAY: A bill (H. R. 20417) for the relief of S. W. Langhorne and H. S. Howell—to the Committee on Claims.

By Mr. REID: A bill (H. R. 20418) granting a pension to Mrs. Henry G. Butts—to the Committee on Pensions.

Also, a bill (H. R. 20419) granting a pension to Martha J. Brooks—to the Committee on Invalid Pensions

Also, a bill (H. R. 20420) granting a pension to Soloman George Bean—to the Committee on Invalid Pensions.

Also, a bill (H. R. 20421) granting a pension to John L. C. Adams—to the Committee on Pensions.

Also, a bill (H. R. 20422) to remove the charge of desertion against L. B. Burcham—to the Committee on Military Affairs.

By Mr. SLAYDEN: A bill (H. R. 20423) to confer jurisdiction on the Court of Claims to hear and determine the claim of Luther Sargent, of Eagle Pass, Tex., for cattle taken by the Comanche Indians—to the Committee on Claims.

By Mr. SMITH of Michigan: A bill (H. R. 20424) granting an increase of pension to C. H. Sedgwick—to the Committee on Invalid Pensions.

By Mr. THISTLEWOOD: A bill (H. R. 20425) granting an increase of pension to Oregon Boughner—to the Committee on Invalid Pensions.

By Mr. WEEKS: A bill (H. R. 20426) for the relief of C. W. Beals—to the Committee on War Claims.

By Mr. ANDREWS: A bill (H. R. 20427) to remove the charge of desertion from the military record of John D. Hopper—to the Committee on Military Affairs.

Also, a bill (H. R. 20428) referring to the Court of Claims the claim of the heirs and legal representatives of John P. Maxwell and Hugh H. Maxwell, deceased—to the Committee on Claims.

Also, a bill (H. R. 20429) to quiet title to certain lands in Dona Ana County, N. Mex.—to the Committee on Private Land Claims.

## PETITIONS, ETC.

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

By Mr. ALEXANDER of New York: Petition of United Trades and Labor Council of Erie County, N. Y., favoring H. R. 10556, for alleviating sufferings incident to accidents in coal mines (McHenry bill)—to the Committee on Mines and Mining.

By Mr. ASHBROOK: Petition of Association for the Protection of the Adirondacks, favoring H. R. 10457, for forest reservations in White Mountains and Southern Appalachian Mountains—to the Committee on Agriculture.

By Mr. BURLEIGH: Petition of citizens of Thorndike, Me., favoring a national highways commission (H. R. 15837)—to the Committee on Agriculture.

By Mr. CALDER: Petition of Treaty Stone Club, Clan-na-Gael, of Kings County, against the treaty of arbitration now being negotiated between the United States and Great Britain—to the Committee on Foreign Affairs.

Also, petition of Home Savings Bank, of Brooklyn, N. Y., against the Aldrich currency bill (S. 3023)—to the Committee on Banking and Currency.

By Mr. CHANEY: Paper to accompany bill for relief of James R. Bennett—to the Committee on Invalid Pensions.

By Mr. COCKS of New York: Petition of the South Side Civic League, favoring construction of battle ships in navy-yards—to the Committee on Naval Affairs.

By Mr. COOPER of Wisconsin: Petition of United Produce Growers and Shippers' Association of Southern Wisconsin, for enactment of a law to establish uniform legal weights per bushel of all farm commodities throughout the United States—to the Committee on Coinage, Weights, and Measures.

By Mr. DRISCOLL: Petition of South Onondaga Grange, of New York, in favor of H. R. 15837, for a national highways commission and appropriation giving Federal aid to construction and maintenance of public highways—to the Committee on Agriculture.

By Mr. DUNWELL: Petition of Clearing House Association, for amendment to the Aldrich bill (S. 3023)—to the Committee on Banking and Currency.

Also, petition of Brooklyn Federation of Labor, against any prohibition legislation—to the Committee on the Judiciary.

Also, petition of editor of Daily Kuryer Polski, favoring the Bates resolution of sympathy for the Prussian Poles—to the Committee on Foreign Affairs.

Also, petition of C. A. Van Deusen Company, against the Aldrich currency bill (S. 3023)—to the Committee on Banking and Currency.

Also, petition of Master Steam and Hot Water Fitters' Association, against the Pearre anti-injunction bill—to the Committee on the Judiciary.

Also, petition of Home Savings Bank of Brooklyn, against Aldrich bill (S. 3023)—to the Committee on Banking and Currency.

Also, petition of Home Savings Bank, favoring the Dalzell bill, making it a misdemeanor to circulate rumors, etc., affecting

the solvency of banking institutions—to the Committee on Banking and Currency.

Also, petition of Charles R. Schurner Company, against the Hepburn amendment to the Sherman antitrust act—to the Committee on the Judiciary.

Also, petition of Allied Boards of Trade, favoring the bill to widen Wallabout channel, in the East River, New York—to the Committee on Rivers and Harbors.

Also, petition of Emily A. Hutchins, for preservation of the Calaveras big trees—to the Committee on Agriculture.

Also, petition of Chicago national banks, against the Aldrich currency bill (S. 3023)—to the Committee on Banking and Currency.

Also, petition of National Grange, for the creation of a national highways commission (H. R. 15837) and appropriation for Federal assistance in construction of public highways—to the Committee on Agriculture.

Also, petition of Richard O'Brien, for the Lorimer bill (H. R. 175), for relief of the telegraphers in the civil war—to the Committee on Invalid Pensions.

Also, petition of National Association of Manufacturers, against Hepburn amendment to the Sherman antitrust act (H. R. 19745)—to the Committee on the Judiciary.

Also, petition of Merchants' Association of New York, against passage of any bills limiting injunctions or restraining orders in labor disputes—to the Committee on the Judiciary.

By Mr. ELLIS of Oregon: Petition of L. H. Peterson and 17 others of Mist, Oreg., praying for the creation of a national highways commission (H. R. 15837)—to the Committee on Agriculture.

Also, petition of Commercial Association of Western Oregon, against the Aldrich currency bill (S. 3023)—to the Committee on Banking and Currency.

By Mr. FLOYD: Paper to accompany bill for relief of James Perrin, jr.—to the Committee on Invalid Pensions.

By Mr. FOSTER of Vermont: Petition of Newfane Grange, asking for support of the Hansbrough antipolygamy bill—to the Committee on the Judiciary.

Also, petition of E. H. Allen and others, of Fowler, Vt., favoring the Fowler Currency bill—to the Committee on Banking and Currency

By Mr. FULLER: Petition of Union Furniture Company, of Rockford, Ill., against the Hepburn bill, amending Sherman Act (H. R. 19745)—to the Committee on the Judiciary.

Also, petition of Byron Hewitt, of Rockford, Ill., for the Fuller bill (H. R. 19250), to create a volunteer officers' retired list—to the Committee on Military Affairs.

By Mr. GARDNER of Massachusetts: Petition of Rowley Grange, No. 204, Patrons of Husbandry, of Rowley, Mass., for a national highways commission and making appropriation for construction and improvement of public highways—to the Committee on Agriculture.

Also, petition of Post No. 108, Grand Army of the Republic, of Georgetown, Mass., against abolition of the various pension agencies—to the Committee on Appropriations.

By Mr. GORDON: Paper to accompany bill for relief of estate of Worley Patterson, of Morgan County, Ala.—to the Committee on War Claims.

By Mr. HIGGINS: Petition of Canterbury Grange, of Canterbury, Conn., for a national highways commission and for Federal aid in road construction—to the Committee on Agriculture.

By Mr. HOWELL of New Jersey: Petition of Marl Ridge Grange, of New Egypt, N. J., for a national highways commission and Federal aid in road construction (H. R. 15837)—to the Committee on Agriculture.

Also, petition of Ancient Order of Hibernians, of Middlesex County, N. J., against the treaty of arbitration now being negotiated between the United States and Great Britain—to the Committee on Foreign Affairs.

Also, petition or memorial of Marl Ridge Grange, of New Egypt, N. J., for a parcels-post law (S. 5122)—to the Committee on the Post-Office and Post-Roads.

By Mr. HUMPHREY of Washington: Petition of citizens of the State of Washington, protesting against passage of H. R. 4929, against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. FOSTER of Vermont: Petition of Newfane Grange, of Newfane, Vt., favoring the Littlefield original-package bill (H. R. 4776)—to the Committee on the Judiciary.

By Mr. KELIHER: Petition of executive council of the Massachusetts State Board of Trade, favoring amendments to the Aldrich currency bill—to the Committee on Banking and Currency.

By Mr. KENNEDY of Iowa: Paper to accompany bill for relief of Silas R. Nugent—to the Committee on Invalid Pensions.

By Mr. KNAPP: Petition of Lorraine (N. Y.) Grange, No. 117, for the Burnham parcels-post bill (S. 5122)—to the Committee on the Post-Office and Post-Roads.

Also, petition of Lorraine (N. Y.) Grange, No. 117, praying for legislation for the improvement of the public highways (H. R. 15837)—to the Committee on Agriculture.

Also, paper to accompany bill for relief of John C. Sullivan—to the Committee on Claims.

By Mr. LAFEAN: Paper to accompany bill for relief of Joseph R. Scott—to the Committee on Military Affairs.

By Mr. LAW: Petition of board of directors of Merchants' Association of New York, against enactment of bills relative to injunctions and restraining orders involving relations of employer and employee—to the Committee on the Judiciary.

By Mr. McMILLAN: Petitions of Columbia County Pomona Grange and Edwin R. Johnson, for a national highways commission and Federal aid in construction of public roads (H. R. 15837)—to the Committee on Agriculture.

By Mr. MALBY: Petitions of Chateaugay (N. Y.) Grange, No. 964, and Nicholville Grange, No. 797, favoring a national highways commission and appropration for Federal aid in construction and improvement of highways—to the Committee on Agriculture.

By Mr. NEEDHAM: Petitions of California Harbor, No. 15, American Association of Masters, Mates, and Pilots, and Marine Engineers' Beneficial Association, No. 35, of San Francisco, Cal., for H. R. 14941, amending section 4463 of Revised Statutes of the United States—to the Committee on the Merchant Marine and Fisheries.

Also, petition of Soquel Grange, No. 349, of California, and E. J. Stacy and others, favoring H. R. 15837, for a national highways commission and appropriation for Federal aid in road building—to the Committee on Agriculture.

By Mr. NORRIS: Petition of C. S. Mitchell and others, of Wilsonville, Nebr., favoring all prohibition bills that come before Congress—to the Committee on Alcoholic Liquor Traffic.

By Mr. OVERSTREET: Petition of H. W. Tutewilder, for a volunteer officers' retired list—to the Committee on Military Affairs.

By Mr. PRATT: Paper to accompany bill for relief of Samuel R. Dummer (H. R. 30370)—to the Committee on Pensions.

By Mr. RYAN: Petition of Rochester Lodge, No. 99, Brotherhood of Locomotive Firemen and Enginemen, favoring S. 4260, known as the "Clapp free-pass amendment"—to the Committee on Interstate and Foreign Commerce.

Also, petition of United Trade and Labor Council of Buffalo, N. Y., favoring H. R. 10556, to alleviate suffering incident to accidents in coal mines—to the Committee on Mines and Mining.

Also, petition of Empire State Lodge, No. 39, Switchmen's Union of North America, favoring H. R. 13477, relative to the standardization of the automatic coupler—to the Committee on Interstate and Foreign Commerce.

By Mr. SHERMAN: Petition of Warren (N. Y.) Grange, No. 810, for S. 5122 (establishment of a rural parcels post)—to the Committee on the Post-Office and Post-Roads.

Also, petition of Warren (N. Y.) Grange, No. 810, for a national highways commission and for Federal aid in construction of public highways (H. R. 15837)—to the Committee on Agriculture.

By Mr. SHERWOOD: Petition against H. R. 4897, for religious legislation for the District of Columbia—to the Committee on the District of Columbia.

Also, petitions of George W. S. Dodge Post, of Nashua, Iowa, No. 132; Samuel Camran Post, No. 379, Department of New York, Grand Army of the Republic, and E. A. Packer and others, favoring the Sherwood pension bill (H. R. 7625)—to the Committee on Invalid Pensions.

By Mr. SPERRY: Resolution of Housatonic Valley Pomona Grange, No. 10, Patrons of Husbandry, of Connecticut, favoring parcels post—to the Committee on the Post-Office and Post-Roads.

Also, resolution of the Woman's Educational Club of East Haddam, Conn., relative to appointments in the Census Office (H. R. 7597), against clauses in bill against competitive examination—to the Committee on the Census.

By Mr. STEVENS of Minnesota: Petition of Irish Benevolent Association of St. Paul, opposing treaty of arbitration with Great Britain—to the Committee on Foreign Affairs.

Also, petition of Shippers' Association of St. Paul, Minn., in favor of bill of lading bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of Roadmakers' Association of Minnesota, in favor of good roads—to the Committee on Agriculture.

Also, protest of P. N. Peterson & Co., against H. R. 15651, relative to eight-hour law—to the Committee on Interstate and Foreign Commerce.

Also, petition of Switchmen's Union of North America, in favor of H. R. 13477, relative to a standard coupler on railroads—to the Committee on Interstate and Foreign Commerce.

Also, petition of citizens of Wabash, Minn., in opposition to H. R. 15651, relative to the eight-hour law—to the Committee on Labor.

Also, resolutions of city council of St. Paul, Minn., in favor of improving the Mississippi River—to the Committee on Rivers and Harbors.

By Mr. WOOD: Petition of Lawrenceville Grange, No. 170, Partons of Husbandry, for the creation of a national highways commission and for appropriation to give Federal aid to the States in highways construction (H. R. 15837)—to the Committee on Agriculture.

Also, petition of Mercer County Board, Ancient Order of Hibernians, of Trenton, N. J., against a treaty of arbitration with Great Britain—to the Committee on Foreign Affairs.

## SENATE.

TUESDAY, *April 7, 1908.*

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

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

The VICE-PRESIDENT. The Journal stands approved.

### ELLEN L. FAUNCE V. UNITED STATES.

The VICE-PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the reformed findings of fact filed by the court April 6, 1908, in the cause of Ellen L. Faunce, widow of Peter Faunce, deceased, *v.* United States, which, with the accompanying paper, was referred to the Committee on Claims and ordered to be printed.

### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its chief clerk, announced that the House had passed a bill (H. R. 20308) to establish a naval station at Pearl Harbor, Hawaii, in which it requested the concurrence of the Senate.

### ENROLLED BILLS SIGNED.

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

H. R. 4780. An act to authorize the Secretary of War to make certain disposition of obsolete Springfield rifles, caliber .45, bayonets and bayonet scabbards for same; and

H. R. 18689. An act to authorize the Secretary of War to furnish two condemned brass or bronze cannon and cannon balls to the city of Winchester, Va.

### ENLARGEMENT OF HOMESTEADS.

Mr. HEYBURN. I desire to call attention to the Calendar. In the General Orders, under Rule VIII, I find Order of Business 471, the bill (S. 6155) to provide for an enlarged homestead. I objected to the further consideration of the bill yesterday and asked that it should go under Rule IX. I think that was sufficient to send it under Rule IX.

The VICE-PRESIDENT. The Calendar will be corrected.

### PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a memorial of the Robert Emmet Club, of Chicago, Ill., remonstrating against the ratification of the pending treaty of arbitration between the United States and Great Britain, which was referred to the Committee on Foreign Relations.

He also presented a petition of the New Jersey State Federation of Women's Clubs, of Newark, N. J., praying for the enactment of legislation providing for an investigation and the development of the methods of the treatment of tuberculosis, which was referred to the Committee on Public Health and National Quarantine.

He also presented the petition of Theodore G. Nelson, R. R. Beall, C. G. Misserole, and J. A. McCreery, representing 200 grain growers and grain shippers of the United States, praying for the enactment of legislation providing for the inspection and grading of grain under Federal control, which was referred to the Committee on Agriculture and Forestry.

He also presented the memorial of E. A. Riley, of Seattle, Wash., remonstrating against the adoption of an amendment to the Constitution to extend the right of naturalization, which was referred to the Committee on Immigration.

Mr. PLATT presented a petition of the Chamber of Commerce of Rochester, N. Y., and a petition of Local Branch No. 22, United National Association of Post-Office Clerks, of Rochester, N. Y., praying for the enactment of legislation to promote postal clerks from the fifth to the sixth grade, which were referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of E. A. Riley, of Seattle, Wash., and the petition of G. W. Griesmeyer, of Brooklyn, N. Y., praying for the enactment of legislation to restrict the immigration of Asiatics into the United States, which were referred to the Committee on Immigration.

He also presented petitions of Oalka Falls Grange, No. 394, Patrons of Husbandry, of Le Roy; Gansevoort Grange, No. 832, Patrons of Husbandry, of Saratoga Springs; Tyrone Grange, No. 1007, Patrons of Husbandry, of Tyrone; Adams Center Grange, No. 590, Patrons of Husbandry, of Adams Center; Argyle Grange, No. 1081, Patrons of Husbandry, of Argyle; Macedon Grange, No. 326, Patrons of Husbandry, of Macedon, and of the Commercial Association of Glens Falls, all in the State of New York, praying for the passage of the so-called "rural parcels-post bill," which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the Chamber of Commerce of Rochester, N. Y., praying for the adoption of an amendment to the present interstate-commerce law providing for a uniform bill of lading, which was referred to the Committee on Interstate Commerce.

He also presented a petition of Rochester Lodge, No. 99, Brotherhood of Locomotive Firemen and Engineers, of Rochester, N. Y., praying for the passage of the so-called "La Follette-Sterling employers' liability bill," and also for the so-called "Rodenberg anti-injunction bill," which was referred to the Committee on the Judiciary.

He also presented a petition of the Association for the Protection of the Adirondacks, of New York City, N. Y., praying for the enactment of legislation to establish a national forest reserve in the Southern Appalachian and White Mountains, which was ordered to lie on the table.

Mr. PERKINS presented petitions of sundry citizens of Bloomfield, Petaluma, and Fallon, and of the Chamber of Commerce of Santa Barbara, all in the State of California, praying for the passage of the so-called "rural parcels-post bill," which were referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of sundry post-office clerks of Pasadena, Cal., praying for the enactment of legislation to equalize the pay of clerks and carriers in the postal service, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented a petition of the Chamber of Commerce of Santa Barbara, Cal., praying for the enactment of legislation to establish postal savings banks, which was referred to the Committee on Post-Offices and Post-Roads.

Mr. WETMORE presented petitions of the Woman's Christian Temperance Unions of Apponaug, Woodville, Cumberland, and Providence, and of the congregation of the People's Free Baptist Church, of Auburn, all in the State of Rhode Island, praying for the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the District of Columbia, which were referred to the Committee on the District of Columbia.

Mr. GALLINGER presented a petition of sundry citizens of Concord, N. H., and a petition of the Twenty-third International Christian Endeavor Convention, of Seattle, Wash., praying for the enactment of legislation to prohibit the manufacture and sale of intoxicating liquors in the District of Columbia, which were referred to the Committee on the District of Columbia.

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

He also presented a petition of the East Washington Citizens' Association, of the District of Columbia, praying for the enactment of legislation providing for a reduction in the price of gas in the District of Columbia, which was referred to the Committee on the District of Columbia.

He also presented memorials of sundry citizens of Oregon, South Dakota, California, Texas, and Washington, D. C., remonstrating against the enactment of legislation to protect the first day of the week as a day of rest in the District of Columbia, which were referred to the Committee on the District of Columbia.

He also presented a petition of the East Washington Citizens' Association, of the District of Columbia, praying that an appropriation be made placing all the school buildings in the District of Columbia in a safe condition, and also requiring