

H. R. 18445, to investigate treatment of tuberculosis—to the Committee on Appropriations.

By Mr. WEISSE: Petition of Sheboygan (Wis.) Lodge, No. 290, Benevolent and Protective Order of Elks, for an American elk reservation in Wyoming—to the Committee on the Public Lands.

Also, petition of Mountain Lumber Manufacturers' Association, favoring a duty of \$2 per thousand on certain kinds of lumber and 30 cents per thousand on shingles—to the Committee on Ways and Means.

By Mr. WHEELER: Petition of Greenville (Pa.) Lodge, No. 145, Benevolent and Protective Order of Elks, for an American elk reservation in Wyoming—to the Committee on the Public Lands.

#### SENATE.

SATURDAY, February 27, 1909.

The Senate met at 11 o'clock a. m.

The Chaplain, Rev. Edward E. Hale, offered the following prayer:

*Behold, I come quickly; and my reward is with me, to give every man according as his work shall be.*

*Blessed are they that do His commandments, that they may have right to the tree of life, and may enter in through the gates into the city.*

*For we know that if our earthly house of this tabernacle were dissolved, we have a building of God, an house not made with hands, eternal in the heavens.*

Let us pray.

Father, Thou hast taught us this by Thy word in all ages by Thy well-beloved Son. To-day we are to go back in memory to those who have served Thee here and are now serving Thee in the larger service of that other world.

O God, be with us when we interpret history. Be with us Thou, when we look into the future to see what our own duty may be in these days that are before us. Show Thy servants in the Congress, show all persons in authority in the Nation, what it is to serve the living God and to bring in Thy law for our law, Thy rule for our passion, Thy strength for our weakness, and Thy love to be with us always, that we may bear each other's burdens, that we may find the duty that comes next our hands, that we may enter into that service which is perfect freedom.

We ask it as Thine own children.

Our Father who art in heaven, hallowed be Thy name. Thy kingdom come, Thy will be done, on earth as it is in heaven. Give us this day our daily bread. Forgive us our trespasses as we forgive those who trespass against us. Lead us not into temptation, but deliver us from evil; for Thine is the kingdom, and the power, and the glory, forever. Amen.

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

The VICE-PRESIDENT. The Journal stands approved.

#### THE IMMIGRATION COMMISSION.

The VICE-PRESIDENT laid before the Senate a communication from the chairman of the Immigration Commission, transmitting, on behalf of the commission, a statement to Congress relative to the work and expenditures of the Immigration Commission created under section 39 of the immigration act of February 20, 1907 (H. Doc. No. 1489), which was referred to the Committee on Immigration and ordered to be printed.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives by Mr. W. J. Browning, its Chief Clerk, announced that the House had passed the following bills:

S. 9067. An act entitled "An act to grant pensions and increase of pensions to certain soldiers and sailors of the civil war and to certain widows and dependent relatives of said soldiers;"

S. 9422. An act granting pensions and increase of pensions to certain soldiers and sailors of the civil war and to certain widows and helpless and dependent relatives of such soldiers and sailors; and

S. 9454. An act granting pensions and increase of pensions to certain soldiers and sailors of the civil war and to certain widows and helpless and dependent relatives of such soldiers and sailors.

The message also announced that the House had passed the bill (S. 9242) granting pensions and increase of pensions to certain soldiers and sailors of the civil war and to the widows and dependent and helpless relatives of such soldiers and sailors.

with an amendment, in which it requested the concurrence of the Senate.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 16743) for the removal of the restrictions on alienation of lands of allottees of the Quapaw Agency, Okla., and the sale of all tribal lands, school, agency, or other buildings on any of the reservations within the jurisdiction of such agency, and for other purposes.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 25392) making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1910, and for other purposes.

The message further announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 26916) making appropriations for the current and contingent expenses of the Indian Department, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1910.

The message also announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 27523) making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1910.

The message further announced that the House insists upon its amendment to the bill (S. 4548) to provide for the sale of timber on allotted Indian land, and for other purposes, disagreed to by the Senate, agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. SHERMAN, Mr. MARSHALL, and Mr. STEPHENS of Texas managers at the conference on the part of the House.

The message also announced that the House had agreed to the report of the second committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 26394) making appropriations for the naval service for the fiscal year ending June 30, 1910, and for other purposes, further insists upon its disagreement to the amendments of the Senate Nos. 58 and 59, asks a further conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. Foss, Mr. LOUDENSLAGER, and Mr. PADGETT managers at the conference on the part of the House.

The message further announced that the House further insists upon its disagreement to the amendments of the Senate to the bill (H. R. 27061) to provide for the appointment of an additional district judge in and for the western district of Washington, agrees to the conference asked for by the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. JENKINS, Mr. ALEXANDER of New York, and Mr. CLAYTON managers at the conference on the part of the House.

The message also announced that the House had passed the following bills, in which it requested the concurrence of the Senate:

H. R. 28175. An act to amend section 4434 of the Revised Statutes of the United States, and for other purposes;

H. R. 29245. An act making appropriation for sundry civil expenses of the Government for the fiscal year ending June 30, 1910, and for other purposes; and

H. R. 28285. An act granting pensions and increase of pensions to certain soldiers and sailors of the civil war and certain widows and dependent relatives of such soldiers and sailors.

#### ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills and joint resolution, and they were thereupon signed by the Vice-President:

H. R. 12499. An act for the relief of Clarence Frederick Chapman, United States Navy;

H. R. 15039. An act authorizing the Secretary of Commerce and Labor to exchange property;

H. R. 21896. An act to amend section 86 of an act to provide a government for the Territory of Hawaii, to provide for additional judges, and for other judicial purposes;

H. R. 24149. An act granting to the Montana, Wyoming and Southern Railway Company a right of way across the Fort Keogh Military Reservation, Mont.;

H. R. 25823. An act to amend an act entitled "An act to extend the time for the completion of the Valdez, Marshall Pass and Northern Railroad, and for other purposes," approved February 21, 1907;

H. R. 27068. An act to extend the time for the completion of the Alaska Central Railway, and for other purposes; and

H. J. Res. 231. Joint resolution authorizing the Director of the Census to collect and publish additional statistics.

CREDENTIALS.

Mr. GAMBLE presented the credentials of COE I. CRAWFORD, chosen by the legislature of the State of South Dakota, a Senator from that State for the term beginning March 4, 1909, which were read and ordered to be filed.

PETITIONS AND MEMORIALS.

Mr. LODGE presented a petition of Local Lodge No. 886, Benevolent and Protective Order of Elks, of Brookline, Mass., and a petition of Local Lodge No. 1078, Benevolent and Protective Order of Elks, of Winthrop, Mass., praying for the enactment of legislation to create a national reserve in the State of Wyoming for the care and protection of the American elk, which were referred to the Committee on Forest Reservations and the Protection of Game.

Mr. DEPEW presented a petition of the Veteran Association, Fifth New York Volunteer Infantry, Duryee Zouaves, of New York City, N. Y., praying for the enactment of legislation to protect the monuments already erected or that may be hereafter erected on the battlefield of Bull Run, Virginia, which was referred to the Committee on Military Affairs.

He also presented a petition of the faculty of the Rochester Athenaeum and Mechanics' Institute, of Rochester, N. Y., praying for the passage of the so-called "Davis bill," relative to agricultural and industrial education, which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of sundry citizens of New Paltz, N. Y., praying for the passage of the so-called "rural parcels post" and "postal savings banks" bills, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented petitions of Local Lodge No. 346, of Niagara Falls; of Local Lodge No. 756, of New Rochelle, and of Local Lodge No. 33, of Utica, all of the Benevolent and Protective Order of Elks, in the State of New York, praying for the enactment of legislation to create a national reserve in the State of Wyoming for the care and maintenance of the American elk, which were referred to the Committee on Forest Reservations and the Protection of Game.

He also presented petitions of the Charities Association of Schenectady, of the congregations of the St. Barnabas Episcopal and Presbyterian Churches, and of the Republican Club and sundry citizens, all of Irvington, in the State of New York, praying for the passage of the so-called "children's bureau bill," which were ordered to lie on the table.

Mr. LONG presented a petition of Local Lodge No. 204, Benevolent and Protective Order of Elks, of Topeka, Kans., and a petition of Local Lodge No. 633, Benevolent and Protective Order of Elks, of Emporia, Kans., praying for the enactment of legislation to create a national reserve in the State of Wyoming for the care and maintenance of the American elk, which were referred to the Committee on Forest Reservations and the Protection of Game.

Mr. WARREN presented a petition of Local Lodge No. 624, Benevolent and Protective Order of Elks, of Rock Springs, Wyo., praying for the enactment of legislation to create a national reserve in the State of Wyoming for the care and maintenance of the American elk, which was referred to the Committee on Forest Reservations and the Protection of Game.

Mr. OWEN presented a memorial of the Eastern Cherokee Nation of Indians, praying that an amount necessary be appropriated to pay the interest of the judgment rendered by the Court of Claims of \$1,111,284.70, since May 14, 1906, up to the date of the disbursement fund, which was referred to the Committee on Appropriations.

Mr. SCOTT. I present the petition, in the nature of a telegram, of Earl A. Henry, state mine inspector, of Charleston, W. Va., relative to mine explosions. I move that the petition be printed in the RECORD and referred to the Committee on Mines and Mining.

There being no objection, the petition was referred to the Committee on Mines and Mining and ordered to be printed in the RECORD, as follows:

[Telegram.]

CHARLESTON, W. VA., February 26, 1909.

Hon. N. B. SCOTT,  
Washington, D. C.:

The loss of life in West Virginia mines makes it imperative that the Federal Government make liberal appropriation for the continuance of the tests at Pittsburg.

EARL A. HENRY,  
State Mine Inspector.

Mr. PLATT presented a petition of members of the faculty of the Home Economics of Mechanics' Institute, of Rochester, N. Y., praying for the passage of the so-called "Davis bill,"

relative to agricultural and industrial education, which was referred to the Committee on Agriculture and Forestry.

He also presented petitions of Local Lodge No. 756, of New Rochelle, and of Local Lodge No. 535, of White Plains, both of the Benevolent and Protective Order of Elks, in the State of New York, praying for the enactment of legislation to create a national reserve in the State of Wyoming for the care and maintenance of the American elk, which were referred to the Committee on Forest Reservations and the Protection of Game.

He also presented a petition of the Veteran Association of the Fifth New York Volunteer Infantry, Duryee Zouaves, of New York City, N. Y., praying for the enactment of legislation providing for the protection of the monuments already erected and which may be erected upon the Bull Run battlefield, Virginia, which was referred to the Committee on Naval Affairs.

He also presented memorials of the United States Printing Company, of Brooklyn, N. Y., and of the American Lithographic Company, of New York City, N. Y., remonstrating against the adoption of certain proposed amendments to the copyright law relating to lithographic and photo-engraving processes, which were referred to the Committee on Patents.

He also presented a petition of Huguenot Grange, No. 1028, Patrons of Husbandry, of New Paltz, N. Y., praying for the passage of the so-called "rural parcels post" and "postal savings banks" bills, which was referred to the Committee on Post-Offices and Post-Roads.

He also presented the petition of R. C. Boardman, of New York City, N. Y., praying for the enactment of legislation for the control and regulation of the waters of Niagara River, and for the preservation of Niagara Falls, which was referred to the Committee on Commerce.

He also presented petitions of The National Temperance Society and Publication House, of New York City; of Revs. A. R. Mills, S. C. Farnham, and F. S. Weeks, of Wyoming; of Rev. Wesley Mason, of Dresden; and of Rev. Edward M. Cullinan, of Fayetteville, all in the State of New York, praying for the passage of the so-called "Burkett-Foelker antigambling race bill," which were referred to the Committee on the Judiciary.

He also presented the memorial of Seabury & Johnson, of New York City, N. Y., remonstrating against the adoption of certain proposed amendments to the act of January 5, 1905, entitled "An act to incorporate the American National Red Cross," which was referred to the Committee on the Judiciary.

He also presented petitions of members of the Irvington Republican Club, of Greenburg; of the congregation of St. Barnabas Episcopal Church, of Irvington; of sundry citizens of Irvington; of sundry citizens of Rochester; of members of the Schenectady Charities Association, of Schenectady, and of Frances J. Schriver, of New Brighton; of Local Order No. 805, of Tarrytown; of Local Order No. 149, of Irvington; of Local Order No. 649, of Dobbs Ferry, and of Local Order No. 1420, of Hastings, all of the Brotherhood of Carpenters and Joiners of America, in the State of New York, praying for the passage of the so-called "children's bureau" bill, which were ordered to lie on the table.

He also presented a petition of the New York State Canned Goods Packers' Association, of Rome, N. Y., praying for the adoption of the measure in the agricultural appropriation bill providing for the retention and reimbursement of the scientific referee board in connection with the Bureau of Chemistry, which was ordered to lie on the table.

NAVAL APPROPRIATION BILL.

Mr. HALE submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on certain amendments of the Senate to the bill (H. R. 26394) making appropriations for the naval service for the fiscal year ending June 30, 1910, and for other purposes, having met, after full and free conference have agreed to recommend to their respective Houses as follows:

That the Senate recede from its amendments numbered 7 and 39.

That the House recede from its disagreement to the amendments of the Senate numbered 1 and 55, and agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 11, and agree to the same with an amendment as follows: In lieu of the proposed amendment insert the following: "unless, in case of minors, a certificate of birth or a verified written statement by the parents, or either of them, or in case of their death a verified written statement by the legal guardian, be first furnished to the recruiting officer, showing applicant to be of age required by naval regulations, which shall be presented with the application for enlistment;" and the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate numbered 18, and agree to the same with an amendment as follows: "In lieu of the proposed amendment insert the following: 'extraordinary emergency';" and the Senate agree to the same.

On the amendments of the Senate numbered 58 and 59, the committee of conference have been unable to agree.

EUGENE HALE,  
GEORGE C. PERKINS,  
B. R. TILLMAN,

*Managers on the part of the Senate.*

GEORGE EDMUND FOSS,  
H. C. LOUDENSLAGER,  
L. P. PADGETT,

*Managers on the part of the House.*

The report was agreed to.

Mr. HALE. I move that the Senate further insist on its amendments in disagreement, and grant the further conference asked for by the House, the conferees on the part of the Senate to be appointed by the Chair.

The motion was agreed to; and the Vice-President appointed Mr. HALE, Mr. PERKINS, and Mr. TILLMAN conferees on the part of the Senate at the further conference.

#### REPORTS OF COMMITTEES.

Mr. SCOTT. I am directed by the Committee on Military Affairs, to whom was referred the bill (H. R. 28059) making appropriations for the support of the Military Academy for the fiscal year ending June 30, 1910, and for other purposes, to report it with amendments, and I submit a report (No. 1103) thereon. I give notice that I shall call up the bill at the earliest day possible.

The VICE-PRESIDENT. The bill will be placed on the calendar.

Mr. CARTER, from the Committee on the District of Columbia, to whom was referred the bill (S. 9369) to amend an act entitled "An act for the widening of Benning road, and for other purposes," approved May 16, 1908, reported it without amendment, and submitted a report (No. 1104) thereon.

#### BILLS INTRODUCED.

Mr. MILTON introduced a bill (S. 9492) for the relief of Robert Broadbent, Barger Holst, James A. Dunham, Byron Dawley, Axel Rosendahl, and Will J. Elliott, which was read twice by its title and referred to the Committee on Claims.

Mr. MONEY introduced a bill (S. 9493) for the relief of the Cumberland Presbyterian Church of Shiloh, Issaquena County, Miss., which was read twice by its title and referred to the Committee on Claims.

Mr. OWEN introduced a bill (S. 9494) for the relief of Mary M. Kennedy, Esther A. Pierce, Alfred Jemison, King Pierce, John H. Pierce, C. S. York, Dwight Jemison, and others, which was read twice by its title and referred to the Committee on Claims.

Mr. GUGGENHEIM introduced a bill (S. 9495) granting an increase of pension to Betsy B. Simons, which was read twice by its title and, with the accompanying paper, referred to the Committee on Pensions.

He also introduced a bill (S. 9496) granting a pension to Jennie Simpson, which was read twice by its title and, with the accompanying paper, referred to the Committee on Pensions.

He also introduced a bill (S. 9497) granting an increase of pension to Hubert Steimel, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 9498) granting an increase of pension to John S. Sanderson, which was read twice by its title and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 9499) granting an increase of pension to John Mather, which was read twice by its title and, with the accompanying paper, referred to the Committee on Pensions.

Mr. CLAPP introduced a bill (S. 9500) for the relief of James McGeary and others, which was read twice by its title and, with the accompanying papers, referred to the Committee on Claims.

Mr. CARTER (by request) introduced a bill (S. 9501) for the relief of Cyrus H. Abbott and others, which was read twice by its title and referred to the Committee on Claims.

#### AMENDMENTS TO APPROPRIATION BILLS.

Mr. LODGE submitted an amendment providing that all contracts made on behalf of the United States for telephone-ex-

change service shall be in such form as may be approved by the Attorney-General, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations.

Mr. TALIAFERRO submitted an amendment proposing to appropriate \$50,000 for a fish-cultural and biological station on the Gulf of Mexico in the State of Florida, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Fisheries.

He also submitted an amendment proposing to appropriate \$25,000 for a fish cultural station on the St. John's River, Florida, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Fisheries.

He also submitted an amendment proposing to appropriate \$4,000 to complete the post-office, court-house, and custom-house building at Jacksonville, Fla., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations.

Mr. DEPEW submitted an amendment providing for the payment of certain judgments against the collector of internal revenue of the United States for the first district of New York, etc., intended to be proposed by him to the sundry civil appropriation bill, which was ordered to be printed, and, with the accompanying papers, referred to the Committee on Appropriations.

Mr. MILTON submitted an amendment providing for the relinquishment and release to John M. Bryan, Jr., of Dade County, Fla., the interest of the United States in and to certain lands situated in Dade County, Fla., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations, and ordered to be printed.

He also submitted an amendment proposing to appropriate \$316.25 to pay C. M. Cox, of Bonifay, Holmes County, Fla., for services rendered as United States commissioner in and for the northern district of Florida, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. FORAKER submitted an amendment relative to the matters in dispute between the Roman Catholic Church in Porto Rico and the United States and the people of Porto Rico, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

Mr. BRANDEGEE submitted an amendment providing an additional compensation of 20 per cent of the annual salary of assistant clerks and messengers doing clerical work in the Senate, etc., intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate and ordered to be printed.

Mr. RAYNER submitted an amendment proposing to appropriate \$72,000 for payment to the State of Maryland for the principal sum, without interest, advanced by Maryland to the United States under the provisions of a joint resolution of the general assembly of Maryland of December 19, 1791, etc., intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

#### HEARINGS BEFORE COMMITTEE ON TERRITORIES.

Mr. BEVERIDGE submitted the following resolution (S. Res. 300), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

*Resolved*, That the Committee on Territories, or any subcommittee thereof, be authorized to send for persons and papers and to administer oaths, employ a stenographer, and to report such hearings as may be had in connection with any subject which may be pending before said committee, and have said hearings printed for the use of the committee; that the committee may sit during sessions of the Senate, and that the expenses thereof be paid out of the contingent fund of the Senate.

#### REVISION OF PENAL CODE.

Mr. HEYBURN. I ask for the adoption of the following order.

The order was read, as follows:

*Ordered*, That the bill (S. 2982) to codify, revise, and amend the penal laws of the United States be reprinted for the use of the Senate so as to distinctly show the amendments made to said bill by the House of Representatives and the amendments made by the Senate.

Mr. HEYBURN. This is really to correct the entry in the record. I find yesterday that that portion of the order made was in some way omitted from the record. I should like to have this order to print made in connection with the report of the conference committee which was printed.

Mr. CLARKE of Arkansas. In connection with the request just made by the Senator from Idaho, I wish to ask him if that means that he is not going to call up the conference report for consideration to-day?

Mr. HEYBURN. I thought that would be dependent upon when to-day ends. It has been suggested that the adjournment taken at the end of the eulogies to-day may be for a later hour to-day, so that the recess can carry the Senate over to tomorrow. If that should occur, I would not like to have the RECORD show that I agreed not to call it up to-day.

Mr. CLARKE of Arkansas. It might be necessary for some of us to be absent on business connected with the Senate.

Mr. HEYBURN. That is the situation as I understand it.

Mr. CLARKE of Arkansas. Very well.

The VICE-PRESIDENT. Without objection, the order is agreed to.

#### INTERMARRIAGE OF WHITES AND NEGROES.

Mr. MILTON submitted the following resolution (S. Res. 306), which was read:

*Resolved*, That the Committee on the Judiciary be discharged from further consideration of the bill (S. 8462) prohibiting the intermarriage of any white person to a negro in the District of Columbia, or in any Territory of the United States, and making the issuance of such marriage, if any, incapable of inheritance, and describing the penalty for such intermarriage, and defining the word "negro," and further prescribing a penalty for any person performing such marriage ceremony.

Mr. MILTON. I give notice that I shall call up the resolution Monday next immediately after the routine morning business for the purpose of submitting a few remarks thereon.

The VICE-PRESIDENT. The resolution will lie on the table.

#### CONGRESSIONAL DIRECTORY.

Mr. MILTON submitted the following resolution (S. Res. 308), which was read and referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

*Resolved*, That the Committee on Printing be, and hereby is, authorized to have prepared and published an edition of the Congressional Directory for the use of Congress at its forthcoming extra session, copies of which shall be laid on the desks of Members within one week from the assembling thereof. And the Secretary of the Senate is directed to pay from the contingent fund for compiling, editing, and indexing the said edition the compensation usually allowed.

#### IMMIGRATION REPORTS.

Mr. MILTON. I submit a resolution and ask unanimous consent for its present consideration.

The resolution (S. Res. 305) was read, as follows:

*Resolved*, That the Secretary of Commerce and Labor is hereby directed, in so far as compatible with public interest, to send forthwith to the Senate the reports of Marcus Braun on immigration conditions along the Mexican border; the last report of John Greenberg; the 1906 report of James B. Reynolds on conditions at Ellis Island; the report, memoranda, and other data on the Chinese boycott by the special commission, composed of J. B. Reynolds, J. W. Jenks, and R. M. Easley, appointed February 24, 1906; and that the same be printed as separate Senate documents.

Mr. PENROSE. I move that the resolution be referred to the Committee on Immigration.

The motion was agreed to.

#### INAUGURAL CEREMONIES.

Mr. KNOX submitted the following resolution (S. Res. 307), which was considered by unanimous consent and agreed to:

*Resolved*, That it is ordered that upon the 4th day of March, 1909, the doors of the Senate Chamber shall be opened to receive those who are entitled to admission as shown by the programme arranged for said day by the Joint Committee of Arrangements for the Inauguration of the President-elect of the United States, and that such persons shall be admitted without reference to order or precedence and shall take the seats assigned to them and to which they will be shown by those in attendance.

It is further ordered that after the organization of the Senate shall have been completed, those assembled in the Senate Chamber shall proceed to the platform on the center portico of the Capitol in the order specified in the programme on arrangements, which order will be announced by an officer of the Senate.

#### PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. M. C. Latta, one of his secretaries, announced that the President had approved and signed the following joint resolutions:

On February 26, 1909:

S. R. 126. Joint resolution authorizing the Secretary of War to donate six condemned cannon to the city of Cheyenne, Wyo.

On February 27, 1909:

S. R. 80. Joint resolution to provide for an accounting of certain funds held in trust for the Chippewa Indians in Minnesota.

#### HOUSE BILLS REFERRED.

H. R. 28285. An act granting pensions and increase of pensions to certain soldiers and sailors of the civil war and certain widows and dependent relatives of such soldiers and sailors was read twice by its title and referred to the Committee on Pensions.

H. R. 28245. An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June 30, 1910, and for other purposes, was read twice by its title and referred to the Committee on Appropriations.

#### PENSIONS AND INCREASE OF PENSIONS.

The VICE-PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 9242) granting pensions and increase of pensions to certain soldiers and sailors of the civil war and to the widows and dependent and helpless relatives of such soldiers and sailors, which was, on page 6, to strike out lines 14 to 15, inclusive.

Mr. McCUMBER. I move that the Senate concur in the amendment of the House of Representatives.

The motion was agreed to.

#### BOILER INSPECTION.

The bill (H. R. 28175) to amend section 4434 of the Revised Statutes of the United States, and for other purposes, was read twice by its title and referred to the Committee on Commerce.

Mr. FRYE. The bill relates to the measurement of boilers and tubes?

The VICE-PRESIDENT. That is correct.

Mr. FRYE. I am authorized by the Committee on Commerce to report back the bill favorably and ask that it may take the place on the calendar of the Senate bill which I reported yesterday, and that Senate bill (S. 9455) to amend section 4434 of the Revised Statutes, and for other purposes, may be indefinitely postponed.

The VICE-PRESIDENT. Without objection, it is so ordered.

#### REPORT OF NAVAL REORGANIZATION COMMISSION.

The VICE-PRESIDENT laid before the Senate the following message from the President of the United States (S. Doc. No. 743), which was read and, with the accompanying paper, referred to the Committee on Naval Affairs and ordered to be printed:

*To the Senate and House of Representatives:*

I send you herewith the final report of the commission on naval reorganization, which outlines a new departmental system. Accompanying is the letter from Mr. Justice Moody, sent to me in transmitting the report. I have expressed to Justice Moody and his associates my profound sense of obligation for the admirable work they have done.

I invite your attention to the sound and conservative character of this report. It is in full accord with American policy, for it recognizes the complete supremacy of the civil power as regards the military no less than the civil or manufacturing side of naval administration. Nothing drastic is recommended as to the bureaus or other agencies by means of which the purely business affairs of the Navy Department are now administered. These are simply coordinated and brought under the general control of the Secretary in such manner as to secure unity of effort and action. The recommendation for the creation of the two councils, the Secretary's general council and his military council, are based upon the fundamental and all-essential proposition that a navy exists and ought only to exist for war, and for war alone; for the efficacy of the navy in securing and guaranteeing peace depends absolutely upon its evident efficiency for war. Preparation for war can only be thorough and complete if the Secretary has the same expert military assistance and the same advisers in time of peace as in time of war. The proposed plan has this object in view. It should be remembered that perfection of organization and training and perfect preparedness cost no more than slipshod inefficiency in so spending money as to disregard, or even prevent or impede, proper training and preparedness. The plan outlined does not imply any greater expenditure of money than at present. It provides merely that the money should be spent wisely, instead of as at present spending it so that a certain proportion is wasted in friction or in useless work. Training and preparation are essential elements of success in war. It is necessary to have the best ships and to have a sufficient number of them; but the number and character of ships will not necessarily bring victory. Efficiency in organization and personnel must be the main dependence in securing victory where there is even an approximate equality in material.

To supplement and finish the work of this commission another commission must eventually be designated to take up the proposed plan and complete it as to details; but no plan can be satisfactory if there is deviation from the essential military principles specified in this report. These principles are those which all sound naval experts have come to recognize as fundamental. I call your attention to the fact that the commission, whose conclusions I lay before you, was composed of five rear-

admirals, two ex-Secretaries of the Navy, and an ex-Member of the House of Representatives, who throughout his term of service in the House was one of the most able and resolute champions that the navy has ever had in Congress.

THEODORE ROOSEVELT.

THE WHITE HOUSE, February 27, 1909.

RIVER AND HARBOR APPROPRIATION BILL.

Mr. FRYE. I ask that House bill 28243, the river and harbor bill, be taken up for consideration.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill (H. R. 28243) to provide for the repair, maintenance, and preservation of public works on rivers and harbors, and for other purposes, which had been reported from the Committee on Commerce with amendments.

Mr. FRYE. I ask that the formal reading of the bill be dispensed with, that it be read for amendment, and that the committee amendments first receive consideration.

THE VICE-PRESIDENT. The Senator from Maine asks unanimous consent that the formal reading of the bill be dispensed with, that the bill be read for amendment, and that the committee amendments be first considered. Is there objection? The Chair hears none, and it is so ordered. The Secretary will proceed to read the bill.

The Secretary proceeded to read the bill.

The first amendment of the Committee on Commerce was, in section 2, page 2, line 23, before the word "thousand," to strike out "five hundred" and insert "six hundred and fifty," and on page 3, line 8, after the word "navigation," to insert:

*Provided*, That to prevent the diversion of the waters of the Missouri River through Lake Contrary and other contiguous lakes, \$150,000 of this appropriation, or so much thereof as may be necessary, shall be expended.

So as to make the section read:

SEC. 2. That for emergencies, to provide for the restoration of channels, or river and harbor improvements, heretofore established or improved by the Government where, by reason of emergency, the usual depth of such channel or customary use of such improvement can not be maintained, and there is no sufficient fund available for such restoration, the sum of \$650,000 is hereby appropriated to be immediately available. The amount herein provided shall be allotted by the Secretary of War: *Provided*, That in no case shall such allotment be made unless recommended by the local engineer having such channel or improvement in charge and by the Chief of Engineers, respectively: *Provided further*, That no single channel or improvement shall be allotted a sum greater than \$50,000, nor any portion of the said appropriation, unless the same is necessary in the interest of navigation or to protect and preserve existing government work in the interest of navigation: *Provided*, That to prevent the diversion of the waters of the Missouri River through Lake Contrary and other contiguous lakes, \$150,000 of this appropriation, or so much thereof as may be necessary, shall be expended.

The amendment was agreed to.

The next amendment was, in section 3, page 6, after line 7, to insert:

Hingham Harbor, Massachusetts: The balance remaining from appropriations heretofore made for this improvement may be diverted and made available for dredging the channel and extending the same in a general westerly direction.

The amendment was agreed to.

The next amendment was, on page 6, after line 22, to insert:

Improving Minnesota River: That the annual appropriation for operating snag boats on the upper Mississippi River, made by section 7 of the river and harbor act of August 11, 1888, is hereby made available for similar purposes on the Minnesota River and other tributaries of the upper Mississippi River.

The amendment was agreed to.

The next amendment was, in section 4, page 8, after line 10, to insert:

For the purchase and acquisition of sites for locks "B" and "C" on the Cumberland River below Nashville, \$10,000.

Mr. FRYE. I ask that the amendment be rejected.

The amendment was rejected.

Mr. FRYE. I move to insert the following at the end of the bill.

The SECRETARY. It is proposed to insert at the end of section 16:

That the sum of \$10,000 be, and the same is hereby appropriated for the purchase and acquisition of sites for locks "B" and "C" on the Cumberland River below Nashville.

The amendment was agreed to.

The next amendment was, in section 7, page 11, line 19, after the word "Speaker," to insert "In the event of a vacancy occurring in the commission such vacancy shall be filled by the same appointing power," so as to read:

SEC. 7. That a commission be, and is hereby, created, to be known as the National Waterways Commission, to be composed of Members of the Sixtieth Congress who shall be Members of the Sixty-first Congress as well, as follows: Five Members of the Senate, to be appointed by the presiding officer thereof; seven Members of the House of Representatives, to be appointed by the Speaker. In the event of a vacancy occurring in the commission such vacancy shall be filled by the same appointing power.

The amendment was agreed to.

The next amendment was, in section 7, in the item for the creation of the National Waterways Commission, on page 12, line 18, after the words "United States," strike out "or Europe" and insert "and elsewhere," so as to read:

The members of said commission or of any subcommission or sub-commissions thereof, may make investigations of waterways and harbors in the United States and elsewhere, and shall be allowed actual necessary expenses for the same and the expenses of necessary employees.

Mr. CULLOM. I wish to know whether the chairman of the committee can admit an amendment carrying about \$100,000 for the purpose of making an opening underneath the canal known commonly as the "Hennepin Canal," for the purpose of preventing a flood tide upon a railroad crossing.

Mr. FRYE. It will be impossible for me to admit it to this bill. It will have to be done under the regular river and harbor bill.

Mr. CULLOM. I made the inquiry at this time for the reason that my colleague [Mr. HOPKINS], who has been absent, as the Senator knows, for some little time, had been written to, and it was not called to my attention until to-day. I desired to get the amendment made if I could. If it is contrary to the policy to amend the bill in that respect, I will withdraw any effort to do so.

Mr. FRYE. It is.

The amendment was agreed to.

The reading was continued to line 19, page 13.

Mr. FRYE. On page 13, line 19, I move to strike out the words "said dams" and to insert "dam across the South Branch," so as to read:

SEC. 8. That section 3 of "An act permitting the building of dams across the North and South branches of Rock River, adjacent to Vandufts Island and Carrs Island, and across the cut-off between said islands, in Rock Island County, Ill., in aid of navigation and for the development of water power," approved May 1, 1906, be, and the same is hereby, amended by extending the time for the completion of dam across the South Branch to May 1, 1911.

The amendment was agreed to.

The reading was continued to line 20, page 15.

Mr. BACON. Mr. President, I do not wish to interfere with the "orderly procedure. I understand the rule to be that the committee amendments shall be first disposed of. I presume it would be understood that, even if one did not offer an amendment, it would be in order to ask for an explanation of any section as it came from the House.

Mr. FRYE. Undoubtedly.

Mr. BACON. Some things might not be readily understood and might require some explanation. I do not wish to interrupt the proceeding now to do that. I only wish to make the suggestion to prevent any misunderstanding. There are some things being passed over in regard to which I should like to have some explanation from the chairman, but I will not now interrupt the reading for that purpose.

The reading of the bill was continued to line 6, on page 19.

Mr. FRYE. I move to strike out lines 1, 2, 3, 4, 5, and 6, on page 19, in the following words:

The Secretary of War is further authorized and instructed to cause to be made a preliminary examination and survey to ascertain and determine a proper plan and the probable expense for constructing in the rapids of the St. Marys River a filling basin or fore bay, from which the ship locks shall be filled.

The amendment was agreed to.

Mr. FRYE. I offer the following amendment, to come in immediately after the paragraph just stricken out.

The SECRETARY. At the top of page 19 it is proposed to insert:

SEC. 12. That the Secretary of War is hereby authorized, in his discretion, to permit any corporation or association of persons in King County, Wash., at their own expense and without cost to the United States Government, to widen, deepen, and straighten the Duwamish River, in said King County: *Provided*, That the work so done shall be in accordance with plans approved by the Chief of Engineers of the War Department.

The amendment was agreed to.

The next amendment was, on page 20, line 11, after the word "Michigan," to strike out "any Canadian waters which shall be compensated for by controlling or remedial works located on the Canadian side of the international boundary line," so as to make the additional proviso read:

*Provided further*, That nothing herein contained shall affect or impair the rights of the Michigan-Lake Superior Power Company, as they existed prior to the passage of this act, under the conditions heretofore prescribed by Congress, to divert from the said St. Marys River into its power canal, located south of the rapids, in the State of Michigan.

Mr. FRYE. In line 9, after the word "divert," I move to insert the word "water."

The amendment to the amendment was agreed to.

Mr. BACON. I will not ask the Senator to reply now unless he desires to do so, but I call attention to the fact that there

is a very grave question in my mind whether we have the power—of course the Senators from Michigan are those who are most directly interested—to embody in the bill a provision which asserts the right of the United States to lease the water power of a river belonging to a State. I think it is a very grave question, and I do not believe there is any such power in the Federal Government.

Mr. FRYE. I question whether there is power in the Government to do it where the Government authorizes the erection of a dam across a river by a private party or corporation, but this is only the erection by the Government of its own dam.

Mr. BACON. That does not change the proposition, Mr. President. Of course I do not intend to press it. Both the Senators from Michigan are here. I will only say the time may come when it will relate to some other State, and, so far as I am concerned, I protest now, and I shall always protest against it.

I shall not make any special fight on this provision, because the Senators from Michigan are the best judges of what is for the interest of their own State, but I would not be willing to pass in silence a proposition of that kind, even though it related to a State in which I have no direct interest. I do not think that the Federal Government has any control over waters within a State, except for the purposes of navigation, and the fact that it makes a dam for the purpose of improving navigation does not in anywise give it any property in the water power of that State. It belongs to the State; it belongs to the individuals of the State who own the land to the thread of the stream.

Mr. FRYE. That matter has been a good deal discussed in both committees, and the conclusion reached in both was that the Government has the right to do what is approved of in this bill.

Mr. BACON. It may have been reached by the committee, but I think it is a very grave matter for the Senate to reach that conclusion.

Mr. TELLER. Mr. President—

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

Mr. FRYE. Certainly.

Mr. TELLER. Mr. President, I do not care at this time to go into any general discussion of this question. The Supreme Court of the United States has said on certain occasions that the Government of the United States does not have the power to build a dam across a river unless it is to further the interests of navigation. So the Government can not build a dam across a river for water power; that is certain; and that the State owns the water can not be doubted.

I have heretofore cited a large number of cases, and I could cite at least a dozen more and two or three that the courts have decided since the Two hundred and ninth United States Reports. There are two cases that affirm the doctrine unequivocally that the State owns the water, and the Government of the United States has not any right to interfere with it and can not convey any interest in it in any possible shape. A contract made by the Government of the United States unauthorized by the Constitution is a nullity. It was so declared in 1845 by the Supreme Court of the United States. That is a fundamental principle that everybody might have understood, but the court went into it and decided it in the case I called attention to yesterday on another point.

I do not like to see in these bills an open, palpable contradiction on the part of the Senate and House of what everybody knows the courts have decided many times for at least seventy-five or eighty years. If the Government wants to do anything of this kind for any purpose except for navigation, it is utterly without the power to do it. Why should the Government of the United States enter into the question of leasing water or leasing rights on a river?

Mr. President, I will not take the time to discuss it; I presume the Senators from Michigan will have something to say on the subject; but I want to enter my protest against it as bad legislation, as undignified legislation, that ought not to be allowed here.

I want to say that I am not a bit alarmed about the power of Congress to take away from the State any power it has. The Supreme Court has declared that it could not deprive a State of its power under the Constitution, not even with the consent of the State.

Mr. NELSON. Mr. President, I agree with the legal proposition announced by the Senator from Colorado in the main, but in this case the provision relates to the St. Marys River, flowing between Lake Superior and the lower lakes. The river passes over a succession of rapids at this point. The Government, a good many years ago, constructed a canal on the south side of the river, and in that canal there are two locks. Ships

can only pass up and down from the upper lakes to the lower lakes by going through this canal. It is essential for the Government to build an additional canal and two more locks on account of the commerce of that country.

A preceding section of the bill proposes to condemn all the riparian land between the canal and the international boundary line. If that condemnation takes place, as provided in the bill, the United States becomes the riparian owner to the middle of the channel or wherever the international boundary may be. In a recent case that has been decided in the Supreme Court here from Michigan, involving this very question, the Supreme Court held that under the laws of Michigan, as interpreted by their supreme court, the right is in the riparian owner and not in the State.

In some cases they hold it is in the State, but here they held that it is in the riparian owner, subject to the public use. If these condemnation proceedings are carried on and the United States becomes the owner up to the middle of the stream or the boundary line, it becomes the riparian owner and ought to be in the position of any other riparian owner. You must construe this paragraph of the law in reference to that.

The canal company that is referred to was given a right to take water out of the lake above the head of the rapids and above the head of the government canal and above the head of the locks. The river and harbor act of 1903 authorized the Lake Superior Canal Company to draw water through that canal from the lock above. This simply leaves that legislation as it is. It does not affect it one way or another. The Government proposes to get control of the whole bed of the river there by condemnation proceedings for the purposes of improving the navigation, and in aid of that, as an incident, is constructing work there at the head of the rapids to improve the navigation. The power is in the Government as riparian owner, and as the constructor of that power it ought to have the right to control the water. That is substantially and briefly the situation.

Mr. TELLER. The statement made by the Senator from Minnesota does not change the law. The United States Government condemns the land simply as a proprietor. It owns land only as a proprietor. If it wants a fort or a post-office site, it has to get a concession from the State to have any more jurisdiction over it than it has over other lands held by private individuals.

The State has absolute control over the question of riparian rights. The Supreme Court, in the case of *Kansas v. Colorado*, decided that question fully. It had been decided several years before. It is in the power of the State of Michigan to say tomorrow, and after we have made this contract, that the riparian right ceases or shall be exercised under certain restrictions of the State. Those decisions are ample and abundant. I think there will not be any impropriety on my part if I say that the committee ought to have considered this question with a view to what the courts and the Michigan authorities might do in the future. They can say whether it is the Government that holds the land or individuals. They can say that the old doctrine of riparian rights shall be abandoned.

Mr. President, I think this is a great blotch upon this bill. I will be glad to vote for it, I think, in the main, but I am certainly not going to vote for a proposition of this kind. I do not think it is to our credit to put in the bill provisions that are in plain contradiction to the determination of the courts of the country, and that, too, the superior court, the court that passes upon these constitutional questions.

Mr. CLARKE of Arkansas. Mr. President—

Mr. FRYE. The unanimous consent was that the committee amendments should first be disposed of. If any Senator proposes to strike out, after the committee amendments have been disposed of, then this discussion would be legitimate, but I do not understand that it is, right here at this point.

Mr. TELLER. It is legitimate on an amendment that proposes to do a thing that you can not do under the Constitution, or at least I think you can not.

Mr. FRYE. No such amendment has yet been reported.

Mr. TELLER. Are we not upon the amendment on the question of water?

Mr. FRYE. We are on the condemnation part of the provision, but the amendment has not been reached authorizing the leasing of the power.

Mr. BACON. It all relates to the same subject-matter.

Mr. CLARKE of Arkansas. I want to say a word in relation to the action of the committee.

Mr. TELLER. The provision for condemnation is general legislation, and I raise the point of order on it.

Mr. FRYE. You can not do it, because it comes from the House of Representatives, and no point of order can be made against it.

Mr. TELLER. That part is in the bill as passed by the House.

Mr. FRYE. That part is in the bill as passed by the House.

Mr. TELLER. That is correct, I think, but we can strike it out.

THE VICE-PRESIDENT. Does the Senator from Maine yield to the Senator from Arkansas?

Mr. FRYE. With pleasure.

Mr. CLARKE of Arkansas. Mr. President, the point raised by the Senator from Colorado [Mr. TELLER] had not escaped the attention of the committee in the consideration of that particular provision of the bill. I believe it was the unanimous opinion of the committee, so far as occasion arose for its expression, that the doctrine announced by the Senator from Colorado was the correct one; but the facts in this case distinguish it, making it necessary to apply an entirely different doctrine. Wherever the common law prevails the bed of nonnavigable bodies of water is in the ownership of the adjacent proprietor. This particular stream, which connects this particular body of water, was never navigable until made so by artificial means, by the expenditure of money and the employment of engineering facilities.

The land either passed to the State of Michigan under the swamp and overflowed land grant of 1850 or it remained in the United States Government and was disposed of and passed to private owners.

So the United States Government owns only so much water or the right to flow water over so much land as has been acquired by the usual means of negotiation or by condemnation. It was thought that that particular state of facts did not raise squarely the question as to whether the United States Government had any right in connection with streams except the right to provide for their unobstructed navigation, because of the fact that this did not present the question which has been raised by the veto message of the President of the United States in the St. James River case. We concluded to let it pass because it presented a question in which the State of Michigan was more directly interested than the United States Government or any other proprietor.

When the question stated by the Senator from Colorado is squarely raised, I think I shall be compelled to agree with him unless I have some reason for concluding that my present estimate of the authority is not a correct one. It seems to me self-evident that it grows out of the very nature of the Government and the very character of ownership that has always obtained to the bed of navigable streams.

Mr. FRYE. On page 20, line 11, after the word "Michigan," in lieu of the language proposed to be stricken out, I move to insert the following:

Under such rules and regulations as shall be from time to time prescribed by the Secretary of War.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. SMITH of Michigan. Mr. President, in view of the statement of the Senator from Georgia [Mr. BACON] with reference to this particular section of the bill, and also the statement of the Senator from Colorado [Mr. TELLER], I feel that I ought to explain my attitude upon this proposition.

In the first place, the practical question presented to the Senate is the question of insuring the navigability of the waters of the St. Marys River. Upon that question, which is a practical one for engineers and not a legal one, the House has taken action.

Mr. BACON. If the Senator will pardon me, I think that is a legal question, but I do not think there is any doubt about what should be done with the question.

Mr. SMITH of Michigan. I do not think the Senator understands me.

Mr. BACON. The Government, of course, has a right to make the stream navigable.

Mr. SMITH of Michigan. The first question that arises is the necessity for the taking. Upon the question of necessity, I think the courts have uniformly held that an authorization by Congress establishes the question of necessity.

This is a narrow stream, and it is not and never has been navigable. The construction of canals or locks are essential to navigation. It is held by the engineering department of the Government that they need additional land for the construction of new locks.

Mr. TELLER. I should like to suggest to the Senator from Michigan the government engineers do not agree on that.

Mr. SMITH of Michigan. It seems to me unnecessary to acquire all this land for additional locks. But upon that question, which I think is purely one of fact, I do not wish to in-

terpose my objection, although upon the question of the right of the Government to acquire this river to the international boundary for purposes of navigation there may be an honest difference of opinion.

Personally I do not think we need the land or the water lying between the present locks and the international boundary for purposes of navigation, but the contention of the Government is that we will need it in the future, and it asks a free hand. If they need it, they can take it under the power of condemnation. The question of necessity being a question of fact, I am not disposed to quarrel with the engineering department of the Government as to its needs; but I would not have the Senator from Georgia [Mr. BACON] or the Senator from Colorado [Mr. TELLER] or any other Senator imagine for a moment that I believe that the Federal Government has the constitutional power to acquire this river for the purpose of vending the water power—

Mr. BACON. That is exactly the point. I want to ask the Senator if the provision on page 19, beginning at line 14, does not undertake to do that very thing.

Mr. SMITH of Michigan. I am quite willing to pass the constitutional question up to the courts to decide, but I do not by so doing change my opinion at all. I believe that the law is well established that, wherever water power is an incident to navigation, it may be sold, and wherever the question of water power is paramount it is in direct conflict with the Constitution. The power is not given to the Federal Government to exploit water power as a commercial enterprise.

Mr. BACON. Now, if the Senator will pardon me, I will give him an illustration.

THE VICE-PRESIDENT. Does the Senator from Michigan yield to the Senator from Georgia?

Mr. SMITH of Michigan. Certainly.

Mr. BACON. I will take the Coosa River, in Alabama, which rises in Georgia and flows into Alabama, upon which the Government has constructed certain locks for the purpose of putting the river in a condition where it can be navigated. Of course, in the construction of those locks the Government has had to build dams; and the water power, which is thus created or made available, is on territory belonging to the government of the State of Alabama—private owners, riparian owners. I want to ask if I understand the Senator correctly to say that in such a case as that the Government of the United States would own that water power and have the right to lease it?

That I understand to be the contention of the President of the United States in several messages which he has sent to this body, and I think he has gone so far as to veto a bill because that right was not recognized. I can not now name the bill, but I think the President has done so.

Mr. SMITH of Michigan. Mr. President, the riparian owner can not be divested of his water right.

Mr. BACON. If the Senator will pardon me a moment, if that is the Senator's proposition, I should like very much for the Senator to point to the adjudication which he says would establish that proposition.

Mr. SMITH of Michigan. I want the Senator from Georgia to understand me. In a navigable stream, where the Government has the paramount right to navigate and control the navigation—

Mr. BACON. The Government never has the paramount right to navigate.

Mr. SMITH of Michigan. It has the paramount right to navigate—

Mr. BACON. To navigate?

Mr. SMITH of Michigan. To navigation.

Mr. BACON. Well, no.

Mr. SMITH of Michigan. Yes.

Mr. BACON. I beg the Senator's pardon.

Mr. SMITH of Michigan. It has the paramount right to navigation.

Mr. BACON. No.

Mr. SMITH of Michigan. To regulate navigation?

Mr. BACON. Ah! it has the power to control it, but not the power to navigate.

Mr. SMITH of Michigan. To control it.

Mr. BACON. Of regulation.

Mr. SMITH of Michigan. Wherever the necessities of navigation are such that the Government is obliged to acquire the riparian land, as is the case at Sault Ste. Marie, and as such riparian proprietor is obliged in the interest of commerce to build locks and dams and water power is developed or acquired, the right to dispose of the same to best advantage must exist.

I do not want to be misunderstood at all, neither do I wish my position to be at all contradictory. I do not believe that the necessities of navigation require the taking of this stream to the international boundary; but if it is to be taken, and the

necessity established, then I want the communities affected to have the benefit of the water power either through the Government or through private enterprise, and I have proposed an amendment making it mandatory upon the Government as a riparian proprietor to develop that water power for the benefit of the communities affected thereby.

Now, does the Senator from Georgia recognize the distinction I make?

Mr. BACON. That is rather a narrow distinction. I do not recognize the correctness of the Senator's logic and reasoning.

Mr. SMITH of Michigan. If the Senator recognizes the distinction, I will not dwell upon it further.

Mr. BACON. Yes.

Mr. SMITH of Michigan. I want my view to square with the legal rule and the constitutional situation. I have great pride in the Government's position. The St. Marys River is an important strait connecting Lake Superior with Lake Michigan. If the Government acquires this property in the interest of navigation, I want the water power, second only to Niagara, to be developed for the benefit of the communities bordering that stream.

I have no special quarrel with the Government's desire to acquire this land; I do not think it is necessary for purposes of navigation; but if the Government thinks it is necessary, I am not going to quarrel with them about it. I do insist, however, that the proviso at the end of page 20, from line 18 to line 3 on page 21, shall constitute a part of this act.

Mr. BACON. If the Senator will pardon me—I do not wish to take him from the floor, because I desire to hear him further on the question—

Mr. SMITH of Michigan. I have no desire to discuss it further.

Mr. BACON. I want to read the language of this provision to show that, according to my understanding, at least, the purpose as indicated by the Senator from Michigan is not the purpose expressed in the bill. The language is this:

The right to the flow of water, and riparian, water power, and other rights, now or hereafter owned by the United States in the St. Marys River in Michigan shall be forever conserved for the benefit of the Government of the United States, for the purpose of having the water power developed.

Not for the purpose of navigation, but—

either for the direct use of the United States, or by lease or other agreement, through the Secretary of War, who is hereby authorized to make such leases or agreements.

The prime purpose there is not navigation. Navigation is not mentioned.

Mr. SMITH of Michigan. Let me call the attention of the Senator to section 11, on page 15:

SEC. 11. That the ownership in fee simple absolute by the United States of all lands and property of every kind and description north of the present St. Marys Falls Ship Canal throughout its entire length and lying between said ship canal and the international boundary line of Sault Ste. Marie, in the State of Michigan, is necessary for the purposes of navigation of said waters and the waters connected therewith.

Mr. BACON. Yes.

Mr. SMITH of Michigan. That is the basis of this declaration. If that is not true, this entire declaration fails. If it is true, then, as an incident, the Government acquires the rapids in this river and may use it for the purposes described in the section to which the Senator from Georgia refers.

Mr. BACON. But even conceding the contention of the Senator, which I do not, as to the change in the attitude of the Government whenever the consideration of navigation is paramount, the section now under consideration is one in which the plain proposition is made, not simply that the Government is to utilize a water power which has been developed by the construction of works intended to improve navigation, but that the purpose of this is to develop such water power.

Mr. SMITH of Michigan. If the Senator from Georgia will permit me, if this was a petition in condemnation in a court of record by a quasi public corporation, the first thing that they must find would be the allegation in section 11 as to the necessity. The next would be the compensation. The Government may declare the taking a necessity. I have seen evidence that it intends to do it. If so, then I insist that what they acquire as an incidental right shall not run to waste, but must be used for the benefit of the people of Michigan.

Mr. President, the Government intends to force section 11 into the law, and I am doing the best I can to see to it that that water power, which is a very valuable asset to the State of Michigan, shall not be lost. That is my only concern.

Mr. FRYE. Mr. President, why can not the debate be postponed until a motion is made to strike out this entire section, and let us go on with the committee amendments?

Mr. TELLER. Why can we not strike it out now?

Mr. FRYE. Because it is not a committee amendment.

Mr. TELLER. The Senator prefers to go on with the committee amendments?

Mr. FRYE. I prefer to go on with the committee amendments, and then any Senator can, of course, move to strike out the entire section in regard to St. Marys River.

The VICE-PRESIDENT. The Secretary will resume the reading of the bill.

Mr. BANKHEAD. Mr. President, I desire to say just a word, and I think this is a very appropriate place to say it, while we are discussing the question of navigation and power combined.

It is perfectly evident that the erection or construction of locks and dams for navigation has never yet created a single reliable horsepower in this country, and never will. Where locks and dams are constructed for navigation, of course their height limits the head. The head, of course, regulates the power, if power is intended to be developed. I have in mind now a river in Alabama where 18 locks have been constructed for the purpose of promoting navigation on that river, and there is not generated now and never can be generated a single horsepower at all of them combined that is reliable; and power that is not reliable and that can not be depended upon every day in the year is almost worthless, unless you go to the expense of adding an auxiliary steam plant to supply power when the water itself does not supply it.

The question of water power is a very important one. I believe that is one of the richest assets that we have. I do not mean the richest asset of the Government, but of the people of the country or the State where the power can be developed. If this power, so valuable to develop all of the resources of the country, is ever to be utilized, it must be done in conjunction with navigation. One or the other is inevitably destroyed when you undertake to construct and operate them separately. It can not be done, as all the engineers in this country will tell you.

I do not expect it done in this bill, but this question must be settled. Some understanding must be reached as to the manner in which navigation and power can be supplied on the same river. The Government of the United States will never construct dams where to create power great reservoirs for the storage of water are necessary. They will be constructed only as aids to navigation. Individuals will never construct great dams and reservoirs for power in order to give the Government navigation. So, to my mind, it is perfectly evident that there must be cooperation if the two purposes are ever to be served together. It can not be in any other way.

The Government of the United States, desiring to improve the navigability of a river where great and valuable water power may be established, ought in the very inauguration of the work to look to it that in the construction and operation of locks power at the same time will be provided. This they must do. Mr. President, unless the Government makes up its mind that for all time this power, valuable as it may be, must give place to navigation exclusively.

I hope the Congress, at some future day when they have more time to devote to this important question, will take it up in an intelligent way and work out some plan by which the power on rivers that are navigable when improved may be utilized and at the same time navigation provided for. How that can be done is for Congress to determine—whether or not the Government of the United States, in pursuance of this policy, shall conclude that it is wise, politic, and businesslike to enter into some understanding or agreement with private individuals by which the Government may build a part of the locks and dams and the individual or corporation the other part, bearing the expense fairly, whatever it may be, and when completed the Government has the navigation and absolute control over it, and the individual or the corporation who participates in the work shall have and enjoy the power under proper regulation.

I merely wanted to say that much, Mr. President, while we were on the subject.

The reading of the bill was resumed. The next amendment of the Committee on Commerce was, on page 20, line 18, after the words "Secretary of War," to insert the following proviso:

*Provided further*, That any excess of water in the St. Marys River at Sault Ste. Marie over and above the amount required for the uses of navigation shall be leased for power purposes by the Secretary of War upon such terms and conditions as shall be best calculated in his judgment to insure the development thereof and most conducive to the commercial progress of the communities affected. The Secretary of War may as often as necessary make such regulations and fix such charges as in his judgment are reasonable and just and best calculated to carry out the purposes of this section.

Mr. TELLER. I want to object to that amendment. I ask the Senator from Maine to let it pass over.

Mr. FRYE. Why not let it be agreed to? Then, if a motion is made to strike out the entire section, of course it will come up in the Senate.

Mr. TELLER. I may not want to move to strike out the entire section, but I do desire to have this stricken out.

Mr. FRYE. If this goes out, the whole section will go out.

Mr. TELLER. Mr. President, I want to make my objection that this is general legislation, vicious legislation, and unconstitutional legislation on an appropriation bill. I think that will raise the point of order.

The VICE-PRESIDENT. The Chair is of the opinion that the first point of order is well taken, and therefore sustains that point of order.

Mr. FRYE. Is the Chair certain that Rule XVI applies to a river and harbor bill—that a river and harbor bill is a general appropriation bill?

The VICE-PRESIDENT. The Chair so understands.

Mr. FRYE. There is a different rule applied to river and harbor bills from that applied to other appropriation bills.

The VICE-PRESIDENT. The Chair is of the opinion that the river and harbor bill is a general appropriation bill in the sense contemplated by the rule.

The reading of the bill was resumed.

Mr. FRYE. On page 21, line 7, I move to strike out "six" and insert "eight."

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 21, line 7, before the word "hundred," it is proposed to strike out "six" and insert "eight," so as to read:

SEC. 13. That for examinations, surveys, and contingencies, and for incidental repairs for rivers and harbors for which there may be no special appropriation, the sum of \$800,000 is hereby appropriated, to be immediately available.

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Commerce was, under the subhead "Alabama," on page 23, line 13, after the word "the," to strike out "Sipsey Fork" and insert "Saunders Ferry," so as to make the clause read:

Mulberry and Locust forks of the Warrior River, up the Mulberry Fork to its junction with the Saunders Ferry, and up the Locust Fork to the mouth of Five-mile Creek.

Mr. FRYE. I move to further amend that paragraph, in line 13, by striking out "its junction with the," after the word "to."

The amendment was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Commerce was, on page 23, after line 20, to insert:

Chickasabogue Creek at its mouth.

The amendment was agreed to.

The next amendment was, on page 23, after line 21, to insert: Bayou La Batre.

The amendment was agreed to.

The next amendment was, on page 23, after line 22, to insert:

Coosa River, with a view to storage reservoirs at, near, or above the sites of Locks and Dams Nos. 12, 14, and 15, by cooperation with the Alabama Power Company, or any other corporation duly organized under the laws of the State of Alabama, in the development of water power for industrial purposes, the report to state what proportion of the cost should be borne by the United States.

Mr. BACON. I ask that that amendment be passed over for the present.

The VICE-PRESIDENT. Without objection, the amendment will be passed over.

The reading of the bill was resumed.

The next amendment of the Committee on Commerce was, under the subhead "Arkansas," on page 24, after line 7, to insert:

And an examination shall be made as to the feasibility, as an aid to navigation on the Ouachita River, of the construction of a canal from Grand Mary Lake to Felsenthal, Ark., and an estimate submitted as to the cost thereof.

The amendment was agreed to.

The next amendment was, on page 24, after line 11, to insert:

Arkansas River, between Little Rock and Dardanelle, with a view of ascertaining if said part of said river is susceptible of being made available for purposes of navigation during the entire year, and, if found capable of being made so available, then to report an estimate of the cost of improving such part of said river by the construction of locks and dams, or otherwise, as well as to report an estimate of the probable tonnage that will seek transportation thereon in the event the same were so improved.

Mr. FRYE. In the amendment of the committee beginning in line 12, on page 24, at the end of the line, I move to strike out the name "Dardanelle" and insert "Ozark."

The VICE-PRESIDENT. The amendment to the amendment will be stated.

The SECRETARY. On page 24, line 12, at the end of the line it is proposed to strike out the name "Dardanelle" and insert the name "Ozark."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The reading of the bill was resumed.

The next amendment of the Committee on Commerce was, under the subhead "California," on page 25, after line 14, to insert:

Humboldt Harbor, South Bay Channel, with a view to the removal of obstructions to navigation to the wharf at Fields Landing.

The amendment was agreed to.

The next amendment was, on page 25, after line 19, to insert:

Humboldt Bay to Eel River, with a view to the construction of a ship canal.

Mr. PERKINS. With the permission of the chairman of the committee, I will move that that amendment be disagreed to, the same item being provided on page 54.

Mr. FRYE. That is right. Let the committee amendment be disagreed to.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the committee.

The amendment was rejected.

The reading of the bill was resumed.

The next amendment of the Committee on Commerce was, under the subhead "Connecticut," on page 26, after line 18, to insert:

Connecticut River up to Hartford.

The amendment was agreed to.

Mr. FRYE. On page 26, line 21, after the word "from," I move to strike out "Newport" and insert "Wilmington."

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 26, line 21, after the word "from," it is proposed to strike out "Newport" and insert "Wilmington," so as to read:

Christiana River, from Wilmington to Christiana.

The reading of the bill was resumed.

The next amendment of the Committee on Commerce was, under the subhead "Delaware," on page 26, after line 24, to insert:

Christiana River, from Wilmington to Christiana.

Mr. FRYE. Let that amendment be rejected.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was rejected.

The next amendment was, on page 26, after line 25, to insert:

Laurel River up to Laurel.

The amendment was agreed to.

The next amendment was, under the subhead "Florida," on page 27, line 6, after the word "walls," to insert "to protect government property; and also to providing a channel 16 feet deep and 300 feet wide from the city of St. Augustine to the ocean," so as to make the clause read:

St. Augustine Harbor, with a view to constructing the necessary sea walls to protect government property; and also to providing a channel 16 feet deep and 300 feet wide from the city of St. Augustine to the ocean.

The amendment was agreed to.

The next amendment was, on page 27, after line 9, to insert:

New Smyrna Inlet.

The amendment was agreed to.

The next amendment was, on page 27, line 15, after the word "to," to insert "the ocean, with a view to obtaining a depth of 30 feet;" so as to make the clause read:

St. Johns River, from Jacksonville to the ocean, with a view to obtaining a depth of 30 feet.

Mr. FRYE. I am informed that in the blueprint of the bill as it came from the House, on page 37, line 15, the words "its mouth" appear after the words "Jacksonville to," but those words do not appear in the printed bill as it is before the Senate. I move, therefore, to amend the amendment by striking out the words "its mouth" and inserting the words of the committee amendment "the ocean, with a view to obtaining a depth of 30 feet."

The amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, on page 28, after line 11, to insert:

New River, Florida, with a view to securing a depth of 20 feet of water at the cut-off near the mouth, with jetties to protect the same.

Mr. FRYE. In line 12, after the word "river," I move to insert the words "Dade County."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, under the subhead "Georgia," on page 28, after line 19, to insert:

Satilla River.

Mr. FRYE. In line 20, before the word "Satilla," I move to insert "Big."

Mr. BACON. The amendment which the Senator suggests is correct, as there are two such rivers in Georgia. If there is any mistake it can be corrected in conference.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, under the subhead "Georgia and Alabama," on page 29, line 3, after the word "navigation," to strike out "and development of water power in connection therewith," so as to read:

Etowah, Coosa, and Tallapoosa rivers, with a view to their improvement for navigation.

Mr. LODGE. That term is to be stricken out throughout the bill?

Mr. FRYE. Yes; throughout the bill.

The amendment was agreed to.

The reading of the bill was continued to the end of line 20 on page 30.

Mr. BURKETT. I should like to ask a question, so that I may gain some information. I should like to understand something about the plan and the theory upon which the bill is builded. My attention has been attracted to it especially because of these three rivers in Iowa—the Des Moines River, the Cedar River, and the Iowa River. I should like to have somebody explain to me what it is that determines the committee in putting streams in the bill. I have seen the three rivers mentioned, and in my opinion they are not susceptible of navigation. I should like to know what is proposed to be done with those rivers. Are they a fair illustration of the other rivers provided for in this bill? I ask for information now because I may want to offer an amendment.

Mr. FRYE. The bill provides first for a preliminary survey. If the preliminary survey shows that the streams ought not to be improved for navigation, that is the end of it. If the examination shows that commerce requires the improvement, a survey is ordered. It goes to the chief engineer. Then it goes to the board of review. It is not possible, with that examination, for anything to get through that ought not to get through.

Mr. BURKETT. That is what I understood, although I have not had time to study the bill. What is determinative in the case of such rivers?

Mr. FRYE. If Members of Congress appear before the committee and request that a certain river be put in for preliminary survey, it is generally put in. Nearly all of the provisions for surveys have passed the Senate by concurrent resolution, and nearly all have similarly passed the House.

Mr. BURKETT. I thought such resolutions were usually lost in the House. They must involve some expense. How much expense does the Senator think is involved in these preliminary surveys?

Mr. FRYE. All the surveys in the bill will carry about \$600,000, if they are made. A mere preliminary survey does not cost much. It is made through the local engineer.

Mr. BURKETT. Did the committee give attention to the practicability or desirability from a navigable standpoint of having these rivers surveyed? There are provided for in this bill rivers which anyone who knows the facts at all would say at once are not worth spending money upon. They can never be made navigable upon any reasonable expense. It is simply a waste of money. I observe that the amount is very small, but it seems to me some attention ought to be given to it before any money is authorized to be expended.

The reading of the bill was resumed.

The next amendment of the Committee on Commerce was, under the subhead "Kansas," on page 30, after line 22, to insert:

Missouri River at the city of Atchison, with a view to restoring said river to its proper channel.

The amendment was agreed to.

The reading of the bill was continued to the end of line 18, on page 31.

Mr. FRYE. On page 31, line 15, before "Jefferson-Shreveport," strike out "the" and insert "survey of the."

The amendment was agreed to.

The reading of the bill was resumed and continued to the end of line 21, on page 31.

Mr. FRYE. I offer the amendment I send to the desk.

The SECRETARY. On page 31 strike out lines 20 and 21 and insert:

Isle au Haut Thoroughfare between the island of Isle au Haut and Kimball's Island, with a view to obtaining a channel of increased depth and width and the establishment of a harbor of refuge.

The amendment was agreed to.

The next amendment was, under the subhead "Maine," on page 32, after line 3, to insert:

St. Croix River at and near Calais.

The amendment was agreed to.

The next amendment was, under the subhead "Maryland," on page 32, after line 13, to insert:

Corsica River.

The amendment was agreed to.

The next amendment was, on page 33, line 9, after the word "navigation," to strike out "and the development of water power in connection therewith," so as to make the clause read:

Connecticut River, from Hartford, Conn., to Holyoke, Mass., with a view to its improvement for navigation.

The amendment was agreed to.

The reading of the bill was continued to the end of line 2, on page 34.

Mr. FRYE. At the top of page 34, after the word "harbor," in line 1, I move to insert "to east end of Fulton street and."

The amendment was agreed to.

The next amendment of the Committee on Commerce was, under the subhead "Michigan," on page 34, after line 18, to insert:

Cheboygan River, with a view to widening its channel and rebuilding or repairing the locks so as to render the river navigable for boats drawing 8 feet of water.

Mr. FRYE. Let the amendment be disagreed to.

The amendment was rejected.

The next amendment was, on page 34, after line 21, to insert:

Forester Harbor, with a view to deepening the same to 20 feet.

The amendment was agreed to.

The next amendment was, on page 34, after line 23, to insert:

White Lake Harbor, with a view to providing a channel depth of 20 feet and a turning basin.

The amendment was agreed to.

Mr. FRYE. I offer the amendment I send to the desk.

The SECRETARY. At the bottom of page 34 it is proposed to insert:

Traverse Bay, at Traverse City, with a view to the construction of a breakwater.

The amendment was agreed to.

The next amendment was, at the top of page 35, to insert:

Leland Harbor, with a view to providing a harbor of refuge by the construction of a breakwater.

Mr. FRYE. Let the amendment be disagreed to.

The amendment was rejected.

The next amendment was, under the subhead "Minnesota," on page 35, after line 2, to insert:

St. Clair River, with a view to making a cut from the north to the south channel near Algoma.

Mr. FRYE. Let that amendment be also disagreed to.

The amendment was rejected.

Mr. FRYE. I offer the amendment I send to the desk.

The SECRETARY. On page 35, after line 4, insert:

Au Sable River, with a view to obtaining a suitable depth over the bar at the mouth by dredging.

The amendment was agreed to.

The next amendment was, under the subhead "Minnesota," on page 35, after line 21, to insert:

Zipple Bay, Lake of the Woods, with a view to establishing a harbor of refuge.

The amendment was agreed to.

The reading of the bill was continued to the end of line 13, on page 36.

Mr. FRYE. I offer the amendment I send to the desk.

The SECRETARY. On page 36, line 13, before the words "Fond du Lac," insert "the stone quarries near," so as to read:

St. Louis River, from the upper limit of present project to the stone quarries near Fond du Lac.

The amendment was agreed to.

The next amendment of the Committee on Commerce was, under the subhead "Minnesota and Wisconsin," on page 36, after line 13, to insert:

The report upon the examination and survey for the location of a canal connecting Lake Superior and the Mississippi River by way of the St. Croix River, as provided by the river and harbor act of 1894, and as supplemented by the provisions of the river and harbor act approved March 31, 1899, shall be completed by a further report as to whether existing conditions render such project now feasible and practicable, considering the necessary location, plans, cost of construction and maintenance, commerce affected, water supply, and incidental water power developed in connection therewith.

The amendment was agreed to.

The next amendment was, under the subhead "Montana," on page 37, after line 17, to insert:

Yellowstone River, from its mouth to the city of Glendive, with a view to maintaining a 4-foot stage of water and the building of a lock at the United States Government dam.

Mr. FRYE. In line 18, after the word "of," I move to strike out "Glendive" and to insert "Miles City."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, on page 37, line 22, after the word "Lake," to insert "with a view to dredging the channel and putting in piling on the east side," so as to make the clause read:

Polson Bay, Flathead Lake, with a view to dredging the channel and putting in piling on the east side.

The amendment was agreed to.

Mr. BACON. We have passed over the amendment on page 36. I want to call attention to that amendment.

Mr. FRYE. It provides merely for a report.

Mr. BACON. I know that, but it is something we have nothing to do with. It is no business of the Federal Government to develop water power or to legislate for the development of water power.

Mr. FRYE. Why does not the Senator move to strike it out? What is the use of making a reservation?

Mr. BACON. I will make that motion.

Mr. FRYE. I should like to have it made now.

Mr. NEWLANDS. Will the Senator from Georgia permit me to make a suggestion?

Mr. BACON. Certainly.

Mr. NEWLANDS. The Senator from Georgia doubtless heard the Senator from Alabama [Mr. BANKHEAD] speak of the importance of cooperation between the State and the Nation in the development of both navigation and water power, assigning to each the part that belongs to it, so that navigation, which is a federal function, and the development of water power, which is a state function, can both be promoted. As I understand, this amendment simply calls for a report regarding the waterway, so that the plan will cover everything that is necessary to develop a river to its highest purpose, both for navigation and water power. Is it not well to have such a report before us? When the report comes in, we will consider how far the Federal Government can act in the matter within its powers, and to what extent the State or individuals or corporations acting under the State can act under state powers.

The Senator from Alabama very clearly showed that unless these works were planned with reference to both uses we could accomplish one purpose only, and that would be the promotion of navigation.

It seems to me it is very much better to leave this provision in the bill, and then determine later on what part of the work shall be assigned to the Nation and what part shall be assigned to the State.

We are on the eve of the great work of coordination of the various national services relating to water. We are also on the verge of cooperation between the national sovereignty and the state sovereignty in reference to the development of rivers, and it is important that we should have a plan before us to ascertain what each sovereign shall do and what each sovereign shall pay in the construction of these works, which serve a double purpose.

Mr. BACON. Mr. President, I well understood the suggestion of the Senator from Alabama, which has been repeated by the Senator from Nevada, and I do not recognize at all the propriety of its adoption. It necessarily involves the idea that the Government of the United States is going into copartnership and into business relationship with private persons or private corporations, who may be interested in water power at places where the Government is interested in protecting the navigability of a river. Senators will see at once that that is necessarily the conclusion.

Mr. NEWLANDS. Mr. President—

Mr. BACON. I heard the Senator through with pleasure. I hope he will hear me through. Then I will yield with great pleasure. Senators will see that that is necessarily the result of the suggestion when it is proposed that when the Government shall enter upon works for the purpose of improving navigation, it shall enter into negotiations with private corporations or private individuals who may be interested in the water power at that point to divide between them the expense and to own jointly between them the property. That is the necessary, inevitable process by which that end is to be accomplished. I will not stop to elaborate that point. In the first place, it is absolutely foreign and antagonistic to the principle upon which the Government acquires any property anywhere for any public use. It can acquire property only for public use.

Mr. FRYE. I am perfectly willing that there shall be stricken out of the bill wherever it occurs the term "incidental water power."

Mr. BACON. Then I will not have another word to say.

Mr. BANKHEAD. Mr. President—

Mr. FRYE. I hope the Senator from Alabama will let the consideration of the bill be proceeded with. The time is passing away rapidly, and there are eulogies to be delivered.

Mr. BANKHEAD. I yield.

Mr. FRYE. "Incidental water power."

Mr. TELLER. Those words are to go out.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 36, in line 24, it is proposed to strike out "incidental water power developed in connection therewith."

Mr. GALLINGER. Let the word "and" be inserted before the words "water supply."

Mr. BANKHEAD. I understood the Senator to suggest that he was perfectly willing that everything in reference to water power should be stricken out.

Mr. FRYE. I am willing that it shall be stricken out. It occurs in several places. We have stricken it out in reference to the Connecticut River.

Mr. BACON. We have stricken it out as to Delaware and Georgia.

Mr. FRYE. We have stricken it out there.

Mr. BANKHEAD. I am going to yield to the suggestion of the committee, of course. But these are the most important provisions in this bill.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Georgia to the amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, under the subhead "New York," on page 39, after line 13, to insert:

Bay Ridge and Red Hook channels, New York Harbor, with a view to the removal of the shoal between these channels and the deep water of the bay and the construction of a breakwater or quay extending from Red Hook Point on and along the easterly side of said shoal as it now exists, for the purpose of providing protection to that part of the harbor against the effects of westerly winds.

Mr. FRYE. In line 18 I move to strike out the word "east-erly" and insert the word "westerly."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The reading of the bill was continued to page 40, line 8, the last paragraph read being as follows:

Hudson River, with a view to providing a channel not less than 200 feet wide and 12 feet deep at all stages from deep water in the lower river to Waterford, including a lock and dam at Troy suitable in size for all probable purposes of navigation and commerce to and from the Barge Canal.

Mr. FRYE. On page 40, line 8, after the word "Canal," I move to insert:

Below Troy channel to correspond in width with the existing project.

The amendment was agreed to.

The next amendment was, on page 40, after line 19, to insert:

The Secretary of War is hereby directed to report as soon as he is satisfied that the city of New York is prepared to undertake the work to be done by it preliminary to or contemporaneous with any dredging to be done by the United States Government, as recommended in the report and plan of the Secretary of War transmitted under date of February 25, 1909, for the improvement of Jamaica Bay, New York, and its entrance at Rockaway Inlet and Dead Horse Inlet.

The amendment was agreed to.

The next amendment was, under the subhead "North Carolina," on page 41, line 6, after the letter "a," to strike out "suitable depth and width" and insert "depth of 30 feet and a suitable width," so as to make the clause read:

Cape Fear River, at and below Wilmington, with a view of obtaining a depth of 30 feet and a suitable width.

Mr. SIMMONS. I wish to have stricken out the words "depth of 30 feet and a suitable width," restoring the House language, "suitable depth and width."

Mr. FRYE. The Senator wants to have the committee amendment disagreed to?

Mr. SIMMONS. Yes.

The amendment was rejected.

Mr. SIMMONS. That restores the House language?

Mr. FRYE. It restores the House language.

The next amendment was, on page 42, after line 3, to insert: Little Contentnia River up to the town of Ridge Springs.

The amendment was agreed to.

The next amendment was, on page 42, after line 5, to insert: Contentnia River from Snow Hill to Stantonburg.

The amendment was agreed to.

The next amendment was, on page 42, after line 6, to insert: Neuse River from Pamlico Sound to Kinston; Trent River up to Trenton; Pasquotank River up to Elizabeth City; Roanoke River up to Wel-

don; Chowan River up to a point opposite Winton; with a view to providing channels of 10 feet depth, to conform with the depth of the authorized canal to connect the waters of Pamlico Sound with the ocean at Beaufort.

The amendment was agreed to.

The next amendment was, on page 42, after line 13, to insert: Cape Lookout, with a view to providing a harbor of refuge for the largest coastwise vessels.

The amendment was agreed to.

The next amendment was, on page 42, after line 15, to insert: Cape Hatteras, with a view to providing a harbor of refuge for the largest coastwise vessels.

Mr. SIMMONS. In line 17 I move to strike out the word "coastwise" and insert the word "seagoing."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, on page 42, after line 17, to insert: Swift Creek from its confluence with the Neuse River to the head of navigation on said Swift Creek.

The amendment was agreed to.

The next amendment was, on page 42, after line 19, to insert: Smiths Creek from its confluence with the Neuse River to the head of navigation on said Smiths Creek.

The amendment was agreed to.

The next amendment was, at the top of page 43, to insert:

NORTH AND SOUTH DAKOTA AND MONTANA.

The Missouri River from Sioux City, Iowa, to Fort Benton, Mont., and the Yellowstone River from mouth to Billings, Mont.

The amendment was agreed to.

The next amendment was, under the subhead "Ohio and West Virginia," on page 43, line 21, after the word "Numbered," to strike out "26" and insert "29," so as to make the clause read:

Survey of Ohio River, with a view to the selection of sites for the additional locks and dams between Lock No. 8 and Lock No. 29, and for the preparation of plans and estimates.

The amendment was agreed to.

The reading of the bill was continued to line 24, on page 43, in the items under the heading "Oklahoma."

Mr. FRYE. After the word "to," in line 24, I move to strike out the words "a point opposite Pauls Valley," and to insert "Mountain View," so as to read:

Washita River, up to Mountain View.

The amendment was agreed to.

Mr. FRYE. At the bottom of page 43, I move to insert:

The North Canadian River, with a view to the diversion of a portion of its waters into the Cimarron River in the locality of Blaine County.

The amendment was agreed to.

The next amendment was, under the subhead "Oregon," on page 44, line 9, after the word "mouth," to insert "including the bar thereof," so as to make the clause read:

Coquille River, from the mouth, including the bar thereof, up to Myrtle Point.

The amendment was agreed to.

The next amendment was, under the subhead "Rhode Island," on page 45, after line 10, to insert:

Newport Harbor, with a view to an extension of the improvement as indicated in projects "B" and "C," contained in House Document No. 438, Fifty-ninth Congress, second session.

The amendment was agreed to.

The next amendment was, on page 45, after line 14, to insert: Point Judith Pond, with a view to obtaining a navigable depth.

The amendment was agreed to.

The next amendment was, on page 45, after line 18, to insert:

The Secretary of War is hereby authorized and directed to report to Congress a plan and estimate for a landing place to be constructed in the harbor of refuge at Point Judith, Rhode Island, within the area protected by the shore-arm breakwater, in accordance with the recommendations contained in the letter dated April 2, 1908, from the Secretary of War to the Speaker of the House of Representatives, and printed in H. Doc. No. 911, Sixtieth Congress, first session.

Mr. FRYE. In line 22, after the word "April," I move to strike out the word "second" and to insert "thirtieth."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, on page 46, line 3, after the word "Point," to insert "and to extending the 25 feet deep anchorage area westward to the western harbor line from a point just above Harbor Junction pier to Fields Point and cutting off Fields Point back to the harbor line," so as to make the clause read:

Providence River and Harbor, with a view to widening and straightening the channel between Kettle Point and Gaspee Point, and to extending the 25 feet deep anchorage area westward to the western harbor line from a point just above Harbor Junction pier to Fields Point and cutting off Fields Point back to the harbor line.

The amendment was agreed to.

Mr. FRYE. On page 46, after line 6, I move to insert:

Inner harbor, Great Salt Pond, Block Island, with a view to widening the present channel and providing increased anchorage.

The amendment was agreed to.

The reading was continued to page 47, line 15, the last paragraph read being as follows:

TENNESSEE, ALABAMA, AND KENTUCKY.

Survey of Tennessee River from Knoxville to its mouth, with a view to securing the best permanent navigation by open channel work, or locks and dams, or both, and making an estimate of the cost of same, with a view to securing a depth from Knoxville to Chattanooga of 6 feet, if obtainable, or any such less depth as may be practicable between such depth and the present project depth; and from Chattanooga to the mouth of the river a depth of 9 feet, if obtainable, or such less depth as may be practicable between such depth and the present project depth.

Mr. FRAZIER. On page 46, line 6, after the word "from," I move to strike out "Knoxville" and to insert the words "the confluence of the Holston and the French Broad rivers, forming the Tennessee River."

Mr. FRYE. There is no objection to that amendment.

The amendment was agreed to.

The reading was continued to page 48, line 13, the last paragraph read being as follows:

Channel extending from the mouths of the Sabine and Neches rivers to the mouth of Taylors Bayou, including the Sabine River from Orange to said canal, and the Neches River from Beaumont to said canal, with a view to widening and deepening said canal and removing the obstructions in the said rivers and improving the same; and in making such examination or survey the engineer or engineers having the same in charge shall take into account and make report upon any proposition for participation in the expense of said project by the localities immediately affected thereby.

Mr. BAILEY. I understand we are on the committee amendments now, but I want to inquire of the chairman of the Commerce Committee if this provision, with respect to extending the channel from the mouths of the Sabine and Neches rivers, and requiring the engineers to take into consideration whether those people ought to be compelled to contribute, is not an unusual provision and not only out of the ordinary as to the general course of the Government, but it is practically the only provision of this kind in the bill, is it not?

Mr. FRYE. I think it is; but is not that the very canal a bill for which has been already passed authorizing those people to make the improvements?

Mr. BAILEY. No; Mr. President, that bill was for a canal. This is for the improvement of the Sabine and Neches rivers. It is a different project. I simply wanted to call the attention of the chairman to it and to say that at the proper time I shall ask that that requirement be stricken out.

Mr. FRYE. The words "and make report upon any proposition for participation," and so forth. Is that the part the Senator wishes to strike out?

Mr. BAILEY. Yes, sir; the words "shall take into account and make report upon any proposition for participation in the expense of said project by the localities immediately affected thereby."

Mr. FRYE. Let the words be stricken out now, then.

Mr. BAILEY. Very well.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 48, line 9, after the word "same," strike out the words:

And in making such examination or survey the engineer or engineers having the same in charge shall take into account, and make report upon any proposition for participation in the expense of said project by the localities immediately affected thereby.

Mr. FRYE. No; strike out the last three lines—the words "and make report upon any proposition for participation in the expense of said project by the localities immediately affected thereby."

Mr. BAILEY. I think, Mr. President, the Secretary is right. I think that all after the semicolon is related to the simple proposition of compelling the localities to participate in the expense. I think, if the chairman will read it attentively, he will find that that is true.

Mr. FRYE. The Senator wants to have the whole clause stricken out?

Mr. BAILEY. Oh, no; I only want to have stricken out the semicolon and to insert a period in line 9, and all beginning with the words "and in making such examination or survey" and ending with the word "thereby" in line 13.

Mr. FRYE. I have no objection to that.

The amendment was agreed to.

The next amendment of the Committee on Commerce was, under the subhead of "Texas," on page 48, after line 13, to insert:

Galveston Harbor, Galveston Channel, Texas City Channel, and Port Bolivar Channel, with a view to a comprehensive and systematic plan of improvement.

The amendment was agreed to.

The next amendment was, under the subhead "Virginia," on page 49, line 12, after the word "Inlet," to insert "with a view to obtaining a channel depth of 15 feet," so as to make the clause read:

Chincoteague Inlet, with a view to obtaining a channel depth of 15 feet.

The amendment was agreed to.

The next amendment was, on page 49, line 21, after the word "feet," to insert "and with a view to removing the bars in and near the mouth of Bennetts Creek," so as to make the clause read:

Nansemond River, from Hampton Roads to Suffolk, with a view to widening and straightening the channel and deepening the same to 25 feet, and with a view to removing the bars in and near the mouth of Bennetts Creek.

The amendment was agreed to.

The next amendment was, on page 49, line 24, after the letter "a," to strike out "suitable depth and" and insert "depth of 35 feet and suitable," so as to make the clause read:

Norfolk Harbor and the approaches thereto, with a view to obtaining a depth of 35 feet and suitable width from deep water in Hampton Roads via Elizabeth River and the Southern Branch to the navy-yard; also between Lambert's Point and Pinners Point, with a view to providing additional anchorage area abreast of and above Lambert's Point; also the Southern Branch of the Elizabeth River above the navy-yard.

Mr. FRYE. On page 50, line 1, after the word "in," I move to strike out "Hampton Roads" and to insert "the sea."

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, on page 50, line 9, before the word "between," to strike out "suitable depth and width" and insert "depth of 35 feet and suitable width," so as to make the clause read:

Channel across Newport News Middle Ground Bar, with a view to obtaining a depth of 35 feet and suitable width between Old Point and Newport News.

The amendment was agreed to.

The reading of the bill was continued to line 24, page 51, in the items under the heading "Wisconsin."

Mr. FRYE. I move, at the bottom of page 51, after line 24, to insert:

Yahara River, with a view to securing a channel 4 feet deep from Madison to Janesville.

The amendment was agreed to.

The next amendment was, under the subhead "Intracoastal waterways," on page 52, line 13, after the word "Sound," to insert:

To include a canal from the protected waters of Narragansett Bay, through the ponds and lagoons lying along the southern coast of Rhode Island and thence to Watch Hill and Fishers Island.

So as to read:

Survey for the construction of a continuous waterway, inland where practicable, from Boston, Mass., to Long Island Sound, to include a canal from the protected waters of Narragansett Bay through the ponds and lagoons lying along the southern coast of Rhode Island and thence to Watch Hill and Fishers Island; thence to New York Bay, etc.

The amendment was agreed to.

The next amendment was, on page 54, after line 22, to insert:

Survey for the construction of a continuous inland waterway in the State of California, between suitable points on Humboldt Bay and Eel River in said State, for the purpose of ascertaining the cost of a channel with a maximum depth of 9 feet, or such lesser depths along any section or sections of said waterway as may be found sufficient for commercial, naval, and military purposes. Such survey shall include an examination of all practical routes and the preparation of plans and estimates of cost along the most available route.

Mr. GALLINGER. I call the attention of the chairman to the fact that the word "practical," in line 5, on page 55, should be "practicable."

Mr. FRYE. That is true. I move that amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

The next amendment was, on page 56, after line 22, to insert as a new section the following:

SEC. 15. That the sum of \$1,875 be, and the same is hereby appropriated to be paid to JOHN H. BANKHEAD, of Alabama, for his services on the Inland Waterways Commission from the 14th day of March to the 18th day of June, 1907.

The amendment was agreed to.

The reading of the bill was concluded.

The VICE-PRESIDENT. The hour of 1 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated by the Secretary.

The SECRETARY. A bill (S. 6484) to establish postal savings banks for depositing savings at interest, with the security of the Government for repayment thereof, and for other purposes.

Mr. CARTER. I ask that the bill be temporarily laid aside.

The VICE-PRESIDENT. Without objection, the bill will be temporarily laid aside.

Mr. FRYE. At the bottom of page 23, the Coosa River amendment, the Senator from Georgia asked should be passed over.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 23, after line 22, insert:

Coosa River, with a view to storage reservoirs at, near, or above the sites of Locks and Dams Nos. 12, 14, and 15, by cooperation with the Alabama Power Company, or any other corporation duly organized under the laws of the State of Alabama, in the development of water power for industrial purposes, the report to state what proportion of the cost should be borne by the United States.

Mr. BACON. Mr. President, I just want to say one word. This is a tentative bill, as it were, and of course it does not occupy the same relation as if it were a bill upon its passage for the execution of these works.

I do not intend to occupy the time of the Senate or offer any amendments to the bill, but I want to say that the attitude which I occupy in regard to this water power is not based solely upon the theory that the Government is transcending its power in that regard, but it has reference to a matter which I consider to be of a most practical and important nature.

We have reached an era when the matter of the development and use and ownership of the water power of the country is going to be one of the most important features in our industries, and that is in connection with its relation to the general use of electricity. We have all over this country, in all the States, or certainly in a large majority of them, an incalculable wealth in the matter of water power. It belongs to the States, it belongs to the people in the States, and I am not willing myself to sit silent for a moment under the suggestion that the Government of the United States, never mind what its original purpose may be, has any power to lease those water powers, even though the water power may be developed by a dam erected by the United States for the purpose of improving navigation.

When the United States erects a dam, it is for the specific constitutional purpose of improving the navigation of a river. There its function ends, and the water and the power which is developed on it still remain the property of the owner of it; and there are plenty of ways in which it can be utilized without interfering in any manner with the use of the water by the Government in the perfection of the navigation of the river.

It is for the purpose of guarding against the possibility of the recognition of any such power on the part of the Government of the United States and for the purpose of preserving to our people their rights in this water power that I make this suggestion. I am the more impressed with the importance of so doing, because it has not only been contended by individuals in private stations and by some in the Senate and in the House, but the President of the United States has distinctly announced the proposition, and in a message to Congress has said that he would veto any bill which did not recognize the right of the United States to the use of water power within a State where they had erected dams for the purpose of navigation or any other purpose and the right of the United States to sell and lease that water power to others, thereby denying the rights of the owners within the State.

That doctrine I utterly repudiate and deny, and I wish to enter a protest against it here, so that when the time comes when any of these projects are sought to be put in operation we may be able to defend the right of the people to the ownership of their own water power, never mind by whom it may be developed.

Mr. FRYE. I wish to ask the Senator from Georgia a question. I am not going to argue this question, because I have not any time; but suppose the Government, in the erection of a dam made necessary for the purposes of navigation, creates an enormous power which can be made useful and is not necessary for the navigation, what on earth are we to do with it?

Mr. BACON. It belongs to the original owner. Here the Government builds a dam for the purpose of supplying a lock with water. All the time the water is flowing over that dam and is going to waste. It can be diverted into a ditch or a canal for the purpose of power or irrigation or anything else, so long as it does not interfere with the purpose for which the dam was built by the United States.

Mr. FRYE. In any quantity of instances we have given to individuals and to corporations the right to use that water. The Government has given it in numerous cases.

Mr. BACON. Very well. I will say that it is proper to get the consent of the Government to the utilization of the water, because the party might seek to use it in a way which would interfere with the purpose of the Government in the erection of the dam. But that is very different from the Government undertaking to say it owns the power and can sell it or lease it for the benefit of the Government.

Mr. FRYE. I can not agree with the Senator.

Mr. BACON. The sole function of the Government is to so control that water as to aid in navigation.

Mr. BAILEY. That is the Government's whole power.

Mr. BACON. That is its whole power, and whenever the owner of that water power, because he is the owner of it as long as it is on his land, wishes to utilize it, it is the duty of the Government to permit him to utilize it, so far as he can do it without interfering with the purpose of the Government in the erection of a dam.

Mr. LODGE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Massachusetts?

Mr. BACON. I do, with pleasure.

Mr. LODGE. I can not see that this amendment has anything at all to do with navigation.

Mr. BACON. The Senator from Massachusetts probably did not hear what I said. I said that I did not propose to obstruct the bill in any way or to offer any amendment to it; but as this matter had been discussed, I wished to state that my view was not limited to the question simply as to whether the Government of the United States was exceeding its constitutional function—although there can be no more important question than that—but that the purpose I had was to resist at the outset the proposition that the Government has the right when it erects a dam for the purpose of improving the navigation of a river to claim ownership in the water power thus developed, either to sell it or to lease it.

Mr. LODGE. This clause, as I read it, is put in not for the purpose of helping navigation, but to create water power. So the United States has come in there and spent the money of all the people of the United States to create water power—

Mr. BACON. I do not believe in it.

Mr. LODGE. And then the United States has no rights in that water power at all.

Mr. BACON. That is exactly what I am objecting to.

Mr. LODGE. They have no right to create it.

Mr. BACON. That is exactly what I am objecting to. I do not believe in any legislation committing the United States to work on streams for the purpose of developing power. Its function is to develop the navigation of streams. I have been contending against that all the morning.

Mr. BANKHEAD. Mr. President—

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

Mr. BACON. I do.

Mr. BANKHEAD. Mr. President, I quite agree with the Senator from Georgia in some of his views. He says that he is trying to preserve this power for the people of the States.

Mr. BACON. Yes.

Mr. BANKHEAD. That is exactly and precisely what I am trying to do also. Water power in Alabama is as valuable as coal mines in Alabama.

Mr. BACON. I quite agree with the Senator in that, and that is the reason I am interested in it.

Mr. BANKHEAD. I, too, am interested in it. The Senator from Georgia proposes that the Government may go along and improve these rivers for navigation and thereby utterly and totally forever destroy every horsepower on them, and nobody could get any benefit therefrom.

Mr. BACON. My position is just exactly the opposite of that.

Mr. BANKHEAD. Wait a minute. I think I know some little about the question of navigation and water power. I undertake to say, as I have already said, that there has never been constructed in the United States a dam for navigation alone that ever produced or ever will produce a reliable horsepower. When you go along and construct these dams and locks for navigation and destroy the water power that might be created if they were constructed for the double purpose of power and navigation, it seems to me that it is wicked.

Take the Coosa River, in my State. A few years ago a survey of that river was ordered for navigation, and it was made. The engineers said that it would take 31 locks to improve it, at an enormous cost. Congress said, "The cost is prohibitive; we can not enter upon the improvement of that river," and the construction of 31 locks for navigation and the project of the improvement of the river was practically abandoned, as the chairman of the Committee on Commerce [Mr. FRYE] knows.

We ordered another survey, and instructed the engineers to take into consideration while the work was being done the question of power. They made the survey and reduced the number of locks to 14—less than half those proposed by the original survey. How? Simply by increasing the height of the dams and the lift and creating storage in an immense pool of water that could be used for power. Without storage, nobody will undertake to say that you can produce power. You must have

it. Varying stages of the water make that necessary. Sometimes the water is up, a great volume is running to waste over the crest of the highest dam, and in other long periods there is scarcely sufficient water for navigation purposes, unless it is stored with a view of creating power.

I protest against any action in this Senate or in this Congress which looks to the destruction of the great water power in the State of Alabama; and that is what this proposition does, absolutely and forever. Go on and improve this river for navigation, construct dams from 12 to 15 feet high, make it impossible ever to build with a view to creating power, and you have destroyed it.

One more proposition and then I am through. It is a matter of great economy to the Government, Mr. President. Here, according to this survey, 14 locks took the place of 31 locks. Our proposition is that the Government build those 14 locks to the extent that navigation requires, and no more, and that the State of Alabama may authorize individuals or corporations to contribute, to supplement, to cooperate, or whatever else you may call it, with the Government and build 25 feet or 30 feet or 40 feet, as the case may be, at their expense—not at the Government's expense—and when the work is completed, what happens? You have navigation better far than under the original plan of the Government to build exclusively for navigation, and you have a power, Mr. President, the value of which can not be estimated. There is no exhausting it.

We are burning up our coals in Alabama at a rapid rate. They are going up in smoke, and that is the end of them. Let us develop this great power to take the place of our coal, and we will have it for domestic purposes, and we will have a power equal to all the coal fields in Alabama to drive our mills and the wheels of industry that now take our coal in such great quantities.

I protest, sir, against this Congress now or at any other time proceeding to improve these rivers, with the knowledge that when it is done, according to the views of the Senator from Georgia [Mr. BACON], they have utterly and absolutely destroyed this power beyond all hope of its future use.

I agree with the Senator from Georgia that this water power, every drop of it, beyond the requirements of the Government for navigation, belongs to Alabama and to the people of Alabama. I deny that the Government has any control over it or any ownership in it, except alone for the purpose of navigation. When that has been provided, their control and interest is at an end, except to regulate the flow, and to see to it that in all future time the navigation of these rivers is not interfered with by reason of the operation of these water powers.

Then, sir, the power created, not by the Government, but by individual enterprise and individual capital, belongs to the people who created it and to nobody else. They must get a charter from my State if they are going to develop it in my State, just as they would for any other purpose.

Mr. FRYE. Mr. President—

Mr. BANKHEAD. I will yield to the Senator in a moment.

They must own the land on each side, which they must transfer to the Government when the Government undertakes to build the locks. They must pay for all the overflowed lands, which sometimes amount to a great deal.

I am speaking of the case where they may submerge land by reason of the height of the dams beyond what the Government submerges it for navigation. They, of course, pay for that, so that it does not cost the Government anything. It secures better and more reliable navigation, and at the same time it develops a power, the value of which can not be overestimated.

Mr. BACON. Mr. President, the Senator from Alabama interrupted me, as I supposed, to interject an inquiry.

Mr. BANKHEAD. I beg the Senator's pardon. I thought he was through.

Mr. BACON. The Senator asked me to yield, and I did so.

Mr. BANKHEAD. I thought the Senator from Georgia was through.

Mr. BACON. I have very little more to say. The Senator from Alabama and I agree upon the fundamental proposition—that is, that nothing should be done which should recognize the right of the Government to the right of ownership in this water, from which would follow a right to sell or lease it—and the proposition of the Senator, as I have said before, looks necessarily to the question of the Government going into partnership with individuals or corporations to develop water power, not for the public benefit, but for the benefit of such individuals or corporations. I do not believe with the Senator on the proposition that the building of a dam for the purposes of navigation destroys the opportunity for the utilization of those waters for power. On the contrary, as I have intimated before, it would be the duty of the Government, where the parties who own the water power—who own the water and the power and seek to

utilize it—to permit them to utilize it so far as it can be done without interfering with the purpose of navigation for which the dam was constructed. When a man owns the water site on which the Government has built a dam to aid navigation it is a simple thing to come to the Government and get authority to use the water power thus developed.

My purpose is that the great water powers that the Senator from Alabama so eloquently speaks of as more valuable than the coal fields of Alabama shall not be put in a position where the proposition which has been made to this Senate and to the House of Representatives in a message from the President of the United States can be recognized for an instant; and that is that the Government of the United States owns the power and can sell it or lease it. I want to guard against that. I want to guard and protect those powers for the benefit of the people in each State to whom they belong, and let them be taken possession of by the United States Government, to which they do not belong.

Mr. FRYE. Mr. President—

The VICE-PRESIDENT. Does the Senator from Georgia yield to the Senator from Maine?

Mr. BACON. I do.

Mr. FRYE. I am notified that I can have about twenty-five minutes more on this bill, and that is all. I should like to conclude the bill.

Mr. BACON. Mr. President, I always yield to the Senator from Maine. I have had frequent experiences of the same kind. Whenever the Senator is in charge of an appropriation bill, the same appeal is made, and I have invariably yielded, as I do now.

Mr. FRYE. The Senator from Georgia is very kind and courteous.

Mr. BACON. The Senator always wants his bills passed without discussion.

Mr. FRYE. The Senator is very kind and courteous.

Mr. LODGE obtained the floor.

Mr. BANKHEAD. I should like to ask the Senator from Georgia one question.

Mr. LODGE. I have the floor in my own right, Mr. President.

Mr. BANKHEAD. I simply wanted to ask the Senator from Georgia a question.

The VICE-PRESIDENT. The Chair recognized the Senator from Massachusetts [Mr. Lodge].

Mr. LODGE. I believe I have the floor, Mr. President.

The VICE-PRESIDENT. The Senator from Massachusetts is entitled to the floor.

Mr. LODGE. Mr. President, the Senator in charge of the bill told me on the floor here, in response to an inquiry made in debate, that the development of the water power, stricken out on page 29, and the same in regard to the Connecticut River stricken out, was the policy of the bill.

Mr. TELLER. And all other places.

Mr. LODGE. And all other places. Now, it is left for this one place. If we are going into the question of water power, or the Government entering on a general development of water power without regard to navigation, it has got to be for all the States, or it has got to be for none. There is no reason why we should strike it out in Georgia, in Connecticut, and in Massachusetts—I think it is right to strike it out; I make no objection to striking it out in those States—but you can not strike it out in those States and leave the Alabama amendment in the bill, which is nakedly and avowedly for no other purpose than to develop water power.

It has been stated here on the floor that a survey for the improvement of the navigation of the Coosa River was so expensive that it was prohibitive, and it was abandoned. The amendment does not attempt to say that the provision is for navigation. It is to build storage reservoirs. If we are going into the business of developing rivers in the various States in order to develop water power we must do it in all the States.

Mr. BACON. That would be a pretty large job.

Mr. LODGE. And that would be a pretty large undertaking. I think if the provision in relation to the Connecticut River, in which the States of Connecticut and Massachusetts are interested, has gone out—and I made no objection to it, for I think it is unwise to enter on that policy—and the provision in regard to certain rivers in Georgia is taken out, as the Senator knows, I do not think such a provision ought to be left in the bill for one State and one especial project.

Mr. BANKHEAD. Mr. President—

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

Mr. LODGE. Yes.

Mr. BANKHEAD. I think the Senator is laboring under a misapprehension.

Mr. LODGE. I am laboring under no misapprehension as to what that amendment says.

Mr. BANKHEAD. I understood the chairman of the committee to say that the amendments relating to water power would go out of the bill.

Mr. LODGE. And the amendment for the Coosa River, that we have been talking about, relates to power and nothing else.

Mr. BANKHEAD. I understood that went out, although I very much regretted it.

Mr. LODGE. I did not so understand. The Senator from Georgia had it passed over, I think, and we have been debating it.

Mr. BACON. That amendment was passed over. I will say to the Senator from Massachusetts that the Senator from Maine [Mr. FRYE], in charge of the bill, stated that all amendments relating to water power would be taken out.

Mr. LODGE. Then the amendment beginning in line 23, on page 23, is out of the bill?

Mr. BACON. I suppose, under the general statement of the chairman, that would be included.

Mr. LODGE. The amendment beginning in line 23, on page 23, is out of the bill?

Mr. BACON. I suppose the Senator from Maine had that in contemplation.

Mr. LODGE. But the amendment is not out of the bill, as a matter of fact. I think I am not mistaken.

Mr. FRYE. What page?

Mr. LODGE. Page 23, beginning in line 23.

Mr. KEAN. That ought to go out.

Mr. LODGE. It ought to go out, like the other power items.

Mr. TELLER. Let it go out.

Mr. FRYE. Let the amendment be disagreed to.

The VICE-PRESIDENT. Without objection, the amendment is disagreed to.

Mr. FRYE. The committee instructs me to offer the following amendment—

Mr. BANKHEAD. Mr. President—

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

Mr. BANKHEAD. I want to set myself right about this amendment. I understood the chairman of the committee to say that all the amendments relating to water power would go out on the suggestion of the Senator from Georgia. I acquiesced in that, as will be remembered, but I said at the time that it was a blunder and that I thought it was the most important part of the bill.

I want to ask the Senator from Georgia if he does not believe that the construction of dams on the Coosa River for navigation will destroy the water power on that river?

Mr. BACON. Mr. President, I do not claim to be an expert, as the Senator from Alabama does, but it so happens that I have been down on the Coosa River and have been through the locks that the Government has erected there—four of them, are there not?

Mr. BANKHEAD. Yes; but the Senator said—

Mr. BACON. I am trying to answer the Senator's question. I recollect distinctly spending some time once on one of those locks, and I recollect distinctly that at the time I was there there was a very considerable amount of water flowing over the crest of the dam, which it seemed to me could be utilized by being diverted to a ditch on the opposite side without interfering with the water supply for the lock. If that were done, certainly the water power could be utilized. But even if that particular instance is not controlling, it does seem to me to be a plain proposition that where the Government erects a dam for the purpose of controlling the water so that it may be diverted into a lock, most of the time when the lock is closed the water is not flowing through the lock, it is flowing over the dam, and it is a very simple proposition to divert that excess of water in such a way that it can be utilized in the propulsion of machinery.

Mr. FRYE. I understand the amendment was disagreed to?

The VICE-PRESIDENT. The amendment was disagreed to.

Mr. FRYE. I offer an amendment on behalf of the committee.

Mr. CLAY. With the Senator's permission, just a word—and I will speak but a word.

The VICE-PRESIDENT. Does the Senator from Maine yield to the Senator from Georgia?

Mr. FRYE. Yes.

Mr. CLAY. This amendment, as I understand, was inserted at the instance of a Member of the other House from the State of Georgia.

Mr. FRYE. I think it was.

Mr. CLAY. I think that is correct. I am informed that the object and purpose of the amendment was this: Private parties

in Alabama and Georgia agree to spend large sums in helping build these locks and dams if they are built in such a way as to enable them to be used both for the purpose of navigation and to develop the water power. The inquiry is simply to be made with a view of finding out how much the private parties ought to pay and how much the Government ought to pay. The only object intended was simply to ascertain if the Government could not be saved expense in building those locks and dams, by private parties assisting in doing it, without interfering with navigation, with the view and purpose of using the water for navigation and also for power purposes. I am not against the amendment. I am in favor of it.

Mr. LODGE. Let me say to the Senator that there is no proposition here about navigation. It has been admitted that the river could not be made fit for navigation because the survey shows that the cost would be prohibitive.

Mr. CLAY. I understand that thoroughly. I have read the amendment, and I say to the Senator that Coosa River has never been developed because of the fact that it would cost five or six million dollars to build locks and dams. I understand that if this investigation is made it will be demonstrated that private parties, for the purpose of developing water power, will put up fully half of the money to improve the navigation on that stream.

Mr. LODGE. This amendment is directed to the development of water power. We have been told by the chairman of the committee that all such amendments were to go out. They have gone out in regard to Georgia; they have gone out in regard to Connecticut, and they have gone out in regard to Massachusetts. So I do not see why this amendment should be left in the bill.

Mr. CLAY. I will not discuss it further, because I have served on the committee with the Senator from Maine and I know he means business, that he does his work well, and wants to get through. So I will not consume time; but I can reply to the Senator and will do so fully when this bill is completed.

Mr. FRYE. I now offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 28, after line 14, at the end of the Florida items, it is proposed to insert:

The Narrows, Santa Rosa Sound, Florida, for a channel of 9 feet.

The amendment was agreed to.

Mr. FRYE. I understand the amendment on page 48, line 14, was agreed to. I should like to have it disagreed to.

The VICE-PRESIDENT. The amendment will be considered as open. The Secretary will state the amendment.

The SECRETARY. On page 48, after line 13, the committee proposed to insert:

Galveston Harbor, Galveston Channel, Texas City Channel, and Port Bolivar Channel, with a view to a comprehensive and systematic plan of improvement.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was rejected.

Mr. FRYE. That completes the committee amendments.

Mr. McCUMBER. I offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 3, after line 12, it is proposed to insert:

To provide for revetting the shores of the Missouri River to protect the banks and maintain the present channel at the landings at Frazier, Mont.; Mondak, Mont.; Judith, Mont.; and Expansion, N. Dak., the sum of \$45,000, or so much thereof as may be necessary, is hereby appropriated, to be immediately available.

The VICE-PRESIDENT. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HEYBURN. I offer the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 30, after line 20, it is proposed to insert:

Idaho: Clearwater River, from its mouth to Kamiah, for the purpose of ascertaining the cost of creating a channel with a maximum depth of 6 feet.

The VICE-PRESIDENT. The question is on the amendment.

The amendment was agreed to.

Mr. SMITH of Michigan. I offer the amendment which I send to the desk, to come in on page 20, line 18, after the word "War."

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 20, line 18, after the word "War," it is proposed to insert:

*Provided further*, That, the consent of the State of Michigan having been first obtained, any excess of water in the St. Marys River at Sault

Ste. Marie over and above the amount required for the uses of navigation shall be leased for power purposes by the Secretary of War upon such terms and conditions as shall be best calculated in his judgment to insure the development thereof and most conducive to the commercial progress of the communities affected. The Secretary of War may, as often as necessary, make such regulations and fix such charges as in his judgment are reasonable and just and best calculated to carry out the purposes of this section.

Mr. SMITH of Michigan. Mr. President, I simply desire to insure on the St. Marys River the use of water power there, even though the Government acquires the entire riparian rights to the international boundary. In order to insure that, I think it is absolutely essential to retain the provisions contained from page 17 to page 20. The water in the rapids is too valuable an asset; it is worth too much to the people of this country, and especially to the people of the State of Michigan, to have it run to waste over those rapids. I have great hope that no Senator will seriously object to the adoption of the amendment.

Mr. LODGE. Mr. President, with the proviso as it originally stood, which the Senator from Michigan has just explained, I am in hearty sympathy. The Government is there going to take, solely for the purpose of navigation, the land on one side, with the riparian rights, and it would be a great mistake if the Government did not have the authority to lease or sell the power created by those natural falls.

But there has been inserted in this proviso a proposition that the Government can not dispose of that excess of water flowing over its own land, without the assent of the State. Mr. President, it is a very extraordinary proposition that the Government is not able to deal with its own land, which it has acquired either by cession, by purchase, or condemnation—property which perhaps it has paid for with the money of all the people of the United States. It is a very extraordinary proposition that the Government should not be allowed to deal with its own property without the assent of the State in which that property happens to be located. I can not vote for that proviso with such an insertion as that in it, under which a government reservation is to be controlled by the State in which it is placed. It seems to be most extraordinary doctrine. I do not see how it is possible to vote for the amendment with that language in it; but I want the remainder of the provision adopted, for I think it is a very proper one. I move to strike out the words at the beginning of the amendment, so that I can vote for the proviso.

The VICE-PRESIDENT. The Senator from Massachusetts proposes an amendment, which will be stated.

The SECRETARY. It is proposed to amend the amendment by striking out at the beginning the words:

*Provided further*, That the consent of the State of Michigan having been first obtained.

Mr. LODGE. Yes; those are the words.

Mr. NELSON. Mr. President—

The VICE-PRESIDENT. Does the Senator from Michigan yield to the Senator from Minnesota?

Mr. SMITH of Michigan. I do.

Mr. NELSON. Before the question is put on the amendment I have just one word to say, and the Senator from Michigan ought to reflect upon it. The reservoir from which this water is drawn is Lake Superior. The people of Minnesota and Wisconsin are as much interested in that water as the people of Michigan. To say that that water in Lake Superior can not be utilized without the consent of the State of Michigan is not only to put a veto on the United States, but a veto on Minnesota and Wisconsin as well.

Mr. SMITH of Michigan. Mr. President, the somewhat unavoidable situation is presented that the proviso, as I drafted it, is in conflict with the rules of the Senate, and the Senator from Colorado [Mr. TELLER] made a point of order against it, and it was stricken out by a ruling of the Chair. Now, I am in the very unfortunate situation of being obliged either to meet the contention of the Senator from Colorado or to offend the judgment of the Senator from Massachusetts [Mr. LODGE]. I do not want to do either, but I should like this proviso as it was originally attached to the matter. I feel that the provision in the bill as it came from the House, which is not subject to a point of order, practically grants this contention, but that it is not strong enough to meet the situation as it exists. That it needs this additional language I feel very sure.

I know that I offend the good judgment of the Senator from Massachusetts and the Senator from Minnesota, but I took the risk of doing that with the hope that I might appease the opposition of the Senator from Colorado.

Mr. LODGE. The Senator from Michigan understands very well that my objection goes to the principle which the words I have moved to strike out involve.

Mr. TELLER. Mr. President, if the amendment now proposed by the Senator from Massachusetts to the amendment of the Senator from Michigan is adopted, the amendment will be

just as it was when I made a point of order against it. That point of order was sustained; and if it is amended, I shall make the point of order on it again, which must also be sustained. I am content to let it go as the Senator has now presented it. Although I have some objection to it, I will not make the point of order.

Mr. LODGE. I move to strike out the words which I have indicated.

Mr. SMITH of Michigan. I have no alternative than to take the sense of the Senate upon it.

The VICE-PRESIDENT. The Senator from Massachusetts proposes an amendment, which will be stated.

The SECRETARY. It is proposed to strike out the words:

*Provided further*, That the consent of the State of Michigan having been first obtained.

Mr. HEYBURN. The idea of condemning land on the shore without defining the limits will be disposed of in very short order. I do not think we need be disturbed much about that. Otherwise, I should be inclined to oppose the establishment of this kind of a precedent.

The VICE-PRESIDENT. The question is on agreeing to the amendment of the Senator from Massachusetts to the amendment of the Senator from Michigan.

The amendment to the amendment was rejected.

The amendment was agreed to.

Mr. BAILEY. I call the attention of the chairman of the committee to the amendment of the Senate committee, which appears on page 44, lines 14, 15, and 16. I ask the chairman to consent that the amount shall be stricken from the bill.

Mr. FRYE. It has already been done.

The VICE-PRESIDENT. It has already been done.

Mr. MILTON. I offer the amendment I send to the desk.

The SECRETARY. On page 7, after line 3, it is proposed to insert:

That for securing a depth of 22 feet at East Pass, St. Georges Sound, Florida, \$15,000, said amount to be immediately available, in order to continue the work now being done by the dredge boat Caucus.

The amendment was agreed to.

Mr. OWEN. On page 44, after line 2, I move to insert:

And thence to Tulsa, reporting an estimate of the cost to make the same navigable.

The amendment was agreed to.

Mr. TELLER. On page 19, I move to strike out from line 14 to the word "compensation," in line 5 on the next page.

Mr. PILES. I do not get the amendment.

Mr. TELLER. It commences in line 14 and continues to line 5 on the next page.

Mr. PILES. I wish the Senator would withhold the amendment until the Senator from Michigan, who has stepped out of the Chamber, returns. That affects his State very materially. I do not think he would like to have it disposed of in his absence.

Mr. TELLER. It does not seem to me as though we are going to complete the bill to-day.

Mr. FRYE. I hope the Senator from Colorado will not refrain from offering his amendment in the absence of the Senator from Michigan. I want to get the bill through before 2 o'clock.

Mr. TELLER. I have offered the amendment merely because I want to keep my personal record reasonably clear. I desire the Senate to understand that I do not agree to it.

The VICE-PRESIDENT. The question is on agreeing to the amendment proposed by the Senator from Colorado.

The amendment was rejected.

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

Mr. TELLER. I desire to make a formal motion. I will not debate it. I move to strike out section 11.

The amendment was rejected.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

#### HOUR OF MEETING MONDAY.

Mr. ALDRICH. I move that when the Senate adjourns to-day it be to meet at 11 o'clock on Monday next.

The motion was agreed to.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives by Mr. W. J. Browning, its Chief Clerk, announced that the House had passed the following bills:

S. 8554. An act authorizing the Secretary of the Interior to sell part or all of the surplus lands of members of the Kaw or Kansas and Osage tribes of Indians in Oklahoma, and for other purposes; and

S. 8654. An act for the relief of certain occupants of unsurveyed public lands in Craighead County, Ark.

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

H. R. 4286. For the relief of John Shull; and

H. R. 15681. For the relief of the Compañía de los Ferrocarriles de Puerto Rico.

The message further announced that the House had disagreed to the amendments of the Senate to the bill (H. R. 27053) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1910, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and had appointed Mr. Scott, Mr. HAUGEN, and Mr. LAMB managers at the conference on the part of the House.

#### AGRICULTURAL APPROPRIATION BILL.

The VICE-PRESIDENT laid before the Senate the action of the House of Representatives disagreeing to the amendments of the Senate to the bill (H. R. 27053) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1910, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. WARREN. I move that the Senate insist upon its amendments, that the request of the House for a conference be granted and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Vice-President appointed Mr. WARREN, Mr. DOLLIVER, and Mr. MONEY conferees on the part of the Senate.

#### MEMORIAL ADDRESSES ON THE LATE SENATOR LATIMER.

Mr. TILLMAN. Mr. President, I submit the resolutions I send to the desk, and I ask for their present consideration.

The resolutions were read, considered by unanimous consent, and unanimously agreed to, as follows:

Senate resolution 310.

*Resolved*, That the Senate has heard with profound sorrow of the death of the Hon ASBURY C. LATIMER, late a Senator from the State of South Carolina.

*Resolved*, That as a mark of respect to the memory of the deceased Senator, the business of the Senate be now suspended to enable his associates to pay proper tribute to his high character and distinguished public services.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and transmit a copy thereof to the family of the deceased Senator.

Mr. TILLMAN. Mr. President, it is a little more than fourteen years since I was sent by the people of South Carolina to be one of their representatives in this Chamber. As things now are that is about one-third of the average lifetime of a man, and while during the time there have transpired many events of national importance, it seems but a brief period after all. Yet during this comparatively short span I have served here with five United States Senators from South Carolina, and after the 4th of March my sixth colleague will have taken the oath at the desk. It is a strange coincidence that all of these men who have come and gone save one were younger in years than I. Three of them have answered the roll call on the other side of the river. First in service, John Lowndes Manning Irby, bright, brave, witty, and genial; next, the knightly and courtly Joseph Haynesworth Earle, forceful, logical, chivalrous, and in every way well equipped for work in the forum or on the bench; last, ASBURY CHURCHWELL LATIMER, who, while denied in youth those advantages of education possessed by the other two, was in some respects the superior of either of them.

His was not a career which one would naturally expect to follow from childish environment and family tradition, as was the case of the other two. While of a good family, his opportunities, owing to the war, were poor and he early had to begin the struggle of life, which barred him from the education and that acquaintance with books which are in great degree essential in a public career. But the obstacles he overcame and the force of character and native mental vigor which he displayed marked him as a man who of necessity would have made an impress in any walk of life.

He was born in what was then Abbeville district, South Carolina, July 31, 1851—Abbeville, which has given birth to or been the homes of so many of South Carolina's illustrious sons—Calhoun, Cheves, Noble, McDuffie, Burt, Gary, McGowan, the two Wardlaws, Perrin, not to mention my present colleague. The original settlers of that county were Scotch-Irish Presbyterians and French Huguenots. Their descendants have well illustrated the sturdy traits and high ideals of their ancestors.

ASBURY CHURCHWELL LATIMER was only 14 when the war closed, and could not, on account of poverty, devote much time to getting an education, and early set about mapping out a career for himself and working toward making of life a success. He

married quite young, one of the safest and best things for any man to do who wishes to preserve high ideals and gain the inspiration which alone comes from contact and association with good and noble women. He had a hard struggle for a few years as a farmer, but, possessed of great energy and a keen business sense, he soon outstripped most of his fellows in gathering a competence, and was so successful as a business man that in later years he had grown to be what in the South is considered wealthy.

After the death grapple upon which the people of South Carolina entered in 1876 with the carpetbaggers and negroes for the maintenance of white civilization, during which crisis Mr. LATIMER did his full duty, like many other farmers, he relapsed into indifference to public affairs. It was only in 1890, when 39 years of age, that he came to the front as an active political factor in his county and State. He had moved to Belton, in Anderson County, in 1880, and when what was known as the "farmers' movement" or "reform campaign" shook the State from center to circumference, his sturdy good sense and forceful manner of speaking won him the confidence and support of his friends and neighbors, and he soon became an acknowledged leader.

It was during the year 1890 when I was a candidate for governor that I first became acquainted with him, and I have had, therefore, the fullest opportunity to observe and note with surprise and admiration the wonderful growth of the man. His ignorance of public affairs and current political events was then so great that it would have been thought utterly absurd that two years later he would be a successful candidate for Congress against one of the ablest lawyers and best speakers in the State, or that it would be possible for him to hold that high position with great credit to himself and entire satisfaction to his constituents for ten years, and then be elected to the United States Senate over a man so popular that he had been recently elected governor and who was withal a good orator and able lawyer. These achievements in politics were not brought about by chicanery or trickery of party conventions, but through the primary system, where the appeal must be made directly to the voters themselves. When he entered the race for Congress in 1892 I doubt if he had ever attempted to address at any length any assemblage other than a Sunday school or other religious gathering, for his bent of mind was in that direction. But with very little practice he developed into one of the best stump speakers we have ever had in the State.

When he entered Congress he began to study public questions, and the facility with which he mastered details and gained acquaintance with political and governmental history was well-nigh marvelous. Only those who know how ignorant and simple-minded he was eighteen years ago, as far as politics was concerned, could believe it possible that in so short a time he would become versed in public affairs to such an extent that he could venture to enter into the debates in the other House and in the Senate with any degree of safety or success.

While a Member of the House he early became deeply interested in the subject of rural free delivery, and he went about pressing experiments along that line and urging its universal adoption with such vigor that he must be considered as one of the pioneers and a potent instrumentality in the inauguration of that great and beneficent system. Another matter with which his name will long be associated was the good-roads question. So well posted did he become on this subject that he was invited to many States other than his own to address meetings called for the purpose of advancing the construction of better highways.

He was an ardent friend of every measure looking to the advancement and uplift of the agricultural interests. Being a practical farmer he understood the needs of other farmers and could the better set about aiding in legislation for their advantage. Early in his public career he became the stanch friend and supporter of the Agricultural Department, and was ever on the watch to aid in the development and growth of that great bureau.

Up to the age of 40 it is doubtful if any man in American politics had made so little preparation for a political career as he. There are not any that I know of, except Andrew Johnson, who with so small a beginning, achieved a more signal success as a public man. He and I entered the political arena together in 1890, and were on terms of intimacy and friendship without a break during the entire eighteen years since. I have little or no doubt that had he lived he would have been reelected to the Senate. And thus one of the strange and inscrutable manifestations of the Divine Providence is brought home to me, that a man so much my junior in years, and so strong and vigorous in body and mind, should have been snatched from a life of great usefulness and promise in such an untimely and unexpected manner.

He was in this Chamber, healthy and strong, attending to his duties as a Senator, one week, and the next we were called upon to witness his sudden and sad death. Of a sturdy and vigorous stock and with every promise of a long and useful career, he departed from among us, again illustrating, as is so often the case, the beauty and pathos of the lines:

Man that is born of woman is of few days, and full of trouble. He cometh forth like a flower, and is cut down: he fleeth also as a shadow, and continueth not.

As the waters fall from the sea, and the flood decayeth and drieth up: So man lieth down, and riseth not: till the heavens be no more, they shall not awake, nor be raised out of their sleep.

It is idle for us to complain or to wonder at the inscrutable ways of the Creator. These things have always been and always will be. We come into being and enter upon the battle of life full of ardor and eager for the fray. In the midst of our work the summons comes, and we know not why we are called, but we must respond. So we pass along down to the grave and join the great and silent majority who have preceded us.

Senator LATIMER had his faults and weaknesses, as all of us have, but he was generous, brave, and had many noble qualities. He is gone and we mourn his loss. He can not come back to us, but we must go to him in a brief while.

The boast of heraldry, the pomp of power,  
And all that beauty, all that wealth e'er gave,  
Await alike the inevitable hour:  
The paths of glory lead but to the grave.

Mr. HEMENWAY. Mr. President, I want to join my friends in adding a word of tribute to the memory of Senator LATIMER. I learned to know his real worth while serving with him in Congress, and I am told that in his early life he selected the motto, "that success lay not in the character of the work, but in the vim and thoroughness with which it was executed." What a worthy precept that is! And it is especially worthy in this day of tremendous business activity and wonderful national development.

Most men who fail, fail not because of inability or incapacity, but because of the lack of thoroughness and judgment with which they undertake to do things. Senator LATIMER stood high in the esteem of his colleagues in the Senate, and his work was highly appreciated. And we pay him the highest tribute when we say that he was a high-minded, honest, industrious Senator, who loved his home, his State, and his country.

Mr. OVERMAN. Mr. President, on the 4th day of March, 1903, 30 Senators were sworn in and took their seats in this Chamber for a term of six years, and it is remarkable but sad to relate that in so short a space of time one-sixth of that number have passed into the great beyond. Of that number, together with 9 others of our noble Senators who within that short time have taken their chamber in the silent halls of death, was Hon. ASBURY C. LATIMER, junior Senator from the State of South Carolina, in whose memory I, mindful of his long and patriotic public service, desire to add a few words to those which have already been said in testimony of his worth and character.

I would contribute a modest and simple tribute to our friend whose presence we miss and whose face we will see no more upon this earth. At the time he entered the Senate he was in the fifty-first year of his age—just in the prime of his manhood. Of splendid physique, healthy and robust, tall and stately, he gave promise from a human standpoint of outliving all of his class who were sworn in that day.

He came to the Senate from the House of Representatives, where he had served for ten years. Like most of our southern youths, at the close of the civil war he had but few advantages for an education, and only attended for a few months in the year what was known as the "old field" schools. He worked upon the farm. He came up through poverty, amidst great struggles and tribulations, without a profession, from the farm to reach the greatest office in the gift of the people next to the Presidency.

In his young manhood he became one of the most successful farmers in his community, and in 1878 he was happily married to Miss Alice Brown, a niece of Governor, afterwards Senator, Joe Brown, of Georgia. She brought to him beauty, refinement, and culture. She cast her lot with him for better or for worse, and throughout his life from that time until his death she was an inspiration to him. He was successful in business and was looked upon as one of the leading citizens in his county.

When the great political upheaval came in South Carolina, when the fires of discontent against the old régime which had been for years smoldering in the hearts of the people, burst forth, when the dissatisfaction of the country people against what was called the "aristocrats"—the city people who for years had held all the important offices—at last found expression in

the Farmers' Alliance meeting, in the public meetings, in meetings held in the little country schoolhouses all over the State, Mr. LATIMER, under the battle cry of "Tillman and reform," sprang into the thickest of the fight, arousing the people of his section to almost a frenzy, and he soon became the leader of that faction in his county. It was hard to find a man to run for the nomination for Congress against the brilliant George Johnstone, one of the best lawyers and best speakers in the State, and who was then serving his first term in Congress, and who, according to the old custom which prevailed there, was entitled to an indorsement and another term.

But some one must be found to oppose him, and at a late hour LATIMER entered the list and announced his candidacy. He met Johnstone in joint debate, and, to the surprise of himself and to the great satisfaction of his friends, it was soon seen that he was easily a match upon the stump for Johnstone; and when the returns came in LATIMER had won by a large majority. This was his first campaign.

He was simple, but forceful and direct in speech, and never deceived the people. He was plain, but earnest and straightforward. He understood the people and knew their wants. He promised them the reforms which they were demanding and did what he could for their accomplishment. He impressed himself upon all who heard him, and they supported him gladly. Four times after that he was nominated for Congress, and elected without opposition. He loved the people and they loved him; and he loved his State. He was ever watchful of their interest, and was soon recognized, not only by the people of his own district, but by the people of the whole State, as one of the most useful members of his congressional delegation. He was always trying to do something for the people of South Carolina, and succeeded where many times before others had failed.

In 1902 he entered the race in the primary for the nomination for United States Senator against ex-Governor John Gary Evans and Senator John L. McLaurin; and after a bitter and most exciting campaign, in which he met upon the stump in joint canvass in every county of the State these able adversaries, everywhere winning the hearts of the people, he was chosen to succeed Senator McLaurin in this great body.

As he was a faithful Representative so he was a true and faithful Senator. He never tried to advertise himself. He made no pretensions to oratory, nor to greatness, but was unassuming and did his work well, untiring and zealous in doing what he thought was best for the interest of the people and the welfare of his country. He seldom joined in the debates in the Senate, but when he did what he said was practical and to the point.

While liberal and generous in his support of public measures intended to promote the prosperity of the whole country, in whatever was proposed to advance the interest of his State, he was zealous, alert, and his every effort was aroused and excited for its accomplishment.

He was sincere, generous, genial, warm-hearted, and kind in his nature. He was a member of the Methodist Church and attended regularly church services on Sunday morning. He loved to join in the singing of the beautiful sacred hymns, and often his strong, mellow voice could be heard in praise to God. He was charitable and gave cheerfully of his means to the support of the church and her institutions.

He was a devoted and indulgent father, a fond husband, and kind friend. He was never so happy as when at home on his farm in South Carolina, surrounded by his good wife, four charming daughters, and his noble son of whom he was justly proud. It was there in the tranquillity of that sacred spot where he found his highest peace, and he knew from a glad and bright experience that earth holds no joy so sweet as the quiet contentment, the confiding love, and the hallowed associations which cluster around the ideal home.

But while we mourn his loss and miss his pleasant voice, his kindly manner, and genial companionship, we may well pause at the threshold of the touchingly beautiful home life which has been enshrouded in impenetrable gloom and the deepest sorrow.

In the presence of his grief-stricken loved ones and many sorrowing friends and a company of distinguished citizens who had come to pay their last tribute of respect, all that was mortal of Senator LATIMER was laid to rest in the modest little cemetery near his beautiful home in the little town of Belton.

He has passed on to join the great majority. It is not permitted for us to know where the loved ones go:

But this we know: Our loved and dead, if they should come this day, Should come and ask us, "What is life?" not one of us could say. Life is a mystery as deep as ever death can be; Yet, oh, how sweet it is to us, this life we live and see.

Then might they say, those vanished ones, and blessed is the thought, "So death is sweet to us, beloved, though we may tell you naught; We may not tell it to the quick, this mystery of death; Ye can not tell us, if ye would, the mystery of breath; The child who enters life comes not with knowledge or intent; So those who enter death must go as little children sent. Nothing is known. But I believe that God is overhead, And as life is sweet to the living, so death is to the dead.

Mr. CARTER. Mr. President, on the first day of this month one year ago there was no more rugged, vigorous Senator in the Chamber than the junior Senator from South Carolina. Mr. LATIMER was physically strong and promised a long and useful career. In the course of our proceedings, before the month had closed, this Chamber was brought to silence by the announcement of his death. His surrender to the final impulse was less to be expected than that of any other Member of the body. He was a man of good habits who had led a regular life, although a great and indefatigable worker, and his general appearance, with enduring strength manifest in every movement of his stalwart and splendid frame, indicated that it would be a long series of years before the reaper would reach him.

But he passed away, and a committee of the Senate was appointed to attend the funeral services at his home. I was appointed a member of that committee and was a witness to the tribute of affection and respect paid to his memory by the people who knew him best in the rural district in South Carolina where he had lived throughout his life. It was a sad homecoming for the family; it was trying to the feelings and sentiments of the committee to witness the manifestations of deep sorrow and grief, for it was touchingly shown that Mr. LATIMER was a lovable man. Although rugged in manly strength, vigorous in mind, and stalwart in frame, he was of a gentle and kindly disposition. In all his relations with his colleagues deference for the wishes and feelings of others marked his deportment always. His every action betokened gentle breeding and high sentiments.

He entered this Chamber as a Member of the Senate on the 4th day of March, 1903. He was a trained legislator, because he had ten years of previous experience in the House of Representatives. His work in that body was not of a perfunctory character, for at the very beginning he had undertaken work of a serious nature. He was the pioneer in the House of Representatives, as was the senior Senator from New Hampshire [Mr. GALLINGER] the pioneer in the Senate, of a movement to secure national aid in the improvement of the post-roads of this country, and his efforts in behalf of that movement ceased only with his death. He did not live to see the movement successful, but he did live to see the country awakened to a realization of the necessity for some broad and comprehensive action with reference to the important subject to which he gave so much earnest attention.

His constant devotion to duty had much to do with the early appearance of the summons to lay down his burden. I doubt if the people of the country at large ever realize the exacting duties which devolve upon a Member of either House of Congress who is intent upon faithfully and fully discharging the duties of a Representative from a district or a Senator from a State.

I entered the House of Representatives twenty years ago, and within the last few minutes I have run over the roll call of the Senate and the House as then constituted. I find that of the membership of this Chamber in 1890, only five remain, the Senator from Rhode Island, the senior Senator from Illinois, and two Senators from Maine, and the senior Senator from Colorado. Within the period of twenty years all have gone forth, either into private life or "over the river to rest under the shade of the trees." But the dread reaper has garnered in a greater harvest than the call to duty in private life.

Of the membership of the Senate of twenty years ago, 52 have died and only 28 survive, and of the 28 survivors, 5 still remain Members of the Senate. After the 4th day of March, a few days hence, only 4 will remain.

In the House of Representatives of that day, the House, of which the present presiding officer [Mr. LA FOLLETTE in the chair] was a Member and a distinguished member of the Committee on ways and Means, the roll call, if sounded now in the Chamber, could not be answered by many who were then distinguished legislators, statesmen, and citizens of the Republic. I recall our late lamented President, who was then chairman of the Committee on Ways and Means of the House; the great Speaker, whose wonderful achievements in parliamentary science challenged the attention of the world; Hon. Nelson Dingley, from Maine; William McKinley, of Ohio; Thomas B. Reed, of Maine; and a line of men as distinguished in their day as men have been in the history of this Republic at any time. Men who

should be living now in the full vigor of manhood have broken down, one after another, under the pressure of the exacting and oppressive life which must be led by the Senator or Representative who justly conceives his relation to his people or his State and to the eighty-odd million of people whose destiny and well-being are committed to the care of these two small bodies of men.

Added to the ordinary burdens of the day is that oppressive sense which comes from labor not only unrequited, but frequently misunderstood and often misrepresented. It sometimes happens, not through the malice of men, but through their thoughtlessness, that when every nerve is strained the Senator or Representative is set before the public as trying to do the very opposite of that which he is strenuously endeavoring to accomplish. Misrepresentation, harsh, cruel, and un-Christian-like criticism have much to do with breaking down the nervous and physical organism of struggling men in public life. I think we can take it for granted that the expectancy of life in the arena of public affairs is much diminished by the combination of burden and unjust criticism.

Our late departed colleague and friend was of the earnest, tireless manner of man. His habits were good, his purposes were lofty, his devotion to his people unquestionable. Every day was with him a serious day and every task a serious task. He lived an honorable life, and in the good opinion of all who knew him best those who loved him best may find their greatest consolation.

Death does not end all even to those who have no faith in an existence beyond the grave, for as a pebble cast into the middle of the sea will send a tiny warning wave to every shore, so will each good influence once set in motion reach to the uttermost ends of human experience. In the good he did, in the example he set, and in the things he achieved for his home, his neighbors, and his country, our lamented friend left a common legacy for all mankind.

Mr. SMITH of Michigan. Mr. President, it has been very hard for me to realize that the late Senator from South Carolina has been called to his final home by death. He was the type of man that one would imagine might live always. Large, robust, strong physically and mentally, he looked as though he might stand as a great oak in the forest of life for many years to come.

I had the pleasure of knowing the Senator from South Carolina for many years, first as a Member of the House of Representatives, where I served with him for a decade, and when this place came to me and I entered the Senate for the first time as a new Senator I was led to a seat beside the late Senator from South Carolina.

In this historic Chamber I was instructed, cheered, comforted, and stimulated by him, and the friendship which had grown warm and valuable through the years of our acquaintance came as a benediction to me in this new place.

The late Senator from South Carolina was an extraordinary man. Full of fire and dash and impulse, yet he could control his feelings so admirably that few who came casually in contact with him ever realized the depth of his feeling or the scope of his desires.

Mr. President, I enjoyed the friendship of the late Senator LATIMER during the years of our acquaintance, and I rise to-day, informally, merely for the purpose of testifying to the beauty of his character, the strength of his friendship, the devotion of his heart and mind to the people he served, and especially the unflagging loyalty of that Senator to the State which sent him here.

South Carolina has sent to this Chamber many eminent men. Much of the history of our country is intertwined and interwoven with the experiences of South Carolina's representatives, and the distinguished senior Senator from that State [Mr. TILLMAN], whose colleague Senator LATIMER was, suffered a great personal loss when he was called away.

With that harmony and unity of purpose which should characterize the Representatives of States in this Chamber, they struggled together and won their victories together in this great field.

South Carolina has contributed many able men to the public service and should be proud of her Senators now here. Mr. LATIMER was an honor to his State, an honor to his friends, and an honor to his country, and his memory will never be blotted from my mind.

I love to think of him as I saw him last here in this Chamber, with quiet dignity, unobtrusively moving among his fellows, vigilantly looking after the routine business of his State, and I love to think of him as I saw him across the sea, when, freed from that official care which is so burdensome to us all, he acted

like a boy at play as he moved about in that recreation upon which he had set his heart; and the new experiences in strange lands kindled his soul and imparted life and refreshment to his last years.

Mr. President, Senator LATIMER was a fine type of the southern gentleman—quiet and unobtrusive; gentle, yet firm; gallant, yet modest; courteous, yet brave; and helpful to all with whom he came in contact. I hope, as this day is set apart in his honor, as a tribute to his memory, that it may also instill in the heart of every Senator his noble virtues, which shall ever remain as a rich heritage to the people of our common country.

Mr. FLINT. Mr. President, it was my good fortune to be intimately associated with the late Senator from South Carolina during the brief period which we served together in the Senate. We were members of the Senate Committee on Public Lands, and in the work of this committee I had an excellent opportunity to observe his character, disposition, and methods of performing the duties which devolved upon him. He was, first of all, a practical man; and being endowed with a large measure of native shrewdness, wisdom, and what is known as "common sense," his opinion, advice, and suggestions were eagerly sought and greatly valued by his colleagues of the committee. He was particularly well fitted for service upon this committee, as he always took a great interest in the public lands of the country, and especially those lands adapted to agriculture, with a view to making such disposition of them as would be of the greatest possible benefit to the farmers of the country. Having been a prosperous farmer himself, he was an enthusiastic believer in the efficacy of an early experience and training upon the farm for the development of the highest type of citizenship.

He took great interest in the movement which was inaugurated some years ago for the enactment of a federal law for the reclamation of the swamp and overflowed lands of the country, along the lines of the irrigation act. With his usual energy and thoroughness, he contributed largely to the vast amount of data which was collected upon this subject, and was an enthusiastic supporter of the measure which was finally favorably reported by the Senate Committee on Public Lands.

Senator LATIMER was essentially a self-made man. The obstacles which confronted him in his early youth and during his young manhood, which deprived him of the opportunities for academic training, have been dwelt upon at length by others who have delivered eulogies upon his life, and need not be enlarged upon by me.

We read of Senator LATIMER's first activities in the political affairs of his State when he took part in the campaign of 1876. In 1890 he was elected chairman of the Democratic party in Anderson County, and was reelected in 1892. He administered the affairs of his party so successfully that he was urged to enter the race for lieutenant-governor, but declined. Shortly after this he was elected as Representative in Congress from the Third Congressional District of his State, and entered upon his career of ten years of unbroken service in that branch of the National Congress. As a climax to this conspicuous career he was elevated to the Senate and had served five years when unexpectedly and greatly to our sorrow he was taken from among us. His friends and colleagues were greatly shocked by his sudden and untimely death, and with one accord we gather here to-day to pay our respects and to honor his memory. Mr. LATIMER was only a little beyond the point which is usually considered middle life, and his sudden demise serves as a reminder of the uncertainties of life and the necessity for us to put forth our best efforts while we may in order that we may not leave our work undone. Though he died in the prime of life, his industrious habits, zeal, enthusiasm, and energy with which he pursued his daily tasks enabled him to perform an average man's work in the comparatively short period which he lived.

From an humble farmer lad to the highest place within the gift of the people of his State is a record of which anyone might well feel proud. When we have coupled with this a career that was beset with difficulties and obstacles from the beginning, all of which were overcome and success attained, notwithstanding the lack of the early opportunities which are usually essential to success, it distinguishes the man as a leader among men and as one whose example might well be emulated by the youth of our land.

Senator LATIMER's friends and neighbors, and all those who knew him best, testify with one accord to his Christian manhood, his consistent living, his beautiful home life, and his loyalty and devotion to his friends, which, after all, are more to be desired than great riches or great honors.

Mr. DOLLIVER. Mr. President, I appreciate very much the privilege, which has come to me by the invitation of the senior

Senator from South Carolina [Mr. TILLMAN], to say a few words about the public services of the late Senator LATIMER. I have felt all the more drawn to this mournful duty, since the Senator an hour ago asked me to perform it, because during the whole period of his service in the House of Representatives I was his colleague and his friend.

In the early years of service in the House an opportunity, which never afterwards comes to us, is given, of knowing with friendly intimacy those who are our associates in that service. So, it happened that, being young Members of the House, we were thrown much together and had that rarest of all the privileges of public life—the opportunity of close personal acquaintance. The House of Representatives, especially in those days, was a somewhat stormy and tumultuous body. It had its own standards for the recognition of ability and merit, and, tested by those standards, more severe, I think, than in any other arena of service in the world, Senator LATIMER speedily rose in the estimation of his colleagues to a position of influence and growing usefulness.

Shortly after I came to this body he was elected to the Senate, and it was a special pleasure and gratification to me to find that we were to work together upon the same committee—the Committee on Agriculture. Sitting there side by side until he passed from among us, I had a still further opportunity to know him and understand his motives and views of life and of duty, public and private, and to set a somewhat accurate estimate upon his character and upon his talents. So on this day I am glad to speak of his career, that fine and faithful public service which ended so untimely with his death.

It has been said here that he was without educational advantages in his youth. I believe that little or no evidence of that can be found in the things that he said or in the things which he accomplished while in the Congress of the United States. Education can do much for every man; and yet Senator LATIMER brought to the work of his manhood a preparation still more valuable than the training of the schools—the discipline of hardship, the culture of experience, that excellent drill of daily labor which comes not from the academies of learning, but from a postgraduate course in the university of the world in which we live.

I was especially impressed during my acquaintance with him with the fact that while he belonged to the period following the rebellion, inheriting possibly many of its peculiar points of view, yet he seemed less encumbered by them than any man from the South whom I have ever known.

He was one of the pioneers of the new school of American political thought. He anticipated the disappearance of old theories. To him it seemed that the Government of the United States ought to be in a practical, working sense, the servant of the American people. He had the same interest that we all have in questions of war, and peace, and diplomacy, and commerce, and industry, but to his mind the largest political questions in America were the questions that concern the lives and the homes and the welfare of the 80,000,000 of men, women, and children who constitute the Government of the United States. So in his service in Congress hardly a trace of partisan dogma can be found. Nor did he ever find trouble in the Constitution when the task was before him to strengthen the foundations upon which society itself rests.

He had a tempestuous political education in the same school that brought into public life the great abilities of our honored friend, the senior Senator from South Carolina [Mr. TILLMAN]; but he did not in this Chamber, it appeared to me, emphasize any of the acute and vital issues, the extreme and explosive opinions, which were a part of the political environment of his earlier years. I do not mean that he deserted his convictions, or held a loose view of his party obligations. I mean, rather, that in the interest of the work he was trying to do here he was able to subordinate himself, to push aside the narrow and transitory things which often embitter and enfeeble our public life, in order to find a surer road to the accomplishment of higher and better ends which he pursued.

In both Houses of Congress his attention was given to every-day matters into which partisanship enters in no sense at all. He was a student of what may be called the "lowly problems of government." He recognized the fact that the great bulk of the business of the Congress of the United States is without any partisan color of any sort. And so it seemed to me that in these respects he dismissed more completely than any other man with whom I have been associated the notion that the Government of the United States is a partisan affair. We find him engaged in the obscure and unheralded work of the committees to which he was assigned, and the questions that interested him most were the questions that lie nearest to the earth and concern most intimately the daily lives and happiness of the Ameri-

can people. For example, he was an advocate, possibly the most influential in the Senate, of good roads for the people of the United States.

He had that vision which enabled him to see that the least excusable losses of American agriculture do not lie where we so often place them, but lie at the very doors of the people; and the thing that seemed to impress his mind most as a member of the Committee on Agriculture was the fact that we lose more in the United States in hauling the crops which we raise into the town markets near which we live than we afterwards do by the conspiracies of the market place or the abuses of interstate commerce. I have often heard him say that if he could realize his dream of a model system of internal transportation on the common public highways of the country, he would have done more good than anybody could hope to do by legislative reforms of railway management in the United States.

He was equally interested in the problems of popular education, especially in the South, and most of all the modern efforts to make our schemes of elementary education respond to the needs of our industrial life. So he labored quietly and modestly, without ostentation or display of any sort, in those tasks which appeared to him to represent in a comprehensive sense the living questions in which the Government of the United States ought to concern itself.

For myself I not only respected his character, but I tried to study the attitude of his mind and to appreciate that fine philosophy of our affairs which enabled him thus to throw aside partisan motives, to dismiss from his mind almost entirely the spectacular questions which are most attractive in our public life, and devote himself with earnest attention to the humbler questions which bring the Government of the United States near to the people, making it responsive to their needs and effective in the guidance of their social progress. It was against his homely intuitions that the civilization of one century should be left helpless on account of a meager understanding of a Constitution made by the people of another.

He will be remembered in both Houses of Congress for his stalwart strength of mind and of body. Above that, he will be remembered for a certain modesty and fidelity of character which made him a reliable worker in whatever field was assigned to him in the business of the United States.

I do not know what his religious views were. He had a characteristic reticence as to the life he lived within himself. I never heard him say a word in all our conversations about that, but if his actions interpreted his faith—and the acts of men are the surest expression of their faith—we do not go astray in paying to him the loving tribute which belongs to a broad-minded patriot, a representative citizen, and an upright Christian man.

**Mr. GARY.** Mr. President, men of exalted character and civic virtue have ever been thought worthy of admiration and their memory worthy of perpetuation. Throughout the land we have erected and are each day erecting monuments in honor of those who have been conspicuous for the possession of such attributes. It is the boast of Rome that the Via Appia and the Via Sacra are lined with monuments to her consuls, generals, and senators, men who have done some service for their country.

Impelled by the same sentiment and actuated by the same desire to put on record our appreciation of exalted character and worthy citizenship, we have this day paused in our labors and laid aside our calendar to honor one who exemplified in the highest degree exalted character and worthy citizenship—one who has done some service for his country. Surely, Mr. President, on such occasion I should add my voice to the chorus of praise of him whose people are my people, whose friendship I had the honor to enjoy, and who has done much service for the State I in part represent.

A distinguished queen's counsel has said:

The highest gospel is a biography—

And he well adds—

So is the life of every good man.

A casual study of the career and character of our departed friend will demonstrate how well his life illustrates this aphorism. That he was a good man no one will deny. When an account shall have been given of the deeds done in the flesh many will be the acts of benevolence and deeds of kindness to his credit; for, like Abou Ben Adhem, he loved his fellow-man. He was ever ready to lend a helping hand to such as might need his assistance. But his was no ostentatious giving of charity that the world might see and applaud, but rather after the fashion of that enjoined in Scripture, which says:

When thou doest alms, let not thy left hand know what thy right hand doeth.

Not only was he a good, a benevolent, and a kind-hearted man, but he was a man of statesmanlike qualities as well.

"He dipt into the future far as human eye could see," and ere it was too late he sounded the first warning note to the people of my State against that steadily deteriorating process which goes on every hand apace—that process of whose danger Horace Bushnell once said:

The constant importation, as now, into our country of the lowest orders of people from abroad, to dilute the quality of our natural manhood, is a sad and beggarly prostitution of the noblest gift ever conferred on a people.

Senator LATIMER entertained similar sentiments, and he proclaimed them in no uncertain terms. May we, Mr. President, have the wisdom to heed his timely warning while we are yet a homogeneous people.

Then, too, Mr. President, as another instance of his statesmanlike qualities and of his desire to promote the welfare of the masses, we might mention his insistent urging of our people to build better roads and build them upon scientific principles. To you people of the North this may mean but little, because you have them already, but to us of the South, to us who for centuries have been accustomed to and satisfied with roads that are a hindrance to progress and the development of our natural resources, such stimulation as was given by his eloquent tongue was sadly needed. With us he was the pioneer along this line, and at times he seemed almost as one crying in the wilderness. His insistence and eloquence have already borne fruit, and had he lived a few years longer he would have witnessed a full realization of his hopes.

Did time permit I might recount the many blessings our people now enjoy as a direct result of his work in establishing free delivery of our mails in the rural districts. In this, if he was not the pioneer, he was, at least, the earnest, insistent, and effective worker. Indeed, Mr. President, his unceasing efforts seemed always to be toward bettering the condition of the masses.

It has been said, however, that he was not an educated man. If by the term "educated" is meant "trained in college walls," the claim will be readily granted. But, sirs, if education signifies such training as fits one to think energetically and with concentration along right lines, then he was essentially an educated man, albeit that education was not received in college walls nor at the feet of some mighty Gamaliel. He was what might be termed a "self-educated man."

Born and reared on a farm, inspired by the observations of nature in its purest form and by the teachings of God-fearing parents, he early learned to cherish high ideals and lofty aims. With such a foundation upon which to build and being possessed of robust health, strong common sense, and a keen and unerring perception of human nature, he felt less than most men that lack of college training, regarded by some as indispensable to the highest development. He was, indeed, another illustration of what Burns so aptly says:

The pith o' sense and pride o' worth  
Are higher ranks than a' that.

It is true that he took no conspicuous part in the great debates in this Chamber, yet he was always at his post of duty, ever ready to take advantage of any opportunity to befriend his people and ameliorate the conditions of the masses. But of his work as a legislator and of his usefulness as a Member of this body, there are others better qualified to speak than I.

But it seemed fitting, Mr. President, that I, who have known him from early manhood till his untimely end, should speak of him as a friend, neighbor, and citizen. It seemed to me that it is proper that I, who was in a position to observe it, should convey to this body some idea of the profound sorrow that was felt and manifested throughout my State when it was learned that ASBURY C. LATIMER was no more. When it was learned, Mr. President, that the Black Camel had knelt at his door, that in the midst of life, duty, and usefulness his sun of life had gone down, the people felt that their friend and tribune had gone, that they had sustained a loss they could ill afford. But his career is ended; his noble work is done; and the world is better for his having lived in it. By his work the great masses of common people were made better and happier, more contented and more comfortable. The present condition of progress, improvement, and happiness in the rural districts is a constant reminder of his friendship for the people, and on account of this his memory will ever be cherished by them. But "let us seek no further his merits to disclose."

Let us conclude this inadequate tribute by repeating, as applicable to him, the words of one of South Carolina's most eloquent sons, who said of another:

He acted throughout life on the maxim that in morals it is more to deserve than to command success.

He has left to his children, to the State of his birth and home a precious legacy of the lesson of his life. May it be an inspiration to us all, may we strive to imitate his worthy example, and may his untimely taking off be to us a reminder that the young may die, the old must die, and the wisest knoweth not how soon.

#### MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE POWERS.

Mr. FRYE. Mr. President, I offer the resolutions which I send to the desk.

The VICE-PRESIDENT. The resolutions will be read.

The resolutions were read, considered by unanimous consent, and unanimously agreed to, as follows:

#### Senate resolution 312.

*Resolved*, That the Senate expresses its profound sorrow on account of the death of the Hon. LLEWELLYN POWERS, late a Member of the House of Representatives from the State of Maine.

*Resolved*, That the business of the Senate be now suspended, in order that fitting tributes may be paid to his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Mr. FRYE. Mr. President, the Powers family was rather a remarkable one. Arba Powers, a stalwart man physically and mentally, built for himself a log cabin in Maine, and from his home sent out into the world eight sons equally stalwart in mind and body. All of them, by their own exertions, aided only by heredity and an early training in economy, thrift, and hard work, achieved success.

Nearly all of them held important public offices in Maine and elsewhere, and discharged their official duties in a manner entirely acceptable to the people. These log cabins have, I think, made more valuable contributions to the Republic than have the homes of wealth and luxury. The oldest of these sons was Governor POWERS, to whose memory we pay tribute to-day. He had the advantage of education in our free schools, the first in the country having been established in the district of Maine.

It is an interesting incident that William King, our first governor, an ardent friend of Thomas Jefferson, visited him at his home at Monticello before he entered upon the duties of his office, and Jefferson, at his request, wrote the article in our Constitution which perpetuated our free-school system.

Mr. POWERS continued his studies in the academy; then for two years in Colby University; then entered the Albany Law School, from which he graduated with honor. He commenced the practice of the law at Houlton, in Aroostook County, the northeast county of this country, then mostly in wilderness, now said to be, in the value of its farm products, the fourth in the United States.

He gained what in those days and in his State was a large and lucrative practice, so large that he was obliged to take as a partner his youngest brother, Frederick, who later on became a judge in our supreme court. Mr. POWERS was a business man of great sagacity, of clear foresight, and invested his surplus earnings in wild lands, which became very valuable and made him a wealthy man. At the time of his death he was the largest individual owner in Maine, having holdings amounting to 200,000 acres.

Mr. POWERS was attorney for the State for the county of Aroostook from 1864 to 1871; collector of customs for the district of Aroostook from 1868 to 1872; a member of the house of representatives in Maine for six terms, during one of which he was speaker; was elected governor of Maine in 1896 and re-elected in 1898. He was elected to the Forty-fifth Congress from the fourth district and elected to the Fifty-seventh Congress in April, 1901, to fill the vacancy caused by the resignation of Hon. Charles A. Boutelle, and to the Fifty-eighth and Fifty-ninth and Sixtieth Congresses.

I was a Member of the House in the Forty-fifth Congress when Mr. POWERS made his first speech. It commanded the attention of the House and made a favorable impression. While serving his State in its legislature he had a commanding influence in the enactment of important legislation. As governor he had strong convictions and the courage of them; he was fearless, not parsimonious, but wisely economical; and by his forcefulness, his tireless energy, his business sagacity, made his administration of the affairs of the State eminently satisfactory to the people, who reelected him by an increased majority.

Governor POWERS was a first-rate, all-round lawyer, the product, I think, more frequently of the country than of the city practice. As an advocate he was forceful, exhaustive, and successful, if not eloquent.

As a legislator, his clear vision and business sagacity, together with his accurate legal knowledge and commanding presence, compelled attention and rendered him effective.

He was an ardent Republican, a firm believer in the protection policy, loyal to all of the fundamental principles of his party, and yet always tolerant to those differing with him.

He made hosts of friends and few enemies. Socially, he was very attractive, was a fine conversationalist, abounding in apt anecdote, and quick of wit. He was a devoted husband and a loving father.

He fought well life's battles, and won more victories than fall to the lot of most men. In his death his country, his State, and his family have suffered a most serious loss.

Mr. SUTHERLAND. Mr. President, of right and of necessity our concern is for the living rather than for the dead, because the living need us and the living we can help. The dead can only be held in affectionate remembrance. The span of our days upon this earth is short, and there is so much to be done by the living for the living that the task of doing it will ever remain our chief and most imperative duty. Life itself is a series of battles, wherein each of us must play the soldier's part and assume the soldier's responsibility, contending with whatsoever weapons we can best use, accepting, if we are wise, the victories which we may win without too much self-pride and the defeats which we may suffer without too much self-pity, and submitting at the end serenely, patiently, and courageously to the inevitable stroke of that final grim antagonist against whom no man can prevail. To one who has grown weary of the strife the stroke is sometimes not unwelcome; but whether sweet or bitter, to-day or to-morrow or finally it comes to all, and the vacant places in the ranks are filled by new comrades and the battle goes on, for the militant business of the world must be done, whoever may fall. While the stern necessities of the living will not permit us to sit idly with the dead, it is fitting and proper that we pause in the conflict and pay passing tribute to the memory of those who, having borne with us the heat and the stress of the struggle, have passed on to their final rest. It is appropriate that we reverently give expression to our gratitude for what they did and our appreciation of what they were. For this purpose we are here this afternoon.

Mr. President, it was my good fortune to meet Governor POWERS very soon after I became a Member of the House of Representatives in the Fifty-seventh Congress, and during the sessions which ensued I became intimately acquainted with him. He was a man of striking personality. His face and figure were so sufficiently out of the ordinary that they will not soon be forgotten, and both are very clearly in my mind to-day. His frame was strong, almost massive; his head large and well formed; his features rugged, strong, furrowed with deep lines. His face, when in repose, gave an impression of sternness, but was full of enchanting kindness when illumined with the smile that always came at the word of a friend—a face, withal, full of character, expressive, thoughtful, which at once and instinctively inspired confidence and trust. His manner to all was gentleness and courtesy personified. He was by nature social—a lover of his fellows. He was a good conversationalist and a good listener, which is sometimes a more amiable, if rarer, accomplishment. He could tell a good story or listen to one with keen and intelligent appreciation. His good nature was infectious.

Mentally, he was, I thought, more sound than alert. He did not come to a decision quickly. His conclusions were not intuitive, but the result of patient, deliberate, painstaking, intellectual effort. Almost as a necessary consequence, having arrived at a determination respecting the merits of a proposition, he was immovable, albeit he was not dogmatic or stubborn. He listened to the views of others with an open mind; he did not differ for the mere sake of difference. He was an earnest partisan in the highest and best sense. A Republican all his life, the traditions and principles of that great party had been woven in the very warp and woof of his character, and yet he never hesitated to voice his disagreement whenever his party declared for something he could not indorse; but when he disagreed it was reluctantly, regretfully. Always he gave his own party the benefit of the doubt.

It is a trite thing to say of any citizen of the Republic that he is patriotic. That is the normal attitude, thank God, of all our people. It is equally a trite thing to say of any properly constituted man that he is humane. That is the common attribute of our modern civilization. But a good many people are patriotic in sentiment and humane in feeling who are neither in practice when the practice entails personal sacrifice. Governor POWERS believed that love of country was not a mere abstraction, but a deep and holy sentiment for which one should be willing to give his time and strength and property and, if need be, his life. When war was declared with Spain he was the governor of his State. He was urged to call a special session of the legislature in order that an appropriation might be made to

equip and supply a regiment of volunteers for service in the field. This he declined to do, because of the great expense an extra session would involve, but instead he went into his own pocket and paid out of his personal means the great sum which was required to properly equip the troops and send them to the front. That the legislature at its next regular session promptly reimbursed him detracts in no measure from the generosity and patriotism of his act. There was no legal obligation on their part to do so, and most men would probably have called the legislature together instead of taking upon their own shoulders the burden and responsibility which he assumed without regard to the consequences.

He was strongly opposed to capital punishment. He thought, as many others have thought, that the poorest use to make of even a bad man is to kill him. The object of punishment for crime is threefold—to reform the criminal, to protect society against a repetition of the crime, and to deter others from committing like offenses. Capital punishment does none of these. The death of the criminal precludes reformation; society is effectually protected by permanently depriving the criminal of his liberty, and life imprisonment operates as a deterrent quite as well as capital punishment. Sheep stealing was at one time a capital offense in England, but sheep stealing was as popular when the punishment was death as it has ever been since that punishment was abolished. Organized society has no more right to take human life as a matter of vengeance than has the individual. This was the way in which the matter presented itself to the mind of Governor POWERS, and as a member of the judiciary committee of the state house of representatives he succeeded in impressing his views upon his colleagues, with the result that his bill abolishing capital punishment in Maine was reported to the house and subsequently enacted into law.

This upright man and splendid citizen, having served his State and country with signal success and distinguished honor as legislator, as governor, and as Congressman for more than thirty years, on the 28th day of last July passed from the conflicts of this world into the rest of the world that is to be.

What lies beyond the grave it has not been given us to know. The old, old question, at once the most pitiful and the most stupendous inquiry of the human race, echoing from the lips of Job through the vanished and the vanishing years, is to-day, as of old, the passionate and sometimes despairing cry of the human heart—"If a man die, shall he live again?" Science has measured and weighed the stars, analyzed the sunbeam, caught the rhythm and the music of the waves of sound, wrested from nature her choicest and most closely-guarded secrets and enslaved her most subtle and powerful forces, but to this one question she gives no answer which carries either hope or conviction. The lips of the young asking "whence" and of the old inquiring "whither" are alike unanswered. Faith alone vouchsafes a reply. Somewhere in the innermost sanctuary of the self there is something which assures us that at the end we shall find a door and not a wall. The vast majority of mankind, when told that nature at the very heart is dead, experiences that fainting of the soul that comes in the presence of a supreme falsehood. Every cell and every nerve instinct with life cries out against it.

What, then, am I,  
An infant crying in the night,  
An infant crying for the light,  
And with no language but a cry?  
\* \* \* \* \*

My own dim life should teach me this:  
That life shall live for evermore,  
Else earth is darkness at the core,  
And dust and ashes all that is.

We stand upon a mountain top and look down long stretches of undulating forest, over grass-grown meadows and peaceful pastures filled with slow-moving and contented herds; we see the lordly river stretching like a ribbon of silver with long vistas of shimmering shallows and shadowed banks; we lift our eyes to the blue sky, and see here a fantastic cloud and there a hawk lazily drifting with outstretched and motionless wing. Our senses thrill with the glory of the vision; but the majesty of mountain, the beauty of field and river, the splendor of the sky, the witchery of cloud and sunlight and shifting shadow are not in the eye or the brain or the body of the beholder, but in the soul. We close our eyes and the scene is gone from the physical sight, but we behold it, nevertheless, softened and subdued, yet filled with a tender and dreamful loveliness, still pictured in the marvelous gallery of the mind. Then may we not believe that, when the darkness of death is come and the cells of the brain go back to dust, a conscious something, above and beyond all nerves and tissues and cells and brain, which saw the picture and hung it in the memory, will mount from this earthly night of death into the light of the eternal morning?

Mr. SMITH of Michigan. Mr. President, in the busy whirl of life, with its trials and exactions, we pause to pay a tribute to the memory of one of our late colleagues in the House of Representatives.

LLEWELLYN POWERS, for many years a Representative in Congress from the State of Maine, served with honor and credit to his Commonwealth and to the country. Maine has been limited in its geographical area, and almost unlimited in its material resources and seemingly inexhaustible in its wealth of able and distinguished men, many of whom have been chosen because of their special fitness for public place, and retained in the service with credit to the State which commissions them as long as they have been willing to serve.

Think of a State which has within a generation contributed to the public service a Fessenden and a Hamlin, a Blaine and a Reed and a Dingley, and is now so honorably represented by our colleagues, Senator HALE and Senator FRYE, than whom there are no more able, conscientious, upright, worthy, or influential men.

I consider myself fortunate to have served with many of these men in the latter years of their public service. Reed and Dingley and Boutelle and Milliken were all colleagues of mine in the House of Representatives, and I learned something from each of them. I consider the country most fortunate to-day to be guided, as it often is, by the practical common sense and the wise experience of the distinguished Senators from Maine now in this Chamber. True to her high traditions, Maine commissioned our late colleague for duty here.

Mr. POWERS first entered public life as a young man, and retired after one term in Congress. He carried his shrewd commercial instincts into the busy world of affairs and made a business success of life. Later returning, after serving as governor of his State, he entered again into the activities of legislative life. I consider that we were fortunate indeed in his legislative companionship. He was modest and unpretentious, yet he was firm and substantial. He made few tenders of his sympathy or kindness of nature, but no one could come in contact with him and fail to appreciate that he was one of nature's truest men.

Mr. President, death places its hand upon all that lives, and in calling LLEWELLYN POWERS from an ideal home life and the activities and responsibilities of private and public employment nature drafted an honorable and a worthy son. His personality will long be missed in the House of Representatives and among those who loved him.

I simply desire to pay my tribute to his lofty character, his usefulness, and his fidelity, and I shall long remember the pleasure and the satisfaction I have taken in our companionship and association here.

Mr. DIXON. Mr. President, LLEWELLYN POWERS was born in Pittsfield, Me., December, 1836, the eldest of ten children. He was descended from a family that had been prominent in New England for many generations and whose name frequently appears on the muster rolls of the Continental Army. Born on a farm, he was educated in the common schools and academies of his native State and at Colby University. He entered the Albany Law School and graduated therefrom in 1860. He immediately returned to Maine and began the practice of his profession at Houlton, the county seat of Aroostook County. Of splendid physique, affable in manner, temperate in his habits, and industrious in his profession, front rank at the local bar was soon attained.

Like most young lawyers, he was soon attracted to the field of local politics. In 1864, four years after being admitted to the bar, he was elected prosecuting attorney of his county, and was twice reelected to the same position. He held the position of United States collector of customs for four years. In the early seventies he was sent to the Maine legislature for three consecutive terms and then elected as a Representative to the Federal Congress, for serving one term in that body along with a distinguished delegation from the State of Maine, which numbered among its members such men as James G. Blaine, WILLIAM P. FRYE, and EUGENE HALE.

Defeated for reelection in the greenback agitation of 1878, he again took up the practice of his profession. Twelve years later he again entered public life as a member of his state legislature, serving again three terms, during the last of which he was elected speaker.

Then followed his election as governor in 1896 and his reelection in 1898 by a majority of nearly 50,000. A few months after his retirement as governor he was again elected a Member of Congress, where he served continuously until his death on July 28, 1908.

Elected by the people of his own district three times as prosecuting attorney, six times as a member of the legislature, and

five times a Member of Congress, his actual time spent in the public service covered a period of a quarter of a century.

Unlike most men who devote so much of their lives to the public business, Governor POWERS was also most successful in his own private business affairs. By his own exertions and good business judgment he accumulated a private fortune of considerable magnitude. Coming from a State justly celebrated for the sound conservatism of its people, he was by nature, blood, and training well fitted for the position of one of the leaders, both in business and political affairs.

It was my pleasure to have served with him for four years in the other end of this Capitol. The Maine delegation, famous for a century past for its strong membership in both Houses of the Federal Congress, was then famous for having three ex-governors of the State in a delegation of only four members.

Governor POWERS was a striking figure in that body, comprising a membership of nearly 400 men, the directly chosen Representatives of 90,000,000 people. Large and well-proportioned physically, swarthy of complexion, a massive head crowned with a shock of raven-black hair, he attracted notice among his fellow-Members. He was most genial in his manner, conservative in his speech, and fair in his judgment of both men and measures. Measured by any standard, his life was a successful one. In business affairs, in the legal profession, and in the public service he had achieved distinction in all.

At the close of their life this can be said of but few men. Most men whom the world calls successful have only achieved success along some one line of action. Our so-called great and successful men have nearly always been deficient in some things.

To his wife and children, to his State, and to the Nation LLEWELLYN POWERS has left a record of an industrious, well-spent, well-ordered, and successful life.

So long as men of his type shall be selected as the chosen leaders of the people of the respective States of this Republic, all is well.

Mr. HALE. Mr. President, I had hoped to secure some facts in a family historical way about the Powers family in Maine, a typical New England family, a household that is the real type of New England life, but the inquiries which I have made as to details have missed their way, and I can only say here that our colleague, Governor POWERS, was the natural and distinguished representative of the New England family and farm life and of nature's stimulating surroundings, and that it was distinguished as have been very few Maine families. It had the inspiration, the best inspiration for youth, of country life, country associations, of the training and education that come in New England, I know in Maine, from the district school and the academy and the religious and moral teachings that go with a sober and temperate community.

The Powers homestead was the seat of plain but ample country hospitality. The neighbors gathered there; the ministers in their rounds came to the Powers house; the boys and the girls, as they were born and reared, imbibed all the healthful influences that come from such a life; and when the day came and they went afar from home life and joined in the life of the larger world they were found equal to any occasion.

The family furnished distinguished lawyers and legislators and men of large and sagacious business minds, and stands today in my mind as one of the best products of New England and Maine country life. One of the family was a most distinguished member of the supreme court of Maine, and when he voluntarily retired from that high place it was to the regret of all our people. Others of the Powers family have joined in making the record of Maine in business and in legislation and in social life, and all have been active and influential factors.

There was none superior to the Governor. That is our fashion, Mr. President, in Maine. A man who has once been governor with us is always "Governor." He may be a Member of the House of Representatives, but we call him "Governor." He may come to the Senate, but he is "Governor." He may go to the Cabinet, or even to higher places, and I fancy we should always think of him and address him as "Governor." So Mr. POWERS was always to the people of Maine, from the time that he served in our highest chief magistracy, "Governor" POWERS.

What my colleague has said of him, and what other Senators who shared in the pleasure of his acquaintance have said, is true. He was a leading and influential figure wherever he was seen. He was intelligent and faithful in his duties, courageous in his standing by his beliefs and convictions, and was never a negligible factor. In Maine, whether in its legislature or as its highest executive officer, or in Congress in the House of Representatives, upon whatever committee he served, and wherever he appeared and was seen and known, he had weight, he had consid-

eration. He was of importance not by intrusion, for, as one of the Senators has just said most fittingly, he was by nature, while courageous and outspoken, a modest and reserved man. But wherever he was, he was of account.

We were proud of him in Maine, Mr. President. We were proud of his position in Congress, of the increasing weight of his character and his counsel as the years went by; and it was with a sense of great loss that Maine gave him up as a public servant.

He had in him great elements of what I may call the practical, shrewd side of New England character. He was not easily moved in business or in politics or socially from what he believed to be the true and the practical course. It was shown in his business life. I knew him always quite intimately, from the time when he began practicing as a young lawyer in a young country shire town. He gained, in the estimation of his neighbors, friends and clients, and the people as a lawyer, as a business man (and was almost infallible in his judgment as to investments), the returns that would legitimately come to a young man from his growing resources.

He was at last, as my colleague has said, one of the largest owners of valuable lands in the State of Maine, and he was worth, I suppose—what with us is a large fortune—a million dollars. He was not penurious. While he was frugal and saving he had a large and generous mind.

I shall miss him, Mr. President, very greatly, because, coming from the same part of the State, we were thrown together closely; and I think I may say that in the years I have known him, with increasing regard for more than forty years, we had no differences. He and I in political matters, in matters touching state interests, and what was of most account to our people, traveled together.

All of this companionship; Mr. President, all of this association, will dwell with me as long as I continue in public life. My colleague and I have had an unusually long service in Congress; I think I may say an unusually friendly and cordial service together. We have seen nearly everybody who has come here with us and in the other House disappear. Neither to him nor to me will the remnant of our days be the same with the new men. He and I will welcome them and act with them so far as we can helpfully, but we shall miss the departed, and none will we miss more than Governor Powers.

#### MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE WILEY.

Mr. BANKHEAD. Mr. President, I submit the resolutions which I send to the desk, and I ask for their adoption.

The VICE-PRESIDENT. The Senator from Alabama submits resolutions, which will be read by the Secretary.

The resolutions were read, considered by unanimous consent, and unanimously agreed to, as follows:

Senate resolution 311.

*Resolved*, That the Senate has heard with profound sorrow of the death of Hon. ARIOSTO A. WILEY, late a Member of the House of Representatives from the State of Alabama.

*Resolved*, That the business of the Senate be now suspended in order that fitting tributes may be paid to his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the widow and family of the deceased.

Mr. BANKHEAD. Mr. President, we are present in this Chamber to pay homage to the memory of a man who for many years was my warm personal friend, and it is with feelings of deep sorrow that I must pronounce these brief, cruel words: "He is dead!"

In reviewing the career of ARIOSTO APPLING WILEY four aspects of his character stand out preeminently: Energy, patriotism, loyalty, and human kindness. He was a scholar, a lawyer, a soldier, a statesman, and, although able in each and all of these, he was greatest as a friend. It was this lovable, human quality that made the hearts of thousands of his people to mourn at his untimely taking off.

Colonel WILEY began the practice of law in Montgomery in 1872, a fresh young alumnus of Emory and Henry College, Virginia, in partnership with that eminent jurist, ex-Chief Justice Samuel F. Rice, of the Alabama supreme court. This partnership lasted for eighteen years, during which time Judge Thomas G. Jones, federal judge of the middle district of Alabama at the present time, was also a member of the firm. The experience and knowledge gained in his early practice equipped Colonel WILEY for the duties that devolved upon him in his future political career.

In 1882 he was elected to the lower house of the Alabama legislature, where he served as chairman of the committee on the revision of laws, as a member of the committee on corpora-

tions, and invariably as a member of the judiciary committees. For years thereafter he was either in the house or the senate of the legislature of his State. His city was also the beneficiary of his talents and loyalty, for he served fifteen years as an alderman of her administrative board.

His most distinguished professional services, however, of a national character were those performed while chief legal adviser and chief of staff to General Lawton during the organization of affairs in Cuba following the Spanish-American war.

Colonel WILEY was a soldier by blood and tradition. His father, Judge J. McCaleb Wiley, was an officer in the Mexican war, and although his son was but a lad during the war of secession, he was ever deeply stirred by the stories of valor and of strategy displayed by both of the contending armies. For a number of years he was captain of the Montgomery Mounted Rifles, a famous local military organization, and for twenty years he was connected with the Alabama National Guard, having risen from a lieutenant to the command of a regiment. He was a man of unusually robust and handsome physique, and in the uniform of a high officer presented a martial and impressive figure.

He served upon the staffs of four successive governors of his State, holding the positions of judge-advocate-general, with the rank of colonel of cavalry; of inspector-general; of chief of ordnance, respectively, upon the staffs of Governor Seay, Governor Oates, Governor Johnston, and Governor Samford. He was well prepared by training and experience, therefore, for the position of second in command of the Fifth Regiment of Volunteer Infantry of the United States Army, to which President McKinley appointed him, for Cuban service, on June 9, 1898. His appointment to this position was unanimously confirmed in this Chamber, and that your confidence was well placed was proven by the services which Colonel WILEY rendered to his country on the island. Upon receiving his commission as lieutenant-colonel he hurried with his command to Santiago de Cuba, his regiment reaching the eastern province just after the battle of San Juan Hill was fought. Shortly after arriving at Santiago General Lawton, commanding that department, availed himself of Colonel WILEY's legal abilities, making him his chief legal adviser and chief of staff. His legislative experience, his military talents, and his legal lore were all brought under contribution in his services as acting civil governor of the Province of Santiago, to which position he was appointed. He set in motion the machinery of the civil government, organized the courts, and contributed greatly to the restoration of law and order. Upon his return to civil life, after a year's military service for his country, he was at once elected to Congress, which position he held until his sad death last June.

Of his political services I could say much. Immediately upon his entrance into the House of Congress he began to display that effective energy that characterized his whole career. He secured large appropriations for his district for internal improvements and gave unfailing sympathy and response to the individual demands upon his legislative services. My association with him, especially during his service in Congress, was an intimate one. He was always active and vigilant for the best interests of his constituents, and was never too busy to exhaust every resource to comply with any request they should make. Among the many things he accomplished for them, and one of which he seemed to be proud, was a bill introduced and passed by him, with considerable difficulty, for the relief of a number of homesteaders who had entered on certain railroad grants. Hundreds of poor but most deserving people in Alabama would have lost their homes and the result of years of toil in the improvement of their farms had it not been for this bill.

It was through his duties as a member of the Military Committee that Colonel WILEY came into friendly and intimate relations with Mr. Taft, who was then Secretary of War. It was because Mr. Taft saw in him a man of broad experience and deep sympathy that he invited him to become a member of the party accompanying him to the Orient.

Colonel WILEY accepted Mr. Taft's invitation for three reasons. First of all, he was a citizen and representative of a cotton-growing country, and he desired to investigate the possibilities of China and Japan as markets for his people's chief product. Secondly, he had been reared in a section of the country where there were vast thousands of an inferior race, and knew, as only a southern man can know, the quality of patience and firmness, of charity and justice that must be used toward a people who have not yet made an ultimate place for themselves in social or economic life. It was with the thought in his large heart that he might be of some active service to the inhabitants of the Philippines, as well as to the flag he served in common with them, that he agreed to go 10,000 miles from home and friends.

In a letter to one of these friends, written upon the high seas on the long voyage, Colonel WILEY said, concerning these alien citizens, quoting from Robert Herrick:

We are bound to one another inseparably in this life of ours. We make a society that is composite. Whatever we do to weaken the sense of that common bond disintegrates society. Whatever we can do to deepen the sense of that common bond makes life stronger and better.

The third reason why Mr. Taft's invitation appealed to Colonel WILEY was personal to the poetic, the romantic, and the adventurous side of his nature. He was a man of refined mental culture, and his imagination had often been stirred by the literature and history of the Orient. Therefore those of us who had been privileged to know intimately this phase of the man's inner self can understand the pleasure the prospect of these foreign travels afforded him. The contrasts of life were never more clearly illustrated than in the fact that the very day when Secretary Taft was nominated by the dominant political party of the United States to fill the highest office in the gift of the people the silent form of Col. A. A. WILEY, his friend and comrade, was being conveyed from the mountains of Virginia back to the heart of the cotton country that he loved so well to find a resting place.

We are such stuff  
As dreams are made on,  
And our little life  
Is rounded with a sleep.

He was genial and kindly and generous, possessing in a larger degree than most men possess those warm friendships that are rooted in esteem's deep soil, resulting from a slow and gradual culture of kind intercourse necessary to bring them to perfection.

One of these friends and neighbors, upon the occasion of his funeral, wrote the following delicate verses in his memory:

Not because the Nation needs him,  
Not because the State will mourn,  
Do I gather up the brightness  
That his gracious smile has worn,  
And now weave it into garlands,  
That no time can wilt or fade,  
For the grave upon the hilltop  
Where the sunshine meets the shade.

How his happy, friendly presence  
Mingles with the sod to-day,  
As a shining shaft at sunset  
Pierces into clouds of gray;  
And I call from spaces endless  
Where remembered kindness grows,  
This one little song of tribute  
Set about with friendship's rose.

Not alone to kings and peasants  
Did his cordial hand extend,  
Everything that needed comfort  
Felt the presence of this friend;  
Animals and trees and flowers  
Flourished where his eyes would stray,  
And he counted years as empty  
If no blessing went his way.

Now he rests; and loud the bird song  
Tells the cheer his voice had told;  
Soft clouds drift above the hilltop  
As if they his words enrolled.  
Life was sunshine, life was friendship—  
This, and more, his bright heart shed;  
And a smile meets us this morning  
That will live when time is dead.

Mr. McENERY. Mr. President, Col. ARIOSTO APPLING WILEY, a Member of the Sixtieth Congress from the Second Congressional District of Alabama, died on the 17th day of June, 1908, in the city of Washington.

The high and low, the good and bad, must die,  
And then, 'tis taught, begin again to live.  
Somewhere, somehow, who knows?

Col. ARIOSTO WILEY was born in the State of Alabama on November 6, 1848. He was graduated with honor at Emory and Henry College, Virginia, in June, 1871. He chose the law for his profession, and for eighteen years was in partnership with that eminent jurist, ex-Chief Justice Samuel F. Rice, of the supreme court of Alabama, and after his death continued the management of the late firm's legal business, which involved many intricate questions in law and large interests. He was thus thrown in contact with a bar distinguished for the ability and high character of its membership. He rapidly rose to the front rank of his profession, and his legal ability was acknowledged throughout the State of Alabama.

I have been told by those who were familiar with his connection with the bar that he was a skillful special pleader and an expert practitioner, while his knowledge of the principles of jurisprudence and their foundation was as thorough as his application of them was masterly.

In the House of Representatives he was classed among the foremost of its able Members. His style in his addresses was that of close and severe reasoning, without ornamentation, con-

cise, and correct. There was left no impression of diction or declamation, but only of the thing said. He had the sublimest faith in the wisdom of the fathers of the Republic, and never departed from their teaching. No popular outburst could influence him to vote for any measure which his conscience told him violated the Constitution, notwithstanding the demand that it was for the relief of an "oppressed people from corporate power and tyranny." He did not believe that the wisdom of past times was, "the unripe fruit of imperfect intellectual culture." He was a patriot. He served with distinction in the Spanish-American war and was recommended for promotion to brigadier-general by his commanding officer for service in the field, and as an able counselor and adviser in framing a constitution for the Province of Santiago. In the field of legislation he was eminently successful, and in the general assembly of Alabama, in the house and the senate, he was industrious, wise, and conservative, and his influence on legislation was recognized in the enactment of needed laws, judicious and wise, which greatly promoted the material interests of the State.

There rests no stain upon his integrity in professional, private, or public life. He was scrupulously punctual and just in all his dealings. In domestic life he was pure and without fault. He was a delightful companion. He had solid good sense, a cheerful temper, good humor, and a playful wit, and there was about him a charm which attracted the humblest and the highest. He was beloved of all classes in his State, both for his great usefulness in the public service, the warmth of his affection, and for his virtues.

His life was spent in the courts, in legislative chambers, in the field, in party conflict—in fact, from birth to mature manhood his life was one of conflict and endeavor. It is rare, indeed, that such a character appears and passes through such experiences with character not only untarnished, but brightened. Success attended his every footprint, and his people applauded and rewarded his steady advance. His nature was noble and generous, even to the greatest fault. There was nothing paltry or sordid in his understanding or his heart. We remember his kindly nature and social graces—

While the soft memory of his virtue  
Yet lingers like twilight hours  
When the bright sun is set.

Mr. JOHNSTON. Mr. President, ARIOSTO A. WILEY was born in Alabama in 1848. He was a descendant of distinguished Scotch ancestors, who settled in Mecklenburg County, N. C., before the Revolution and acquitted themselves as patriots in that eventful struggle. He graduated at Emory and Henry College, Virginia, and was admitted to the bar in 1872. He began the struggle of life in the period of reconstruction, when the clouds hung dark and heavy over his native State, and when despair was held at bay only by the indomitable courage and fidelity of her people. He soon removed from Troy to the capital city of Alabama and entered upon a long and brilliant career which finally placed him at the head of his profession in that city so famous for its lawyers.

He was not one of those lawyers who attained success by a devotion confined to his profession to the exclusion of all other affairs of life, but was a citizen taking interest in all that concerned the people of his city, county, and State, serving them well and faithfully for quite twenty years in the municipal government and in the house and senate of his State. In the latter he was chairman of the most important committees in each house, and was faithful and diligent in the performance of every duty, notwithstanding his pressing engagements at the bar. When the war with Spain occurred Colonel WILEY tendered his services and was commissioned lieutenant-colonel of the Fifth Regiment U. S. Volunteer Infantry.

He soon attracted the attention of the gallant and lamented General Lawton, and served as his chief of staff and as civil governor of the eastern province of Cuba for some time. Returning home when the war ceased, he was elected to the Fifty-seventh Congress, and continued to serve in that body until he died, a Member of the Sixtieth Congress, in the vigor of a splendid manhood.

This is the brief record of his public service, but what historian can relate or what friend narrate the many services he rendered, the kindly deeds he performed, or the joy he brought to the friends with whom he associated, to his family and loved ones, or to those in distress or sorrow?

I knew him well as legislator, lawyer, citizen, soldier, and friend. He served on my staff when I had the honor to be governor of Alabama. Kindly, sympathetic, cheerful, full of generous sympathies, courageous, strong in his convictions, faithful to friends, to his country and State, to be with him, to know his heart, and to witness his many unselfish and generous

acts was to appreciate him more and more at his true value. He was bold and aggressive when he stood for client or cause, a formidable adversary in any forum, and a generous foeman who never struck below the belt or causelessly wounded the feelings of any man. The combat over, the victory won, he bound up the wounds of his adversary, soothed his feelings, and never boasted of his deeds or harbored animosity.

Whilst he commanded attention and respect in any forum to which he was called by the graces of his oratory and the logic of his argument, it was in the social circle where the kindness of his heart and scintillations of his intellect shone most conspicuously.

No man of generous impulses who knew him well could fail to love him. No appeal was ever made to his sympathy that did not meet prompt response; no demand for his services by the people he loved so well was ever denied, however great the personal sacrifice.

I saw him here in Washington in his last illness, suffering great pain, but thoughtful still of the comfort of those around him. Little then did I think that I should never again see his attractive smile, feel his generous greeting, or hear his kindly voice.

I saw him laid to his eternal rest in his loved city, and I saw the great concourse of friends and acquaintances, white and black, that gathered around the grave to bid a long farewell to a generous, faithful, and affectionate friend; and it seemed then to me that this tribute to the man, to the citizen, and to the friend was the most convincing testimony that any man could have that he had not lived in vain or wrought for self alone.

Many years will doubtless pass before time shall have taken the edge from the sorrow of wife and son. The sympathy of friends, the remembrance of happier days, may bring some solace to their hearts; and it must soften their grief to know and feel that the loss is not all theirs, and that the people of his city and State, and a host of friends, will long remember and regret him.

#### MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE MEYER.

Mr. McENERY. Mr. President, I offer the resolutions which I send to the desk.

The VICE-PRESIDENT. The resolutions will be read.

The resolutions were read, considered by unanimous consent, and unanimously agreed to, as follows:

Senate resolution 315.

*Resolved*, That the Senate expresses its profound sorrow on account of the death of the Hon. ADOLPH MEYER, late a Member of the House of Representatives from the State of Louisiana.

*Resolved*, That the business of the Senate be suspended in order that fitting tributes may be paid to his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Mr. McENERY. Mr. President, during each session of Congress we are called upon to pay tribute to the memory of distinguished Members who have passed away.

Of them who wrapped in earth are cold  
No more the smiling day shall view,  
Should many a tender tale be told.  
For many a tender thought is due.

One of the most lovable and tenderest of men, Gen. ADOLPH MEYER, a Member of the Sixtieth Congress, died in the State of Louisiana at his home in the city of New Orleans on the 8th day of March, 1908. Of him many tender tales can be told, and many tender thoughts suggest themselves as due to his cherished memory. He was born October 19, 1842; was a student at the University of Virginia until 1862, during which year he entered the confederate army, and served until the close of the war on the staff of Brig. Gen. John S. Williams, of Kentucky. At the close of the war he returned to Louisiana and had been engaged largely in the culture of cotton and sugar since; was also engaged in commercial and financial pursuits in the city of New Orleans; was elected colonel of the First Regiment of Louisiana State National Guard in 1879, and in 1881 was appointed brigadier-general to command the First Brigade, embracing all the uniformed corps of the State; was elected to the Fifty-second, Fifty-third, Fifty-fourth, Fifty-fifth, Fifty-sixth, Fifty-seventh, Fifty-eighth, Fifty-ninth, and Sixtieth Congresses.

To this short sketch from the Congressional Directory I may add that as a merchant he was universally respected, and as a planter he was known and admired for his progressiveness; and as a soldier for undaunted skill and courage, receiving the highest encomiums from his commanding general, on whose staff he served during the war. As brigadier-general of the national guard, he was in service for more than eight years, and added by his persistent efforts, under the guidance of Gen-

eral Beauregard, to the deserved popularity of the organization and to its admirable discipline. As a Representative in Congress from Louisiana he was always diligent in serving his State, and no interest affecting it escaped his attention. To the welfare of his constituents individually he was devoted, and day after day he was at the departments looking into their condition and their wants.

I quote from the eulogy on General MEYER of Mr. Foss, chairman of the Committee on Naval Affairs, of the House of Representatives, who knew him more intimately than any Member of that body.

But General MEYER's greatest work consisted not so much in serving the constituency which elected him as it did in serving that greater constituency which extends from the Atlantic to the Pacific and from the Gulf to the Great Lakes. It was his labors in the upbuilding of the American Navy for which he will be longest remembered. He was the oldest member of the Committee on Naval Affairs. He had served for seventeen years, and no man was more familiar with the great subjects pertaining thereto than himself.

The many and able reports on naval subjects which he has written will stand as a monument to his faithfulness, ability, and industry. When he became a member of the Naval Committee we had not a single battle ship in commission and the tonnage of our new navy was less than 200,000, whereas now, when the pending naval bill shall have become a law, the tonnage of our navy will reach 850,000. General MEYER can rightfully be called one of the legislative builders of the new navy, because during the seventeen years of his service upon the committee more than three-fourths of the new American Navy has been built.

While his education was interrupted during his long service in the army, the training there was useful, as he had learned discipline, self-control, and self-denial, and, in the privations and dangers of army life, human nature in all its phases. Fortunately his habits were studious and his tastes scholastic. He had good judgment and unfailing tact. No circumstance, however embarrassing, disturbed the evenness of his temper, and what he had to do was done at the right time and in the right way, and his words were suitable on all occasions to the matter under discussion. With his self-possession there was in his manner modesty and dignity. With his many attractions, it is not to be wondered that he had ardent admirers and devoted adherents among all classes of people in his district.

When the Fifty-ninth Congress adjourned, which he had attended, General MEYER was apparently in full health and vigor. No Member of it had brighter hopes for the future and none had a clearer conscience for having done his duty well and faithfully. It was expected that he would be returned here for many years to come, so well, so faithfully, and ably had he represented his district.

The day preceding his death he was hopeful of life, bright, and cheerful, expecting to attend the opening of the Sixtieth Congress. We have so often been called upon to pay tribute to the memory of those who have left here in perfect health, but who have been suddenly called, that we must be impressed with the uncertainty of the hour of death.

Determined are the days that fly  
Successive o'er thy head;  
The numbered hour is on the wing  
That lays thee with the dead.

While the hour may have come at an unexpected time, General MEYER was not unprepared for the dreaded ordeal of passing into the unknown—

Across that ebbing tide which has no flow.

His entire life had been a preparation for the conflict with death. He was in no fear of its near approach. Why was there no cloud on the soul of one who had passed through life pursuing professions and callings that carried with them strong temptations?

The unbroken testimony of all who knew him from early manhood is that he had strong convictions of right; that he had the highest order of moral and physical courage; that he had to the fullest measure generous sympathies and impulses, which went out into active work among the poor and afflicted. Possessing such qualities, he filled every office to which he had been called with honor, ability, and fidelity. In war he was a valiant soldier; in peace, a good citizen, an able and conscientious legislator. He loathed the gross sensualisms now so common and deplored, that excessive luxury which commercial prosperity has developed. Apart from the emphatic testimony of his friends, the slightest acquaintance with him was enough to show that his heart was right, full of love and sympathy, and that he was in full fellowship with his Maker, and that he had a clear vision and passionate hatred of all wrong. He never stooped to flatter popular prejudice. He was independent in his political actions, while he gave steady support, so far as they harmonized with his convictions to party policy and discipline. Fortunately, his opinions and temper harmonized with the progressive spirit of his constituents. The commercial, industrial,

agricultural, and professional people rallied around him with their energy and self-confidence, their pride and their patriotism, to the support of a statesman whose aims were lofty and unselfish, whose life was pure and full of kindly feeling for all conditions of humanity and of tender and affectionate love for wife and child. He loved his adopted State with enthusiastic devotion. The splendor of her history, the vast extent of her domain, the manifold resources of her wealth, the learning of her jurists, the character of her people, unsurpassed for energy, intelligence, and hospitality, her strength, and her power.

His glowing patriotism was the spell which bound his people to him. His successful career is remarkable for the abnegation of all selfishness, the sacrifice of personal consideration to a sense of duty so well performed in every station, that his public virtue is to be more admired than any particular act which he did or any particular faculty which he possessed. The personal popularity of General MEYER was such as might be expected from a man who was modest, candid, and affable, without any pretense to genius or great superiority over his fellow-man. His generosity and charity were boundless, limited only to his means of giving. He believed that he who withheld his generosity until death gave nothing at all. A great part of his income went for the relief of the poor and for the support of his faith. In his religious and moral character there is much to admire and imitate. He was a firm believer in his faith, yet he was too firmly imbued with the spirit of the age to judge harshly of those who differed with him. But all forms of vice and all irreverence for religion and impurity in expression were steadily condemned.

There was for his acceptance further preferment and higher reward. The world held out to him promises for greater usefulness and great distinction. But how uncertain is the realization of the hopes and rewards of an earthly career. His untimely death is a warning.

But he had hopes beyond earthly promise. His life was one of continuous endeavor, and to him the promise of eternal life and glory, a trust in God—

To whose eternal doom  
Must bend the sceptered potentates of earth—

was of greater value than the flattering and ephemeral honors of life. He had learned from his sublime faith—

'Tis to the vulgar death too harsh appears,  
The ill we feel is only in our fears;  
To die is landing on some silent shore  
Whose billows never break nor tempest roar;  
Ere well we feel the friendly stroke 'tis o'er.

In this short sketch of General MEYER I have not been blinded by the clouds which gather round the dead, but I have given an impartial though an inadequate description of his character. He had pleasing and elegant manners, was possessed of large general information, and his society was much courted, and those who enjoyed his esteem and confidence learned that each day found him prepared—

To hold his course unfaltering while the voice  
Of truth and virtue up the steep ascent  
Of nature calls him to his high reward—

for in his studied efforts to perfect himself he had—

Summed the actions of the day  
Each night before he slept.

Mr. CLAPP. Mr. President, as we advance into the years the shadows gather about us. One by one those of our own generation pass beyond. General MEYER fell in the full prime of his strength and his achievements. His long service, faithful and successful, might well have been taken as a warrant of additional and still more valuable service and of still greater honors had his life been spared. There is an immutable law which decrees that real honor is intertwined with true achievements. Obedient in his very nature to that law, General MEYER combined with valuable service to his country the gathering of honors to himself.

It has been suggested here this afternoon that these services bear but little fruit unless we consider the lessons which they teach. The chords which reach from the living to the dead, while mystic, silent, and unseen, are vibrant with immortal truths. Of the truths thus borne to us upon this occasion I shall only dwell upon one, and that is the lesson of life, for whatever there may be of immortality, whatever there may be in that which lies beyond, this much is certain: This life is the vestibule of the life to come.

A short time ago in this Chamber I listened to the prayer of one of the great divines of his age, and I heard these words fall from his lips:

We know, O Lord, that Thy omnipotence is our omnipotence if we but be one with Thee.

I believe, sir, that to-day that sentiment would awaken a responsive echo in every pulpit in Christendom; and yet, simple as it is, it reverses the thought and the experience of ages. That simple statement sweeps away the cobwebs of dogma and creed that reach back through the corridors of nineteen centuries to the hour when the Master in turn shook the ritualism of fourteen centuries with the simple statement "The kingdom of heaven is within you." This reversed all that had gone before. This thought, sinking into human consciousness, supports the gospel of word with the gospel of action.

This thought takes from the old creed the constantly reiterated prohibition "Thou shalt not" and in place inserts the injunction "Thou shalt." It substitutes now for hereafter. In this concept of the Infinite, human effort becomes a factor as never before; while it lessens not our thought of immortality, it deepens our appreciation of this life and its opportunities; while it detracts nothing from our worship of the Infinite, it quickens our appreciation of our own powers to reach toward the Infinite.

This is the difference between creeds which, barren of fruitage, barren of blessings to humanity, have passed away, leaving that old, but new, thought of to-day, rich in its blessings, chief of which is the inspiration to human effort, a thought which brings man to a truer and a closer relation with Deity; and in that relationship must be found the truer relationship of man to man—a broadened brotherhood of man. With that truth sinking deeper into our consciousness, we will no longer "remember the dead and forget the living," but while we will still bring our tribute and strew flowers over the grave of the dead, abating nothing of our tender memory of the departed, we will appreciate our duty to those about us and thus reflect sunlight along and strew with flowers the pathway of the living.

Mr. PERKINS. Mr. President, the Congress of the United States lost a most useful Member in the death of Representative ADOLPH MEYER, and the State of Louisiana a most faithful servant. States which send here men of the high character and great ability that he possessed have reason to be proud, and Louisiana fully appreciated the worth of her distinguished son. In all positions which he occupied—in the army, in agricultural pursuits, and in business enterprises—he exhibited those great qualities of sincerity and unselfishness which endeared him to all who knew him. These qualities quickly caused him to occupy a prominent position when he was first elected one of the Representatives of Louisiana in the Fifty-second Congress, and he added materially to the strength of that State's delegation in the House until his death.

For several years he was the ranking member of the Committee on Naval Affairs of the House, and as members of conference committees on naval bills we became well acquainted, and that intimate knowledge of him thus gained excited in me admiration for his ability and profound respect for his character. He was always most courteous and conciliatory in the consideration of the most vexed questions which arose in the consideration of naval questions in conference committee, and at all times showed himself to be most earnest and energetic in the work of building up a great navy.

When he first took his seat in Congress we had launched only one battle ship, the first *Maine*, whose destruction in the harbor of Habana was the immediate cause of the Spanish-American war. We had authorized construction amounting to only \$43,000,000, and the total cost of the entire naval establishment for the year 1891 was only \$25,000,000. The enlisted force of the navy at that time was only 8,250 men, whose pay amounted to \$7,300,000. Since that time our navy as it stands to-day, the second in the world in point of fighting strength, has been built up. What went before was simply the establishment of the foundation.

Mr. MEYER voted for the authorization of practically all but 4 of our 31 battle ships, for all of our 12 armored cruisers, for most of our large fleet of protected cruisers, gunboats, and so forth, for all of which we have up to this time appropriated \$344,904,298, of which he voted for over \$300,000,000. The total yearly cost of the entire naval establishment has grown from \$25,000,000 to \$129,000,000 for the fiscal year of 1908. The number of enlisted men has increased from 8,250 to 44,500, and their pay to \$30,000,000. As we became Members of Congress at about the same time, Representative MEYER and I have voted in favor of the bills which have made our navy what it is to-day. I found in him the same earnest endeavor to create a strong naval force that I myself had, and which prevailed among the Naval Committees of the two Houses.

At the time of the Spanish-American war no one was more active and energetic in all that related to naval affairs than

Representative MEYER, and he was always ready to cooperate for the best interests of the service and of the Nation. In one of the debates on the naval bill in the House Representative MEYER expressed his attitude toward this important arm of the public service thus:

I do not think the navy a subject for partisan discussion. It is one to lift a man above the rancor of a partisan. I should be very sorry to believe that the American people are willing to have the subject of the navy considered in this way. In my service on the Naval Committee I, together with my Democratic colleagues, have ever held this object of preparing the navy for national defense above party, and sought beyond party to develop our strength to the highest degree commensurate with our greatness and safety. I believe that now is the time to build up our navy. I ask the House to give it careful, patriotic consideration, and, in the words of Lawrence, who in Boston Harbor fought his glorious fight, as he fell, maintaining the honor of his country: "Don't give up the ship."

These are the sentiments of every loyal American, and have inspired the efforts of all the members of the Naval Committees of both Houses in their work of upbuilding the navy. They are the sentiments which animate both committees to-day, and I know that the words of the late honored Representative from Louisiana will inspire all future committees in the great work which they will have to do.

We have just seen return to the port from which it sailed over a year ago the most powerful fleet of war vessels which has ever made an extended voyage, and this one has carried the American flag around the world on a course aggregating 42,000 miles. Not one of the 16 battle ships was in the service at the outbreak of the Spanish-American war. In fact, only two had then been launched, and that hardly a month before the outbreak of hostilities. This great modern fleet is nearly five times greater in displacement than was our fighting force in Cuban waters, while the offensive power—the weight of metal that can be fired in a given time—has increased 2,000 per cent; and in striking force the broadsides of the Atlantic Fleet are thirty times that of the fleet which destroyed the Spanish vessels. Besides this, the marksmanship has increased from an average of 5 per cent of hits at the battle of Santiago to about 70 per cent as developed by the practice of the fleet which has just made the circuit of the globe, and the tremendous power which resides in our fleet of modern battle ships will be used, should there be occasion, with the same relentless energy which has always characterized our engagements on the sea, and in time of victory will be held in check in accordance with the humanitarian spirit which actuates the bravest men whose calling is to fight upon the ocean, and which called forth the command of Capt. Jack Philip when Cervera's ships had been riddled and had been run ashore: "Don't fire, boys. Don't you see the poor fellows are drowning?"

The victory won, mercy took the place of battle fury, and the spirit of peace went abroad beneath the clouds of smoke from hostile guns. Such has always been the American Navy, and such it will always be; and for such the man whom we honor here to-day always exerted his strongest efforts. With such men in the councils of the Nation, and such men on the decks of our battle ships, the Republic need have no apprehension as to a foreign foe.

No one would have been more enthusiastic at the record made by the Atlantic Fleet, which has just returned from its world-encircling cruise, than Representative MEYER were he alive to-day. No one would appreciate more than he the value of the lessons learned, the experience gained, and the vast increase given to the efficiency of our sea fighting force through this year's training that it has received. Officers and men are more fit for any duty on the ocean, and problems that twelve months ago would have sorely troubled them have now been solved. The year's cruise has demonstrated that no navy in the world is the superior of our own. It has shown that no better warships are afloat than ours, which fact is due to the ability of our designers and to the skill and faithful workmanship of our mechanics. No machinery has ever better stood the test of use; no vessels ever proved more seaworthy.

And, above all, the men of the fleet have, by their discipline and manliness exhibited in the four quarters of the globe, won the profound respect of all nations. They have exhibited the characteristics which have made, and which will always make, the men of the American Navy the best who ever trod the decks of a man-of-war—self-confidence, self-respect, intense loyalty to the flag, a spirit of self-sacrifice, and a bravery which knows no fear. Officers and men of the Atlantic Fleet have, by the exhibition of these qualities, quadrupled the effectiveness of the American Navy, for the world knows now and knows it thoroughly that the American flag floats above fighters whose ideal is John Paul Jones and whose example they will follow in time of stress. The immortal words, "I have not begun to fight yet," will be their inspiration, and men so inspired can never be de-

feated. Such is the navy that Representative MEYER assisted in creating, and his work is the most important that Members of this body can perform, for it creates the strongest assurances of peace that the Nation can possess.

MR. GALLINGER. Mr. President, others who knew him better than I, have spoken and will speak of the public services of the distinguished man whose memory we all cherish. Mine will be but a few words of heartfelt appreciation.

ADOLPH MEYER entered the House of Representatives at the same time that I became a Member of this body, and he was honored with eight successive elections, representing the district in which New Orleans, his home city, is a part. It was my privilege to become acquainted with him shortly after he entered Congress, and I soon learned to highly value his friendship. He was a man of large business capacity, belonging to the class of men who have built up the great industrial and commercial interests of our country. He was a diligent legislator, among other things, taking a great interest and pride in matters pertaining to the navy, serving with distinction on the Committee on Naval Affairs.

General MEYER was a courtly man—dignified and self-poised under all circumstances. Neither the trappings and follies of ostentatious display nor the common and vulgar things of life appealed to him. He was a genuine knight, with lofty views and pure ambitions, devoted to his friends, and true to the ideals that distinguish the high-minded and honorable public servant.

He was a genial and lovable man, always acting the part of a gentleman of the old school. Courteous, companionable, and sincere, it was a pleasure and delight to meet him, and the memory of his gracious and gentle qualities will long remain with those of us who were privileged to know him. His life was a useful and valuable one, and in his death the State of Louisiana and the Nation sustained a great loss.

Mr. President, it has been said that "the tomb is but the gateway to an eternity of opportunity." If that be so, death is robbed of its terrors, and the future life is to be welcomed rather than dreaded. If that be so, we can think of our departed friend as having simply passed out of mortal sight, to enter upon a higher and happier life beyond. We miss his genial presence here, but his memory will be a benediction and a blessing to the community in which he lived and to the larger constituency which, as a public man, he represented with rare fidelity and ability.

Such men are needed in our national life, and their loss can not be overestimated. But the inevitable fiat came to him, as it will, sooner or later, come to all of us, and fortunate, indeed, will it be if, when the summons comes, we are as well prepared to meet the change as was he of whom we speak to-day.

Mr. President, if our faith in the future life is well founded, how beautifully appropriate are the lines of Rudyard Kipling:

When earth's last picture is painted,  
And the tubes are twisted and dried,  
When the oldest colors have faded,  
And the youngest critic has died,  
We shall rest—and, faith, we shall need it—  
Lie down for an aeon or two,  
Till the Master of all good workmen  
Shall set us to work anew!  
  
And those that were good shall be happy,  
They shall sit in a golden chair;  
They shall splash at a ten-league canvas  
With brushes of comets' hair;  
They shall find real saints to draw from—  
Magdalene, Peter, and Paul;  
They shall work for an age at a sitting  
And never get tired at all!  
  
And only the Master shall praise us,  
And only the Master shall blame;  
And no one shall work for money;  
And no one shall work for fame;  
But each for the joy of the working,  
And each to his separate star,  
Shall draw the thing as he sees it  
For the God of things as they are.

And so I will content myself by placing this simple wreath of affectionate remembrance on the grave of my departed friend, whose memory will be an inspiration to all who knew him, and whose life work points us to high ideals and noble purposes. "May he rest in peace."

MR. FOSTER. Mr. President, twice within the year just ended death has called from Congress a Representative from the State of Louisiana.

On each occasion it was the dean of the delegation to be summoned, and while in an elective body which renews its membership every two years rank does not always mean long tenure,

yet in these instances two Members of unusual length of service went to their reward.

In the case of Gen. ADOLPH MEYER, of the first district, but three of his party then in Congress could claim a longer period of membership in the House.

General MEYER was born at Natchez, Miss., on the banks of the Father of Waters, sixty-five years ago. It would seem that fate decreed all the activities of his life, private and public, should center about the mighty river which cleaves this continent as it flows, unceasing, to the sea.

Whether as a boy upon its banks; as a planter behind the barriers built to keep out the annual flood that sweeps down like the torrent of the Nile; whether as a factor in New Orleans and the consignee of argosies freighted with the staples that line its shores, his name and labors are inseparably connected with the great stream; and his crowning public service in Congress was his effort to create a naval station and a haven at its mouth, where not only vessels of war, but those of peace, from the seven seas might come and make repair.

He received a careful early training, and being of a refined, studious nature, with the means to indulge any bent, it seems but natural that in the selection of a life work his preference should have been the law. The bar of Natchez in that day was famous. Sergeant S. Prentiss was his fellow-townsman, and the meteoric career of that great man could not fail to impress and fire to emulation an ambitious youth.

With the purpose of perfecting himself for a career at the bar young MEYER matriculated at the University of Virginia at the age of 18. He was an apt student, and, with the earnestness and thoroughness that remained his most noble attributes until the end, was preparing at the institution founded by the immortal Jefferson, for the battle of life, when the tocsin of war in reality sounded.

Exchanging the classic shades of the academy for the camp, he displayed soldierly qualities of a high order. He was early promoted to the rank of captain, and given an important staff assignment; and at the close of the war held the post of assistant adjutant-general under Gen. John S. Williams, of Kentucky. The mettle he displayed as a soldier was illustrated years afterwards, when war was declared between this country and Spain. His old commander, in indorsing him for one of the commands of the volunteer forces, wrote to President McKinley as follows:

He was preeminent for soldierly qualities, the loftiest courage, fidelity, and endurance. In fact, he seemed a natural-born soldier, and commanded the confidence and admiration of the entire command.

The Senate is familiar with the fate of the confederate soldier, when, bowing to the arbitrament of war, he returned home. Many of that gallant host were subsequently sent to Congress by a grateful people, and on occasions like this their valor, fortitude, and privations have been so often and eloquently told that they need be but referred to now.

When the young captain returned to Natchez after the unequal struggle, it was to put behind him all dreams of preferment at the bar, to cross over the great river into Concordia Parish, La., and begin life anew as a cotton planter.

While thus engaged he acquired much practical knowledge of the levee system and other needs of the alluvial country that was subsequently used here to the advantage of his State. He was by temperament, however, adapted to and longed for an urban rather than a country life, and after a few years of planting moved to New Orleans and engaged in the cotton factorage and commission business.

Those were stirring times in Louisiana. It was the period of reconstruction, and a condition frequently existed amounting to civil war. It was a time of peril, especially to the white people living in the outlying districts, and their chief reliance lay in their militia.

While this condition prevailed, General MEYER was called upon, by reason of his experience in the confederate army, to reorganize the state troops, and under his command the Louisiana Militia became efficient to a high degree.

In 1890 he was elected a Representative to Congress, and at once demonstrated a peculiar fitness for the place. He was ever watchful of the interests of his State, painstaking and energetic in his efforts to serve his people, and broad and liberal in his treatment of all public questions. He was at all times affable and easy of approach and ever ready to listen to the appeal of the humblest as well as the highest who might seek his aid or counsel.

These qualities in time became proverbial, not only in his own district, but throughout the State. He thus established a place for himself in the confidence and esteem of the people, and was renominated and reelected practically without opposition during his long service in the other branch of Congress.

His career in that body as one of the hardest workers and leaders of his party is familiar to most Senators. While making no pretense at rhetorical effect, he gave to every subject discussed the thorough consideration of the student, and when he addressed the House his speeches were noted for their thought and literary excellence.

His best work, however, was done in council—in committee—where his prudence, fairness, conservatism, and wisdom were early recognized and highly valued to the end.

On entering upon his duties in the House he was assigned to the Committee on Naval Affairs, and he was the oldest-ranking member at the time of death. When he became a Member, there was not a battle ship on the naval list, and our tonnage was less than one-quarter of what it is to-day. No one labored more industriously to have our sea force grow and wax strong, and in the language of the chairman of the House committee:

General MEYER can rightfully be called one of the legislative builders of the new navy, because during the seventeen years of his service upon the committee more than three-fourths of the new American navy has been built.

But it is with the naval station at Algiers that his name will be most enduringly connected. His efforts in the House in conjunction with the labors of the senior Senator from our State in this Chamber resulted in the establishment of a floating dock where the largest ships may be repaired. More than a million six hundred thousand dollars have already been expended on this great work, and while not yet completed, it stands a monument to his foresight, persistency, and untiring zeal.

So likewise must his name be connected with much other notable legislation affecting his district and State. He labored for years to secure the completion of the shaft which marks the field of Chalmette, just below New Orleans, where General Jackson won his immortal victory over the British legions fresh from their laurels at Waterloo.

He was ever active in securing the needed appropriations for his State. With his colleagues he worked assiduously and successfully to obtain the necessary funds for the building and maintenance of our levees; for deepening and widening the mouth of the Mississippi River; for the retention in active operation of the United States mint; for the construction of the post-office building in his city; and for the river improvements in front of New Orleans—all works of vast importance to the general public.

His efforts, however, were by no means confined to Louisiana. He was connected with the Committee on District Affairs almost as long as he served on the Naval Committee, and labored as zealously to make this the most beautiful capital in the world as he did to restore the American flag to its proud position on the sea.

Personally, General MEYER had many charms and attractions. He was always kind, gentle, and considerate in his daily associations, a loyal and stalwart friend, and never forgot a kindness. He was a devoted husband, a kind parent, and affectionate brother; ever bright, cheerful, and thoughtful of the happiness of each and every one in the family circle, and never permitted the duties of his public life to mar or distract the harmony and happiness of his home.

Few men have sacrificed at the altar of public service more liberally than he. To give the best that was in him to the State, with an unstinted hand, and keep no reckoning; to labor in the public vineyard from the early morn of life until an end that came just as twilight greeted the evening star; to serve in camp or council as chance and duty might decree, and then to lie down to rest with the consciousness of work well and faithfully performed is a record of which Louisiana is justly proud.

#### MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE BRICK.

MR. BEVERIDGE. Mr. President, I submit the resolutions which I send to the desk, and ask for their adoption.

THE VICE-PRESIDENT. The Senator from Indiana offers resolutions, which will be read:

The resolutions were read, considered by unanimous consent, and unanimously agreed to, as follows:

Senate resolution 314.

*Resolved*, That the Senate has heard with profound sorrow of the death of the Hon. ABRAHAM LINCOLN BRICK, late a Member of the House of Representatives from the State of Indiana.

*Resolved*, That the business of the Senate be now suspended in order that a fitting tribute may be paid to his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

MR. BEVERIDGE. Mr. President, I rise to pay a tribute of admiration and affection to the memory of the Hon. ABRAHAM LINCOLN BRICK, late Representative in Congress from the Thirteenth Congressional District of Indiana, who departed this life on April 7 of last year. In saying the few words

which I shall speak I know that I voice the sentiment of all the people of the thirteenth district regardless of creeds or parties.

Mr. BRICK was born in St. Joseph County May 27, 1860, just at the beginning of that mighty conflict to save the Nation's life, and it was natural that the loyalty of his parents should find their highest expression in bestowing upon their son the name of that wonderful man under whose guidance the Nation came through the desperate peril which for five years threatened its existence.

Very early in life Mr. BRICK showed unusual mental gifts, and he was noted even in the common schools for his brilliance of mind. He went through the usual course of our common-school instruction, and finally was graduated from the South Bend High School. Later he attended Cornell, Yale, and Michigan universities. After having graduated from the law department of Michigan University in 1883 he began the practice of law in South Bend.

It was not a great while before ABRAHAM L. BRICK became known as one of the very ablest young lawyers, not only of his district, but of the whole State. Few men of his age anywhere were better grounded in legal principles or acquired a richer legal learning. In 1886 he was elected prosecutor for the counties of St. Joseph and Laporte, and he conducted this office with such distinction that the people showed their approval by making him their Representative. He was elected to the Fifty-sixth Congress and reelected to the Fifty-seventh, Fifty-eighth, Fifty-ninth, and Sixtieth Congresses.

In the House of Representatives he constantly grew in influence and efficiency. He was gradually advanced to the membership of important House committees, his ability and industry in every instance having justified his appointment. His work on the House committees was painstaking and thorough, and his judgment upon matters referred to him for settlement was singularly clear and sound. He won the absolute confidence of his colleagues in the House, regardless of party, and he won it by solid work and careful study. He was approaching the fullness and maturity of his unusual powers when death suddenly laid her hand upon his heart, and he passed away from us for a little while.

Mr. BRICK was a mingling of courage and modesty, of rugged strength and a woman's loveliness, of a lawyer's keenness and a poet's imagination. He was an example of the influence which the tremendous moral and intellectual activities of the people at the time of his birth produced upon the children born during that period. He was delicately sensitive to all the nobler impulses, and his bravery amounted to absolute fearlessness. His mind was electric in its rapid operations, and mathematical in the correctness of its conclusions. In his friendships he was loyal, and his devotion to those to whom he gave his heart was almost passionate.

Not only was he deeply versed in the law, but he was a wide reader of all literature. I shall never forget one particular evening which we spent together in my apartments reading Markham's immortal poem on Abraham Lincoln and talking about the large things of history and fate. His brilliancy of speech, his fertility of thought, his wide information were as astonishing as they were delightful.

Mr. BRICK was a stalwart Republican. He profoundly believed in what he understood to be the principles of that party, and he felt that the welfare of his country could best be secured by Republican policies and government. He was a partisan, but with him partisanship meant patriotism.

He has gone from our physical presence, but not from our hearts and our memories. No one who ever knew him ever will forget ABRAHAM LINCOLN BRICK. There are those who look on death as a cruel thing, but I never could share this view. Surely we go hence to something better, purer, nobler; and if we do, death is no more to be regretted than is birth, just as death is no greater a mystery than birth. So death should be accepted as only an incident in an eternal life.

That man is fortunate who, when death comes to him, can leave behind a record of useful work accomplished, of needed things actually done. And particularly fortunate is that man to whom the people give their commission to do their work. As I view it, all good work of every kind, whether in private or public life, is equally important. We can not get along without any of it. The man who digs a well has done as good a thing as the man who erects a monument; the explorer is as admirable as the inventor; the brick mason as necessary as the merchant. But perhaps work done for the people as a public servant, while not of any greater value than any other work, is more distinguished for its largeness and touches more human beings. To do this work fell to the lot of ABRAHAM LINCOLN BRICK; he did it superbly, and he leaves behind a clean, bright record of labor faithfully performed for the Nation.

Mr. HEMENWAY. Mr. President, ABRAHAM LINCOLN BRICK was born in St. Joseph County, Ind., May 27, 1860, and that county was his home until the time of his death, when his body was laid tenderly at rest there forever, and where he is remembered to-day lovingly and pleasantly by thousands of sorrowing friends. We lay aside for a time to-day the cares and duties of public life to pay tribute to his memory, and recall again to our minds his pleasing and charming personality, his high sense of honor and patriotism, and his strong devotion to the service of his people.

The Congress of the United States is made up of men of varied character and temperament, but none render better service to their country than those substantial, hard-working men who attend to their duties and are imbued with the desire to work out substantial legislation that will be of real benefit to the people. In fact, it has been said by an eminent Speaker of the House of Representatives that the real work of Congress is done in the committee rooms, where bills are carefully scrutinized, data collected, and information sought as to the real and practical effect of proposed legislation. The value of this work can not be overestimated, and it was here that Mr. BRICK served his country best. He was an able lawyer, with a strong analytical mind, with an honest desire to work out good legislation. He did not spend his time seeking to find out what policy might be popular and then advocate such policy, but he rather tried to determine whether or not a given proposition or policy was right.

This Government of ours is a tremendous business institution, and it will prosper or fail just in the degree in which business methods are applied in the administration of its affairs. In the fourteen years that I have spent in the American Congress I have observed that more lasting and substantial good has been accomplished by the common sense, practical legislator who threw aside all desire for popular approval and worked with the purpose of securing good legislation, rather than by the theorist who is always seeking something that will attract attention and abandoning that as soon as he finds something more attractive, and all the while seeming to be impressed with the idea that the weight of nations rests on his shoulders. Mr. BRICK belonged to the former class, and when he passed away the people of his district and the State of Indiana and the whole Nation lost a safe and valuable public servant.

Mr. BRICK was a college graduate and a scholarly, cultured gentleman, but in addition to this he had a quality which colleges and universities can not give, and without which their training is useless, and that is common sense. He was my personal friend, and I learned to know him for his true worth. He was broad minded, unselfish, and charitable. He was proud of Indiana and of her history. He was honored by her people and he in turn honored them. In Washington he is remembered with respect and pride. In Indiana he is remembered with gratitude.

#### MEMORIAL ADDRESSES ON THE LATE REPRESENTATIVE GRANGER.

Mr. ALDRICH. Mr. President, I offer the resolutions which I send to the desk.

The VICE-PRESIDENT. The resolutions will be read by the Secretary.

The resolutions were read, considered by unanimous consent, and unanimously agreed to, as follows:

Senate resolution 313.

*Resolved*, That the Senate has heard with profound sorrow the announcement of the death of the Hon. DANIEL L. D. GRANGER, late a Representative from the State of Rhode Island.

*Resolved*, That the business of the Senate be now suspended in order that fitting tribute may be paid to his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Mr. ALDRICH. Mr. President, Mr. GRANGER was born in Providence, R. I., in 1852. He was educated in the public schools of Providence and graduated from Brown University. He was a lawyer by profession, and engaged in active practice until 1889, when he was elected city treasurer of the city of Providence. He served in that capacity for eleven years, and was a faithful and efficient public servant, securing the confidence and support of members of both political parties.

In 1900 he was elected mayor of the city of Providence, and was reelected in 1901. The success of his administration as the chief magistrate of his native city strengthened the esteem continuously accorded to him by the people of Providence.

He was elected to the House of Representatives as a Democrat in 1902, and reelected in 1904 and 1906. For twenty years—

almost the entire period of his active life—he was engaged in the public service.

The depth and sincerity of the regard with which he was held by a very wide circle of friends and admirers was evidenced by the numerous tributes to his memory, made public at the time that his death was announced in Providence.

Mr. GRANGER was closely affiliated with St. John's Episcopal Church in Providence, and was one of its most active and influential members. He was vestryman of the church, and for twenty-five years preceding his election to Congress was superintendent of its Sunday school. He was frequently a lay member of church conventions.

I can perhaps best illustrate the position held by Mr. GRANGER in the estimation of representative men of Providence by quoting from recent statements made by the Right Rev. W. N. McVickar, bishop of Rhode Island, and Col. R. H. I. Goddard, one of Rhode Island's leading citizens.

Bishop McVickar, in speaking of Mr. GRANGER's death, said:

Both church and state have lost a very valuable man, a man who was noted for his high principles and integrity. He was a man whom the State and city had delighted to honor.

Colonel Goddard said:

Mr. GRANGER was a faithful city treasurer, an excellent mayor, and an able Representative in Congress. His death is a distinct loss to Rhode Island, whose interests he served most conscientiously. In his private life he was exemplary, and throughout his public career he stood for the highest standards of political honor.

These expressions fairly represent the estimate placed upon the character and services of Mr. GRANGER by those who knew him best and were most closely associated with him in his religious and political life. This judgment of those most familiar with his successful public career and his many private virtues enables us to measure the loss sustained by the people of Rhode Island in the death of Mr. GRANGER.

Mr. WETMORE. Mr. President, DANIEL LARNED DAVIS GRANGER was born at Providence, R. I., May 30, 1852, and died at Washington February 14, 1909. His funeral took place from St. John's Protestant Episcopal Church, at Providence, and he was buried at Swan Point Cemetery on February 17.

Mr. GRANGER was fitted for college in the schools of his native city; was graduated from Brown University in the class of 1874, from Boston University in 1877, with the degree of LL. B.; was admitted to the bar of Rhode Island the same year, to the United States bar in 1882, and for ten years practiced his profession. In 1902 he received the honorary degree of A. M. from his alma mater.

The first of Mr. GRANGER's family in America, Launcelot Granger, was an inhabitant of Ipswich, Mass., as early as 1648, and afterwards of Newberry, in the same State. He went to Suffield, Conn., in 1674, where the line of descent of Congressman GRANGER remained until his great-grandfather and grandfather removed to Buffalo in 1800 and 1806.

Capt. Abner Granger, the great-grandfather, was present at the battle of Crown Point in 1758 and the taking of Montreal in 1760. He took part in the battles about New York, in New Jersey, and Pennsylvania, and during the winter of 1777-78 was at Valley Forge. He was also a participant in the war of 1812. At his death, in 1816, a Buffalo newspaper described him in an obituary notice as a "veteran of three wars."

Judge Erastus Granger, the grandfather, was appointed by Jefferson agent for the Six Nations, and also by him postmaster, surveyor of the port, and collector of the port of Buffalo, performing the duties of the three last offices by deputy. He was also one of the judges of the court of Genesee, supervisor of Buffalo, and one of the founders of St. Paul's Episcopal Church, being its first senior warden. As Indian agent he was largely instrumental in making a treaty with the Six Nations which bound them to neutrality; and afterwards, when they openly joined the side of the Americans, he was commissioned as lieutenant-colonel of New York Volunteers and went to the front with them to Canada.

The Rev. James Nathaniel Granger, D. D., the father, was born at Canandaigua, N. Y. In 1828 he received an appointment to the United States Military Academy at West Point, but, deciding to become a clergyman, entered the Hamilton Literary and Theological Institute, now Colgate University, and was graduated from the collegiate department and theological school. In 1842 he became pastor of the First Baptist Church of Providence, R. I., and was for many years president of the Rhode Island Baptist State Convention, president of the Rhode Island State Sunday School Union, trustee and fellow of Brown University and a member of its executive board.

Outside of his political activities, Mr. D. L. D. GRANGER was a trustee of the Providence Public Library and a member of the Rhode Island Historical Society. His interest in religious matters and the appreciation in which he was held by the Protestant Episcopal Church of his State is shown by the positions he held in that denomination, having been president of the Churchman's Club, member of the standing committee of the diocese, member of the vestry of St. John's Church, and for twenty-five years preceding his election to Congress superintendent of its Sunday school.

Before his election to the United States House of Representatives Mr. GRANGER was twice reading clerk of the house of representatives of Rhode Island, city treasurer of Providence for eleven years, from 1890 to 1900, and mayor of Providence for two terms, for the years 1900 and 1901.

Mr. GRANGER was elected from the first district of Rhode Island to the House of Representatives for the Fifty-eighth, Fifty-ninth, and Sixtieth Congresses and defeated last November for the Sixty-first Congress. During his service in the House of Representatives he was a member of the Committee on the Revision of the Laws and the Committee on Ways and Means.

As an evidence of the loyalty of Mr. GRANGER's political supporters I would state that in the Rhode Island election of 1907 the Democratic candidate for governor was elected by a plurality of over 2,000 votes, and the full Democratic ticket for the general assembly from the city of Providence, a part of his congressional district, was elected by an average plurality of over 3,000 votes.

At the elections last November, the presidential year, when Mr. Taft received a larger plurality than President Roosevelt in 1904, the situation described a little above was reversed, and the Republican candidate for governor was elected by a plurality of over 7,000 and the full Republican ticket for the general assembly from the city of Providence was elected by an average plurality of almost 1,000, and yet Mr. GRANGER was defeated by only 81 votes.

For some time past Mr. GRANGER's health had been seriously affected, and he was obliged during a part of two sessions of Congress to go to Florida and the South, the condition of his health being apparently much benefited by so doing. Last summer, when in England, he had, however, such a severe attack of the heart that on his return home he was advised by his physician to take little or no part in the presidential campaign, an admonition which he submitted to with rare exceptions. On November 7 last he was stricken on his way to Buffalo with a much severer similar attack, from which he never recovered to any extent.

On his death the governor of Rhode Island, a Republican, communicated the following message to the general assembly:

As chief executive of the State, it becomes my painful duty to communicate officially to you the fact of the death of Hon. DANIEL L. D. GRANGER, Member of Congress from the First Congressional District of Rhode Island for the term ending March 4, 1909, which occurred at Washington, D. C., on the evening of Sunday, February 14.

As a lawyer, statesman, and citizen, Congressman GRANGER held a place in the confidence and esteem of the people that it fails to the lot of few to attain. In the belief that some fitting recognition of his service to the State should be accorded by its legislative body, I would respectfully recommend that on the day of the funeral, Wednesday, February 17, all business before the general assembly that does not necessitate immediate action be suspended for the day.

As a further mark of respect, I have ordered that the flags on all state buildings in Rhode Island be placed at half mast on the day of the funeral, from sunrise until the completion of the funeral ceremonies.

The general assembly of Rhode Island, Republican, by 95 to 12, under a suspension of the rules, passed by unanimous vote of both branches the following resolutions of respect:

*Resolved*, That the general assembly, through the message of his excellency the governor, learns with profound regret of the death of the Hon. DANIEL L. D. GRANGER, Member of the Sixtieth Congress for the First District of Rhode Island.

*Resolved*, That the extended and exalted public services of Mr. GRANGER entitle his memory to the highest respect of the people of the State.

*Resolved*, That as a mark of appreciation of Mr. GRANGER's devotion to his ideals of right and his ever-faithful performance of duty the general assembly shall, on Wednesday, the 17th day of February, the day of the funeral, adjourn at the earliest practicable hour.

*Resolved*, That a committee of the general assembly, comprising three members of the senate, to be appointed by his excellency the governor, and four members of the house of representatives, to be appointed by the honorable speaker, be, and the same is hereby, created to represent the general assembly at the funeral ceremonies.

Mr. President, as a further mark of respect to the memory of the deceased, I move that the Senate adjourn.

The motion was unanimously agreed to; and (at 5 o'clock and 27 minutes p. m.) the Senate adjourned until Monday, March 1, 1909, at 11 o'clock a. m.

## HOUSE OF REPRESENTATIVES.

SATURDAY, February 27, 1909.

[Continuation of legislative day of Tuesday, February 23, 1909.]

The recess having expired, the House, at 11 o'clock a. m., was called to order by the Speaker.

## PENSIONS.

Mr. LOUDENSLAGER. Mr. Speaker, I ask unanimous consent to take from the table the motion to reconsider the vote whereby the bill (S. 9278) granting pensions and increase of pensions to certain soldiers and sailors of wars other than the civil war and to certain dependent relatives of such soldiers and sailors was passed and to reconsider the vote by which the bill was passed and the motion to reconsider laid on the table.

The SPEAKER. The gentleman from New Jersey asks unanimous consent to take from the table the bill S. 9278, and to reconsider the vote whereby the bill was passed. Is there objection?

Mr. CLARK of Missouri. What is this?

Mr. LOUDENSLAGER. This is a Senate bill that came over and was referred to our committee. The committee of the House put some amendments on it. Last night the bill was called up and passed, but passed as it came from the Senate, without the House amendments, and we want to reconsider the vote and put in the House amendments.

Mr. CLARK of Missouri. To whom does it give pensions?

Mr. LOUDENSLAGER. It is an omnibus bill, with several beneficiaries in it.

Mr. MANN. It is not a general pension bill.

The SPEAKER. The gentleman asks unanimous consent to reconsider the vote. Is there objection?

There was no objection.

Mr. LOUDENSLAGER. Now, Mr. Speaker, I offer the following committee amendments.

The Clerk read as follows:

Page 2, strike out lines 7, 8, 9, 10, and 11, as follows: "The name of Frances D. Webster, dependent mother of James D. Webster, late of Company A, Ninth Regiment U. S. Infantry, war with Spain, and pay her a pension at the rate of \$24 per month in lieu of that she is now receiving."

Page 3, strike out lines 5, 6, 7, and 8: "The name of Florence Van Etta, former widow of John H. Purcell, late first lieutenant, First Regiment U. S. Infantry, and pay her a pension at the rate of \$20 per month."

Page 4, strike out lines 5, 6, and 7, as follows: "The name of Ellen Bernard Lee, widow of Fitzhugh Lee, late brigadier-general, United States Army, and pay her a pension at the rate of \$50 per month."

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

The amendments were agreed to.

The bill as amended was ordered to be read a third time, was read the third time, and passed.

Mr. LOUDENSLAGER. Now, Mr. Speaker, I ask to take from the table a motion to reconsider the vote whereby the bill (S. 9421) granting pensions and increase of pensions to certain soldiers and sailors of wars other than the civil war and to certain widows and dependent and helpless relatives of such soldiers and sailors was passed. The same reasons apply to that bill.

The SPEAKER. The gentleman from New Jersey asks consent to take from the table the motion to reconsider and reconsider the vote whereby the bill referred to was passed. Is there objection?

There was no objection.

Mr. LOUDENSLAGER. Now, Mr. Speaker, I offer the following amendments recommended by the committee.

The Clerk read as follows:

On page 1 strike out all of lines 6, 7, 8, and 9, in the case of Jay B. Sessions.

On page 2 strike out all of lines 1, 2, 3, and 4, in the case of Winslow H. Reaves.

On page 2, line 7, strike out "forty" and insert "thirty," in the case of Marianna C. Rockwell.

On page 2, line 10, strike out "fifty" and insert "thirty," in the case of Samuel H. Askew.

On page 2, line 14, strike out "twenty" and insert "twelve," in the case of William G. Glasgow.

The amendments were agreed to.

The bill as amended was ordered to be read a third time, was read the third time, and passed.

Mr. LOUDENSLAGER. Mr. Speaker, I ask unanimous consent that the bill H. R. 27249 be taken from the Speaker's table and the House disagree to the Senate amendments and ask for a conference.

Mr. JONES of Virginia. Mr. Speaker, reserving the right to object, I want to ask the gentleman a question. Is there a provision in one of these bills for pensioning Ellen Bernard Lee, widow of Fitzhugh Lee?

Mr. LOUDENSLAGER. No; there is not.

Mr. JONES of Virginia. Was the provision disagreed to by the House?

Mr. LOUDENSLAGER. It was.

Mr. JONES of Virginia. Then, Mr. Speaker, unless the gentleman will consent to an amendment of this bill incorporating the name of Ellen Bernard Lee, I am afraid I shall have to object to the consideration.

Mr. LOUDENSLAGER. We could not agree on it.

Mr. JONES of Virginia. I will ask the gentleman why the amendment was rejected.

Mr. LOUDENSLAGER. I can only say that Mrs. Lee is the widow of a Regular Army officer who had been in the service for a very short period. He died without any disability incurred in the service, and it has been the uniform practice of both committees not to grant pensions to either the widows of officers or the widows of soldiers or sailors who served in the regular service in time of peace. He did not die from disabilities received in the service, and this would be an exception, and an exception in favor of the widow of an officer who served but a very short period and during a time of peace.

Mr. JONES of Virginia. Mr. Speaker, I would like to make just a brief statement in regard to what the gentleman from New Jersey [Mr. LOUDENSLAGER] has said. The Senate has passed a bill to grant a pension to Mrs. Lee, widow of the late Gen. Fitzhugh Lee, but up to this time the House Committee on Pensions has failed to act upon it. General Lee was not only a major-general in the Spanish war, and he not only performed distinguished services as consul-general at Habana just prior to the beginning of that war, but, in addition to this, Mr. Speaker, he served in the Regular Army of the United States prior to the civil war, during which service he was seriously wounded in a fight with the Indians. If it be true, as has been stated, that his service as brigadier-general in the Regular Army subsequent to the Spanish war was of short duration, it should not be forgotten that he held high command and rendered distinguished services during that war, and that he well-nigh lost his life when a young lieutenant fighting Indians on the frontier prior to the civil war.

Mr. LOUDENSLAGER. Mr. Speaker, as this bill does not pertain at all to the question referred to by the gentleman from Virginia, I withdraw my request.

Mr. JONES of Virginia. Mr. Speaker, I do not want to delay the passage of the bill, and rather than do that I will withdraw my objection. My only purpose in objecting to this particular bill, or rather reserving the right to object, was to put the House in possession of the real facts connected with the military services of General Lee.

Mr. LOUDENSLAGER. Mr. Speaker, I will say to the gentleman that I will take the matter up at some other time.

## SELLING SURPLUS INDIAN LANDS, KAW AND OSAGE TRIBES.

Mr. SHERMAN. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (S. 8554) authorizing the Secretary of the Interior to sell part or all of the surplus lands of members of the Kaw, or Kansas, and Osage tribes of Indians in Oklahoma, and for other purposes, which I send to the desk and ask to have read. I will state that this is the bill I had the other day, and to which the gentleman from Illinois [Mr. MANN] objected. He now withdraws his objection.

The Clerk read as follows:

*Be it enacted, etc.*, That the Secretary of the Interior be, and he hereby is, authorized and empowered, upon application, to sell, under such rules and regulations as he may prescribe, part or all of the surplus lands of any member of the Kaw, or Kansas, and Osage tribes of Indians in Oklahoma: *Provided*, That the sales of the Osage lands shall be subject to the reserved rights of the tribe in oil, gas, and other minerals.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. The question is on the third reading of the Senate bill.

The bill was ordered to be read a third time, was read the third time, and passed.

JOHN SHULL.

The SPEAKER laid before the House the bill (H. R. 4286) for the relief of John Shull, with Senate amendments thereto.

The Senate amendments were read.

Mr. MILLER. Mr. Speaker, I move to concur in the Senate amendments.

The motion was agreed to.

## COMPAÑIA DE LOS FERROCARRILES DE PUERTO RICO.

The SPEAKER laid before the House the bill (H. R. 15681) for the relief of the Compañia de los Ferrocarriles de Puerto Rico, with Senate amendments thereto.

The Senate amendments were read.

Mr. MILLER. Mr. Speaker, I move to concur in the Senate amendments.

Mr. CARLIN. Mr. Speaker, I will ask what committee that comes from?

Mr. MILLER. It comes from the Committee on Claims.

Mr. CARLIN. I would like to ask the gentleman if those bills were reported by a majority of the full committee or by a committee of four, appointed to consider the Senate bill.

Mr. MILLER. They were reported by the full committee, and passed by the committee, and this has been passed by the Senate with an amendment, simply a change in the wording of the original report.

Mr. CARLIN. Is it not true that the gentleman's committee has delegated its authority, with reference to Senate bills, to a committee of four?

Mr. MANN. Mr. Speaker, to that I make a point of order.

The SPEAKER. The point of order is sustained.

Mr. CARLIN. Does this require unanimous consent?

The SPEAKER. It does not. The question is on the motion of the gentleman from Kansas that the House concur in the Senate amendments.

The question was taken, and the Senate amendments were concurred in.

#### INTERNATIONAL CONGRESS OF APPLIED CHEMISTRY.

Mr. HARRISON. Mr. Speaker, I ask unanimous consent for the present consideration of House joint resolution 261, authorizing the President of the United States to invite the International Congress of Applied Chemistry to hold its eighth meeting in the United States of America in the year 1912, which I send to the desk and ask to have read.

The Clerk read as follows:

#### House joint resolution 261.

*Resolved, etc.*, That the President of the United States be, and is hereby, authorized to invite the International Congress of Applied Chemistry, now about to assemble in the city of London, to hold its eighth meeting in the United States of America in the year 1912: *Provided, however*, That no appropriation shall be asked or granted for any expense connected with said congress.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none. The question is on the engrossment and third reading of the House joint resolution.

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed.

#### ASSIGNMENT OF ROOMS, CAPITOL AND OFFICE BUILDING.

Mr. MANN. Mr. Speaker, from the Committee on Distribution of House Rooms, I present the following privileged report (H. Rept. No. 2277) and resolution, which I send to the desk and asked to have read.

The Clerk read as follows:

#### House resolution 599.

*Resolved*, That the following assignment of rooms be, and the same is hereby, made, to wit:

#### IN THE CAPITOL BUILDING.

To the Committee on Elections No. 2, the room on the first floor now occupied by the Committee on the Judiciary.

To the Committee on Foreign Affairs, the rooms now occupied by the Committee on Elections No. 1 and No. 2.

The room now occupied by the Committee on Foreign Affairs is hereby assigned to be used as a ladies' retiring room.

The space now occupied for ladies' retiring room is hereby assigned to be used as a part of the reporters' gallery.

#### IN THE HOUSE OFFICE BUILDING.

To the Committee on the Judiciary, rooms 481, 483, and 483A.

To the Committee on Elections No. 1, room 297, heretofore assigned for the use of the press.

To the Committee on Banking and Currency, as an additional room, room 450.

The SPEAKER. The question is on agreeing to the resolution. The question was taken, and the resolution was agreed to.

Mr. SMITH of Michigan. Mr. Speaker, I call up the bill S. 8520.

The SPEAKER. The Chair can not recognize the gentleman until some matters of a privileged nature are disposed of, at least the Chair desires to give the House an opportunity to dispose of them before the District of Columbia matter is considered.

Mr. SMITH of Michigan. Then, Mr. Speaker, I move to suspend the rules and—

The SPEAKER. One moment. The Chair has a few matters, if the gentleman will withhold his matter.

#### AGRICULTURAL APPROPRIATION BILL.

Mr. SCOTT. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 27053) making appropriation for the Department of Agriculture, to nonconcur in the Senate amendments, and ask for a conference.

The SPEAKER. The gentleman from Kansas asks unanimous consent to take from the Speaker's table the agricultural appropriation bill, to disagree to the Senate amendments, and ask for a conference. Is there objection? [After a pause.] The Chair hears none.

The Chair announces the following conferees.

The Clerk read as follows:

Mr. SCOTT, Mr. HAUGEN, and Mr. LAMB.

#### PERSONAL PRIVILEGE.

Mr. COOK of Colorado. Mr. Speaker—

The SPEAKER. For what purpose does the gentleman rise?

Mr. COOK of Colorado. To a question of personal privilege. The SPEAKER. But matters of the highest privilege are now being considered. However, the gentleman will state it.

Mr. COOK of Colorado. Mr. Speaker, in the Washington Post of this morning an article headed "Fun for President" is published. I desire, Mr. Speaker, to read a portion of the article given out at the White House, referring to me as a Member of this House.

As had been arranged Thursday, the House yesterday morning referred to a select committee the speech of Representative Cook, in which he assailed the President. The resolution referring the speech to a committee was introduced by Chairman TAWNEY, of the Appropriations Committee, after being suggested by Representative HUGHES of West Virginia. The committee will report to the House on Monday what action it recommends.

The debate on the resolution was largely parliamentary, but CHAMP CLARK opposed it on general grounds, declaring that he had opposed expunging Mr. WILLETT's remarks, because it was a tendency toward throttling free speech, and he opposed expunging the remarks of Mr. Cook on the same ground. He did so, he declared, the more freely because Mr. Cook was a Republican, and no trace of partisanship could be seen in his action.

#### SUGGESTED CAUSE OF ATTACK.

It was said at the White House yesterday that Mr. Cook's recent outburst may have been inspired by the President's opposition to a measure which he has been endeavoring to have become a law, dealing with a question of the boundary of Colorado. It was pointed out to Mr. Cook that, under the Constitution, it was necessary to have affirmative action of the Colorado legislature before Congress could act in the matter, but that difficulty did not seem to appeal to him as of sufficient weight.

This speech is the second time Mr. Cook has "gone after" the President. About a year ago, soon after he came to Congress, and during the preliminary campaign for the Republican presidential nomination, he sent out a letter attacking Mr. Roosevelt savagely. Mr. Cook was elected Congressman-at-large from Colorado in 1906, succeeding Franklin E. Brooks, of Colorado Springs. He was not renominated last summer, and the man who did get the Republican nomination was defeated by a Democrat at the November elections.

Mr. COOK of Colorado. Mr. Speaker, I positively deny the President of the United States—

Mr. PAYNE. Mr. Speaker, I submit to the Chair that this is not a question of personal privilege, from beginning to end, and I make the point of order against it.

The SPEAKER. The gentleman from New York makes the point of order that the gentleman from Colorado does not present a matter of personal privilege. The Chair must say, having listened to the reading of the article, that it does not seem to the Chair that the article affects the gentleman in his representative capacity; and the gentleman, in the opinion of the Chair, could only proceed by unanimous consent.

Mr. MACON. Mr. Speaker, I ask that the gentleman may be allowed to proceed—

Mr. PAYNE. How much time does the gentleman desire?

Mr. COOK of Colorado. About four minutes.

Mr. PAYNE. Mr. Speaker, I ask unanimous consent that the gentleman may have four minutes.

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

Mr. COOK of Colorado. Mr. Speaker, I positively deny the President of the United States pointed out to me that under the Constitution it was necessary to have affirmative action of the Colorado legislature before action could be taken in the matter. In the President's veto of the Colorado, Oklahoma, and New Mexico boundary-line bill, he gave as a reason for vetoing the boundary-line bill passed by the Sixtieth Congress that it would remove from the jurisdiction of Colorado and add to the Territory of New Mexico at least five post-offices and an appreciable number of inhabitants. This is also an incorrect statement, in proof of which I hold a letter, signed personally by Mr. Meyer, the Postmaster-General, dated January 20, 1909, which I read:

OFFICE OF THE POSTMASTER-GENERAL,  
Washington, D. C., January 20, 1909.

MY DEAR CONGRESSMAN: In answer to your letter of January 19, requesting the names of any post-offices that were taken from Colorado and reestablished in the Territory of New Mexico under what is known as the "Carpenter survey," I have to advise you that the only post-office shown by the records of this department to have been affected by that survey is that of Edith, N. Mex., which, in accordance with the

survey, was changed from Colorado to New Mexico in 1904. Edith post-office is shown on the current post-route map of the Territory of New Mexico.

Respectfully,

Hon. GEORGE W. COOK,  
House of Representatives.

GEO. V. L. MEYER.

Mr. COOK of Colorado. This transfer was made at the time the Interior Department approved and accepted the Carpenter survey establishing the thirty-seventh parallel and boundary line between Colorado, Oklahoma, and the Territory of New Mexico. The thirty-seventh parallel and boundary line was established by the act making Colorado a Territory February 28, 1861 (12 Stat. L., 172), and by the enabling act passed by Congress March 3, 1875, and accepted in the constitution of Colorado when admitted into the Union in 1876. If the President had taken time to refer to his letter of January 10, 1905, addressed to the Senate and House of Representatives inclosing a letter from Secretary Hitchcock, of the Department of the Interior, dated January 7, 1905, he would have seen that the Secretary of the Interior used the following language:

The State of Colorado, by act of general assembly of April 11, 1901, authorized the appointment of a commissioner to act in conjunction with representatives of the General Government and the adjacent Territories for the purpose of fixing and determining a part of said south boundary line.

In my letter to the President, dated December 31, 1908, and personal interview with the President, I called his attention to the act passed by the Colorado legislature and to the fact that on July 1, 1902, Congress made an appropriation of \$31,500. Under this authority the Department of the Interior made a contract July 7, 1902, with Howard B. Carpenter, surveyor and astronomer, for the execution of the reestablishment. The work was commenced in September, 1902, and completed in October, 1903. Said resurvey was accepted by the act of the Colorado legislature, passed April 11, 1901, and was approved and accepted by the Interior Department February 15, 1904. In my letter of December 31, 1908, to the President, and my personal interview, I said:

The only objection in Colorado made to the action of the Sixtieth Congress and the Interior Department is by the Colorado Fuel and Iron Company, to avoid the payment of taxes on thousands of acres of land underlain with coal, situate along the thirty-seventh parallel, and this company is now owned and controlled by the Standard Oil Company.

Evidently the President, judging from his veto message, is not in this important matter antagonizing the interests of the Standard Oil Company.

As to the reference made at the White House that I was not renominated as a Member of the House, I desire to say, Mr. Speaker, that at no time was I ever a candidate for reelection to this House from my State. [Applause.]

#### MESSAGE FROM THE PRESIDENT OF THE UNITED STATES.

A message in writing from the President of the United States was communicated to the House of Representatives by Mr. Latta, one of his secretaries, who also informed the House of Representatives that the President had approved and signed bills of the following titles:

On February 26, 1909:

H. R. 3844. An act for the relief of E. L. Simpson;

H. R. 4307. An act for the relief of E. J. Reed;

H. R. 15442. An act to amend an act entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3, 1891, and the acts amendatory thereto, approved February 21, 1893, and June 27, 1898;

H. R. 16269. An act authorizing the extension of Ninth street NW.;

H. R. 17171. An act for the relief of Benjamin F. Curry;

H. R. 17303. An act authorizing the extension of Girard street NW. from its western terminus to Fifteenth street NW.;

H. R. 21019. An act to reimburse Agnes M. Harrison, postmaster at Wheeler, Miss., for loss of money-order remittance;

H. R. 21167. An act to reimburse J. N. Newkirk, postmaster of San Diego, Cal., for moneys lost by burglary;

H. R. 26068. An act providing for an additional judge for the western district of Pennsylvania, and for other purposes;

H. R. 27139. An act to provide for the sittings of the United States circuit and district courts of the northern district of Ohio at the city of Youngstown, in said district; and

H. R. 27425. An act to provide for the parole of juvenile offenders committed to the National Training School for Boys, Washington, D. C., and for other purposes.

On February 27, 1909:

H. R. 18694. An act relating to the use, control, and ownership of lands in the Canal Zone, Isthmus of Panama,

#### ENROLLED BILLS SIGNED.

The Speaker announced his signature to enrolled bills of the following titles:

S. 9422. An act granting pensions and increase of pensions to certain soldiers and sailors of the civil war and to certain widows and helpless and dependent relatives of such soldiers and sailors; and

S. 9454. An act granting pensions and increase of pensions to certain soldiers and sailors of the civil war and to certain widows and helpless and dependent relatives of such soldiers and sailors.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed with amendments bill of the following title, in which the concurrence of the House of Representatives was requested:

H. R. 27053. An act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1910.

#### GENERAL DEFICIENCY BILL.

Mr. TAWNEY, from the Committee on Appropriations, reported the bill (H. R. 28376), the general deficiency bill, making appropriation to supply deficiencies in the appropriations for the fiscal year ending June 30, 1909, and for prior years, and for other purposes, and submitted a report (H. Rept. No. 2274) thereon, which bill and report were referred to the Union Calendar and ordered to be printed.

Mr. FITZGERALD. Mr. Speaker, I reserve all points of order.

#### CODE OF LAW, DISTRICT OF COLUMBIA.

Mr. SMITH of Michigan. Mr. Speaker, I call up the bill (S. 6055) entitled "An act to amend section 691 of subchapter 7, building associations, of the Code of Law for the District of Columbia," and move to suspend the rules and pass the same.

The SPEAKER. The gentleman from Michigan moves to suspend the rules and pass the following bill and agree to the committee amendments. The Chair suggests to the gentleman that he had better hold the matter temporarily. The Chair is under the impression that there is another amendment that somebody desired to offer which was acceptable to the gentleman's committee.

Mr. SMITH of Michigan. The gentleman from Pennsylvania [Mr. BROADHEAD], who has immediate charge of the bill, may know of that amendment.

The SPEAKER. The Chair calls the attention of the gentleman from Pennsylvania [Mr. BROADHEAD] to the motion of the gentleman from Michigan to pass this bill with committee amendments. The Chair is under the impression, from the gentleman from Pennsylvania [Mr. MOORE], or somebody who talked to the Chair about it, that there was an additional amendment, which was agreed to.

Mr. BROADHEAD. Yes; there is an additional amendment.

The SPEAKER. Will the gentleman inform his colleagues on the committee what that amendment is, so that the motion can cover that as well as the committee amendment?

Mr. SMITH of Michigan. To save time, then, I withdraw it for the moment.

The SPEAKER. Perhaps we had better get at it now. Has the gentleman the amendment?

Mr. BROADHEAD. Yes.

The SPEAKER. Will the gentleman confer with his colleague, the gentleman from Michigan [Mr. SMITH], a moment?

Mr. BROADHEAD. I will.

Mr. CARLIN. Mr. Speaker, I desire to offer an amendment to that bill at the proper time.

The SPEAKER. The Chair has no control over the matter, except that the Chair was led to believe from members of the committee that this was an amendment concerning which they are now conferring—that they desired to have considered in relation to the motion to suspend.

Mr. CARLIN. Mr. Speaker, I would like to have this withdrawn for the present until I can prepare an amendment and hand it to the gentleman.

The SPEAKER. For what purpose does the gentleman rise?

Mr. CARLIN. I would like to ask the chairman of this committee to withdraw this bill for a moment or two until I can prepare an amendment.

The SPEAKER. Does the gentleman from Michigan [Mr. SMITH] withdraw the bill for the present?

Mr. SMITH of Michigan. I do.

#### UNSURVEYED PUBLIC LANDS, CRAIGHEAD COUNTY, ARK.

Mr. MACON. Mr. Speaker—

The SPEAKER. For what purpose does the gentleman rise?

Mr. MACON. I rise for the purpose of asking unanimous consent to call up a Senate bill for immediate consideration.

The SPEAKER. Is it on the House Calendar?

Mr. MACON. It is on the Union Calendar.

The SPEAKER. Does the gentleman from Michigan [Mr. SMITH] withhold for a moment the request for unanimous consent?

Mr. SMITH of Michigan. Yes.

The SPEAKER. The gentleman from Arkansas [Mr. MACON] asks unanimous consent to discharge the Committee of the Whole House on the state of the Union from further consideration of the following bill (S. 8654), which the Clerk will report.

The Clerk read as follows:

An act (S. 8654) for the relief of certain occupants of unsurveyed public lands in Craighead County, Ark.

*Be it enacted, etc.*, That the survey, made under the authority of the State of Arkansas in the year 1898, of a small area of land known as Cane Island, situated in St. Francis River, in townships Nos. 14 and 15 north, range 6 east, Craighead County, Ark., into blocks numbered, respectively, from 1 to 33, inclusive, shall, upon the filing in the local land office, and with the Commissioner of the General Land Office, of that plat of said survey and the field notes thereof, be accepted as the governmental official survey of said body of land.

Sec. 2. That, under rules and regulations to be prescribed by the Secretary of the Interior, all persons who at the date of the passage of this act are bona fide occupants and owners of improvements situated upon any of the blocks returned by said survey, shall have a preferred right at any time within one year from the passage of this act to make entry, under the provisions of the homestead laws, of the block or blocks so occupied and upon which their improvements are situated, as their respective interests may appear, or to make purchase of such lands at the rate of \$1.25 per acre: *Provided*, That no person shall be permitted to acquire title under this act to more than 160 acres: *Provided further*, That nothing in this act shall be construed to grant to any person title to any part of the island, herein referred to, which is shown to be within the limits of land previously surveyed and disposed of by the Government.

The SPEAKER. Is there objection?

There was no objection.

The bill was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. MACON, a motion to reconsider the vote by which the bill was passed was laid upon the table.

#### NIAGARA RIVER.

Mr. BURTON of Ohio. Mr. Speaker, I desire to ask unanimous consent for the consideration of House joint resolution 262, which I will ask to have read.

The SPEAKER. The Clerk will report the resolution.

The Clerk read as follows:

House joint resolution 262, extending the operation of an act for the control and regulation of the waters of Niagara River, for the preservation of Niagara Falls, and for other purposes.

Whereas the provisions of the act entitled "An act for the control and regulation of the waters of Niagara River, for the preservation of Niagara Falls, and for other purposes," approved June 29, 1906, will expire by limitation on June 29, 1909; and

Whereas a date for the termination of the operation of said act was provided therein, but with a view to the more permanent settlement of the questions involved by a treaty with Great Britain and by further legislation appropriate to the situation, and such treaty not having been negotiated, it is desirable that the provisions of said act should be continued until such permanent settlement can be made: Therefore be it

*Resolved, etc.*, That the provisions of the aforesaid act be, and they are hereby, extended for two years from June 29, 1909, being the date of the expiration of the operation of said act, save in so far as any portion thereof may be found inapplicable or already complied with.

The SPEAKER. Is there objection?

Mr. PORTER. Mr. Speaker—

Mr. MANN. Mr. Speaker, reserving the right to object, I simply wish to ask the gentleman, the chairman of the Committee on Rivers and Harbors, whether the passage of this resolution would in any way affect the controversy now in court or going on concerning the additional flow of water out of Lake Michigan at Chicago?

Mr. BURTON of Ohio. I do not see how it can. I take it that it is an entirely separate matter.

Mr. MANN. There was a provision in one of the laws that the Secretary of War declared determined the matter. The gentleman does not remember whether it was in the law concerning this or not?

Mr. BURTON of Ohio. It is under the general law rather than the act.

Mr. PORTER. Mr. Speaker—

The SPEAKER. Does the gentleman from Ohio yield?

Mr. BURTON of Ohio. I do.

Mr. PORTER. Mr. Speaker, I want merely to make a brief statement of the facts in connection with this resolution. The act of 1906, which this resolution keeps in operation for two years from June 29, 1909, when it would expire by limitation, was enacted with the intent to limit and regulate the diversion of water from the Niagara River for power purposes, and thereby to preserve the scenic beauty of the falls and of the rapids both above and below them, whose beauty it was widely and in many

respects erroneously claimed was in imminent danger, because of the existing and proposed diversions of water. These diversions had been authorized on the American side by the State of New York, and similar, though larger, diversions had been authorized on the Canadian side. Since this act was passed some charters which had been granted by the State of New York for power diversion, and which were dormant, have been repealed. The act of 1906 limited the amount of water on the American side for which revocable permits could be issued. Time and investigations have proved that more than that limit can be granted with safety to the scenic beauty.

The investment of many millions of dollars within the city of Niagara Falls, N. Y., in the development of many thousands of horsepower brought many large industries to that city and trebled the population between 1890 and 1905. The volume of water going over the falls had not been affected to any appreciable degree; yet the cry was set up that the falls of Niagara were being destroyed and the Federal Government was called upon to exercise its powers and rights over the Niagara River as a boundary stream in order to "preserve" the falls.

Why, Mr. Speaker, the people living in the city of Niagara Falls are more interested in preserving those falls and all the wonderful scenery at and adjacent to them than any other people on earth; not merely because they share the universal admiration for the unique scenic beauty, but also because so many of them are engaged in lines of business that cater to nearly a million and a half people who annually visit Niagara. Any damage that might be done to either the falls themselves or to the rapids above or below them by reason of diversion of water would be, in a scenic sense, a calamity not only to the people of the United States but to the people of the world, and, in a business sense, especially so to the people who live in the immediate vicinity of the falls.

Of course my constituents want to "preserve" Niagara. But there is a vast amount of power in the falls which can be developed and utilized without any damage to those falls or to the scenery, and up to the limit to which power can be developed with safety to the scenic beauty of Niagara, both the falls and the rapids, we desire to have it done. Under the act of 1906 the many industries at Niagara Falls, N. Y., are now operating on revocable permits granted to the companies developing power. Since June, 1906, when the act which this resolution extends became a law, we have not had a single great industry which requires large blocks of power located there, and this is solely because, under that act, they can now be guaranteed nothing but a revocable license for their power.

The act of 1906, section 4, called upon the President to open negotiations with Great Britain for a treaty to regulate and control the waters of Niagara River and to preserve the scenic beauty of the falls and the rapids. A treaty embodying those points and other subjects is now before the Senate. The people of Niagara Falls are extremely anxious to have this whole question definitely settled by a treaty. Power conditions at Niagara Falls and business conditions depending thereon can only be made better by a permanent, not a temporary, condition. The act of 1906 limited the diversion of water on the American side to 15,600 cubic feet per second, whereas the treaty now before the Senate is reported to contain, and I believe correctly, a consent for the diversion of 20,000 cubic feet per second on the American side.

I have desired and I have contended that the extension of the above act shall be for only one year, for as short a period as possible, until a treaty can be ratified and made effective; but when the treaty shall be ratified by the Senate some new legislation will undoubtedly be required, and the argument is made that one year might, and probably would, prove too short a time in which to complete such legislation. And with a full knowledge of conditions at Niagara, on that ground, therefore, I shall offer no objection to the adoption of this resolution.

The joint resolution was ordered to be engrossed for a third reading; and being engrossed, it was accordingly read the third time and passed.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had insisted upon its amendments to the bill (H. R. 27053) making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1910, disagreed to by the House of Representatives, had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. WARREN, Mr. DOLIVER, and Mr. MONEY as the conferees on the part of the Senate.

#### BROWNSVILLE AFFRAY.

Mr. DALZELL. Mr. Speaker, I submit the following privileged report from the Committee on Rules.

The Clerk read as follows:

House resolution 600.

*Resolved*, That immediately after the adoption hereof it shall be in order to consider the bill of the Senate (S. 5729) to correct the records and authorize the reenlistment of certain noncommissioned officers and enlisted men belonging to Companies B, C, and D of the Twenty-fifth U. S. Infantry, who were discharged without honor under Special Orders, No. 266, War Department, November 9, 1906, and the restoration to them of all rights of which they have been deprived on account thereof, and that after one and a half hour's debate, to be divided between those in favor of the measure and those opposed to the measure, the previous question shall be considered as ordered on the bill to final passage without any intervening motion.

Mr. DALZELL. Mr. Speaker, the purpose of this resolution is to bring up for present consideration Senate bill 5729. That bill provides that the Secretary of War shall be authorized to appoint a court of inquiry to consist of five officers of the United States Army not below the rank of colonel. The court is to be authorized to hear and report upon all charges and testimony relating to the shooting affray which took place at Brownsville, Tex., on the night of August 13-14, 1906, and the bill provides that this board shall be authorized to report after examination as to the qualification for reenlistment of the parties who were discharged under the order made by the President, with a view to restoration to the army of those who may be proven eligible and with a view of their restoration to pay from the date of discharge.

Mr. LIVINGSTON. Is there any provision made for an appeal from that board?

Mr. DALZELL. There is no provision for an appeal.

Mr. LIVINGSTON. Would the gentleman accept an amendment of that kind, and send that to conference?

Mr. DALZELL. I am not authorized to do so. I now move the previous question, but will first yield to the gentleman from Mississippi to make a statement.

Mr. WILLIAMS. I want to state to this side that in order to get forty-five minutes of debate rather than the twenty minutes under the rule, I agreed in committee not to call the yeas and nays on the passage of the rule, calling for the yeas and nays only on the passage of the bill. I furthermore agreed to request that nobody else should call for it on the rule.

Mr. DALZELL. I now ask for the previous question.

The question was taken on ordering the previous question, and the Speaker announced that the ayes seemed to have it.

Mr. WILLIAMS. Division!

The House divided; and there were—ayes 125, noes 90.

So the previous question was ordered.

The question was taken, and the resolution was agreed to.

The SPEAKER. Under the practice of the House it seems to the Chair that the gentleman from Iowa, chairman of the Committee on Military Affairs, should be recognized for forty-five minutes and some member of the minority on that committee would be entitled to recognition.

Mr. CLARK of Missouri. Mr. Speaker, inasmuch as the gentleman from Mississippi [Mr. WILLIAMS] is the ranking member of the Committee on Rules that brought in the rule, I want him to have control of our time.

The SPEAKER. Without objection, it will be so ordered. The Chair hears no objection.

Mr. HULL of Iowa. Mr. Speaker, I would have been entirely satisfied for the gentleman from Pennsylvania to have had control of the time for this side of the House; but he requested that I should take the position, and I am perfectly willing to assume the responsibility of parcelling out the time.

Mr. Speaker, the entire membership of this House is thoroughly familiar with the question that is to be determined by us at the close of this debate by our vote on the bill. There was an unfortunate occurrence at Brownsville, Tex., many months ago, and it seemed impossible for the President to determine who were the guilty parties; and the result of his investigation led to what seemed to be a legitimate exercise of executive power, and, in my judgment, he was clearly within his rights as the Executive of the Nation in issuing an order by which three companies of a regiment of the United States were mustered out of service without honor.

There is no pretense on the part of anyone that all these soldiers were guilty of the crime charged against the companies. There is no pretense that there were more than a small minority of the soldiers engaged in the riot. I recognize, Mr. Speaker, the fact that a soldier of the United States, sworn to observe the law and to preserve peace, should be held to a stricter responsibility for any rioting or for any unlawful measures than any other person under the Government.

But I also recognize the fact that those who by long service have proven their value to the country as soldiers, who by many years of service have proven their high character and standing as individuals as well as soldiers, should have at some place,

somehow, and at some time, an opportunity to establish their innocence; that their records should not be tarnished by remaining under an order of dismissal from the army without honor; and I hail this compromise measure, that has been agreed to by all the factions in another body, as furnishing in some measure relief to those who were not guilty of any crime under the sun. There were soldiers in the garrison, many of them, not being even in the locality that night.

Mr. GARNER. Will the gentleman yield there?

Mr. HULL of Iowa. In one minute. This act provides for a board of five officers not below the grade of colonel, who shall have one year in which to investigate. Any soldier discharged without honor because of the Brownsville affair can go before that board and furnish such testimony as he is able, still handicapped by the presumption of guilt, which is contrary to the theory of the law; still handicapped by the fact that he must prove practically a negative. But if he satisfies that board of his innocence of any participation in this crime, the board has the absolute power to let him reenlist in the army.

Mr. GILLESPIE. Will the gentleman yield right there for a question?

Mr. HULL of Iowa. That will break me right off. I should like to finish this sentence if I can.

Mr. GILLESPIE. But it fits right in here.

Mr. HULL of Iowa. All right; if it fits, go ahead.

Mr. GILLESPIE. How does the gentleman infer from this resolution that the presumption of guilt obtains against these men and that they are required to prove their innocence? The resolution does not read that way or make any such provision.

Mr. HULL of Iowa. The man has got to satisfy the board of his innocence.

Mr. GILLESPIE. But the resolution does not say that.

Mr. HULL of Iowa. That is the object of the board, and if the gentleman will read the bill he will find I am correct.

Mr. GILLESPIE. I will ask the gentleman if it is not also true that this board of officers, although they may find that one of these—

Mr. HULL of Iowa. This should not come in my time. Gentlemen on that side have three-quarters of an hour. I do not want to take much time.

Now, it is provided that if a man satisfies this board of his innocence, if the board is satisfied that he was not guilty of participation in the riot, he can reenlist; and the second section does the further justice, which is absolutely right in my judgment, of providing that he shall be reenlisted as of the date of his discharge, without losing any time whatever or any right of retirement under the law. He would, by this act, also be entitled to his pay for the entire time. Our law provides that reenlistments, in order to become effective for retirement, must be continuous. If this bill provided simply for a reenlistment from the day of the finding of this board of officers, with the loss of intervening service, he would get no benefit from his previous service; but if he was not guilty of participation in this riot at Brownsville, this great Government, while it can not do entire justice, can do partial justice by seeing that the man shall not suffer any wrong, financially at least, in being permitted to reenlist as of the date of his discharge. These are the entire provisions of the bill, and in my judgment it is a long-delayed measure of justice; and I hope that this House, by more than a two-thirds vote, will agree to it, although a majority will pass it.

Mr. GARNER. Will the gentleman yield now?

Mr. HULL of Iowa. I will yield for a question, but the gentleman must realize—

Mr. GARNER. The gentleman made the statement a while ago, when I undertook to interrupt him, to the effect that this board would determine who were guilty and who were innocent.

Mr. HULL of Iowa. Oh, no.

Mr. GARNER. I understood the gentleman to make that statement.

Mr. HULL of Iowa. Oh, no.

Mr. GARNER. What is the object of this board, then?

Mr. HULL of Iowa. It is to pass on all who apply for reenlistment, and to determine whether those who apply shall under the provisions of this law be given the right to reenlist, by practically clearing their skirts of any participation in the Brownsville riot.

Mr. GARNER. Must not the board necessarily, then, pass upon the guilt or innocence of those who apply?

Mr. HULL of Iowa. I should imagine so, of those who apply, because if they were guilty, no one would desire to have them reenlist.

Mr. GARNER. Then, in that connection, I want to ask if these soldiers have not had their day in court, to have their guilt or innocence determined, before the Senate committee?

Mr. HULL of Iowa. No; they have not.

Now, I reserve the balance of my time, Mr. Speaker, and ask the other side to use their time.

Mr. WILLIAMS. Mr. Speaker, I do not desire to consume any time except to say this: Some of these men committed murder, and many more were engaged in an effort to commit a crime. All the balance of them have evidently entered into a conspiracy of silence in order to shield the criminals, and they ought not thereby to be permitted to have the privilege and honor of wearing the uniform of the United States Army. I now yield four minutes to the gentleman from Texas [Mr. HENRY].

Mr. HENRY of Texas. Mr. Speaker, regardless of the section or State from which I come, it is my duty to oppose the passage of this bill. There is great misconception of the real issue. The gentleman from Pennsylvania [Mr. DALZELL] and the gentleman from Iowa [Mr. HULL] have not touched the question now pending before the House.

In the first place, this is not a resolution, as it has been characterized, but a bill to be passed by Congress. The gentleman from Iowa stated that these men charged with the shooting affray at Brownsville "must establish their innocence" before they can be reenlisted. I deny it, and say that such is not the fact. There is nothing in the bill that indicates such purpose and effect. I challenge the gentleman to deny my statement and analysis.

It is a bill—

To authorize the reenlistment of certain noncommissioned officers, and for the restoration to them of all rights of which they have been deprived on account thereof.

This is the purpose of the bill as indicated by the caption. Its meaning is manifest.

In four minutes I can not discuss and analyze the various provisions of this bill. Briefly, in the first part of section 1 a "court of inquiry" is provided for, and a little further along in the same section it is provided that the board may hear certain charges and testimony that may come before them. A little further in the same section it is provided that such board may make "final" and "partial reports" of the results of such inquiry, and then in the latter part of the section it is provided that those men may reenlist—

Which said court shall find and report as qualified for reenlistment in the Army of the United States.

The board can report that each and every one of them is qualified, and also that they are eligible for reenlistment in the army. That is the plain provision of this statute, and the power is undeniably given. Here it is, and the gentleman from Iowa wants to mislead this House concerning the purpose of the bill. He is entirely mistaken about what is in it and the real provisions of the act.

What more? In the next section of the bill it is provided that after they are enlisted they shall receive pay from the time they were discharged. There is no mandatory requirement for anyone to come before the board and prefer charges, and no detailed method of procedure is fixed. The board can assemble, under this act, and disregard every line of testimony ever taken or to be taken and report that these men, regardless of guilt or innocence, are entitled to reenlistment. Such power is indisputably given the board. I shall oppose the passage of such an unreasonable and unjust measure. [Applause.]

Mr. HULL of Iowa. I want just a minute to say that the bill provides, in lines 10 and 11, page 2—

as said court shall find and report as qualified for reenlistment in the Army of the United States shall thereby become eligible for reenlistment.

They can not find and report as qualified for reenlistment any man unless that man should convince the board that he is not guilty. The general law makes provision as to who can enlist.

Mr. HENRY of Texas. The gentleman's resolution does not say so.

Mr. HULL of Iowa. The bill speaks for itself.

Mr. HENRY of Texas. But the gentleman's statement is not correct, if he will read the bill, and if I had time I could prove it.

Mr. HULL of Iowa. The words are "shall find and report that he is qualified for reenlistment."

Mr. HENRY of Texas. The gentleman said they must prove their innocence before they can reenlist, and there is no such provision in the bill.

Mr. WILLIAMS. Now, Mr. Speaker, I yield fifteen minutes to the gentleman from Texas [Mr. SLAYDEN].

Mr. SLAYDEN. Mr. Speaker, this bill purports to be a measure to appoint a court of inquiry to hear and report upon all charges and testimony relating to the shooting affray at Brownsville in August, 1906. The court is to make a final report in one year from the date of appointment, and from time to time it is to make partial reports for the purpose of restor-

ing, just as rapidly as these reports can be made, such of the discharged soldiers and noncommissioned officers as shall be found qualified for reenlistment.

That is the first paragraph of the bill. The second provides that such of these men as shall be found qualified and do re-enlist shall have all the pay and benefits that they would have had if their discharge had been honorable and the service continuous. All that do reenlist under these findings will receive a considerable sum in cash for a service they never rendered, and others will go at once on the retired list of the army, to be hereafter supported in idleness and in comparative comfort out of the Public Treasury.

The bill will pass, of course, for it has become a party measure. It is the result of a compromise between the senior Senator from Ohio and the present occupant of the White House. It does not concede all that the Senator demanded, but it does yield much more than it was thought the President would ever give up. The effect of it is to provide the reward of insubordination, a bonus for murder, and a premium on infamy. [Applause on the Democratic side.]

Under the direction of the President this atrocious murder by organized military bodies was repeatedly and thoroughly investigated. These investigations were made by officers of the army who were supposedly jealous of the good name of the service, and who would have been glad to be relieved of the odium it brought to the uniform.

Mr. HOBSON rose.

THE SPEAKER. For what purpose does the gentleman rise?

Mr. HOBSON. Will the gentleman from Texas yield for a question?

THE SPEAKER. Does the gentleman yield?

Mr. SLAYDEN. Mr. Speaker, I regret to say that I can not. It will be almost impossible in the time allotted to me to say what I desire to say. I mean no discourtesy to the gentleman.

Mr. HOBSON. I will be glad to let the gentleman have a minute of my time.

Mr. SLAYDEN. I can not yield. It was investigated by gentlemen from the Department of Justice, one of them a man of such character and attainments that he was subsequently nominated to a place on the federal bench.

These investigations were all made when the "affray" was of comparatively recent occurrence, when the witnesses were at hand, and when correct conclusions could be more easily reached.

Everybody knows what the verdict was. Secretary Taft was convinced of the actual guilt of some of the soldiers and of the guilty knowledge of the others. The President was convinced, of course; thoroughly convinced, or the order of dismissal would not have been issued. He found that conspiracy and perjury were called to the support of murder. In fact I know of no fair-minded man, who is not blind with prejudice against the people of one section of the country or whose judgment is not clouded by unreasonable sympathy for an alien race, who has reached any other conclusion. The most righteous act of the administration of Mr. Roosevelt is to be undone now for political reasons. Why? Because the negro is the most cherished political asset of the Republican party, and as such entitled to special legislation, and is to receive distinguished consideration. [Applause on the Democratic side.] These men are fortunate in their color. If that midnight assault on an innocent and unsuspecting community had been made by white soldiers, the righteous act of the President in dismissing them would never have been questioned. Indeed, sir, it would have been universally approved. From no political pulpit would there have been clamor for their reenlistment. None of these editors who seem to be, under all circumstances, out of patience with their own race, would day by day have thundered their demands for a reenlistment of soldiers who so far forgot their duty as to shoot down unarmed and unresisting American citizens. If the criminals had been white, great statesmen would not have dedicated themselves to the task of giving a lot of mad savages another chance to disgrace the uniform by engaging in organized assassination.

But, then, white men are not a political asset, always bulked and always ready at the call of a party.

I shall take just a few minutes, Mr. Speaker, to review the history of the regiment to which these companies belong.

The facts that I shall briefly relate are all from the official records in the War Department, and I will state, Mr. Speaker, that this is largely a quotation from a speech I had the honor to make here on a previous occasion, and let me say is an exact copy of official records accessible to every Member of this House upon a visit to the War Department.

While stationed at Fort Meade, Dak., in 1885, Corporal Hallon, of the Twenty-fifth Infantry, murdered a citizen. With "neatness and dispatch" the people of that community lynched the

murderer. Three weeks later 15 or 20 of the negro soldiers raided and shot up the town of Sturgis, firing into dwellings and business houses, and killed one citizen.

At Winnemucca, Nev., in June, 1899, while going to the Philippines to elevate the benighted people of those islands, men of the same regiment invaded a liquor saloon, took possession of the bar, and shot the barkeeper.

In October, 1899, at the San Carlos Agency, in Arizona, they murderously assaulted four unarmed Indians. General Merriam, who commanded, and now a resident of the city of Washington, advised that the negro troops be taken away and white soldiers sent to take their place, as they "would make less trouble."

At El Paso, Tex., to which place they were sent from San Carlos—and they are always unloaded on the South when they raise trouble in other sections of the country—they

Took rifles from the arms racks and went to the city jail of El Paso, where two soldiers were held for trial by the city authorities for being drunk and disorderly, fired into the jail, and killed a policeman on duty there.

That is a quotation from the report made by Captain Loughborough, of the army.

Mr. STEPHENS of Texas. Mr. Speaker, I will ask the gentleman to allow me to state that that policeman was an ex-soldier of the Spanish war, and left a father and mother dependent upon him alone for support, who are now without any property whatever.

Mr. SLAYDEN. At Key West, Fla., in 1898, the Twenty-fifth Infantry was delayed just a few hours en route to Cuba. In that brief time they assaulted and attempted to kill citizens. When the particular assailants were lodged in jail their comrades took their guns, surrounded the jail, and liberated the prisoners.

What they did later at Brownsville is history.

The Ninth and Tenth regiments of negro cavalry made similar crimson records at Suggs, Wyo.; Huntsville, Ala.; and San Antonio, Tex.

These incidents cover a period beginning with 1867, when men of Company E of the Ninth Cavalry, a negro regiment, killed one and wounded two other lieutenants at San Antonio.

I submit, Mr. Speaker, that these facts go to show their absolute unfitness as soldiers.

The Secretary of War, Mr. Taft, in June, 1906, wrote to a Senator of the United States as follows:

The fact is that a certain amount of race prejudice between white and black seems to have become almost universal throughout the country, and no matter where colored troops are sent there are always some who object to their coming.

There are excellent reasons for believing that before the Twenty-fifth Infantry was sent to Brownsville in 1906 they were to have gone to a northern station. Protests from eminent public men prevented the execution of the order. Their destination was changed to another northern station, and again eminent men protested and once more the order was canceled. They were then sent to Texas, where there are no eminent men with influence in Washington.

The distinguished citizen who was then Secretary of War and is now the President-elect was right when he said that race prejudice was "universal throughout the country." With equal accuracy he might have said throughout the world. It is manifested throughout all history and everywhere. I believe that it is a God-given instinct to preserve race integrity, and I know that it ought to be recognized in all administration. It is commanded in all experience, and wise statesmen will not disregard it. It is an effort of nature to preserve the purity of the blood, to insure the breeding of thoroughbreds.

Speaking in New York this week, Mr. Taft said:

Race feeling is a fact. Denial of it is illogical. You can not dispose of it by saying that it does not exist.

I am glad to see that the man who is to be our President is no mere theorist. I am glad to know he has a comprehension of the facts of life, and hope he will adjust his administration to those facts, so as to maintain harmony and peace between all of the people whom fate has decreed should be residents of this land, for a long time at least.

But in the same interesting speech he falls into an economic error in his comments on race prejudices. He says:

The negro is absolutely essential to the development of the South.

I challenge that statement. It is not true. Mr. Taft is mistaken in his view of conditions in the South.

The great crop of the South is cotton. One of the great export crops of the country is cotton. The cotton that we send abroad about marks the balance of trade that is in favor of our country. The development of the South depends more on cotton than on any other one thing. We do not know with absolute accuracy the amount of that staple produced by the whole

world, but we do know it approximately, and of that vast total Texas produces more than a fourth and something less than a third. Texas produces about 4,000,000 bales, and of that quite 85 per cent is planted, cultivated, and harvested by white labor. [Applause on the Democratic side.]

We do not want our climate and economic conditions misrepresented. White men can work in the fields of the South and in all of them, Mr. Speaker, without danger to health and with no greater discomfort than attaches to similar outdoor work in the Middle States, and white men only are essential to its development. All others are a clog on the wheels of progress, a social and economic incubus.

I have taken pains to inquire of my colleagues from the cotton States, and they all confirm my personally held view that the larger part of the crop in each of those States is made by white labor. And the ratio of production by white men is increasing year by year. The negroes find farming distasteful. They go to the towns and to menial and personal service in preference. Each year they are of less and less importance in production. They are leaving for the North, where, as their numbers increase, they are doing excellent missionary work.

The President-elect is right. We have race prejudices and race problems, and I sincerely hope, Mr. Speaker, that during the next administration we may have less meddling with the affairs of other countries and other races. Mr. Taft knows that race antipathy exists. He must know that when antipathetic people come into contact trouble is likely to ensue.

For the sake of our own future I hope that we will leave the Africans to their own devices in Haiti, Santo Domingo, Liberia, and elsewhere. We have an indigestion now. Heaven only knows what will happen to us if we undertake any more of that sort of thing.

The people of the Pacific coast, especially those of California, are getting into the vestibule of the comprehension of this question. Although they are not seriously threatened, although they are now protected by treaties and statutes, they are in a pitiable, a ludicrous state of funk. The suggestion of the gentleman from Iowa that the country—the whole country, not California, mind you—would find employment for half a million cooks and chambermaids has given them a fever of fright. It succeeded in arousing their intermittent and local interest in the welfare of the Caucasian race. For the time being and for the Pacific coast they have a revival of race pride. They cheerfully surrender their brethren in the South to the peril of invasion from the West Indies and Africa of a race even more alien, and themselves clamor for help because a few Chinese or Japs divide jobs with them. I greatly fear that it is pure pride, not race pride, that controls them. They strain at an Asiatic gnat and cheerfully swallow an African camel.

But, Mr. Speaker, in spite of their shortsighted policy, in spite of the very intermittent nature of their interest in the larger question, and in spite of their lack of gratitude and indifference to the woes of others, I shall do my best to protect them against the threatened invasion of Colonel HEPBURN's cooks and chambermaids.

Here is an article clipped from the Washington Post of yesterday that I think contained a gratifying suggestion:

SAYS A MOSES IS NEEDED—NEGROES NOT TO REMAIN IN AMERICA, ASSERTS DOCTOR COROTHERS.

Asserting that the negroes of America were never destined to remain here, but that their "temporary sojourn as citizens of this country is but the carrying out of their mission as designated by a divine power," the Rev. S. L. Corotheres, pastor of Galbraith African Methodist Episcopal Zion Church, made a plea last night before a large audience in Shiloh Baptist Church for aid for the people of Liberia.

"The appointment of a commission by this Government," said Doctor Corotheres, "to subscribe funds and suggest ways and means for the relief of our black brothers in Liberia would be the casting of bread upon the waters. And it is important to demand that since it is the man of color who is to be aided, the commission to do the work should be composed of colored men."

"The relief of their debt-ridden and oppressed country by the American negro will work naught but good for him. While it may rankle in the hearts and bosoms of some for me to say that the negro is not destined to remain forever in America, I am firmly convinced of this fact. Who knows but what we are preparing a promised land for our own people by aiding the people of Liberia? As the Jews went to Egypt on God's own mission, so it is my belief that the negroes were sent to America for a like reason by the all-powerful Spirit. It needs but a Moses among us to lead us to the land of promise."

It is expected that another meeting will be held shortly to place before the Congress resolutions asking that the United States take a hand in the relief of Liberia.

If he will head the hegira I shall be glad to have him connect with the pay of the proposed commission. [Applause on the Democratic side.]

Mr. HULL of Iowa. Mr. Speaker, I yield five minutes to the gentleman from New Jersey [Mr. PARKER], a member of the committee.

Mr. PARKER. Mr. Speaker, this bill orders the calling of a court of inquiry. I shall not go into the race question. A

court of inquiry is well known under the old Articles of War. It can be ordered by the President or a commanding officer to investigate and examine into the nature of any transaction or of accusation or imputation against an officer or soldier.

Article of war No. 115: A court of inquiry to examine into the nature of any transaction or of accusation or imputation against any officer or soldier, may be ordered by the President or by any commanding officer.

Nothing more appropriate than such a court can be devised to examine into the question respecting these men, who have been, some of them, for twenty years soldiers of the United States and of good character, whether they be white or black.

Mr. HULL of Iowa. One of them for twenty-eight years.

Mr. PARKER. One of them for twenty-eight years, and a sergeant.

Unfortunately the old act as to a court of inquiry does not apply to any man who has ceased to be an officer or a soldier, and the discharge issued in this case barred the President thereafter under the law as it stood from ordering such a military court of inquiry. This bill rightly cures that difficulty and allows such a court to be called. The court in this case would be larger than the usual court of three members, having five, and it is limited to officers who hold at least the rank of colonel in the army. The powers of the court, however, are settled by the general statutes. There are few words in the bill, but in constituting a court of inquiry it gives the court, under article of war 118, all the powers and duty of a court-martial to summon and examine witnesses under oath and to allow the accused to examine and cross-examine them.

Article of war No. 118: A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof.

Such witnesses shall take the same oath which is taken by witnesses before courts-martial, and the person accused shall be permitted to examine and cross-examine them so as fully to investigate the circumstances in question.

That right should belong to these men and is provided for in this bill to the extent granted by the general law.

The function of the court of inquiry is briefly stated in the bill. It is to "find and report" whether any and which of these men are "qualified for reenlistment."

Such qualification is determined by the statutes. By the act of August 1, 1894—

No soldier shall be again enlisted in the army whose service during his last preceding term of enlistment has not been honest and faithful.

When this bill asks the court of inquiry to find and report whether they are qualified for reenlistment, it puts before this great court in each case the duty of determination upon the proofs, yea or nay, whether the soldier's service has been honest and faithful. [Applause.]

Mr. HULL of Iowa. Mr. Speaker, I yield five minutes to the gentleman from Illinois [Mr. MADDEN].

Mr. MADDEN. Mr. Speaker, the passage of the bill now before the House will bring nothing more than long-delayed justice to the black men now known as the "Brownsville soldiers." Every man charged with the commission of a crime is presumed to be innocent until he is proven guilty. I hold that none of these men have been proven guilty of the crime with which they are charged. No braver men ever fought for the protection of the flag than these men have proved themselves to be. They fought with a valor that received the plaudits of every citizen of America. They are the men who led the charge in the only important engagement between the American and the Spanish forces in our war for the extension of Christianity, humanity, and civilization.

Mr. GARNER. Will the gentleman yield?

Mr. MADDEN. I only have a minute, and I can not yield. And they are entitled to decent treatment. They are American citizens, and they are entitled to the equal protection of every law that every other citizen enjoys. There would be no question involved of their guilt or innocence if it were not for the color of their skin and it is unfortunate that discrimination should be made between American citizens because one man is black and another is white.

Who objected to their leading the charge at San Juan? Who questioned their color then? Was the question one of color then, or was it one of bravery? Does anyone suppose that the victory was any less worthy, because it was won in a charge led by men having black skin? Not at all. Does anyone suppose that because the negro soldiers held the front of the line and fought with a courage never surpassed and seldom equaled, that the victory was less appreciated by the American people? By no means. The country owes something to the men who had the courage to march fearlessly forward under such circumstances.

Such men are at least entitled to simple justice. The bill now under consideration offers them a chance to reenter the service in which they have on more than one occasion proved their valor. When a call to arms is made for the defense of the flag, what are the questions asked? Not what is your color, not where were you born, not what is your religious belief; but Are you ready to offer up your life in defense of your country? The question, then, is, Have these men proved their courage; have they performed their duty when called upon; have they proved themselves brave in the hour of need; have they been worthy to wear the blue? I say yes, unequivocally. We claim the right to govern. If this claim be admitted, we must assume the responsibility. In assuming that responsibility, we must exercise the powers of government justly; justly not only with respect to our transaction of the ordinary business affairs of the country, but also with respect to that higher and more important function which involves the equal treatment of our masters—the citizens of the country. We can not afford to be charged with unfairness; we would be unworthy of the high place we occupy if we fail to exercise the authority reposed in us with due regard for justice.

The liberty of the humblest citizen is as dear to him as that of the most exalted. The honor of the one is as worthy of protection as that of the other. It is our duty to protect both. Injustice against whomsoever practiced by the Government is inexcusable, and no man is worthy to exercise the functions of government who is unwilling to deal fairly with the governed.

Mr. GAINES of Tennessee. Will my friend yield?

Mr. MADDEN. I decline to yield. I believe that these men when given an opportunity to prove their side of this case will be found to be worthy to wear the uniform of the United States Army. They would, then, after being found to be so worthy, be entitled as a matter of justice to the pay and to the privileges which they would have the right to enjoy had no controversy about this unfortunate question ever arisen.

Members on the other side charge me with favoring legislation favorable to the colored man, because of the fact that a great number of them happen to live in my congressional district.

Why, Mr. Speaker, I was a consistent and sincere friend of the negro long before I even dreamed of coming to Congress, and that friendship did not come from a desire on my part to influence their votes, but came rather from an inborn desire to be fair and just to all classes of citizens. The Creator did not put into my heart a selfish or domineering disposition, and I thank God for that.

Mr. Speaker, it has never been easy for me to understand how a man enjoying all the blessings vouchsafed to an American citizen, blessings such as no other people on earth enjoy, can so far forget the biblical injunctions as to permit himself to deny rights to others he demands for himself. The oft-repeated insinuation that a man's color, if it be other than white, is a fruitful reason for discrimination does not at all appeal to me. The Constitution of the United States was made for all of the people of this blessed land of ours, and the laws made under it were made, not for the protection of one branch of our citizenship, but for all the people—North, South, East, and West, white, black, and mixed—and it is therefore extremely difficult for me to understand why it is that Members of this body coming from a section where live, it is claimed, the only true friends of the black man, are always found on their feet scolding long and loud whenever a measure is before the House which, if adopted, would bring relief and comfort to this much-abused race.

I certainly hope that the patriotism of the membership of this House, regardless of what their political affiliations may be, or the sections of the land in which they live, will prompt them to vote for the restoration of these men to the position which they have so long occupied with so much honor to themselves and to the United States. [Applause.]

Mr. HULL of Iowa. How much time did the gentleman from Illinois use, Mr. Speaker?

The SPEAKER pro tempore. The gentleman from Illinois used four minutes.

Mr. HULL of Iowa. The gentleman yields back the other minute. I may want to use it, not for myself. I now yield to the gentleman from Ohio [Mr. DOUGLAS].

Mr. DOUGLAS. Mr. Speaker, whatever may be the individual opinion of any Member of this House as to the guilt or innocence of any number of the soldiers of these three companies, whatever may be the individual opinion of any Member of the House to any question of law, whether criminal, civil, or constitutional, arising out of this occurrence and the disposition of it which has been made from time to time by the Executive and War Department, I submit that there ought not to be, in common justice, a vote in this House against this conservative

and just measure. This bill simply authorizes, if in his discretion he deems it wise, the Secretary of War to inaugurate a court or commission to inquire into this whole matter, with the object of finding out, if possible, which of these soldiers were guilty, if any, and which innocent, so that the innocent may not suffer with the guilty.

It does not seem to me that this is a political question, nor a sectional question, nor a race question, or any other sort of a question, but a question of simple justice.

No Member upon this floor, to whatever party he may belong, or from whatever State he may come, ought to be willing to deny to such of these colored soldiers who may be able to do so, or to all of them, the opportunity to establish their innocence; and so I trust that no one upon either side of the House will vote against this just bill.

Mr. HULL of Iowa. Mr. Speaker, I yield five minutes to the gentleman from Illinois [Mr. PRINCE], a member of the committee.

Mr. PRINCE. Mr. Speaker, it is most unfortunate that the military law was not invoked immediately after this affray at Brownsville. On page 745 of the military laws of the United States, section 1863 reads as follows:

A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer.

Had that law been invoked, the time of Congress and the discussion before the country would not have occurred on this question that is now before the House. For the first time this branch of Congress has had presented to it a concrete proposition on this question. The proposition is to establish in effect a court of inquiry to find out whether these soldiers should have been separated from the service without trial. Now, with hat in hand, they come before this board of inquiry with a stigma placed upon them as men who have violated their oaths as soldiers, who have disgraced the army blue that they wore. They have to come with that stigma upon them before a court of inquiry to hear whether they should be reenlisted or not. They ought to have their day in court. This is a free country—

Mr. GARNER. Will the gentleman yield?

Mr. PRINCE. I can not yield. Ordinarily I would. These are soldiers; remember that. It is not a question of color; it is a question of treating fairly a soldier; the color does not enter into the question at all. He is a soldier wearing the blue, maintaining the flag, and he has been separated from the service. Now he comes and asks whether he is a proper person to be reenlisted in the service of the United States. A commission or a court of inquiry that ought to have been invoked when the affray occurred, after two and one-half years Congress is called upon to create, and we are now asked to vote in favor of it. Without question, some of these men are not guilty. I am not one of those who want to pass upon the guilt or innocence of these men.

Mr. GARNER. Will the gentleman yield just there?

Mr. PRINCE. I decline to yield to anybody. This board we are creating for that specific purpose. We are asking officers above the grade of colonel, who have taken an oath, many and many a time, to support the laws and the Constitution and maintain the honor of the army, to sit in judgment upon these men, and these officers, under oath, are to report from time to time whether these men should be reenlisted or not. If they are again put back into the service—and they have been separated from the service without trial—is it unfair to restore them to the place where they were before they were separated without trial? It seems to me it is fair and even-handed justice toward a soldier who had been separated from the service, and I am sorry to see my friend and colleague, for whom I have a high regard and appreciation, seek to say that this is a political question because, forsooth, in some portions of the country the colored voters saw fit to vote the Republican ticket. If it were a political question, we might have raised it before the presidential election, but not now. [Applause.]

Mr. WILLIAMS. Mr. Speaker, I yield two minutes to the gentleman from Georgia [Mr. BARTLETT].

[Mr. BARTLETT of Georgia addressed the House. See Appendix.]

Mr. SLAYDEN. Mr. Speaker, I make the same request.

Mr. MADDEN. Mr. Speaker, I make the same request.

The SPEAKER pro tempore. The gentleman from Georgia [Mr. BARTLETT], the gentleman from Texas [Mr. SLAYDEN], and the gentleman from Illinois [Mr. MADDEN] ask unanimous consent to extend their remarks in the RECORD. Is there objection?

There was no objection.

Mr. BARTLETT of Georgia. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Is there objection?

There was no objection.

Mr. HULL of Iowa. Mr. Speaker, I ask unanimous consent that all who have spoken on this matter have permission to extend their remarks in the RECORD.

Mr. WILLIAMS. I would suggest that the gentleman state that the remarks be printed prior to the adjournment of this Congress.

Mr. HULL of Iowa. Mr. Speaker, I ask that all who have addressed themselves to this resolution may have permission to extend their remarks in the RECORD, the extension to be limited to the matter before the House, and the remarks be printed before the adjournment of Congress.

Mr. BARTLETT of Georgia. My permission was not limited to three days. I got my permission to extend under the rule.

The SPEAKER pro tempore. The gentleman from Iowa asks unanimous consent that those who speak on this subject may have permission to extend remarks in the RECORD on the resolution within three days. Is there objection?

Mr. GILLESPIE. I object.

The SPEAKER pro tempore. The gentleman from Texas objects.

Mr. GILLESPIE. I withdraw the objection.

Mr. OLLIE M. JAMES. Why does the gentleman confine it to those who speak? Why not let all who desire to extend remarks put them in the RECORD?

Mr. BURLESON. I would object to that.

Mr. HULL of Iowa. I do this for the purpose of saving the time of the House by gentlemen asking permission to extend their remarks after they have spoken. I now yield three minutes to the gentleman from Alabama [Mr. HOBSON].

Mr. HEPBURN. Before the gentleman sits down, will he explain a portion of this bill which to my mind is very peculiar?

Mr. HULL of Iowa. I will not take time to do so now.

Mr. HEPBURN. Somebody ought to explain it.

Mr. HOBSON. Mr. Speaker, these three minutes will cost me a contest in my district, and may cost me my seat in Congress. I wore the uniform of the United States for eighteen years, and I have never known a case where an officer or an enlisted man was punished severely without a court of inquiry. I know that he is not allowed to be punished to the extent of thirty days' imprisonment without a court-martial—to dishonorably dismiss a man without a court-martial is unheard of. When these crimes were committed at Brownsville—

Mr. GARNER. Will the gentleman allow me?

Mr. HOBSON. No, sir; my time is too short. When these crimes were committed at Brownsville, the President of the United States could have ordered all officers and men to remain within barracks and could have ordered a court of inquiry, followed by a court-martial, which, held on the spot without delay, would no doubt have established the guilt or innocence of all the men, and would have given a regular, legal opportunity to every innocent man to establish the fact of his innocence. If, under duly administered oath, any man had refused to tell the whole truth or had been found to have concealed or abetted the guilty, he could have been punished accordingly. By such a regular and legal procedure the guilty, all of them or part of them, at least, could have been brought to full punishment at the scene of their hideous crime, fulfilling the ends of justice. But the President did not proceed in this regular, legal way. He scattered the men, guilty and innocent alike, to the four winds, and thus prevented the ends of justice. This action of the President prevented the establishment of the guilt of the guilty and prevented the innocent from establishing their innocence. These men have never had a chance to appear before a court of inquiry; never before a court-martial; have never been under oath. This bill provides the least that can now be done for the cause of justice.

Mr. Speaker, I saw black men carrying our flag on San Juan Hill; I have seen them before Manila. A black man took my father, wounded, from the field of Chancellorsville. Black men remained on my grandfather's plantation after the proclamation of emancipation and took care of my mother and grandmother. The white man is supreme in this country; he will remain supreme. That makes it only the more sacred that he should give absolute justice to the black man who is in our midst. [Loud applause.] I submit it to the conscience of my colleagues. This ought not to be made a party measure. We are standing here on the field of eternal justice, where all men are the same. It is justice that links man to the divine. Whether the heavens fall or the earth melt away, while we live let us be just. [Loud applause.]

Mr. GARNER. Mr. Speaker, Brownsville being in the district which I have the honor to represent, I feel that it is my duty to the people of that city and to myself to state to the House some

of the facts preceding the location of these soldiers at Brownsville, some of the circumstances leading up to this unfortunate affair, and to call attention to some of the facts which conclusively showed that they were the people who perpetrated the outrage, rather than some one else in the city of Brownsville.

In the first place, Mr. Speaker, these soldiers should never have been located at Fort Brown. As my colleague from Texas [Mr. SLAYDEN] has already stated to the House, the War Department had decided to send them to some place in the North. Protests were made to the War Department, and they then changed them to another place in the North. Protests were again made, and then it was decreed that they should go to Brownsville.

Hearing of that, my constituents protested against it. I visited the War Department, interviewed the Assistant Secretary of War, then Acting Secretary, and told him of the conditions existing there, and that the people did not want this black battalion stationed at Fort Brown. I was told by the Acting Secretary of War, General Oliver, that these soldiers were not wanted anywhere, but it was Texas' time to take them [applause], showing conclusively that, in the estimation of the War Department, this character of soldier was not welcomed by the people situated near to any of the forts of this country. They were sent to Brownsville, as I say, over the protests of the citizens, and it is represented that after they got there not a single act on the part of the citizens of Brownsville, not a single act on the part of its officers, not an act on the part of anyone else unless it could be said that of a representative of the Government itself, was responsible in any degree for the trouble referred to in the testimony taken before the Senate Military Committee.

After they had been stationed there a few days it seems that a soldier met a customs officer, and the officer knocked him down on account of offensive conduct toward his wife. This officer was an employee of the present administration, and while I think he did right in defending his family against the insults of these murderers, I mention it simply to show that it was not a private citizen, but a part of the Government itself, who brought on the trouble.

Mr. Speaker, I think it may be said that the people of Brownsville are composed in a greater degree of United States ex-soldiers and ex-officers of the Union Army than any other city of its size in the United States. The mayor of the city is an ex-officer of the United States Army. One of the leading citizens of that town, the president of a leading bank, is an ex-officer of the United States Army. A large percentage of the people of that town is made up of ex-soldiers of the United States Army. So it can not be said, here or elsewhere, that the people of that town have any animosity toward those who wear the uniform of an American soldier.

Now, what was the result? The town was shot up at the hour of midnight. The citizenship undertook to determine who did the act. They immediately selected a committee, and I want to say to the House that that committee was composed of as high-class men as there are in Texas, therefore as there are in the United States. That committee was selected to investigate the question as to who was guilty of this crime. They met and heard testimony, and sent the result of that testimony to the President of the United States, who made an inquiry of the commanding officer of that post, and he, realizing that the testimony was so strong, wired the War Department that he regretted to say that the evidence was convincing that the soldiers had perpetrated this murderous outrage.

I was surprised that the gentleman from Illinois, or any other gentleman on the floor of this House, should rise and say he did not believe that any one of these soldiers perpetrated this crime. The gentleman from Illinois evidently has not read the record. I can not conceive how any reasonable man, how any man whose mind is open to conviction, and who has read the record could say that he believed that none of these soldiers perpetrated this crime.

It has been investigated by seven distinct and impartial investigations; first, by the commanding officer; second, by the citizens' committee, headed, as I said a moment ago, by an ex-officer of the United States Army. That committee took the evidence on the ground and concluded, beyond any doubt, that these soldiers perpetrated the crime. Then Major Blockson, an impartial officer of high rank in the United States Army, made a full investigation and reported that there was no doubt but what the soldiers committed this murderous assault. Then Mr. Purdy, from the Department of Justice, a high-class lawyer and capable of distinguishing between legal and illegal testimony, was assigned the duty of investigating and determining who shot up Brownsville. He, likewise, after an exhaustive in-

vestigation, advised the President that no one could doubt but that the infamous Twenty-fifth were guilty as charged. (It might be remarked just here, that Mr. Purdy has since been made a United States judge.)

Again, the grand jury at Brownsville, composed of as law-abiding citizens as you will find in the United States, investigated the matter and in their report emphatically stated that no doubt existed in the mind of any one of them that the soldiers of this battalion had been guilty of murder; but they were unable to specify the identical party who pulled the trigger, therefore, respecting their oaths, they could not return bill of indictment, not being able to designate the particular soldiers who committed the crime.

Some have said that this was an indication that the people of Brownsville had some doubt as to the guilt of these men, but to my mind, it is another evidence of their love of law and justice, and the respect that each had for his oath as a grand juror. Had they desired to enter into a conspiracy to punish these troops regardless of their oaths, they could have indicted any number of them, and under the agreement with the military authorities, had them returned to Brownsville and incarcerated in the county jail; and had the court and the people generally, as some high in official life have intimated, been in a conspiracy to punish these men regardless of their guilt or innocence, they would have tried and convicted them.

Again, Brig. Gen. A. E. Garlington, Inspector-General of the United States Army, as well as Lieutenant-Colonel Lovering and Gen. A. B. Nettleton have, after full investigation, advised the War Department that these men were guilty, and that the President was not only justified but was in duty bound to issue the order which relieved the army of this band of murderers.

But, sweeping aside all these matters, and turning to the Senate investigation, we find some 200 witnesses have been examined; the affidavit of every soldier has been taken; and in all some 6,000 pages of testimony have conclusively shown that these soldiers were guilty. If 17 eyewitnesses and the strongest circumstances that have ever surrounded any case coming under the observation of any court can not convince one of the guilt of these soldiers, when the contrary evidence is the sole affidavit of the accused, then it must be apparent that the color of these men has so blinded his vision to justice that he can not see, impartially, the proof that is so overwhelming and conclusive.

Mr. Speaker, it will be remembered that the President of the United States has declared that this was the blackest crime in the history of the American army; it will also be remembered that he has declared more than once that after all the investigations had been made it was conclusively shown that some 15 of these soldiers pulled the triggers that caused the death of an American citizen; and that many of them had knowledge of the facts before, and all of them had information after, the crime that would have led to the detection of the most guilty. Therefore, in discharging the battalion, it can not be said that the innocent have suffered except by their own acts in refusing to give information that would lead to the detection of the midnight assassins. So these so-called "innocent members" of that battalion, while they may not have participated in the raid itself, have brought just punishment upon themselves by trying to shield their comrades.

Mr. HOBSON. Will the gentleman yield for a question?

Mr. GARNER. I will extend to the gentleman the courtesy that he refused to extend to me and will yield to him. [Applause.]

Mr. HOBSON. Did any one of these soldiers have a chance before a regularly constituted court of inquiry or court-martial?

Mr. GARNER. They did. I will say to the gentleman here is the record of the court-martial of Major Penrose. The gentleman says he has worn the uniform of an American soldier for eighteen years. I want to read to him a list of this court-martial and ask him if he does not consider it to be equal to any that the President will be able to call under this bill?

Mr. HOBSON. If the gentleman will simply read the heading of the general order, saying that it was a court-martial, regularly constituted, before whom these men appeared, that will answer the question.

Mr. GARNER. By an examination of this record he will see that the second specification in this court-martial was that the soldiers shot up the town of Brownsville, and in response to that specification the court-martial unanimously returned a verdict of guilty. While it can not be said that these men were being court-martialed themselves, the issue involved was exactly the point raised here, that a part of this battalion was guilty of shooting up the town of Brownsville. That issue was determined by the court-martial.

Mr. HOBSON. Was it a board or a court?

Mr. GARNER. It was a court-martial, and here is the order convening it:

Special Orders, No. 264.

DEPARTMENT OF TEXAS,  
San Antonio, Tex., December 20, 1906.

2. A general court-martial will convene at these headquarters at 10 o'clock a. m., Friday, January 4, 1907, or as soon thereafter as practicable, for the trial of such persons as may properly be ordered before it.

Now the detail for the court was:

Col. George Le Roy Brown, Twenty-sixth Infantry; Lieut. Col. Louis M. Maus, deputy surgeon-general; Lieut. Col. Charles J. Crane, military secretary; Lieut. Col. Alfred C. Sharpe, Thirtieth Infantry; Lieut. Col. Edward J. McClelland, First Cavalry; Lieut. Col. Robert R. Stevens, deputy quartermaster-general; Lieut. Col. Frank Baker, Ordnance Department; Maj. Hamilton S. Wallace, paymaster; Maj. Charles W. Taylor, Thirteenth Cavalry; Maj. Henry D. Snyder, surgeon; Maj. Charles J. T. Clarke, Twenty-sixth Infantry; Maj. Charles A. Bennett, Artillery Corps; Maj. John H. Gardner, First Cavalry.

One of the specifications in this court-martial was that the troops under Major Penrose's command were guilty of shooting up the town of Brownsville; that was the second specification. They took testimony for three weeks, making a volume of 1,100 pages, where the troops of this company, every one of them, could have appeared before it. The witnesses from Brownsville appeared before the same court, each party had able counsel, and, after full hearing, the second specification was sustained; therefore these soldiers were found guilty of shooting up the town.

Mr. MADDEN. This man was court-martialed because he was off duty without leave.

Mr. HOBSON. Will the gentleman yield for a question right there? If the same procedure had been instituted against these men that was instituted against this officer, I would never have made my point this morning or made my speech.

Mr. GARNER. Neither would the gentleman from Alabama have made his speech if he had known of the record in this case. [Applause.] But, Mr. Speaker, I believe, furthermore, that if the gentleman from Illinois had read the record, and he had not been afraid of some people in his district, who might read the record to-day, he would not have made the speech he did a few minutes ago.

Mr. MADDEN. I think the gentleman from Texas will agree with every Member of the House that nobody can charge "the gentleman from Illinois" with cowardice; no man in this House can charge "the gentleman from Illinois" with not having the courage of his convictions.

Mr. GARNER. Mr. Speaker, I did not charge the gentleman from Illinois with cowardice; but it is peculiar, indeed, that every time the race question comes up the men on that side of the House that have the greatest number of negroes in their district are the quickest and the loudest in their approval of the negro. [Applause.]

Mr. Speaker, remarkable as it may seem, when the matter was considered by every department of this Government, every verdict that has been rendered up to this good hour has been that the negroes perpetrated the crime. Now, I want to ask if there is a man on that side of the House or on this side of the House who has investigated the record in this case who will rise in his place and say that none of these soldiers perpetrated the crime? [Applause.]

Mr. Speaker, if these had been white soldiers, I do not believe there would even have been a resolution of inquiry in either branch of Congress, much less the confusion that this matter has brought about. The negro is a political asset in the Republican party. Therefore he will continue to be a disturbing factor so long as he is essential to the success of that party in their political contests in several States of the Union. This is, indeed, unfortunate for the Southland, because every time an act of this kind is passed it is calculated to and does encourage those people to believe that they will receive protection, and even encouragement, from the Republican party in their efforts to place themselves upon a social plane with the white race. This can never be done, and the more strenuously the negro and his white sympathizers undertake to bring about this state of affairs the more harm will result to him and the greater confusion and discord among the whites.

You may pass all the laws you please, place it in the Constitution, declare it from the pulpit, proclaim it from the mountain top, but there is no power on earth that will make the African the equal of the white man, and those who undertake it are doing both races a great injury.

No one can tell how this race question is to be solved, but all who understand the question admit that it is best to permit the South to solve it in its own way, knowing that the white

race in that section has as keen a sense of justice and righteousness as any in the world.

Mr. Speaker, what will be accomplished by the passage of this bill? Either every man who applies for readmission into the army must be admitted upon his affidavit, or else every man who applies must be refused admission upon his affidavit. In either case the board will have no discretion in the premises, for all must be tried alike, and each and every one has sworn that he did not participate in the crime, nor did he know who perpetrated it. Under these conditions they must all be admitted who apply, or else all be rejected. Those believing that all should be returned where the most guilty can not be identified, should propose a bill directing their reenlistment, those who believe that the murderers should not be a part of the army should vote against this bill.

Every witness who knew any circumstance tending to show who shot up the town has been examined; every soldier's affidavit has been taken; all the testimony is in; and no one has been able to say who of the soldiers did the shooting, though all admitting that some of them did.

What will the board of five officers do? They can not secure additional testimony, therefore must pass on the record already made.

I can not help but believe that it is the intention of this bill to readmit every soldier who applies, but I indulge the hope that this committee of army officers will not admit a single one until he has established to their satisfaction that he neither perpetrated the crime nor had knowledge that would lead to the detection of the guilty.

What an anomalous condition we will have should these soldiers be readmitted into the army. The Commander in Chief of that army, the President-elect, of which they would be a part, has declared that the evidence was overwhelming, and beyond doubt showed that they were guilty, and no one here doubts his great legal ability, his statesmanship, and his sense of justice; therefore he would either have to exercise his constitutional right and again dismiss these troops, or else by his own decree continue in the army persons guilty of the heinous crime of murder. Wonderful, is it not, what political emergencies will do?

There is not a man in this House who would go further toward protecting the innocent negro than will I. And yet I say there is not a man in this House, and there is not a committee that can be appointed, that can ascertain, for the life of them, who was innocent and who was guilty, without the assistance of some of these soldiers. That being the case, I do not think that a battalion of men should be put back into the army where it is conceded by all that a portion of them are guilty.

In fact, according to my mind, there is not an innocent man in the battalion, for the reason that he either pulled the trigger or had knowledge of it, or has knowledge of facts that would aid the Government in ascertaining who was innocent or who was guilty. [Applause.]

Mr. WILLIAMS. Will the gentleman from Iowa now use a portion of his time?

Mr. HULL of Iowa. I want to be charged with a half a minute, just to say a word. The gentleman from Texas read from a court-martial proceeding in Brownsville, which was convened to try an officer who was in command of the post after the order was issued and the troops were discharged. The troops themselves have never had a court of inquiry. They did have an inspector-general go down there and report that the town was shot up by colored troops. That is not in controversy here. The simple question in this bill is to give the individual colored soldier a chance to show that he did not participate in this riot, and all who can show it can be reinstated. They never have had a court-martial or a court of inquiry. The individual soldier has never had an opportunity to do that, and will not have until this bill passes.

Mr. GARNER. Will the gentleman from Iowa yield for a question?

Mr. HULL of Iowa. I can not yield now.

Mr. WILLIAMS. Does the gentleman from Iowa propose to consume the balance of his time in one speech?

Mr. HULL of Iowa. Oh, no; I have a dozen gentlemen who want time.

Mr. WILLIAMS. I wish the gentleman would use some of his time now.

Mr. HULL of Iowa. Mr. Speaker, I yield three minutes to the gentleman from New York [Mr. WALDO.]

Mr. WALDO. Mr. Speaker, this is not a political question, this is not a race question, so far as I am concerned. I am about to leave this body, and it is highly improbable that I shall ever hold a political office again. I am here to ask merely that the Ameri-

can people, whether they be North or South, shall concede to men who have been discharged in violation of law and without authority an opportunity for such trial as our laws guarantee to them. That is all. It is very likely that many people might be convinced by the testimony that some of these colored troops were guilty. I am inclined to think, from a careful reading of this testimony, that some 5 or 6 men were. As to the others, there is absolutely no proof. On the contrary, the proof taken by all these officers shows that they were not guilty, and yet they have been discharged without honor and deprived of rights to which they are entitled, some of them, by honorable service for twenty-six years. One of these men has been in constant service for nearly twenty-six years. He has been in every war that we have had for the last quarter of a century—the Spanish-American war, the war in the Philippines, and in all the Indian wars. He was one of the men who helped save the white troops in Cuba. If he were the only man who is to be found innocent, the American people ought to give him the opportunity to show his innocence. I desire here publicly to thank the gentleman from Alabama [Mr. HOBSON] for having the courage to rise in his place and, in defiance of the universal prejudice of the people of the South, state that he is in favor of justice to negro soldiers. That is all that I am in favor of. [Applause.]

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

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

Mr. SULZER. Mr. Speaker, I am in favor of doing justice to the negro soldiers of Companies B, C, and D of the Twenty-fifth U. S. Infantry. I want to give these colored soldiers their day in court. They are entitled to this, and they never have had this opportunity of proving their innocence. If one be guilty, let him be punished, but the innocent should be reenlisted in the army and given all their rights and emoluments. The innocent should not be punished for the guilty. I voted in favor of this bill in the Committee on Military Affairs, and I shall vote to pass it through this House. No fair-minded man can consistently oppose this measure. It is honest and it is just. It will do justice to the innocent men and go far to ascertain the guilty. If we fail to do substantial justice in the case, we will be false to ourselves and false to every principle that we revere and hold most dear. If we refuse to do impartial justice to the colored soldiers who are innocent, we will violate every tenet of our boasted love of fair play. In my opinion, if this bill becomes a law no guilty man will be able to reenlist in the army, and no innocent man should be prevented from doing so. I have confidence that the board of inquiry created by this bill will be composed of men of ability and of high character. I have no doubt that the board will do its full duty in the premises, and I believe no soldier will be reenlisted until it is shown beyond the peradventure of a reasonable doubt that he is guiltless of any complicity in the Brownsville affair. I have no prejudice in a matter where justice is concerned. I want to say that I am now and always have been, and I trust always will be, in favor of equal and exact justice to all men—here and everywhere throughout the world—without regard to race or to creed or to previous condition. We must do justice in this Brownsville matter. We can not do less without stultifying ourselves and bringing our free institutions into strange contrast with our acts and performances. I want to see justice done, and I hope the bill will pass. It is never too late to do justice. "For justice, all seasons summer and all places a temple." [Applause on the Republican side.]

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

Mr. HULL of Iowa. Mr. Speaker, I yield five minutes to the gentleman from New York [Mr. COCKRAN].

Mr. COCKRAN. Mr. Speaker, the remarks of my colleague [Mr. SULZER] indicate the reasons which constrain me to support this measure. It is idle to ignore the fact that consideration of this proposal is complicated by the element of race antagonism. It is idle to ignore the fact that where two races dwell in considerable numbers together supremacy of one race will be asserted and established in some way or other. I fully sympathize with the determination of the white race in the South to maintain its supremacy as necessary to the preservation of its integrity against all opposition and against every obstacle; but, Mr. Speaker, how is this supremacy to be established? You can not establish superiority by asserting it, but by proving it. What is the test of superiority in Christian civilization? The greatest capacity to establish justice and the utmost readiness to do justice. [Applause.]

When a question arises between members of a superior and an inferior race, the superior, which insists upon exercising ex-

clusive control of government, must vindicate its position by doing not only exact justice, but, in cases of doubt, by doing more than justice to the weaker. [Applause on the Republican side.] The stronger race can justify itself in excluding the other from equality of political rights only by showing that under its domination more perfect justice will always be done men and women of the weaker race than they could establish for themselves if they were admitted to a share in the management of public affairs. And, sir, be it said with all credit to the friends who sit around me here that never in the whole range of human experience has this problem of adjusting the relations between two races—one intent upon maintaining its supremacy, whatever the cost—been forced upon a people under circumstances so difficult and conditions so disastrous as in the Southern States of this Union after the civil war, and never has it been met with such wisdom, faced with such success, solved with such credit to a nation or such promise to the progress of civilization! [Applause.]

It is a fact, I believe, that whenever a controversy concerning property or wages occurs between a white and a colored man in the South juries and courts nearly always give the benefit of every doubt to the member of the race which is considered inferior. Political rights are denied to the negro, but all his natural rights are fully protected. While you gentlemen of the South are accused by your critics in the North of excluding the black man from the enjoyment of equal political rights, nobody can doubt you have extended to him in the fullest measure the enjoyment of industrial rights. Indeed, I believe the condition of the colored man is better under the system you have established than it is in any northern State. In the North the negro is permitted to vote, but industrial conditions are such that he is practically denied a chance to work. In the South, on the other hand, he is refused the right to vote, but given every opportunity to work. In the North he is welcome to carry a torch in the political procession, but he is not allowed to carry a dinner pail in the industrial procession; while the white people of the South, who have excluded him from the political procession, welcome him to the industrial procession. And, in my judgment, it is the measure of justice which the negro admittedly enjoys that has reconciled the conscience and judgment of civilization to the peculiar political position he occupies in the Southern States. [Applause.]

Mr. Speaker, the proposal before this House now is to do complete justice where some negroes were charged with conduct which has deeply moved the indignation of a southern community. I agree with the gentleman from Texas [Mr. SLAYDEN] that grave crime has been committed. I agree with the gentleman from Texas, and all the gentlemen who have spoken on the same side, that a number of these colored soldiers are undoubtedly guilty of it.

Moreover, sir, I sympathize with the President of the United States in the action which he took. That a military company enlisted, organized, and equipped for the protection of American citizens, which had shown itself capable of committing crime and had actually accomplished assassination, should have been immediately dismissed from the service of the United States, disbanded, and discharged seems to me absolutely self-evident. And I thank God this was promptly done by executive order.

But, sir, it is equally true that besides the men comprising that battalion who were undoubtedly guilty there may have been one, two, five, perhaps ten, or even more, who were innocent. The protection of society and the vindication of military discipline were subserved when that military company or organization was disbanded. That measure of discipline having been accomplished, justice requires that any individual members who may be able to show they were innocent of any share in the crime that made disbandment of the battalion an imperative duty of the President shall be permitted to return and reenlist in the army, not to join the same company—that has ceased to exist—but to be distributed among other branches of the service where they will be under the influence of different and better associations.

Mr. BURLESON. But they will take them all back in the army. Mark my prediction.

Mr. COCKRAN. The gentleman may be as good a prophet as Samuel of old, but surely, Mr. Speaker, it will not be contended that prophecy can be made the basis of legislation. We must legislate upon principles applicable and comprehensible to all of us, not upon gifts peculiar to the prophets. [Laughter and applause.]

Mr. SLAYDEN. Will the gentleman tell us why he thinks some of them may be innocent?

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

Mr. COCKRAN. If I may have the time to answer—

Mr. SLAYDEN. I want to know why he assumes that—upon what information that has come to us officially or otherwise he reaches the conclusion that any of them may be innocent.

The SPEAKER pro tempore. The gentleman from Texas is out of order.

Mr. HULL of Iowa. Mr. Speaker, I yield one minute to the gentleman from New York to enable him to answer the question.

Mr. COCKRAN. Here is my answer: I do not assume that any are innocent, but I say some of them may be innocent, and justice forbids the possibility of injustice being done to anyone, even though he be the blackest, the poorest, the most ignorant of all the population. [Applause.]

Mr. SLAYDEN. I thought the gentleman said that undoubtedly some of them were innocent.

Mr. COCKRAN. I say some of them may be innocent, and this bill merely provides machinery for an inquiry into that very fact, and if there be any found innocent to give them the rights to which their innocence entitles them. [Loud applause.]

Mr. ADAIR. Mr. Speaker, I can not in the time allotted me enter into a detailed discussion of the merits of the bill before the House. I must therefore content myself with a brief statement, setting forth my reasons and the motive which prompts me in favoring the passage of the bill.

I am going to vote for this bill, Mr. Speaker, because I believe it is a matter of justice and right. I want every man to have equal opportunities under the law, regardless of whether he be black or white. I want the men discharged because of the Brownsville occurrence to have the right to establish, if possible, their innocence, and if they can do so I want to see them reinstated. This is not a political question, neither is it a racial question; it is a question of the guilt or innocence of these discharged soldiers; and this bill provides a method of determining who are guilty and who are innocent, and it also provides for the reinstatement of all who it is ascertained had no part in that unfortunate occurrence. It has been suggested that some Members are supporting this bill because there are a large number of colored voters in their districts, and that their support of the bill is due to that fact rather than to the merits of the bill.

Mr. Speaker, it can not be charged that my support of the bill is due to such a motive, as there are a very limited number of colored voters in my district, and they are sufficiently intelligent to cast their votes according to the dictates of their own conscience, and will not be controlled or influenced by what I may say or do with reference to this bill.

I have always been and always expect to be a consistent and sincere friend of the colored man, and shall always recognize and advocate his rights under the Constitution and the laws of our country. Our laws are enacted not for a particular race or nationality, but for all American citizens, and so long as I am a Member of Congress I shall use my voice and vote in bringing about the enactment of such legislation as will do full and complete justice to every man, without regard to race, creed, or previous condition. While I do not want to criticise anybody, I can not but believe that if these discharged soldiers had been white men their cases would have been heard and determined long ago. Every honest man will admit that, while possibly not intentional, there is nevertheless more or less discrimination against the colored man in cases of this kind. We all admit they are the weaker race, and that is a strong reason why they should be given due consideration. They go out in the battle of life handicapped by reason of their color, and the least we can do is to see that they are given all their rights under the Constitution.

Many of these soldiers had served for twenty years with credit to themselves and credit to the Government. Their bravery had been demonstrated on more than one occasion and their loyalty and devotion to the country and the flag had never been questioned. I am not, Mr. Speaker, trying to obscure the fact that murder was committed and that some of these men are guilty. I am just as anxious that the guilty may be punished as any Member of this House, and I am also anxious that the stain of guilt may be removed from the innocent and that the right of reenlistment be restored to them. All I ask is a square deal for both the innocent and the guilty, and I believe this bill will give it to them.

The bill provides that a court of inquiry, to consist of five officers of the United States Army, not below the rank of colonel, shall be appointed by the Secretary of War to hear and report upon all charges and testimony relating to the shooting affray which took place at Brownsville, Tex., on the night of August 12-14, 1906. It provides that this court of inquiry shall, within one year from the date of its appointment, make a final report and from time to time shall make a partial report to the Secre-

tary of War of the results of such inquiry. It provides that such soldiers and noncommissioned officers of Companies B, C, and D, of the Twenty-fifth Regiment, U. S. Infantry, who were discharged from the military service as members of said regiment under the provisions of Special Orders, No. 266, dated at the War Department the 9th day of November, 1906, as said court of inquiry shall find and report as qualified for reenlistment in the army, shall thereby become eligible for reenlistment.

It further provides, Mr. Speaker, that any noncommissioned officer or private soldier who shall be made eligible for reenlistment under the provisions of this bill shall, if reenlisted, be considered to have reenlisted immediately after his discharge, and to be entitled from the date of his discharge to the pay, allowances, and other rights and benefits that he would have been entitled to receive according to his rank from the date of discharge, as if he had been honorably discharged and had reenlisted immediately.

I can not see anything wrong or unfair in the provisions of this bill. It simply gives the discharged soldiers the right to appear before this court of inquiry and establish their innocence, and if they are unable to do that, they will not be eligible for reenlistment. Under the rule of law every man is presumed to be innocent until proven guilty beyond a reasonable doubt. Under this bill the burden rests upon the discharged soldiers, as it requires them to establish their innocence to the satisfaction of the court of inquiry and the Secretary of War.

It is only fair that these men be given an opportunity somehow or somewhere to establish their innocence, and up to this time that privilege has been denied them. Give them a day in court, let them be heard, and if guilty punish them, but in the name of justice do not punish the innocent because of the guilty.

I do not see how anyone can consistently oppose this measure. Its effect will be to vindicate the innocent and punish the guilty. I believe the court of inquiry appointed under the provisions of this bill will consist of men of high character, standing, and ability, and that no man will be allowed to reenlist until he has established his right. The passage of this bill is a matter of tardy justice. Let us show to the country that this House stands for equal and exact justice to all men regardless of race or color, by giving these discharged soldiers the right to be heard, and the right of reenlistment, if their innocence is established.

[Mr. MILLER addressed the House. See Appendix.]

Mr. HULL of Iowa. Mr. Speaker, how much time have I remaining?

The SPEAKER pro tempore. The gentleman from Iowa has six and one-half minutes remaining.

Mr. WILLIAMS. Does the gentleman from Iowa [Mr. HULL] intend to yield all of his time to one person?

Mr. HULL of Iowa. I will yield to one.

Mr. WILLIAMS. How much time has the gentleman remaining?

The SPEAKER pro tempore. Will the gentleman from Iowa [Mr. HULL] inform the Chair whether he yields?

Mr. HULL of Iowa. No; I reserve the balance of my time.

Mr. WILLIAMS. I understand the gentleman from Iowa is going to yield it all to one person.

Mr. HULL of Iowa. Yes.

Mr. WILLIAMS. Then I will yield the balance of the time on this side to the gentleman from Missouri [Mr. CLARK].

The SPEAKER pro tempore. The gentleman from Missouri [Mr. CLARK] is recognized for eight minutes.

Mr. HEFLIN. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD on this subject.

Mr. WILLIAMS. Mr. Speaker, I regret that I have to do this. I think the printing business by unanimous consent in order to extend for those who have really spoken is all right, but to let everybody print who have not spoken upon this question, and thereby encumber the RECORD, I think I will have to object to.

Mr. CLARK of Missouri. Mr. Speaker, how much time have I?

The SPEAKER pro tempore. The gentleman from Missouri is recognized for eight minutes.

Mr. CLARK of Missouri. Mr. Speaker, there is no sense in gentlemen becoming heated up about this question on either side. It is purely and simply a legal proposition. One gentleman says it is a political question, and another gentleman says it is not a political question, while yet another one says it is a racial question. It is, however, neither a racial nor political question; but if it is a political question, which I do not believe, I stand with my party. [Applause on the Democratic side.] If it is a racial question, which I do not believe it is, I stand with the people of my blood. I have never been ashamed or afraid to stand up and be counted with any crowd to which I belong in any station of life.

The gentleman from New York [Mr. COCKRAN] says that the race to which we belong has conquered by reason of its sense of justice. That is not true. He is mistaken. We have conquered by the power of the lion's paw and the eagle's claw. That is the way we have gotten along in this world. [Applause on the Democratic side.] In every country where we have set our feet we have either achieved the mastery or we have found a grave. And that will be the way of it until the end of time. [Applause.] It is in the blood. It is our destiny. We could not escape it if we would, and we would not escape it if we could.

I will tell you about the political phase of this question. In the numerous debates I have had with our beloved friend, Gen. Charles Henry Grosvenor, on one occasion he was telling of the marvelous prosperity that prevailed in 1892, during Gen. Benjamin Harrison's administration. I said, "General, if that is true, how did we happen to mop up the face of the earth with you that fall?" He said, "It was that d—d Homestead strike!" That was the politics that year. There has never been any partisan politics in this thing. There has been a great deal of factional Republican politics in it, as much as there was of partisan politics in the Homestead strike. This Brownsville wrangle removed Senator JOSEPH BENSON FORAKER absolutely as a candidate for the Presidential nomination. It contributed largely to an event that I am glad of, and that was the election of the Hon. THEODORE E. BURTON to the Senate of the United States by putting Senator FORAKER out of the running. [Applause.]

As long as there was any factional politics to be played in this matter the Republicans split up and fought each other with the pertinacity of the Kilkenny cats. Now, having carried the election, you are doing what you generally have managed to do—you are getting together for further political effect, and that is all the politics there ever was in it. [Applause on the Democratic side.]

Mr. Speaker, a large number of men in this House have been prosecuting attorneys. That is one of the favored paths to a seat in this House. I have prosecuted hundreds; I have defended hundreds. I never made the slightest difference between a negro and a white man, either in the discharge of my duty as prosecuting attorney or in defending them in court. Some of the hardest fights I ever made in my life inside of a court-house I made on the appointment of a judge to defend some poor negro that did not have a nickel with which to pay any living man to defend him. [Applause on the Democratic side.] I have no unkind feeling in my heart toward them. I worked with them when I was a boy, in the same field, played with them when I was a child, and every one of them that lives in my town to-day is my personal friend and I am their personal friend. When they want help, they come to me, and I have never yet turned one of them away empty-handed. I never will.

Mr. Speaker, you used to be a circuit attorney, and I was prosecuting attorney. The law in every civilized community where the English tongue is spoken is this: That the man that gives aid or comfort to a murderer is a murderer himself—an accessory after the fact. [Applause on the Democratic side.] Indeed, in the criminal code passed through this House only a few days ago both accessories before the fact and accessories after the fact are specifically declared to be principals in felonies. Now, what are the facts in this case?

Mr. HOBSON. Will the gentleman yield to a question?

Mr. CLARK of Missouri. I have not time. I do not want to be discourteous, but that is exactly the situation.

Some of these soldiers committed murder. There is not any doubt about that in any sensible man's mind. The man murdered was a peace officer, killed in the discharge of his duties. They tried to commit two more murders. Every man in that battalion that has any knowledge of that transaction is as guilty in the eyes of the law as the man that pulled the trigger, and you can not get away from that. [Applause on the Democratic side.] There is not a single man here or elsewhere who ever read a hornbook on criminal law who would, under oath, take issue with me on the law as I have stated it.

What was offered after President Roosevelt, as Commander in Chief of the Army and the Navy, put these men out of the service? William H. Taft was Secretary of War. They both said that if the men of that battalion would deliver up to justice the guilty ones the rest of them should be reinstated in the army. [Applause.] That was your President, Mr. Speaker, and that is your President-elect. Their proposition was a fair one, and the law ought to have been enforced on them whether they were black men or white men. [Renewed applause.] See how it is? The United States soldiers are the only men permitted to carry arms under the law and swagger around with them, except in a few towns, where the policemen have that

power. If I knew of any man in Washington who had threatened hundreds of times to take my life, I do not have the poor privilege under the law of carrying a pistol for self-defense.

Soldiers, of all men, ought to behave themselves, whether black or white. This can not be twisted into a race question. It is purely a legal question. You can not befog it by talking about black men and white men. You can not befog it by talking about Republicans or Democrats. You will fool nobody by such jabber and such tactics. Every man that commits murder—I do not care whether in the army or out of the army—ought to be hanged until he is as dead as the men who lived before the flood. [Laughter and applause.] President Roosevelt has denounced the men that committed that crime as "bloody butchers and murderers." Mr. Speaker, there are some 200 of us in this town that one night witnessed a spectacle never seen before by human eyes and in all probability never to be duplicated in all the centuries yet to be. We saw a Senator of the United States [Mr. FORAKER] in a public place hold a joint discussion with the President of the United States and hold his own. It grew out of this Brownsville business and was a most thrilling performance. Just exactly how anybody can get his own consent that a murderer shall not be punished I can not tell.

One thing more and I will quit. This bill ought to be entitled "A bill to put a premium on perjury." [Loud applause.]

The bill runs as follows:

An act to correct the records and authorize the reenlistment of certain noncommissioned officers and enlisted men belonging to Companies B, C, and D, of the Twenty-fifth U. S. Infantry, who were discharged without honor under Special Orders, No. 266, War Department, November 9, 1906, and the restoration to them of all rights of which they have been deprived on account thereof.

*Be it enacted, etc.*, That the Secretary of War is hereby authorized to appoint a court of inquiry, to consist of five officers of the United States Army, not below the rank of colonel, which court shall be authorized to hear and report upon all charges and testimony relating to the shooting affray which took place at Brownsville, Tex., on the night of August 13-14, 1906. Said court shall, within one year from the date of its appointment, make a final report, and from time to time shall make partial reports, to the Secretary of War of the results of such inquiry, and such soldiers and noncommissioned officers of Companies B, C, and D, of the Twenty-fifth Regiment U. S. Infantry, who were discharged from the military service as members of said regiment, under the provisions of Special Orders, No. 266, dated at the War Department the 9th day of November, 1906, as said court shall find and report as qualified for reenlistment in the Army of the United States shall thereby become eligible for reenlistment.

SEC. 2. That any noncommissioned officer or private who shall be made eligible for reenlistment under the provisions of the preceding section shall, if reenlisted, be considered to have reenlisted immediately after his discharge under the provisions of the special order hereinbefore cited, and to be entitled, from the date of his discharge under said special order, to the pay, allowances, and other rights and benefits that he would have been entitled to receive according to his rank from said date of discharge as if he had been honorably discharged under the provisions of said special order and had reenlisted immediately.

The second section of this bill, when intelligently interpreted, provides that the men who perjure themselves, or whom you can not prove are guilty, shall not only be reinstated in the army, but they shall receive their emoluments for the two years, I believe it is, that they have been out of the army, and for the time until they go back into the army. In addition to that they are to resume rights to be put on the retired list. Does any sane man believe that a man who commits assassination will not also commit perjury? Others may vote for this bill. I will not.

The SPEAKER. The time of the gentleman has expired.

Mr. CLARK of Missouri. Just one more sentence. I say now, speaking for every man here, that if these soldiers will give up the guilty ones the innocent ones may be taken care of. [Loud applause.]

Mr. HULL of Iowa. I yield the balance of my time to the gentleman—

Mr. BEDE. May I ask the gentleman from Missouri one question?

The SPEAKER. The gentleman has not the floor.

Mr. WILLIAMS. I have not the time to yield. If I had, I would gladly do so. [Cries of "Give him half a minute!"]

Mr. HULL of Iowa. I ask unanimous consent that the gentleman from Minnesota may have the right to ask one question of the gentleman from Missouri, and that he have time to reply.

Mr. CLARK of Missouri. I would like to have time to answer it.

Mr. HULL of Iowa. That is my request.

The SPEAKER. Is there objection?

Mr. HULL of Iowa. I will ask unanimous consent that the gentleman from Minnesota may have the right to ask the gentleman a question, not to exceed half a minute, and that the gentleman from Missouri have one minute to reply.

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

Mr. BEDE. I ask the question merely as a layman. The gentleman from Missouri has stated that many Members of this House have been prosecuting officers. I ask him this question from his knowledge of jurisprudence, as it would clear up my mind a little before this vote; if he can tell me if there has ever been a case where 167 men went into a conspiracy? There were 167 of these soldiers. I have never heard of a case where that many men went into a conspiracy.

Mr. CLARK of Missouri. Why, there are cases where thousands of men went into conspiracy. There is no question about that.

It does not make any difference what you call it. There were the Bald Knobbers in Missouri; there were the Night Riders, the Ku Klux; the Mollie Maguires in Pennsylvania; the White Cappers; the Mafia in Louisiana; and the race riots at Springfield, Ohio, and Springfield, Ill. [Applause and laughter on the Democratic side.]

Mr. HENRY of Texas. I ask unanimous consent—

Mr. HULL of Iowa. Mr. Speaker, I must object. I want to yield the balance of my time now.

Mr. HENRY of Texas. Mr. Speaker—

The SPEAKER. Does the gentleman from Iowa yield?

Mr. HULL of Iowa. I will not.

The SPEAKER. The gentleman declines to yield.

Mr. HULL of Iowa. I yield the remainder of my time to the gentleman from Ohio [Mr. KEIFER].

Mr. KEIFER. Mr. Speaker, neither in the judgment of civilized man nor in the judgment of Almighty God will the Saxon or white race ever attain, establish, or maintain supremacy in this world by or through acts of cruelty or injustice to an inferior race. [Applause.]

On the night of the 13th of August, 1906, an unfortunate thing happened in Brownsville, Tex. One man was killed; the chief of police was dangerously wounded. Some superficial examination was made by an officer of the army, specially detailed, with reference to ascertaining who was guilty. So far as I have been able to read the testimony taken of some of the men who are arraigned here to-day and charged with being guilty of crime, not one of them was asked any question the answer to which would or could have tended to show who committed the crime or that the witness being examined knew who committed it.

General Garlington, who made the report, based on the testimony, simply reported that the men at whose door the crime was laid were given the opportunity to prove that they did not know who was guilty. This was not true in any real sense. They were offered no such opportunity. The testimony, it would seem to a lawyer, was taken with a view to not eliciting from the witnesses examined any important thing they might know as to either the guilt or innocence of anybody. But of this, more at length, a little later.

Mr. GARNER. Will the gentleman yield?

Mr. KEIFER. No; not now. On the 9th of November, 1906, by the direction of the President, a War Department order, No. 266, was issued, discharging without honor from the service of the United States Companies B, C, and D, of the Twenty-fifth U. S. Infantry, including about 167 enlisted men. Part only of the members of these companies were at Brownsville when the shooting took place, and some of those then there were, for minor offenses, locked up in the guardhouse, and still others who were there were sick in hospital, and about 18 of the enlisted men of these companies were a thousand or more miles away, principally in Oklahoma, on furlough or on detail duty.

The gentleman from Missouri [Mr. CLARK], who has just taken his seat, says that they are all guilty of perjury; and he lays down as a principle of law something that has never been recognized in any court of justice in the world. In effect his legal claim is that if a man had an opportunity, or might in some way have, by possibility, the means of knowing that somebody was guilty of a crime, he himself becomes guilty with the principal as an accessory after the fact. No such absurdity has ever crystallized into the law of a civilized country, and never will.

It is not even true, as the distinguished gentleman from Missouri states, "that the man that gives aid or comfort to a murderer is a murderer himself—an accessory after the fact." This announcement of such a rule of law was hastily made or it never would have been made by the distinguished gentleman. An accessory after the fact to any crime, at common law or by statute, is very rare and never can exist where the crime is murder. There may be an accessory before the fact where the party did something to promote the murder before the deed was consummated. There can be no accessory after the fact in homicide or murder. After the murder has been committed

there can be no new party to it. There must be a participation in some way in the commission of the crime before guilt can attach. An accessory to a crime, before or after the fact, arises only through participation, directly or indirectly, in the acts, or some of them, constituting or connected with the crime and with a guilty intent; and there can be no accessory after the fact to a crime of any character growing out of a suppression of knowledge of the crime or of the evidence of the guilt of the real criminal. An accessory after the fact to a crime is a person who, with no previous relation to it and after the principal act constituting it has been committed, participates in subsequent acts necessary to its full or final consummation. In larceny and like offenses where property is taken a person may be an accessory after the fact who, after the taking, aids in carrying it off and secreting it. There must be a participation in the crime while it is yet incomplete. Larceny consists in the unlawful taking of property of another, and the offense is regarded as committed any time after the original asportation, but the crime is held to be continuing and repeated so long as the goods are in the possession or under the control of the thief; and he may be prosecuted for the crime in any county of the same State where he has taken the stolen property. A horse stolen in one county and ridden to another renders the thief liable to prosecution in either. There may be repeated accessories in larceny and kindred incomplete offenses, but not in homicide.

But in no case can a man become an accessory after the fact by merely failing to give information as to who the guilty party was, even though he possessed full knowledge of the crime; and to announce, as does the gentleman from Missouri, that "every man in that battalion that has any knowledge of that transaction is as guilty in the eyes of the law as the man that pulled the trigger" is to announce that which is not supported by any authority and is unsound in principle and is not supported by sound reason.

There are many in higher life than the soldiers involved who withhold information as to a guilty party for various reasons, and sometimes justifiably do so, but whether the reason for not disclosing such information or knowledge is justifiable or not, those who do so are not regarded, criminally or otherwise, as accessories to a crime. There never was a conviction of a person as an accessory to a crime where the indictment or information only alleged that the person possessed knowledge that some other person had committed it. No such foolish indictment or information was ever framed.

Clergymen, attorneys, and physicians often acquire directly from the guilty the most accurate and detailed information as to their guilt, which is sacredly concealed from the public authorities and which they are not allowed by the common law or by state and federal statutes to disclose in a court of justice, however willing they may be to do so. The law does not regard these professional men as criminals, but guards their knowledge acquired in a confidential way from publicity, and wisely so.

Priests in the confessional may learn the author of the most heinous crime, and their sacred calling warrants and protects them in sacredly keeping the knowledge secret. If the rule of criminality said to exist was applied to priests, they would all be condemned to prison or the gallows.

It has always, in this and other countries, in schools, colleges, and universities, theological institutions included, been regarded as dishonorable for one student to disclose the bad conduct or acts of his fellows, and it is nowhere in civilization held to be dishonorable or criminal to keep secret knowledge of offenses committed by comrades or friends.

But these poor unfortunate negroes are here arraigned as murderers because they did not disclose their supposed knowledge of the guilt of some of their soldier comrades. And it is only assumed that they possessed or could possess knowledge of the guilt of any one of their comrades.

The shallow theory that all of the three companies were in a conspiracy to suppress all knowledge of the shooting up of Brownsville deserves no attention. No such conspiracy was possible or could have been carried out successfully.

Mr. Speaker, I do not care here to go into the question of the power of the President to issue the order of dismissal, and I would not regard it necessary, if I had the time, to arraign him for issuing it, however much I differ with him as to its wisdom or as to his right and power to issue it.

I have heard it said, and I believe it has been repeated on the floor here to-day, that there were precedents for commanding officers of the army dismissing whole battalions of men because of some misconduct. I know of no such precedent and I have reason to believe none can be found. A precedent has been talked about as coming from General Lee, when he issued an

order in October, 1864, with reference to a battalion of the army of northern Virginia. In that case General Lee expressly declined to exercise the power to dismiss the battalion, but simply ordered it out of the army of northern Virginia in disgrace. He did not assume to do anything more. That is the only precedent I have heard cited on the confederate side in the civil war. I will read here this much-talked-of order of General Lee:

General Order No. —.  
HEADQUARTERS ARMY OF NORTHERN VIRGINIA,  
October —, 1864.

The — Battalion, for cowardly conduct on every battlefield from Gettysburg to the present time, is unworthy of a place as an organization in the Army of Northern Virginia. It will be marched to division headquarters Wednesday afternoon at 4 o'clock and surrender its colors and marched to the rear in disgrace. The general commanding the Army of Northern Virginia regrets that there are some brave officers and men belonging to this organization who must share in this common disgrace, but the good of the service requires it, and they must bear it as brave soldiers.

Gen. R. E. LEE,

Assistant Adjutant-General.

It will be seen the battalion was only sent to the rear in disgrace, and the whole battalion was held guilty of cowardice, as the order recites, and of course all its members must suffer together.

Mr. BARTLETT of Georgia. The President in his message cited the precedent of an Ohio regiment.

Mr. KEIFER. I can not now allow the gentleman to take my time. General Grant or General Lee could order an organized army into battle where possibly 50 per cent or more of them might be killed or wounded, but neither of those generals had the right to order any of them dismissed from the army, organized under and in pursuance of law, without trial by court-martial.

The power of the President, as Commander in Chief, to command the Army of the United States does not carry with it the power to disband that army. And of course this is so as to generals commanding armies. The dismissal of the officers and enlisted men of the Volunteer Army in times of war would not be a precedent for the dismissal of officers and soldiers from the Regular Army, as the commissions and enlistment in the Volunteer Army provide for a term of months or years or during the war and always coupled with a condition—"or until sooner discharged." Hence the enlisting authority might discharge during the war an organization of volunteers at any time. The Regular Army of the United States in all its history furnishes no precedent for the presidential order.

The present adjutant-general of the United States Army, Maj. Gen. F. C. Ainsworth, of date of December 10, 1906, in a memorandum furnished at the request of the Secretary of War, among other things, says:

A protracted examination of the official records has thus far resulted in failure to discover a precedent in the Regular Army for the discharge of those members of the three companies of the Twenty-fifth Infantry who were present on the night of August 13, 1906, when an affray in the city of Brownsville took place.

No record of the summary discharge from the Regular Army, prior to the recent discharge of a battalion of the Twenty-fifth Infantry, of a considerable number of enlisted men at one time has been found.

The individual cases of summary discharge without honor and without court-martial from the Regular Army are shown by the same authority to be on account of "fraudulent enlistment," "desertion," "imprisonment after conviction by a civil court," and for "having become disqualified for service through their own misconduct," and not because the soldiers were charged with any crime punishable under the Army Regulations or by statutes, state or federal. And in most of the cases other than those arising from desertion the soldier was discharged on his own application.

Involuntary discharges from the United States Army seem to be unknown, especially where vested rights, due to long service and repeated enlistments, were involved. Only after conviction by a duly organized military court can such rights be properly or legally taken away and the soldier be dishonorably discharged.

The alleged precedents arising in the civil war where it is said volunteer military organizations were discharged the service I have already sufficiently commented on and pointed out that by the terms of enlistment they were at all times subject to discharge by the President from the service.

There were cases in the Union Army, like the one I have referred to in General Lee's army, where a regiment, battalion, or company was sent to the rear in disgrace as a punishment, but I think no precedent can be found of even an enlisted man being discharged for any offense by an army commander without trial by court-martial.

The case of an Ohio regiment just referred to by the gentleman from Georgia [Mr. BARTLETT] as a precedent was doubtless like the General Lee case, where a regiment was ordered to the rear by General Grant as a punishment for bad conduct on the battlefield of Shiloh. Other instances cited are purely cases where the President discharged volunteer military organizations for various reasons, but in accordance with their terms of enlistment.

But here is the question: These men never had a trial; never have faced a tribunal; never were shown to be guilty before the order for their dismissal was issued, nor since, unless possibly a very few of them on *ex parte* testimony and without trial.

I should like to read the testimony of one or more of these witnesses which my friend from Missouri [Mr. CLARK] says makes them guilty of perjury because they did not answer the questions and disclose somebody's guilt. This witness and the other witnesses responded to the questions asked.

Mr. HENRY of Texas. Read it all.

Mr. KEIFER. I will read the testimony of Musician Jones:

Q. Where were you on August 13 when the shooting commenced?—A. I was in my bed in the quarters.  
Q. Asleep or awake?—A. Asleep, sir.  
Q. Anybody ever abuse you in Brownsville?—A. No, sir.  
Q. Have you ever been in a barroom in Brownsville?—A. No, sir.

Mr. HENRY of Texas. Read it all.

Mr. KEIFER. That is every word of it. That man was then dismissed without further inquiry and not permitted to testify further, and the gentleman from Missouri [Mr. CLARK] calls him a perjurer because he did not disclose who committed the crime. I have looked over the testimony of a large number of the witnesses who testified and who were examined in the same way, and I do not recall one of them having been asked a question that could have elicited an answer as to who was guilty had the witness known. The questions put to all of these witnesses seem to have been designedly so framed as to avoid getting any desired information.

Mr. HENRY of Texas rose.

Mr. KEIFER. Now, I can not yield. I have not the time. I would if I could. If you will give me half an hour I will give you half of it.

Lest the testimony of this witness may be thought exceptional I will read that of a number of other members of Companies B, C, and D, of the Twenty-fifth U. S. Infantry, who were called as witnesses. The testimony of each witness is read in full:

PVT. MARK GORMAN, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when shooting commenced in Brownsville?—A. In bed.  
Q. Where was the bed?—A. Upstairs.  
Q. In quarters?—A. Yes, sir.  
Q. Asleep or awake?—A. I was asleep; they woke me up.  
Q. Anybody ever abuse you in Brownsville?—A. No, sir.  
Q. Were you asleep at 11 o'clock inspection?—A. Yes, sir; I guess I was; I did not know when they came through.

PVT. JOSEPH ROGERS, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13, 1906, when shooting commenced?—A. I was at the guardhouse.  
Q. Asleep or awake?—A. Asleep, sir.  
Q. Who did you first see when you awoke?—A. The sergeant of the guard.  
Q. Name him.—A. Sergeant Reid.  
Q. Was the shooting still going on?—A. Yes, sir.  
Q. Anybody ever abuse you in Brownsville?—A. No, sir.

PVT. JAMES T. HARDIN, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13, 1906, when shooting commenced in Brownsville?—A. I was at Lieutenant Higgins's quarters.  
Q. Awake or asleep?—A. Asleep, sir.  
Q. Who did you first see when you awoke?—A. Artificer Rudy, next morning.  
Q. Anybody in Brownsville ever abuse you?—A. No, sir.

PVT. AUGUST WILLIAMS, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when the shooting commenced?—A. In Brownsville, Tex.  
Q. What part of Brownsville?—A. I was in the post; in quarters.  
Q. Awake or asleep?—A. Asleep, sir.  
Q. Anybody in Brownsville ever abuse you?—A. No, sir; nobody ever abused me.  
Q. Who, if anybody, told you that they had been abused?—A. Nobody that I remember.

PVT. ROBERT TURNER, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when shooting commenced?—A. Was over across the garrison at Lieutenant Hay's quarters at Fort Brown.  
Q. Did you hear the shooting?—A. Yes, sir.  
Q. Were you awake or asleep when the shooting commenced?—A. I was asleep when it first commenced.  
Q. Did anybody in Brownsville ever abuse you?—A. No, sir.  
Q. Did anybody ever tell you that they had been abused in Brownsville?—A. Yes, sir; one was Private—don't remember his name.

PVT. JOHN T. HAWKINS, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when the shooting commenced?—A. I was asleep in bed in quarters.  
Q. Anybody ever abuse you in Brownsville?—A. No, sir.

PVT. LEARTIS WEBB, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when the shooting commenced?—A. In bed, asleep; bed was near the door upstairs; in the quarters.

Q. Awake or asleep?—A. Asleep.  
 Q. Anybody ever abuse you in Brownsville?—A. No, sir.  
 Q. Anybody ever tell you that they had been abused in Brownsville?—A. No, sir.

PVT. CALVIN SMITH, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when the shooting commenced?—A. I was in my bed, sir; in quarters.  
 Q. Awake or asleep?—A. I was asleep; woke up by noise of shooting.  
 Q. Anybody ever abuse you in Brownsville?—A. No, sir.

PVT. JOHN SMITH, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when the shooting commenced at Brownsville?—A. I was in confinement.

PVT. HENRY T. W. BROWN, COMPANY D, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13, 1906, when the shooting commenced?—A. Fort Brown, Tex.; in barracks, asleep.  
 Q. Anybody ever abuse you in Brownsville?—A. No, sir.  
 Q. Any man ever tell you that he had been abused in Brownsville?—A. Once. His name is Newton, belonged to C Company. Man by the name of Reed, belonged to C Company. That is all.  
 Q. Ever hear of anybody else being abused there from any company?—A. No, sir.

COOR. ROBERT WILLIAMS, COMPANY D, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when the shooting commenced?—A. In my room, sir; asleep.  
 Q. Anybody ever abuse you in Brownsville?—A. No, sir.  
 Q. Any man ever tell you he had been abused in Brownsville?—A. No, sir.

CORPL. ALBERT ROWLAND, COMPANY D, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when the shooting commenced?—A. I was in my quarters.  
 Q. Awake or asleep?—A. I was asleep at the beginning of it.  
 Q. Anybody ever abuse you in Brownsville?—A. No, sir.  
 Q. Did you ever hear anybody say that he had been abused in Brownsville?—A. I heard one man say; I can not think of his name; belongs to C Company; the man that said he got hit.

Q. Did you ever go into a saloon in Brownsville?—A. Only one; a discharged soldier had one there; I went into it.

Q. Was that a private saloon for the Twenty-fifth Infantry soldiers?—A. Yes; I think it was.

Q. Never went into a city saloon?—A. No, sir; never went into a city saloon.

PVT. DORSIE WILLIS, COMPANY D, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when the shooting commenced?—A. I was in bed, sir; in quarters in garrison; Company D quarters.  
 Q. Anybody ever abuse you in Brownsville?—A. No, sir.  
 Q. Hear any rumors that men were abused in Brownsville?—A. Yes, sir.

Q. Name those that you heard were abused.—A. Private Newton, Company C.  
 Q. Anybody else?—A. Private Reed, also Company C.  
 Q. Have you ever been in a city saloon in Brownsville?—A. No, sir; only that one that was run there by a discharged soldier.

PVT. WILLIAM E. JONES, COMPANY D, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when the shooting commenced?—A. I was in Captain Lyon's quarters, asleep.  
 Q. Anybody ever abuse you in Brownsville?—A. No, sir.

MUSICIAN HENRY JIMERSON, COMPANY B, TWENTY-FIFTH INFANTRY.  
 Q. Where were you on August 13, 1906, when shooting in Brownsville commenced?—A. In quarters, sir.

Q. Awake or asleep?—A. Asleep.  
 Q. Were you ever abused in Brownsville?—A. No, sir.  
 Q. Were you ever in a saloon in Brownsville?—A. No, sir; I never was.

PVT. WILLIAM M. MATTHEWS, COMPANY D, TWENTY-FIFTH INFANTRY.  
 Q. Where were you on August 13, 1906, when shooting commenced?—A. In quarters, sir.

Q. Awake or asleep?—A. Asleep, sir.  
 Q. Were you ever abused in Brownsville?—A. No, sir.  
 Q. Were you ever in a saloon in Brownsville?—A. Once, sir; called the depot saloon—Mexican saloon.

PVT. GEORGE W. PERKINS, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. How long have you been in the service?—A. Eight years.  
 Q. Where were you on August 13, 1906, when the shooting commenced?—A. In Brownsville; in quarters, in bed.

Q. Awake or asleep?—A. Asleep at the time.  
 Q. Have you ever been abused in Brownsville?—A. No, sir.  
 Q. Have you ever been in a saloon in Brownsville kept by a white man?—A. Once I started in there and turned back. A Mexican told me not to go in those saloons, because they wouldn't serve me, so I turned back and wouldn't go in. On one occasion I was downtown unloading freight; stopped in; otherwise haven't been in.  
 Q. Ever been in a Mexican saloon?—A. No, sir.

PVT. JOHN BROWN, COMPANY B, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13 when shooting commenced?—A. In the baker shop, asleep.  
 Q. Have you ever been abused in Brownsville?—A. No, sir.

PVT. WILLIAM B. JONES, COMPANY D, TWENTY-FIFTH INFANTRY.  
 Q. Where were you on August 13 when shooting commenced?—A. In Fort Brown, sir.

Q. Whereabouts?—A. Asleep, when the shooting commenced.  
 Q. Where?—A. In my bunk; sleeping in my quarters.  
 Q. Were you ever abused in Brownsville?—A. No, sir.

PVT. FRANK BUNSLER, COMPANY C, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13, 1906, when the shooting commenced?—A. In the guardhouse at Brownsville.

PVT. HENRY ODOM, COMPANY B, TWENTY-FIFTH INFANTRY.  
 Q. Where were you on August 13 when shooting commenced at Brownsville?—A. Asleep, sir; in barracks.  
 Q. Who did you first see when you woke up?—A. I got up and put on my trousers and ran down; met the major; first I saw.  
 Q. Have you ever been abused in Brownsville?—A. No, sir.  
 Q. Have you ever been in a barroom kept by a white man?—A. No, sir.  
 Q. Why not?—A. Because I very seldom went down town, sir.

PVT. LEROY HORN, COMPANY B, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13, 1906, when shooting commenced at Brownsville?—A. Laying in bed, asleep, sir. Bed on side of house next to town, in barracks.

Q. Were you ever abused in Brownsville?—A. No, sir.

PVT. SOLOMON JOHNSON, COMPANY B, TWENTY-FIFTH INFANTRY.

Q. On August 13, 1906, where were you when shooting commenced?—A. In quarters, sir; in barracks, in bed.

Q. Asleep or awake?—A. Asleep.

Q. Were you ever abused in Brownsville?—A. No, sir; I wasn't.  
 Q. Were you ever in a saloon in Brownsville kept by a white man?—A. No, sir.

Q. Why not?—A. It was said partition had been put between white and colored, so I never went down there.

PVT. WILLIAM ANDERSON, COMPANY B, TWENTY-FIFTH INFANTRY.

Q. Where were you on August 13, 1906, when shooting commenced?—A. In my bed asleep; in barracks when shooting began. When I woke up, shooting was going on; shooting and call to arms woke me up, together.

Q. Anybody ever abuse you in Brownsville?—A. No, sir; never had any trouble any time with anyone.  
 Q. Did you ever hear of anyone having trouble? If so, state who.—A. I heard of Private Reed, C Company, and Newton, C Company, so I heard say; I don't know, though.

Q. Anybody else?—A. No, sir.

The testimony of these soldiers is sufficient to show that no real effort was made in good faith to have the members of these companies disclose any knowledge they might have possessed as to the guilt or innocence of anybody, and there was no effort to have them exculpate themselves. There was much testimony of members of the three companies of the character quoted.

On this character of testimony General Garlington, in his report to the War Department and the President, was pleased to say:

The uniform denial on the part of the enlisted men concerning the "barrack talk" in regard to these acts of hostility upon the part of certain citizens of Brownsville indicated a possible general understanding among the enlisted men of this battalion as to the position they would take in the premises, but I could find no evidence of such understanding.

And, further, that—

It has been established, by careful investigation, beyond reasonable doubt that the firing into the houses of the citizens of Brownsville, while the inhabitants thereof were pursuing their peaceful vocation or sleeping, and by which one citizen was killed and the chief of police so seriously wounded that he lost an arm, was done by enlisted men of the Twenty-fifth Infantry belonging to the battalion stationed at Fort Brown. After due opportunity and notice, the enlisted men of the Twenty-fifth Infantry have failed to tell all that it is reasonable to believe they know concerning the shooting. If they had done so, if they had been willing to relate all the circumstances—instances preliminary to the trouble—it is extremely probable that a clew sufficiently definite to lead to results would have been disclosed. They appear to stand together in a determination to resist the detection of the guilty; therefore they should stand together when the penalty falls.

And by way of conclusion he said:

I recommend that orders be issued as soon as practicable discharging, without honor, every man in Companies B, C, and D of the Twenty-fifth Infantry serving at Fort Brown, Tex., on the night of August 13, 1906, and forever debarring them from reenlisting in the Army or Navy of the United States, as well as from employment in any civil capacity under the Government.

On this report the President acted, and his order was as comprehensive as the recommendation just quoted. The bill we are about to pass will only partially and tardily repair the consequent injustice done.

It has been frequently asserted here to-day that Secretary of War Taft approved the issuance of the order of dismissal. My understanding is that he did not, and that he delayed its issue until he had no discretion in the matter.

It is said, after careful scrutiny of the testimony taken by the Senate Committee on Military Affairs, that about five or six, as I now recollect, of these persons have been inculpated, and the balance, according to every test that is applied to criminal procedure, are innocent. The bill is hardly just to these soldiers, but it is hoped that it will secure substantial relief to all who are found to be innocent. It is the best that can be done now, and the bill should be passed.

The SPEAKER. The time of the gentleman has expired.

Mr. HULL of Iowa. Mr. Speaker, on the passage of the bill I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 211, nays 102, answered "present" 1, not voting 72, as follows:

YEAS—211.

Acheson	Barclay	Boyd	Campbell
Adair	Barnhart	Bradley	Capron
Alexander, N. Y.	Bartholdt	Brownlow	Cassel
Allen	Bates	Burleigh	Caulfield
Ames	Bede	Burton, Del.	Chaney
Andrus	Bennet, N. Y.	Burton, Ohio	Chapman
Anthony	Bennett, Ky.	Butler	Cockran
Ashbrook	Bonyng	Calderhead	Cole
Barchfeld	Boutell	Caldwell	Cook, Colo.

Cooper, Wis.	Haggott	Loud	Reynolds
Cousins	Hall	Loudenslager	Roberts
Cox, Ind.	Hamilton, Iowa	Lowden	Rodenberg
Crumpacker	Hamilton, Mich.	McCall	Rothermel
Currier	Harding	McCreary	Ryan
Cushman	Haskins	McDermott	Scott
Dalzell	Haugen	McGuire	Sherman
Darragh	Hawley	McHenry	Sherwood
Davis	Hayes	McKinlay, Cal.	Siemp
Dawson	Henry, Conn.	McKinley, Ill.	Smith, Cal.
Denby	Hepburn	McKinney	Smith, Iowa
Denver	Higgins	McLachlan, Cal.	Smith, Mich.
Diekema	Hill, Conn.	McLaughlin, Mich.	Snapp
Dixon	Hinschaw	McMoran	Southwick
Douglas	Hitchcock	Madden	Sperry
Draper	Hobson	Madison	Stafford
Driscoll	Holliday	Malby	Steenerson
Durey	Howell, N. J.	Mann	Stevens, Minn.
Dwight	Howell, Utah	Martin	Sturgiss
Edwards, Ky.	Howland	Miller	Sullivan
Ellis, Oreg.	Hubbard, Iowa	Morse	Sulzer
Englebright	Hubbard, W. Va.	Mudd	Swasey
Esch	Hughes, N. J.	Murdock	Tawney
Fairchild	Hull, Iowa	Needham	Taylor, Ohio
Fitzgerald	Humphrey, Wash.	Nelson	Thistlewood
Focht	Jenkins	Nicholls	Thomas, Ohio
Fornes	Jones, Wash.	Norris	Tirell
Foss	Keifer	Olcott	Townsend
Foster, Ill.	Kelther	Olmsted	Voistead
Foster, Ind.	Kennedy, Iowa	Overstreet	Vreeland
Foster, Vt.	Kennedy, Ohio	Parker	Waldo
French	Kinkaid	Parsons	Wanger
Fuller	Kipp	Payne	Washburn
Gaines, W. Va.	Knapp	Pearre	Weeks
Gardner, Mass.	Knopf	Perkins	Wheeler
Gardner, N. J.	Knowland	Peters	Willet
Gilhams	Küstermann	Pollard	Wilson, Ill.
Gillet	Lafean	Porter	Wilson, Pa.
Goebel	Landis	Pray	Wood
Goulden	Langley	Prince	Woodyard
Graff	Law	Rainey	Young
Greene	Lawrence	Rauch	The Speaker
Gronna	Lindbergh	Reeder	
Guernsey	Longworth		

## NAYS—102.

Adamson	Estopinal	Humphreys, Miss.	Richardson
Aiken	Favrot	James, Ollie M.	Robinson
Alexander, Mo.	Ferris	Johnson, S. C.	Russell, Mo.
Bartlett, Ga.	Finley	Jones, Va.	Russell, Tex.
Beale, Pa.	Flood	Kimball	Shackelford
Beall, Tex.	Gaines, Tenn.	Kitchin	Sheppard
Bell, Ga.	Garner	Lamb	Sherley
Booher	Garrett	Lee	Sims
Brantley	Gill	Lenahan	Slayden
Brothead	Gillespie	Lever	Small
Brundidge	Glass	Lewis	Smith, Tex.
Burgess	Godwin	Livingston	Sparkman
Burleson	Gordon	Lloyd	Spight
Burnett	Gregg	McLain	Stanley
Byrd	Griggs	Macon	Stephens, Tex.
Candler	Hackney	Maynard	Talbott
Carlton	Hammond	Moon, Tenn.	Taylor, Ala.
Carter	Hardwick	Moore, Tex.	Thomas, N. C.
Clark, Mo.	Hardy	Murphy	Underwood
Clayton	Hay	O'Connell	Watson
Craig	Heflin	Padgett	Watkins
Cravens	Helm	Page	Webb
Crawford	Henry, Tex.	Patterson	Wiley
Davenport	Houston	Pujo	Williams
De Armond	Howard	Randall, Tex.	
Edwards, Ga.	Hull, Tenn.	Ransdell, La.	

## ANSWERED "PRESENT"—1.

Ellis, Mo.

## NOT VOTING—72.

Ansberry	Dawes	Huff	Mondell
Bannon	Ellerbe	Hughes, W. Va.	Moon, Pa.
Bartlett, Nev.	Fassett	Jackson	Moore, Pa.
Bingham	Floyd	James, Addison D.	Mouser
Birdsall	Foelker	Johnson, Ky.	Pou
Bowers	Fordney	Kahn	Pratt
Broussard	Foulkrod	Lamar, Fla.	Reid
Burke	Fowler	Lamar, Mo.	Rhinoeck
Calder	Fulton	Lanning	Riordan
Cary	Gardner, Mich.	Lassiter	Rucker
Clark, Fla.	Goldfogle	Leake	Sabath
Cocks, N. Y.	Graham	Legare	Saunders
Conner	Hackett	Hale	Smith, Mo.
Cook, Pa.	Hale	Lorimer	Sterling
Cooper, Pa.	Hamill	Lovering	Watson
Cooper, Tex.	Hamlin	McGavin	Weems
Coudrey	Harrison	McMillan	Weisse
Davidson	Hill, Miss.	Marshall	Wolf

So the bill was passed.

The Clerk announced the following pairs:

Until further notice:

Mr. GARDNER of Michigan with Mr. HAMIL.

Mr. ELLIS of Missouri with Mr. SMITH of Missouri.

Mr. CARY with Mr. WEISSE.

Mr. JACKSON with Mr. WOLF.

Mr. CALDER with Mr. GOLDFOGLE.

Mr. GRAHAM with Mr. LEGARE.

Mr. BIRDSALL with Mr. BROUSSARD.

Mr. STERLING with Mr. SAUNDERS.

Mr. WATSON with Mr. SABATH.

Mr. MOORE of Pennsylvania with Mr. RUCKER.

Mr. MOON of Pennsylvania with Mr. RIORDAN.

Mr. McMILLAN with Mr. RHINOECK.

Mr. LOVERING with Mr. REID.

Mr. McGAVIN with Mr. PRATT.

Mr. LORIMER with Mr. POU.

Mr. ADDISON D. JAMES with Mr. LAMAR of Florida.

Mr. HUGHES of West Virginia with Mr. LAMAR of Missouri.

Mr. FOULKROD with Mr. HILL of Mississippi.

Mr. FOELKER with Mr. HARRISON.

Mr. FASSETT with Mr. FLOYD.

Mr. DAWES with Mr. LASSITER.

Mr. DAVIDSON with Mr. HAMLIN.

Mr. COUDREY with Mr. HACKETT.

Mr. COOPER of Pennsylvania with Mr. FULTON.

Mr. COOK of Pennsylvania with Mr. COOPER of Texas.

Mr. COCKS of New York with Mr. CLARK of Florida.

Mr. BURKE with Mr. BOWERS.

Mr. BINGHAM with Mr. BARTLETT of Nevada.

Mr. MANN with Mr. ANSBERRY.

On this vote:

Mr. HUFF with Mr. JOHNSON of Kentucky.

The result of the vote was announced as above recorded.

On motion of Mr. HULL of Iowa, a motion to reconsider the last vote was laid on the table.

## GENERAL DEFICIENCY APPROPRIATION BILL.

Mr. TAWNEY. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 28376) making appropriations to supply deficiencies in the appropriations for the fiscal year ending June 30, 1909, and for prior years, and for other purposes. Pending that motion, Mr. Speaker, I ask unanimous consent to include in the bill certain amendments, one of which was agreed to by the committee, but was by mistake in the printing of the bill omitted, and that is the amendment for the entertainment of foreign representatives of the English and French Governments who have been invited by the State Department to participate in the Champlain celebration next summer. Another is an amendment which the gentleman from Illinois [Mr. MANN] has in regard to a matter that was not determined until too late to be included in the bill, but which ought to be included.

The SPEAKER. The gentleman will have the amendments sent to the desk, and the Clerk will report them.

The Clerk read as follows:

Insert on page 55, after line 18:

"For allowance to ALBERT ESTOPINAL, for expenses incurred as respondent to the memorial asking that he be declared not elected a Member of the Sixtieth Congress, \$511.35."

The SPEAKER. The Clerk will report the other amendments.

Mr. WILLIAMS. Mr. Speaker, reserving the right to object, will the gentleman from Minnesota [Mr. TAWNEY] yield to me for a moment?

Mr. TAWNEY. I yield to the gentleman.

Mr. WILLIAMS. Mr. Speaker, you are operating now under a rule under which you have made a majority amount to two-thirds, and under which you have ordered that a second should be granted, and as long as you are operating under a rule of that sort and not under the normal and natural rules of the House, I shall object to any favors that are asked while making efforts to operate under that rule. I therefore object.

Mr. MANN. Will the gentleman reserve his objection for a statement?

Mr. WILLIAMS. It is absolutely useless, because my objection does not go to the amendments. I am in favor of both of the amendments.

Mr. MANN. Will the gentleman reserve his objection?

Mr. WILLIAMS. No; I will make it.

Mr. MANN. The gentleman is not acting as usual about such matters. He is very courteous ordinarily.

Mr. WILLIAMS. That may be; but this proceeding is not as usual either.

Mr. MANN. I may say to the gentleman that it will probably cost his colleague on that side of the House \$535.

Mr. WILLIAMS. Oh, I think not.

Mr. MANN. There is no way it will ever be in order except now.

Mr. WILLIAMS. If you have a set of rules that do not enable Congress to go ahead without unanimous consent, the Committee on Rules can bring in another rule.

Mr. MANN. The gentleman can take the responsibility with his colleague for this if he desires.

The SPEAKER. The committee can not bring in a rule which is not asked and voted for by the majority.

Mr. TAWNEY. Mr. Speaker, then I move to suspend the rules and pass the bill (H. R. 28376) making appropriations to supply deficiencies in the appropriations for the fiscal year end-

ing June 30, 1909, and for prior years, and for other purposes, with amendments, which I send to the desk and ask to have read.

**THE SPEAKER.** The gentleman from Minnesota moves to suspend the rules and pass the bill with certain amendments. The Clerk will report the bill, with the amendments.

The bill as amended was read at length.

During the reading,

**Mr. STANLEY** (interrupting the reading). Mr. Speaker, I make a point of order on the item about a housekeeper in the White House. It is not authorized by existing law.

**THE SPEAKER.** But this is a motion to suspend the rules and pass the bill as it is with the amendments, whether they be matters subject to a point of order or not.

**Mr. STANLEY.** As I understand it, this does away with existing law?

**THE SPEAKER.** Not at all.

**Mr. MANN.** It is in accordance with law.

**THE SPEAKER.** Existing law can not be done away with without legislation by Congress. This is a motion to suspend the rules, such rules as might interfere and all rules that do interfere, if any, with the present and immediate consideration of this bill and the amendments. It is a motion to suspend all the rules and pass the bill with the amendments.

The reading of the bill having proceeded for some time, the following occurred:

**Mr. GAINES** of Tennessee (interrupting the reading). Mr. Speaker, I would like to make an inquiry.

**THE SPEAKER.** For what purpose does the gentleman rise?

**Mr. GAINES** of Tennessee. If I am in order, I would like to ask a question.

**THE SPEAKER.** The gentleman can not interrupt the reading.

**Mr. GAINES** of Tennessee. Then, I am not in order; that is what I asked. One never knows when you are in order here, you make so many rules.

**THE SPEAKER.** The gentleman has served long enough in Congress to know he is not in order.

**Mr. GAINES** of Tennessee. I did not know I was not in order. I have just come into the Chamber; I have been at work, and public work at that, as usual.

**THE SPEAKER.** The gentleman should learn—

**Mr. GAINES** of Tennessee. It takes a student like the Speaker to know all these rules, and he has to study them every minute, with somebody to prompt him.

**THE SPEAKER.** The gentleman from Tennessee is absolutely discourteous and misstates the fact.

**Mr. GAINES** of Tennessee. "The gentleman" is not discourteous any more than the Speaker is discourteous to the gentleman from Tennessee. "The gentleman" has not misstated the fact.

**THE SPEAKER.** The Chair sitting as Speaker of the House, desiring to be as nearly impartial as he can, a practice has grown up, on the supposition that the Speaker's tongue is tied, to insult him, and the Speaker will not sit silent—

**Mr. GAINES** of Tennessee. "The gentleman's" tongue is not tied, and he is insulted as often as the Speaker. He has done that for twelve years—

**THE SPEAKER.** The gentleman will be in order, and the Clerk will proceed.

**Mr. GAINES** of Tennessee. The Speaker will be in order, too, and has no right to lecture a Member—

**THE SPEAKER.** The gentleman will be in order.

**Mr. GAINES** of Tennessee. I am trying to be, Mr. Speaker.

**THE SPEAKER.** The gentleman will be in order, and the Sergeant-at-Arms will see that he remains in order.

**Mr. GAINES** of Tennessee. A parliamentary inquiry, Mr. Speaker.

**THE SPEAKER.** The gentleman is not recognized for a parliamentary inquiry.

**Mr. GAINES** of Tennessee. I will sit down, then.

The Clerk resumed and concluded the reading of the bill.

**THE SPEAKER.** Is a second demanded?

**Mr. LIVINGSTON.** Mr. Speaker, I demand a second.

**THE SPEAKER.** Under the rule a second is ordered, and the gentleman demanding the second is entitled to twenty minutes and the gentleman from Minnesota is entitled to twenty minutes.

**Mr. TAWNEY.** Mr. Speaker, this bill carries appropriations for deficiencies for the fiscal year 1909. The aggregate estimates upon which the bill is based were \$21,217,315.51. The amount recommended in the bill is \$17,548,932.84. Thirteen million eight hundred and eighty-four thousand five hundred and seventy-eight dollars of this amount is made up of three items, neither one of which is a deficiency growing out of the discretionary action on the part of the department in the matter of public expenditures for the public service. Without exception, they are all made necessary by reason of laws passed by Congress authorizing and requiring additional obligations, for which the committees of Congress reporting the legislation failed to make the appropriations necessary to meet the obligations thus created.

That is true of two of these items, and especially and partially true of the third one. For the military establishment this bill carries \$5,229,935. Of this amount \$4,000,000 is for pay of officers and enlisted men in the army, made necessary by the law enacted recently increasing the compensation of officers and enlisted men of the army, for which the Congress did not appropriate sufficient money to meet these increased obligations created by this law. Hence this deficiency. With the exception of a few minor items the remaining amount of this deficiency is on account of our military occupation of Cuba, which amounts have been expended during the current fiscal year.

**Mr. SHERLEY.** Will the gentleman yield for a question?

**Mr. TAWNEY.** Yes.

**Mr. SHERLEY.** What effort is being made by the United States Government looking to have the Government reimbursed for these expenditures in Cuba?

**Mr. TAWNEY.** So far as the Congress of the United States constitutes a part of the Government it has endeavored to secure the reimbursement of our Treasury for this extraordinary expenditure made for the benefit of the people of Cuba. The act making appropriations to supply the deficiencies in the appropriations for the fiscal year ending June 30, 1907, approved March 4, 1907, contains the following provision:

The President is hereby authorized to receive from the treasury of the Cuban Republic and pay into the Treasury of the United States from time to time such amounts to reimburse the United States, for the expenditures from the United States Treasury made necessary on account of the present intervention, as he may consider the Cuban treasury may be able to pay without serious embarrassment.

**Mr. SHERLEY.** What amounts have been received under that authorization?

**Mr. TAWNEY.** None whatever, as I am advised by the officials of the War Department.

**Mr. SHERLEY.** The Federal Government is no longer in charge of the revenues of Cuba?

**Mr. TAWNEY.** No; the Federal Government is no longer in charge of the revenues of Cuba and has not been since some time in January last.

**Mr. SHERLEY.** And no effort was made while we were in charge to reimburse the Government for these extraordinary expenses?

**Mr. TAWNEY.** None that I know of.

**Mr. SHERLEY.** Does the gentleman know what prospect there is of ever getting this money back?

**Mr. TAWNEY.** I do not know of any prospect now unless the State Department should be authorized to negotiate with the Republic of Cuba for the purpose of securing a reimbursement some time in the future of all or part of this extraordinary expense.

**Mr. SHERLEY.** Will the gentleman permit the offering of an amendment to that effect on this bill?

**Mr. TAWNEY.** No; I will not. I could not permit the offering of an amendment of that kind. The matter was discussed hastily, not in the formal meeting of the committee, but by members of the committee, and there is a diversity of opinion among members of the committee themselves on the subject, and the amendments I have offered here are amendments on which there is no disagreement whatever. I would say to the House that the aggregate amount which we have expended on account of our intervention for the purpose of bringing about peace in the island of Cuba this last time is \$6,102,956.

Mr. Speaker, we have another item of \$5,458,000, which carries the deficiency appropriation for the Isthmian Canal. These deficiencies arise out of the fact that the commission is doing a great deal more work this year than it was estimated a year ago, when the estimates were submitted, would be accomplished. These four items aggregate \$13,884,578, and, deducted from the total amount carried as a deficiency, leave a deficiency in all other departments and branches of the public service of \$4,715,254. And that includes an item of over a million dollars that is not really chargeable as a deficiency. Five hundred and seventy-four thousand six hundred and eighty-six dollars of that remaining balance is awards of the Spanish Treaty Claims Commission, judgments of the Court of Claims, judgments in Indian depredation claims, judgments in United States courts, and audited accounts.

Another item is \$500,000 for the collection of the customs revenues, and to supplement the permanent definite appropriation of \$5,500,000 for that purpose.

So the real deficiencies are comparatively small. Mr. Speaker, one of the primary causes for the fact that legitimate deficiencies are so very small now is due to the fact that Congress enacted four years ago this winter the so-called "antideficiency law;" and this law has not only been of benefit in preventing the creation of deficiencies, but it has also been of benefit in restoring to Congress the power of fixing the standard of public expenditure in all the departments of the Government.

There is no disposition now on the part of the departments to begin the expenditure of their appropriations on the basis of their estimates and irrespective of the amounts which Congress has seen fit to allow. I say the law has, therefore, been not only of great benefit in the matter of keeping down deficiencies by compelling the departments to keep within their appropriations, but it has also resulted in giving the departments to understand, and they now understand, that it is the Congress of the United States and not the departments of this Government that fixes the standard of public expenditures. The actual deficiencies carried in this bill of \$4,000,000 added to the amount carried in the urgent deficiency bill of a little over \$800,000 make the total deficiencies for this fiscal year less than \$5,000,000. I reserve the balance of my time.

Mr. LIVINGSTON. I yield ten minutes to the gentleman from New York [Mr. FITZGERALD].

Mr. FITZGERALD. Mr. Speaker, it is unfortunate that the difficulties of the Republican party make it necessary to use time in order to straighten out their troubles that should be used in the discussion of public business. This appropriation bill, carrying seventeen million five hundred thousand and some odd dollars, has many items in it which should receive serious consideration at the hands of this House. There is no real necessity for the passage of this bill at this time. It could easily wait until the next session and receive ample consideration. Unfortunately, however, there are some Members on that side of the House who believe that the rules of this House should receive some consideration and be changed in some respects. In order to prevent this growing revolt from assuming such proportions that would make success possible in the next House, it is now proposed to take the time that might have been devoted to this important measure to consider a report from the Committee on Rules that will amend in one trivial respect the rules of this House and so break the force of the revolt which is now impending. Since the exigency of the Republican party requires that this condition be met, and so time taken that otherwise would be devoted to this bill, let me at least call attention to a few items in this bill, without any hope of effect on the result when the vote is taken, but that all may know just what is being done.

On the 29th of December, 1906, the Government of the United States occupied Cuba with her military forces. Since that time, until of 1st of February of this year, the United States Government has kept a force of about 6,000 men in the island of Cuba. It has cost this Government a little over \$6,000,000 to do so. Some time ago, when Congress realized what was being done, it provided that the President should receive from the treasury of Cuba whatever moneys might be necessary in order to reimburse this Government for its expenditures. That has not been done. Not a single dollar expended in the pacification of Cuba has been or will be reimbursed, although the revenues of Cuba were ample to have done so. I have a report of Governor Magoon, made under date of December 1, 1907, in which he shows that from September 29, 1906, the day of occupation, until October 31, 1907, one year, the revenues of the Republic of Cuba, in the control of this Government, were \$54,867,000. The expenditures were about \$39,000,000; so that there was a surplus of revenues of about \$15,000,000. In 1908 the revenues were \$25,466,000; the expenditures, \$23,309,000. So that there were ample funds in the treasury of the Cuban Republic to have completely reimbursed this Government for its expenditures. That has not been done. We have given up possession, the money has been expended, and there is little reason to believe that reimbursement will ever be made.

There is another item in this bill to which I desire to call attention, a deficiency appropriation for the mint at Philadelphia. It is not really a deficiency in the appropriation, but the appropriation is made necessary because of the unauthorized diversion of the funds that were appropriated for the mint. Moneys appropriated for certain purposes and obligations under contract were taken under the direction of the President and paid to men who were employed to design the new gold coins, without authority of law, so far as I know, and without any appropriation having been made for it.

There are some other items here to which attention might be called. I might call attention to the generosity with which

the great Committee on Ways and Means have been treated. They have a clerical force equivalent to the clerical force of the Committee on Appropriations. Ordinarily the Committee on Ways and Means is not called upon to do much work. They have a clerk at \$3,000, an assistant clerk at \$2,000, and another clerk at \$1,500 a year, and a janitor at \$1,000. Since the 10th of November last that committee has been engaged in laborious work on the tariff bill; and because of the additional work, because of work imposed upon it for the first time in ten years, the committee receives \$10,000, not for additional clerks, but for additional compensation to their regular clerks and to some men who have been assigned to the committee for special work.

I regret that the political necessities of the Republican party, the situation that requires the fixing up of the troubles that exist among themselves, have made it necessary to bring this bill in under a motion to suspend the rules. I should like to test the House on some of these items. It is useless to point out many of them, but there are others to which the attention of the House could justly be called and which should receive the condemnation of the House. I will not do more than refer to one other item in the bill.

It is not a gracious thing, as a rule, to object to appropriations that are for the convenience or benefit of Members with whom we are closely associated; but in this bill is a provision that those Members of Congress who are now members of the Monetary Commission created in the last session of Congress, and who were unsuccessful in their attempts to be reelected to the House, should be continued as members of that commission with a salary equal to that which they received as Members of Congress. There is no limitation upon the life of the commission; there is no time fixed when this commission shall report; and three Members of Congress, two in this House and one in the other, who have rendered valuable services as Members of Congress, who have also undoubtedly rendered valuable services as members of this commission, are to be continued as members of the commission with a salary equivalent to that which they received for their services as Members of the House as well as members of the commission.

It is in no mean or captious spirit that I criticise this proceeding. It is not in harmony with what I believe to be proper legislation; and however pleasant my relations happen to be with those gentlemen who will be the beneficiaries of this provision, I do not feel that it should pass without being condemned. [Applause.]

Mr. LIVINGSTON. Mr. Speaker, I yield to the gentleman from Kentucky [Mr. SHERLEY] ten minutes.

Mr. SHERLEY. Mr. Speaker, ordinarily the Republican party can never be accused of any hesitancy in disregarding the rights of the minority or of the people in the discussion of a bill, but in this particular instance they have failed to take advantage of two things. They have permitted the reading of a bill that carries \$17,000,000, and they are going to grant twenty minutes a side for discussion, notwithstanding the fact that no amendment can be offered and that both the reading of the bill and the discussion, so far as a change in the legislation is concerned, are a waste of time.

I do not believe that any condition can arise that warrants the passage of a bill of this kind under a suspension of the rules. Inasmuch as we are to have a special session of Congress shortly there is no great need, and it is an outrageous invasion of the rights of membership in this House to pass such a bill through it in this way. There are items here that are subject to points of order, items that could stand neither the test of the legislative rule nor the test of the common sense of this House, and that would be stricken out if an opportunity was given. Now, the gentleman from Minnesota felicitates himself and the House on the fact that there are less deficiencies this year than usual. The explanation is very simple. When we appropriate a billion dollars at each session, even the greed of the departments is more or less satisfied, and there is not much room left for deficiencies. But there is one deficiency here that I want to call attention to. Men talk about expenditures, and say, "Oh, well, expenses have to go on, and you can not correct them." Now there is a deficiency in this bill of \$600,000 for the Department of Commerce and Labor. On its face it is apparently a deficiency in regard to the Immigration Service. In point of fact the major part of the deficiency has been caused by the extravagant expenditures of an immigration commission authorized by Congress.

That commission in a little over two years has spent or will have spent at the end of this fiscal year \$450,140.02. No one has been informed of the items that go to make up that expenditure. The men who are members of that commission—Mem-

bers of Congress, Members of this House and the other—owe it to Congress and to themselves to give to the Congress statements as to these detailed expenditures.

Mr. BENNET of New York. Will the gentleman yield for a brief statement?

Mr. SHERLEY. I will yield for a question. I can not yield for a statement.

Mr. BENNET of New York. Very well.

Mr. SHERLEY. This expenditure, according to the testimony—

Mr. FINLEY. Will the gentleman yield?

Mr. SHERLEY. For a question.

Mr. FINLEY. Do I understand the gentleman to say that no itemized statement has ever been made?

Mr. SHERLEY. I did not say that; but if there has been any report made by that commission I am not aware of it.

Mr. FINLEY. I have no knowledge of the matter, and I am asking if that is the fact.

Mr. SHERLEY. If there has been a report by the commission, I hope some gentleman will correct me.

Mr. LIVINGSTON. There has been no report.

Mr. SHERLEY. Now, inside of two years to have an expenditure of over \$400,000 for a commission of this kind requires an explanation. On its face it does not look right to me.

That is the way some of our money goes. Here is another provision which is going to authorize some more of it to go the same way. We created a monetary commission, and, as I now recall, there is no fixed life to that commission. There is no limit upon its expenditure. I am informed that its expenses have been moderate. I trust that is true. I find in this bill a provision that authorizes the payment to members of that commission, who after the 4th of March will cease to be Members of Congress, a salary of \$7,500 a year.

Now, at present, these men who are performing work, both as Members of Congress and members of this commission, are receiving \$7,500; but when all of their work as Members of Congress ceases, and when only their work as members of the commission continues, they are to receive the same salary of \$7,500.

It is not pleasant, as my colleague says, to call attention to this matter. I have the highest respect for the members of that commission whose terms as Members of Congress are about to end, and I think their loss is a loss to the House; but that does not take from us the obligation to check this sort of expenditure. Not one of these gentlemen needs to be taken care of, and it is not proper that we should provide for the payment of such sums to a commission that may run along year after year.

I am also told personally that the commission will last but a short time. We were told that in regard to the Immigration Commission. It was said also of the Commission on Revision of the Laws, that existed for years and years and had to be finally stopped, after quite an effort, by an act of Congress. So I insist that we owe it to ourselves to prevent this sort of an expenditure. They may not be great in any particular case, although the immigration matter is a large matter; but in their aggregate they help to make up a very large sum, and there are enough legitimate expenditures of the Government to warrant us in curtailing all these unnecessary expenditures.

Now, we are deprived on this side of any opportunity of making a point of order against any of these provisions, or to move to strike them out, or to have any real discussion. We are required either to vote for the whole bill or to vote against the whole bill, and there has been no excuse given for forcing this parliamentary situation upon the House. To my mind it is unjustifiable in the extreme. I for one am not willing to lend my sanction to these two items that I have mentioned, or to several others in the bill that time forbids me to now discuss.

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

The SPEAKER. One minute and a half.

Mr. LIVINGSTON. Mr. Speaker, a matter has been referred to by the gentleman from Kentucky [Mr. SHERLEY] that needs a little explanation. It is a deficiency created in the Bureau of Immigration. This House and the Senate have passed four acts establishing immigration stations—one at Charleston, one at Mobile, one at New Orleans, and the other day, just a day or two ago, one at Boston. The comptroller holds that these are special appropriations and have the right of way over the absolute current expenditures in the bureau and in the department, and there is a large amount of money that has been diverted in that way from the head tax that should have gone to the support of the bureau, and the bureau is not to blame any more—

Mr. SHERLEY. I agree with the gentleman, Mr. Speaker, that the bureau had no control over the expenditure of the commission, unfortunately.

Mr. LIVINGSTON. But, Mr. Speaker, this House is to blame for such legislation. They have no use for an immigrant station in Boston, and some of these other places are just as impractical, and the House should blame itself for some of these deficiencies, and not put all onto the committee or on the bureau or on the department. We ought to take our medicine when it comes to us.

Mr. FITZGERALD. I want to ask the gentleman if it is not a fact that the bureau, with a force of inspectors necessary when the immigration fund amounted to \$1,200,000, has maintained the same force when it has fallen off to about \$600,000 a year?

Mr. LIVINGSTON. That is true; yes. They are anticipating the month of March for the tide of immigration to begin to flow in again, and, if that is true, they will have more money.

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

The SPEAKER. Thirteen minutes.

Mr. TAWNEY. I yield three minutes to the gentleman from New York [Mr. BENNET].

Mr. BENNET of New York. Mr. Speaker, the remarks of the gentleman from Kentucky [Mr. SHERLEY] in relation to the Immigration Commission were not founded on knowledge. Out of the head tax, under the operation of the law which limits the amount which can be paid into the immigrant fund to \$2,500,000, there were paid into the Treasury of the United States, into the general fund, last year in excess of that sum \$880,000, so that really after this \$600,000 item in the bill is deducted there would still be a surplus in the Treasury on account of these matters of \$288,000, plus. Furthermore, the gentleman charges all the deficiencies to the Immigration Commission. I desire to indorse emphatically what the gentleman from Georgia [Mr. LIVINGSTON] has said about other expenditures.

We authorized a building at Charleston for \$70,000, at New Orleans for \$70,000, at Galveston for \$70,000, at Philadelphia for \$250,000, at Boston for \$250,000, and in New York City, where 75 per cent of the immigration comes through, very properly and rightly, the Committee on Appropriations has reported out appropriations aggregating in the last two Congresses over one million and a half of dollars for buildings, every one of which was needed. Besides those appropriations the sum spent by the commission cuts a very small figure. The gentleman says that we ought to file a statement. Three hours ago the statement which he desired was filed in the Senate of the United States, and I now ask unanimous consent, Mr. Speaker, to present to this House for printing as a document a statement to Congress relative to the work and expenditures of the Immigration Commission, with a financial statement.

Mr. SHERLEY. Was not that report filed in the Senate as a result of a resolution of the Senate calling for it?

Mr. BENNET of New York. It was not. This is a report to Congress.

The SPEAKER. The gentleman from New York asks unanimous consent to have printed as a document (H. Doc. No. 1489) the report to which he refers. Is there objection?

There was no objection.

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

Mr. VREELAND. Mr. Speaker, both the gentleman from New York [Mr. FITZGERALD] and the gentleman from Kentucky [Mr. SHERLEY], members of the committee, have referred to an item in this bill relating to the Monetary Commission. This item and its purpose was fully explained to each of these gentlemen. I had hoped that they would take a broader view of the necessity for it than that it was simply seeking an opportunity to pay a salary to several distinguished gentlemen. A year and a half ago, Mr. Speaker, we had a panic in the United States—a monetary panic. As the result of that there was a paralysis of business, millions of men were turned out of employment, untold suffering came to the American people, which to some extent still exists to-day. The effects of it will still be felt for years to come.

The Congress of the United States passed a temporary measure designed to prevent a currency famine in the future, but it limited the life of that law to May, 1914, and appointed a commission to take up and study the whole subject, for the purpose of preventing in the future monetary panics such as have prevailed in the past. A commission was appointed consisting of nine Members of the House and nine Members of the Senate. They have put in a year of study, constant work in the study of this question, in the collection of information and statistics and

data relating both to our own experience and to the experience of the other great commercial nations. Mr. Speaker, I will ask unanimous consent to insert as a part of my remarks a pamphlet prepared by the commission, showing the extensive field of investigation into which it has entered.

I ask unanimous consent, Mr. Speaker, to file that as a part of my remarks, for the information of the House.

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

Mr. VREELAND. Mr. Speaker, I think that any gentleman who looks that over and carefully examines the field which this commission is attempting to cover will say that if no other result comes from their efforts they will have at least accumulated the most exhaustive fund of information in reference to financial and currency matters that has ever been collected together. Now, at the end of a year's work we find that three members of this commission are going out of Congress—Senator TELLER, in the Senate; Representative OVERSTREET and Representative BONYNGE, in the House.

We confidently expect that we will be prepared to report to this Congress and recommend legislation which we shall ask to have enacted into law at least a year from this time, somewhere in March or April of the long session of Congress of next year. That is our hope and our expectation, that we will be able to conclude our investigation and make a report to be passed at that time. Now, any gentleman who examines the work that has been gone over by this commission and by those gentlemen who have taken an important part in it will understand that any new men coming upon that commission would be almost worthless in the pursuance of its labors. Senator KNOX is a member of that commission. He goes into the State Department, and we asked him to remain as a member of the commission, and he consented to place his great legal knowledge at the disposition of the commission. Representative THEODORE E. BURTON is going to the Upper House as a Senator from the State of Ohio.

This act will remove any doubt as to his standing as a member of the commission; so that the House will readily see that it would disarrange the work of this commission to have those men who have taken so active and important a part in this year's investigation go out and the Congress and the committee lose the knowledge of the work which they have gained in that time. This simply means that those two distinguished gentlemen of the House and Senator TELLER in the Senate will remain on for another year, and during that time they shall continue to draw the pay of a Member of Congress.

Mr. OLLIE M. JAMES. May I ask the gentleman a question? How much has this commission expended?

Mr. VREELAND. I am unable to state to the gentleman, but it has had no expenses except traveling expenses and to pay the employment of some experts who are preparing specific items in this work.

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

Mr. OLLIE M. JAMES. But the amount that could be expended is unlimited.

Mr. VREELAND. I suppose it is.

*List of conferences in London, Paris, and Berlin held by representatives of the National Monetary Commission, and of papers and statistics to be prepared for the commission.*

EUROPEAN CONFERENCES HELD BY REPRESENTATIVES OF THE NATIONAL MONETARY COMMISSION.

CONFERENCE IN LONDON, 1908.

August 12. Parr's Bank (Limited), London, Mr. R. W. Whalley, general manager. Union Discount Company, London, Mr. Christopher R. Nugent, manager; Prof. Herbert S. Foxwell.

August 13. London City and Midland Bank, Mr. Edward H. Holden, M. P. managing director. National Provincial Bank of England, Mr. R. T. Haines, general manager; Sir George Murray, K. C. B., permanent secretary of the treasury.

August 14. The Statist, London, Mr. George Paish, editor.

August 15. Parr's Bank (Limited), Mr. R. W. Whalley, general manager; Bank of England, Mr. W. Middleton Campbell, governor; Mr. Frederick Huth Jackson, director; Mr. Alfred C. Cole, director; Mr. Edward C. Grenfell, director.

August 17. London City and Midland Bank, Mr. Edward H. Holden; Bank of England, Mr. H. W. Search, discount officer; London and Westminster Bank (Limited), Mr. T. J. Russell and Mr. Edward Clifton Brown.

August 18. Baring Bros. & Co., London, Mr. Gaspard Farrer. Hongkong and Shanghai Banking Corporation, Mr. C. S. Addis, manager in London.

August 19. Bank of England, Mr. Frederick Huth Jackson, Mr. Alfred C. Cole; Munroe & Co., Mr. F. de Reiset, 7 Rue Scribe, Paris; Bank of Liverpool, Mr. James H. Simpson, general manager.

August 20. Swiss Bankverein, London, Mr. Leon Rueff, managing director; Mr. L. Joseph, submanager.

CONFERENCE IN BERLIN.

August 26. Deutsche Bank, Dr. Paul Mankiewitz, director.

August 27. Deutsche Bank, Dr. Paul Mankiewitz, director; Reichsbank, Doctor von Glasenapp, vice-president; Doctor von Lumm, director.

August 28. Reichsbank, Doctor von Glasenapp, vice-president; Doctor von Lumm, director.

August 29. Dresdner Bank, Herren Schuster & Nathan, directors.

August 31. Dresdner Bank, Herren Schuster & Nathan, directors; Reichsbank, Doctor von Glasenapp, vice-president; Doctor von Lumm, director.

September 1. Deutsche Bank, Dr. Paul Mankiewitz, director.

September 2. Reichsbank, Doctor von Lumm, director; Dresdner Bank, Herren Schuster & Nathan, directors.

September 4. Schulze-Delitzsch Genossenschaften, Herr Kleemann, director.

September 7. Preussische Central Genossenschafts-Kasse, Geheimrat Hessberger et al.; Berliner Kassen Verein, Herr Hoppenstedt.

September 8. Preussische Central Bodencredit Actien Gesellschaft, geh. Regierungsrat von Klitzing.

September 9. Preussische Central Genossenschafts-Kasse, Geheimrat Hessberger et al.; Pfandbrief Bank, Kommerzienrat Dannerbaum.

September 10. Royal Seehandlung, Geheimer Oberfinanzrat Littner, vice-president.

September 11. Kur- und Neumarkisches Ritterschaftliches Kredit-Institut, Geheimrat Heintze, president; Neues Brandenburgischer Kredit Institut and Kur- und Neumarkische Ritterschaftliche Darlehns Kasse.

September 14. Berliner Handels Gesellschaft, Doctor Mosier; Disconto Gesellschaft, Doctor Salomonsohn.

September 15. Von Mendelsohn & Co., Herr Franz von Mendelsohn; S. Bleichroeder, Doctor von Schwabach.

September 16. Berliner Sparkasse, Stadtrat, Herr Emil Gehricke, president.

September 18. Disconto Gesellschaft, Doctor Salomonsohn.

CONFERENCES IN PARIS.

August 24 and September 26. Banque de France, M. Pallain, gouverneur.

August 25. Crédit Lyonnais, Baron Brincard, administrator.

September 29. Crédit Lyonnais, M. Lefevre, chef des études financières; Comptoir D'Escompte, M. Ullmann, directeur.

October 1. Crédit Lyonnais, M. Lefevre.

October 2. Crédit Agricole, M. Decharme, chef du service du crédit mutuel et de la coopération agricole; Crédit Foncier, M. Touchard, secrétaire général.

October 3. Crédit Lyonnais, M. Lefevre.

October 5. Caisse des Dépôts et Consignations, M. Delatour, directeur-général.

October 6. Mouvement des Fonds (ministère des finances), M. Sergent, chef; Caisses d'Epargne, M. Georges Paulet, directeur de l'assurance et de la prévoyance sociales, au ministère du travail.

October 7. Banque de Paris et des Pays-Bas, M. Moret, directeur; Banque de France, M. Pallain, gouverneur.

ADDITIONAL CONFERENCES IN LONDON.

October 12. Lord Swaythling; London Joint Stock Bank, Mr. Charles Gow, manager.

October 13. The Union of London and Smith's Bank, Sir Felix Schuster, governor.

ENGLAND.

*Reports to be prepared in England.*

Prof. H. S. Foxwell, lecturer in the London School of Economics, 1 Harvey road, Cambridge, will prepare a history of banking in England, to include the Bank of England, joint-stock banks, private and merchant bankers, and any other institutions engaged in commercial banking.

H. Withers, financial editor of the London Times, 15 Cophall avenue, London, E. C., will prepare a study of banking practice in England and Scotland, including an account of the London Stock Exchange. (See later pages for details.)

Francis W. Hirst, editor of the Economist, 3 Arundel street, Strand, London, E. C., will prepare a paper upon the growth of the public debts of England, France, and Germany during the last thirty-five years, including national, provincial, municipal, and all publicly guaranteed obligations (e. g., of railroads), to contain some analysis of the budgets of the countries concerned.

George Paish, editor of the Statist, 51 Cannon street, London, E. C., will prepare a paper on the balance of trade and indebtedness between America and England.

Robert Martin Holland, honorable secretary of the clearing house, Post-Office Court, Lombard street, E. C., will prepare an account of the clearing system in London and other cities of the United Kingdom.

Ernest Sykes, of the Central Bankers' Association and of the Institute of Bankers, 34 Clements lane, London, E. C., will prepare a brief statement of the objects and history of these institutions.

ENGLISH STATISTICS.

R. H. I. Palgrave, F. R. S., Henstead Hall, Wrentham, Suffolk, will prepare statistics for the Bank of England since 1844. (See later pages for details.)

Francis W. Hirst, of the Economist, 3 Arundel street, Strand, London, will prepare statistics for the joint-stock and other banks during the last thirty years; as to British exports and imports of gold and rates of international exchange for the last fifty years; as to the growth of population, business, wealth, and commerce of Great Britain since 1867; as to the money supply of Great Britain at intervals since 1844; and also as to the growth of debts, national, provincial, municipal, and changes in the national budgets since 1870 in Great Britain, France, and Germany. (See later pages for details.)

H. W. Search, head of the discount department of the Bank of England, has prepared statistics of the rates for discounts, loans, and deposits of the joint-stock and other banks in London, provincial cities, and country towns for the past twenty years.

R. W. Whalley, of Parr's Bank, 4 Bartholomew lane, London, E. C., will secure information regarding proportion of checks or cash in his bank (metropolitan offices, provincial and country branches being separated).

GERMANY.

*Provisional list of books and articles upon German banks to be translated.*

I. THE REICHSBANK.

The law of 1875, with amendments and comments as given by R. Koch: *Die Reichsgesetzgebung Über Münz-und-Notenbankwesen*, Berlin, 1905, pages 1-43, 120-267, Allgemeine Bestimmungen über den Ge-

schäftsverkehr mit der Reichsbank, pages 44-133; also law of February 20, 1906.  
Die Reichsbank 1876-1900. Jena 1900. Jubiläums-Schrift, pages 1-225.

#### RENEWAL OF REICHSBANK PRIVILEGES.

Verhandlungen des dritten allgemeinen Deutschen Bankiertages zu Hamburg am 5. und 6. September 1907, Berlin 1907, pages 68-127, including speeches of Messrs. Schinkel, von Klitzing, Edler von der Planitz, Salomonson, Jaffe, Damme, Müller, and others.

W. Lexis: Die Erneuerung des Privilegiums der Reichsbank, Bank-Archiv. VI, Jahrgang 1906, page 309.

M. Stroell: Ueber die Erneuerung des Privilegiums der Reichsbank und der Privat Notenbanken. Bank-Archiv. VI, Jahrgang 1906, page 311.

1. Koch, R. Der Kredit bei der Reichsbank. (Zeitschrift für Handelswissenschaft und Handelspraxis. Leipzig. July 1908.)

2. Koch, R. Über den Lombardkredit bei der Reichsbank, insbesondere die Beleihung von Reichs- und Staatspapieren. (Deutsche Revue. Stuttgart and Leipzig. 1908. III. Vierteljahr, S. 35-40.)

#### II. JOINT-STOCK BANKS.

Doctor Riesser: Zur Entwicklungsgeschichte der deutschen Grossbanken mit besonderer Rücksicht auf die Konzentrationsbestrebungen. Jena 1906. (Third edition in preparation.)

#### III. OTHER BANKS.

a. *Mortgage banks*.—F. Hecht: Article on Hypothekenbanken in Conrad's Handwörterbuch. (Third edition in preparation.)

b. *Landschaften*.—Dr. J. Hermes: Article on Landschaften in Conrad's Handwörterbuch. (Second edition.)

Doctor Altrock: Article on Entschuldigung in Conrad's Handwörterbuch. (Third edition.)

c. *Rentenbanken*.—Dr. J. Hermes: Article on Rentenbanken in Conrad's Handwörterbuch. (Second edition.)

d. *Landeskultur-Rentenbanken*.—Dr. J. Hermes: Article on Landeskultur-Rentenbanken in Conrad's Handwörterbuch. (Second edition.)

e. *Genossenschaften*.—H. Crüger: Article on Darlehnsskassen in Conrad's Handwörterbuch. (Third edition.)

f. *Savings banks*.—Doctor Breslauer: Article to be prepared.

R. Schachner: Die staatliche und kommunale Sparkassen-politik der neuesten Zeit. Conrad's Jahrbuch, 1906, Seite 247-256.

Doctor Seidel: Das Sparkassenwesen. (Zeitschrift für die gesamte Staatswissenschaft. Tübingen, 1908, S. 58-107.)

g. *Miscellaneous*.—W. Prion: Das Deutsche Wechseldiskont-Geschäft. Leipzig, 1907, pages 110-159. (Discusses relation of bank rate to other rates of discount.)

Dr. M. Wittner: Article on the use of checks in Germany (to be prepared).

Dr. M. Wittner: Brief sketch of the organization of the German money market (to be prepared).

Doctor Breslauer: Article (to be prepared) on the history, organization, and methods of the Bourse.

Dr. Carl Melchior: Article (to be prepared) upon the kinds and forms of corporations, and upon methods of remunerating directors.

#### German statistics.

Doctor Wittner and Doctor Breslauer, of the Centralverband des Deutschen Bank- und Bankiergewerbes, 7 Dorotheenstr. 3 II, Berlin, will prepare statistics of the Reichsbank, of the money supply of Germany, the exports and imports of gold, the rates of international exchange, the published rates of discount and deposit in different parts of the country, the growth of population, business, wealth, and commerce, statistics also of the Kreditgenossenschaften and the savings banks. (See later pages for details.)

Robert Franz, of the Deutsche Oekonomist, Burgstrasse 3, Berlin, C. 2, will prepare statistics of the joint-stock and other banks for the past twenty years, of the Hypothekenbanken and Landschaften. (See later pages for details.)

The president of the Reichsbank, Excellenz Havenstein, has furnished statistics of rates of discount and deposit throughout Germany corresponding to the figures collected by Mr. Search in England.

Geh. Kommerzienrat E. Jacob, of the Verein Berliner Kaufleute und Industrieller, Jägerstr. 22, Berlin, has been asked to collect data with regard to the relative use of coin, bank notes, and credit instruments, such as checks, drafts, money orders, among the different firms connected with that organization in Berlin.

#### ADDRESSES.

Doctor Wittner and Doctor Breslauer p. adr., Centralverband des Deutschen Bank und Bankiergewerbes, 7 Dorotheenstr. 3 II, Berlin.  
Geh. Justizrat Doctor Riesser, Lichenstein-Allee 4, Berlin.

Geh. Regierungsrat Prof. Johannes Conrad, 13 Muhlweg, Halle a. d. S.  
Doctor Whittaker, Wilhelmstrasse 98, Berlitz School, Berlin (translator of Jubiläumschrift).

H. L. Lutz, 49 Wendell street, Cambridge, Mass. (translator of other German material).

Dr. Carl Melchior, 75 Ferdinandstrasse, Hamburg.

#### FRANCE.

##### Monographs to be prepared in France.

André Liesse, professeur au Conservatoire National des Arts et Métiers (18 Rue Denfert-Rochereau), Paris, will prepare a history of banking in France to include the Banque de France, the Sociétés de Crédit, the local banks, the Crédit Foncier, and the Crédit Agricole, showing their evolution in form and policy and their interrelations during the past century, with critical opinions as to their relations with the Government, the policies pursued, and the services rendered by them to different classes.

Albert Aupetit, chef du service administratif et des études économiques de la Banque de France, will prepare a study of banking practices in France, showing the distinctive functions of each class of banks and differentiating the character of the business done by the several classes of institutions in Paris, in the large departmental cities and in rural communities, showing also the provisions of law or custom governing their organization, capital, reserve, liabilities of stockholders, officers, and directors, their methods of supervision and inspection, and the nature and extent of returns required or published. The account will portray the general nature of the business done, including the character of the deposits and of current accounts, with the usual rates of interest, if any, paid on both, and a statement of any charges upon the turnover, including the general character of bills dis-

counted, loans, advances to customers, cash credits, and acceptances, with the usual rates charged for each.

It should include an explanation of all terms appearing in the ordinary reports of banks. It should also include a statement as to the use of checks, crossed checks, etc., a description of the organization and methods employed in the Paris chambre de compensation, with a statement as to the kinds of devices which are cleared; also a statement as to the number and aggregate transactions of the other chambres de compensation in France, and a description of the methods of making payments at a distance. There should also be included a description of any organizations or associations of banks other than clearing houses existing either in Paris or elsewhere in France.

Finally, the paper should present in appendices the text of the principal statutes governing the operations of the various classes of banks.

The study is to include the Bank of France, the Sociétés de Crédit, the local banks, the Crédit Foncier, the Crédit Agricole, the Caisse des Dépôts et Consignations, and the Caisses d'Epargne ordinaires and the Caisse d'Epargne Nationale.

Alfred Neymark, editor of Le Rentier, 33 Rue St. Augustin, ancien président de la Société de Statistique de Paris, will prepare a paper upon savings in France, under the following heads:

1. The formation and development of saving in France.
2. The ordinary savings banks and the postal savings banks.
3. French and foreign securities; their distribution in France and abroad.

4. The influence of security investment upon the rate of discount, upon the banks, their deposits, their reserves, etc.

E. Vidal, editor of La Cote de la Banque et de la Bourse, 1-3 Place de la Bourse, will prepare an account of the history and method of the Paris Bourse, its regulations, whether of law or custom, regarding its organization, conditions of membership, kinds of business done, methods of listing, machinery of settlement, etc.

#### French statistics.

Albert Aupetit, chef des études économiques, Banque de France, rue la Vrillière, Paris, will collect the statements of the Bank of France since 1875, with tables of rates of interest charged, and the published market rates of discount, statistics of exports and imports of gold, of the rates of international exchange, of the money supply of France, and of the proportion of money and money substitutes in trade. (See later pages for details.)

M. Lefevre, chef des études financières, Crédit Lyonnais, Boulevard des Italiens, Paris, will collect statistics of the Sociétés de Crédit and other banks for the last twenty years, of the Crédit Foncier, of the Crédit Agricole, of the Caisses d'Epargne, and statistics showing the growth of population, business, wealth, and commerce in France. (See later pages for details.)

The governor of the Bank of France, M. Georges Pallain, has been asked to furnish statistics of rates of discount and deposit throughout France corresponding to the figures collected by Mr. Search for Great Britain.

#### English statistics.

[Statistics to be prepared by R. H. I. Palgrave, F. R. S., Henstead Hall, Wrentham, Suffolk.]

#### BANK OF ENGLAND STATEMENTS.

To include both issue and banking departments, stated separately—

1. For period since 1844, grouped in annual and decennial averages.
2. For last twenty years, weekly (omitting last five figures).
3. These should also state in each case percentage of reserve (gold, silver, and notes) in banking department to total deposit liabilities.
4. Also annual amount of dividends paid.
5. Average weekly fluctuations for the twenty years (1887-1907) of—  
a. Notes issued.  
b. Notes held by the public.  
c. Bank's reserves.  
d. Public deposits.

#### TABLE OF BANK OF ENGLAND RATES SINCE 1844.

1. Average rate for annual and decennial periods.
2. Maximum and minimum rates for each year.
3. Number of changes each year.
4. For twenty years (1887-1907) table showing date and character of all changes.

#### NOTE ISSUES.

- a. By Bank of England (as above).
- b. By other banks of issue in England and Wales.
- c. By banks in Scotland.
- d. By banks in Ireland.

1. Annual and decennial averages since 1844 with per capita amounts at decennial periods.

2. Four-weekly statements for last twenty years.

3. Average four-weekly fluctuations for these twenty years.

[Statistics to be prepared by the Economist, Granville House, 3 Arundel street, Strand. Francis W. Hirst, editor, 27 Campden Hill Square, London, W.]

#### JOINT-STOCK AND OTHER BANKS.

These should be stated separately, to include (a) London clearing-house banks, (b) other joint-stock banks in England and Wales, (c) private banks and merchant bankers who make reports, (d) Scotch banks, (e) Irish banks, (f) foreign and colonial banks doing business in England, as to their English business.

Statements of joint-stock and other banks and bankers should include, as far as possible, the following:

- a. The name of the bank or banking house.
- b. Number of branches.
- c. Subscribed capital.
- d. Paid-up capital and reserve fund.
- e. Reserve liability of shareholders.
- f. Number of shareholders.
- g. Cash on hand and at Bank of England (where possible these to be separately stated).
- h. Percentage of same to deposit liabilities.
- i. Money at call and short notice.
- j. Percentage of same to deposit liabilities.
- k. Government and other securities.
- l. Percentage of same to deposit liabilities.
- m. Deposits.
- n. Bills discounted.
- o. Loans and advances.
- p. Percentage of capital and reserve fund to other liabilities.
- q. Dividend rate per cent paid last year.
- r. Number of reports per year.

## CONSOLIDATED STATEMENTS ANNUALLY FOR ALL BANKS FOR TWENTY YEARS.

1. Bank of England.
2. Other banks in England and Wales—
  - a. London Clearing-House banks.
  - b. Other joint-stock banks in England and Wales.
  - c. Private banks and merchant bankers who make reports.
  - d. Total for banks of England and Wales.
3. Scotch banks.
4. Irish banks.
5. Foreign and colonial banks doing business in England, as to their English business.
6. Total United Kingdom.

Figures to be given for the following items:

- a. Number of banks.
- b. Number of branches.
- c. Number of inhabitants to each bank and branch.
- d. Subscribed capital.
- e. Paid-up capital and reserve funds.
- f. Reserve liability of shareholders.
- g. Deposits.
- h. Cash on hand and at Bank of England; percentage of same to deposit liabilities.
- i. Money at call and short notice; percentage of same to deposit liabilities.
- j. Investments in securities.
- k. Discounts, loans, and advances.
- l. Percentage of capital and reserve fund to other liabilities.
- m. Dividends.

## GOLD MOVEMENTS.

Exports and imports of gold—

- a. From Great Britain to and from various countries, for annual and decennial periods since 1857.
- b. Weekly shipments and receipts for last ten years.
- c. Monthly for twenty years.

## RATES OF INTERNATIONAL EXCHANGE.

Quoted rates for sight exchange for same time as above (weekly for last ten years, monthly for last twenty years) between—

- a. London and New York.
- b. London and Paris.
- c. London and Berlin.

## GROWTH OF POPULATION, BUSINESS, WEALTH, AND COMMERCE.

For annual and decennial periods since 1867 for Great Britain, as shown by—

- a. Population.
- b. Foreign commerce (exports and imports).
- c. Registered tonnage.
- d. Amount of bank capital and reserve fund.
- e. Bank deposits.
- f. Postal, trustee, or other savings banks deposits.
- g. Banks clearing-house transactions.
- h. Home consumption of tea and sugar.
- i. Amount of public revenues.
- j. Amount of iron and steel production.
- l. Transportation statistics, including gross earnings of railways and number of tons of freight carried 1 mile.
- m. Growth in wealth as shown by income-tax returns yield per penny.
- n. Total ratable value of lands and houses.
- o. Any other available statistics showing industrial growth.

All the above should show also per capita growth.

## PROPORTIONS OF MONEY AND MONEY SUBSTITUTES IN TRADE.

Statistics as to the relative use of coin, bank notes, and credit instruments, such as checks, drafts, money orders, etc., as shown by the receipts on a given day of several department stores and several shops in London, in some large provincial cities, and in one or two country towns.

## QUOTED MARKET RATES.

The published rates for twenty years, for thirty days and six months' bills, for money on call, and the deposit rates of banks and discount houses, as published in the Economist.

## MONEY SUPPLY OF THE UNITED KINGDOM.

1. Total supply of gold at periodic intervals since 1844.
2. Per capita supply of gold at same dates.
3. Total supply of notes at same dates.
4. Per capita of notes at same dates.
5. Percentage of gold supply to total note issue at same dates.
6. Percentage of gold supply to aggregate of notes and deposits.
7. Such figures as can be obtained showing the amount of gold and notes in the banks and in the hands of the people.
8. Amount of silver in circulation.
9. Per capita amount of silver in circulation.

The Economist will endeavor to supplement the figures collected by the deputy master of the mint, with regard to the gold and silver holdings of the banks, by figures especially collected showing the amount of notes held by them, for the purpose of finding the total amount of actual money held by the banks.

## GROWTH OF PUBLIC DEBTS IN ENGLAND, FRANCE, AND GERMANY.

To include national, provincial, and municipal debts and all obligations guaranteed by the public, such as railroad bonds and the like.

## NATIONAL BUDGETS OF ENGLAND, FRANCE, AND GERMANY.

- a. Totals to be presented at intervals of five years during the last four decades.
- b. Comparative analysis and classification of revenues and expenses in the budgets of the three countries for the last year available.

## German statistics.

[Statistics to be prepared by Dr. Max Wittner and Doctor Breslauer, of the Centralverband des Deutschen Bank und Bankiergewerbes, 3 Dorotheenstrasse, Berlin.]

## REICHSBANK STATEMENTS.

1. For period since 1875, grouped in annual and decennial averages.
2. For last twenty years, weekly (omitting last five figures).
3. These should also state in each case percentage of reserve (gold, silver, and Reichskassenscheine):

- a. To note issue.
- b. To notes and deposits.

4. Also annual rate of dividends paid to stockholders and to Government.
5. Average weekly fluctuations for the twenty years (1887-1907) of—

- a. Notes held by the public.
- b. Banks' reserves (coin, bullion, Reichskassenscheine).

## TABLE OF REICHSBANK RATES SINCE 1875.

1. Average rate for annual and decennial periods.
2. Maximum and minimum rates for each year.
3. Number of changes each year.
4. For twenty years (1887-1907), table showing date and character of all changes.

## NOTE ISSUES.

- a. By Reichsbank (as above).
- b. By other banks of issue in Germany.
1. Annual and decennial averages since 1875, with per capita amounts at decennial periods.
2. Monthly statements for last twenty years.
3. Average monthly fluctuations for these twenty years.

## QUOTED MARKET RATES.

The published rates of the Reichsbank during twenty years, for thirty days and three months' bills, for money on call, for Lombards thirty days, and the private discount rate for the same period in Berlin, in leading provincial cities, and in country towns covering thirty, sixty, ninety, and one hundred and twenty day bills, money on call, on thirty-day Lombards, on advances to customers and on overdrafts, also rates paid on deposits (in so far as these can be obtained).

## MONEY SUPPLY OF GERMANY.

1. Total supply of gold at periodic intervals since 1871.
2. Per capita supply of gold at periodic intervals since 1871.
3. Total supply of notes at same dates.
4. Per capita supply of notes at same dates.
5. Percentage of gold supply to total note issue at same dates.
6. Percentage of gold supply to aggregate of notes and deposits.
7. Such figures as can be obtained showing the amount of gold and notes in the banks and in the hands of the people.
8. Amount of silver in circulation.
9. Per capita amount of silver in circulation.

## GOLD MOVEMENTS.

Exports and imports of gold—

- a. From Germany to and from various countries for annual and decennial periods since 1871.
- b. Monthly shipments and receipts for last twenty years.

## RATES OF INTERNATIONAL EXCHANGE.

Quoted rates for sight exchange (weekly for last ten years, monthly for last twenty years) between—

- a. Berlin and New York.
- b. London and Berlin.
- c. Paris and Berlin.

## GROWTH OF POPULATION, BUSINESS, WEALTH, AND COMMERCE.

For annual and decennial periods since 1871 for Germany, as shown by—

- a. Population.
- b. Foreign commerce (exports and imports).
- c. Registered tonnage.
- d. Amount of bank capital and reserve funds.
- e. Bank deposits.
- f. Savings banks deposits.
- g. Bank clearing-house transactions.
- h. Home consumption of coffee, sugar, and beer.
- i. Amount of public revenues.
- j. Amount of iron and steel production.
- l. Transportation statistics, including gross earnings of railways and number of tons of freight carried 1 mile.
- m. Growth in wealth in Prussia as shown by income-tax returns.
- n. Total ratable value of lands and houses.
- o. Any other available statistics showing industrial growth.

All the above should show also per capita growth.

## KREDITGENOSSENSCHAFTEN.

1. Number of Kreditgenossenschaften and Centralverbände in the Empire.
2. Number of members.
3. Classification of Kreditgenossenschaften according to limitation of liability, with number of members in each group.
4. Extent of members' balances.
5. Extent of reserves.
6. Extent of outside deposits.
7. Kinds and amounts of credit extended (discounts, current accounts, etc.), and other investments.
8. Rates of interest and of discount.
9. Classification of Kreditgenossenschaften as Schultze-Delitsch Ralf-Feisen, and Haas, and activities of each group, according to above scheme.

## SAVINGS BANKS IN PRUSSIA AND IN EMPIRE, WHERE POSSIBLE.

1. Number of institutions.
2. Number of depositors.
3. Proportion of depositors to population.
4. Amount of deposits at the end of each year.
5. Proportion of deposits to depositors and to the total population.
6. Amount of yearly additions to deposits.
7. Amount of yearly withdrawals.
8. Rates of interest paid upon deposits.
9. Classification of investments of savings bank funds.

Above figures to be given for period from 1870 to 1907, and to be divided between city and community savings banks.

[Statistics to be prepared by Dr. Robert Franz, of the Deutsche Oekonomist, Burgstrasse 3, Berlin. C. 2.]

## JOINT-STOCK AND OTHER BANKS.

These should be stated separately, to include—

- a. Joint-stock banks in Germany.
- b. Other banks and bankers who make reports.
- c. Foreign and colonial banks doing business in Germany, as to their German business.

Statements of joint-stock and other banks and bankers should include, as far as possible, the following:

- a. The name of the bank or banking house.
- b. Number of branches (not including agencies).
- c. Subscribed capital.
- d. Paid-up capital and reserve funds.
- e. Reserve liability of shareholders.
- f. Number of shareholders.
- g. Cash on hand and at Reichsbank (where possible these to be separately stated).
- h. Percentage of same to deposit liabilities.
- i. Money at call and short notice.
- j. Percentage of same to deposit liabilities.
- k. Government and other securities.
- l. Percentage of same to capital and reserve fund.
- m. Deposits and acceptances (stated separately when possible).
- n. Bills discounted.
- o. Loans and advances.
- p. Percentage of capital and reserve fund to other liabilities.
- q. Dividends, rate per cent paid last year.
- r. Number of statements per year.
- s. Syndicate interests and amount invested in the capital of other banks or bankers (stated separately where possible).

## CONSOLIDATED STATEMENTS ANNUALLY FOR ALL BANKS FOR TWENTY YEARS.

- 1. Reichsbank.
- 2. All joint-stock banks in Germany.
- 3. Other banks and bankers who make reports.
- 4. Total for banks of Germany (not including foreign and colonial).
- 5. Foreign and colonial banks doing business in Germany, as to their German business.
- 6. Total of German banks.
- Figures to be given for the following items:
- a. Number of banks.
- b. Number of branches.
- c. Number of inhabitants to each bank and branch.
- d. Subscribed capital.
- e. Paid-up capital and reserve funds.
- f. Reserve liability of shareholders.
- g. Deposits and acceptances (stated separately when possible).
- h. Cash on hand and at Reichsbank. Percentage of same to deposit liabilities.
- i. Money at call and short notice. Percentage of same to deposit liabilities.
- j. Investments in securities.
- k. Discounts, loans, and advances.
- l. Percentage of capital and reserve funds to other liabilities.
- m. Dividends.
- n. Syndicate interests and amount invested in the capital of other banks and bankers.

## HYPOTHEKENBANKEN AND LANDSCHAFTEN.

Statements should be made for each institution separately for the most recent date available.

Consolidated statements for all institutions taken together should be given annually for twenty years. To include—

- a. Number of banks.
- b. Number of branches.
- c. Subscribed capital.
- d. Paid-up capital.
- e. Reserve liability of shareholders.
- f. Surplus.
- g. Total capital and surplus.
- h. Mortgage bonds issued.
- i. Communal bonds issued.
- j. Small railway bonds.
- k. Deposits.
- l. Acceptances.
- m. Credit accounts.
- n. Covering mortgages.
- o. Free mortgages.
- p. Communal loans.
- q. Small railway loans.
- r. Cash on hand and at the bank.
- s. Discounts.
- t. Securities.
- u. Advances on collateral.
- v. Deposits with other banks.
- w. Amount of dividend.
- x. Percentage of dividend.
- x. Average size and average duration of mortgages.

## French statistics.

[Statistics to be prepared by Albert Aupetit, Chief des Études Économiques de la Banque de France (Rue la Vrillière).]

## STATEMENTS OF THE BANQUE DE FRANCE.

- 1. For period since 1875, grouped in annual and decennial averages.
- 2. For last twenty years, weekly (omitting last five figures).
- 3. These should also state in each case percentage of reserve (gold and silver) to (a) note issue, (b) notes and deposits.
- 4. Also annual rate of dividends paid to stockholders and percentage of capital paid to Government.
- 5. Average weekly fluctuations for the twenty years (1887 to 1907) of (a) notes held by the public, (b) bank reserves (coin and bullion).

## TABLE OF RATES OF INTEREST SINCE 1875.

- 1. Average rate for annual and decennial periods.
- 2. Maximum and minimum rates for each year.
- 3. Number of changes each year.
- 4. For twenty years, 1887 to 1907, table showing date and character of all changes.

## NOTE ISSUES.

- 1. Annual and decennial averages since 1875, with per capita amounts at decennial periods.
- 2. Monthly statements for the last twenty years.
- 3. Average monthly fluctuations for these twenty years.

## MARKET RATES OF DISCOUNT.

Rates of the Banque de France during twenty years for thirty-days and three-months bills, for money on call, for thirty-day Lombards, and the rate in other institutions of credit during the same period in Paris, in the leading provincial cities, and in country towns, covering thirty, sixty, ninety, and one hundred and twenty day bills, money on call, on thirty-day advances upon security, and on overdrafts, as well as rates paid on deposits.

## GOLD MOVEMENTS.

- a. Exports and imports between France and various important countries for annual and decennial periods since 1871.
- b. Monthly shipments and receipts for last twenty years.

## RATES OF INTERNATIONAL EXCHANGE.

Quoted rates for sight exchange weekly for last ten years, monthly for last twenty years, between—

- a. Paris and New York.
- b. Paris and London.
- c. Paris and Berlin.

## MONEY SUPPLY OF FRANCE.

- 1. Estimated supply of gold at periodic intervals since 1871.
- 2. Per capita supply of gold at same intervals since 1871.
- 3. Quantity of notes issued at same date.
- 4. Per capita amount of notes issued at same date.
- 5. Percentage of gold supply to total note issue at same dates.
- 6. Percentage of gold supply to aggregate of notes and deposits.
- 7. Any figures obtainable showing amount of gold and notes in the banks and in the hands of the people.
- 8. Amount of silver in circulation.
- 9. Per capita amount of silver in circulation.

## PROPORTION OF MONEY SUBSTITUTES IN TRADE.

Statistics as to the relative use of coin, bank notes, and credit instruments, such as checks, drafts, money orders, etc., as shown by the receipts on a given day from large banks or credit institutions, several department stores, and shops in Paris, in some large provincial cities, and in one or two country towns.

[Statistics to be prepared by Mr. Lefevre of the Études Financières du Crédit Lyonnais, Boulevard des Italiens.]

## SOCIÉTÉS DE CRÉDIT AND ALL OTHER BANKS MAKING REPORTS.

The following items from the last annual statement should be given:

- a. The name of the institution.
- b. Number of branches (not including agencies).
- c. Subscribed capital.
- d. Paid-up capital and reserve funds.
- e. Reserve liability of shareholders.
- f. Number of shareholders (where possible).
- g. Cash on hand and at the Bank of France.
- h. Percentage of same to deposit liabilities.
- i. Money at call and short notice.
- j. Percentage of same to deposit liabilities.
- k. Government and other securities.
- l. Percentage of same to capital and reserve funds.
- m. Deposits and acceptances, stated separately when possible.
- n. Bills discounted.
- o. Loans and advances.
- p. Percentage of capital and reserve fund to other liabilities.
- q. Dividends, rate per cent paid last year.
- r. Number of statements per year.
- s. Syndicate interests and participations, with amount invested in the capital of other banks, stated separately where possible.

## CONSOLIDATED STATEMENTS ANNUALLY FOR ALL BANKS FOR TWENTY YEARS.

Separate groupings to be made for (1) Bank of France; (2) the Sociétés de Crédit; (3) all other banks making reports; (4) total of all banks in France. The figures should include the following items:

- a. Number of banks.
- b. Number of branches.
- c. Number of inhabitants to each bank and branch.
- d. Subscribed capital.
- e. Paid-up capital and reserve funds.
- f. Reserve liability of shareholders.
- g. Deposits and acceptances, stated separately where possible.
- h. Cash on hand and at Bank of France.
- i. Percentage of same to deposit liabilities.
- k. Money at call and at short notice.
- l. Percentage of same to deposit liabilities.
- m. Investments in securities.
- n. Discounts, loans, and advances.
- o. Percentage of capital and reserve funds to other liabilities.
- p. Dividends.
- q. Syndicate interests and participations in the capital of other institutions.

## CRÉDIT FONCIER.

- a. Number of branches.
- b. Subscribed capital.
- c. Paid-up capital.
- d. Reserve liability of shareholders.
- e. Surplus.
- f. Total capital and surplus.
- g. Mortgage bonds issued.
- h. Communal bonds issued.
- i. Deposits and current accounts.
- j. Acceptances.
- k. Amount of mortgages taken.
- l. Average size of mortgages.
- m. Average duration of mortgages.
- n. Communal loans.
- o. Cash on hand and at the bank.
- p. Discounts.
- q. Securities.
- r. Advances on collateral.
- s. Deposits with other banks.
- t. Percentage of dividend.

## CRÉDIT AGRICOLE.

- 1. Number of caisses locales.
- 2. Number of caisses régionales.
- 3. Number of members.
- 4. Number with limited liability.
- 5. Number with unlimited liability.
- 6. Extent of reserve fund.
- 7. Kinds and amounts of credit extended (discounts, current accounts, and so on) and other investments.
- 8. Rates of interest and of discount.

## CAISSES D'ÉPARGNE.

The figures should be given separately for the Caisses d'Épargne Ordinaires and for the Caisses Nationales, to include:

- 1. Number of institutions.

2. Number of depositors.
3. Proportion of depositors to population.
4. Amount of deposits at the end of each year.
5. Proportion of deposits to depositors and to the total population.
6. Amount of yearly additions to deposits.
7. Amount of yearly withdrawals.
8. Rates of interest paid upon deposits.
9. Classification of investment of savings-bank funds.

Above figures to be given for period from 1870 to 1907.

#### GROWTH OF POPULATION, BUSINESS, WEALTH, AND COMMERCE.

For annual and decennial periods since 1871, as shown by—

- a. Population.
- b. Foreign commerce (exports and imports).
- c. Registered tonnage.
- d. Amount of bank capital and reserve fund.
- e. Bank deposits.
- f. Savings-bank deposits.
- g. Bank clearing-house transactions.
- h. Home consumption of coffee, sugar, and wine.
- i. Amount of public revenue.
- k. Amount of iron and steel production.
- l. Transportation statistics, including gross earnings of railways and number of tons of freight carried 1 mile.
- m. Growth of wealth in France as shown by any particular tax returns.
- n. Total ratable value of lands and houses.
- o. Any other available statistics showing industrial growth.

[Suggestions for the study of banking practice to be prepared by H. Withers, of the London Times. City office: 15 Copthall avenue, London, E. C. Private address, 6 Linden Gardens, London, W.]

#### 1. What are the distinctive functions of—

- a. Bank of England.
- b. Joint-stock banks.
- c. Private banks and merchant bankers.
- d. Postal and trustee or other savings banks.
- e. Discount houses.
- f. Banks of Scotland.

#### 2. What are the laws which govern each class as evidenced—

- (1). By legislation, or
- (2). By custom, growing out of the understood unwritten laws, to include in each case the provisions of law or custom governing—

- a. Organization.
- b. Government and control.
- c. Capital and reserve fund.
- d. Liabilities of stockholders, officers, and directors.
- e. Requirements, if any, for the government or other supervision, inspection, or examination.

f. Nature and extent of statements or returns, public or private, if any, required or published.

3. What is the character of the business done by various classes of banks under the following different conditions:

- a. In rural communities.
- b. In industrial and financial centers, like Manchester.
- c. In commercial centers, like Liverpool.
- d. In the great international exchange center of London, to include in each case—

1. General nature of the business done.
2. General character of (a) deposits, (b) current accounts, with the usual rate of interest, if any, paid on each class.
3. General character of (a) bills discounted, (b) loans, (c) advances to customers or cash credits, with the usual rate of interest on each as compared with the bank rate, (d) acceptances.

(To include description of "crossed checks," charges on the turnover, distinction between current and deposit accounts, etc.)

4. Are there organizations or associations of banks other than clearing houses in existence; and if so, what is their character?

5. Number and character of clearing-house organizations in the United Kingdom.

6. Description of London Stock Exchange; its organization; conditions of membership; regulations whether of law or custom; methods of listing; kinds of business done, machinery of settlement, etc.

#### CANADA.

##### Reports to be prepared in Canada.

R. M. Breckenridge, 216 Jackson street, Hamilton, Ontario, will prepare a paper upon the history of banking in Canada, giving especial attention to recent legislation and to the organization of the Canadian Bankers' Association, with a compilation of the banking statutes revised to date.

Prof. Joseph French Johnson, of New York University, will prepare a study of banking practices and of the relations between the banks in Canada at the present time.

The commission will also conduct personal inquiries in leading Canadian cities.

#### JAPAN.

Prof. O. M. W. Sprague, of Harvard University (18 Sumner road, Cambridge, Mass.), will prepare a paper upon the organization and history of the banking system of Japan.

Steps have also been taken to secure information from the Marquis Katsura, premier and minister of finance; Baron Takahashi, vice-governor of the Bank of Japan, and other Japanese authorities.

##### Reports from other countries.

Dr. Julius Landmann, das Schweizerische Bankgesetz, Untersuchungen zur Geschichte und Kritik der Schweiz. Notenbankgesetzgebung, insbesondere des Bundesgesetzes vom 6 Oktober, 1905, über die Schweizerische Nationalbank.

To be translated under the supervision of Mr. Léon Rueff, of the Swiss Bankverein, 43 Lothbury, London, E. C.

A. W. Flux, of the London Board of Trade, Gwydyr House, Whitehall, London, S. W., England, will prepare a paper upon the recent history of Swedish banking, with especial reference to the changes of the last few years in the note-issuing arrangements.

Charles A. Conant, 32 Nassau street, New York, will prepare papers upon the organization and history of the banking systems of Belgium and Mexico, and short descriptions of the central banks of Austria-Hungary, Russia, and Holland.

Paul M. Warburg, of Kuhn, Loeb & Co., William and Pine streets, New York, will prepare a paper upon the organization of the discount market in London and European financial centers, with a discussion of the methods and effects of rediscounting as practiced there.

L. M. Jacobs, of the foreign-exchange department of the National City Bank, New York, will prepare a paper upon the business of "accepting" in English and European banks, with a discussion of acceptances as a means of increasing the flexibility in a country's credit.

#### UNITED STATES.

##### Reports upon banking in the United States.

Prof. William Graham Sumner, of Yale University, New Haven, Conn., has been asked to prepare a paper surveying the banking experiences of the United States during the past hundred years and summarizing the lessons to be learned therefrom.

Prof. Davis R. Dewey, of the Massachusetts Institute of Technology, will prepare a study of banking history in America before the civil war, giving especial attention to the first and second United States banks and the safety fund and free banking systems of New York.

Andrew McFarland Davis, 10 Appleton street, Cambridge, Mass., will prepare a study of the origin of the national-banking system, with especial reference to the motives which led to its creation and the conditions and principles which had influence in giving it form.

Prof. O. M. W. Sprague, of Harvard University (18 Sumner road, Cambridge, Mass.), has been asked to prepare a paper upon the experiences of the banks during the several periods of panic and general suspension since the organization of the national-banking system.

Alexander D. Noyes, 24 Vesey street, New York, financial editor of the Evening Post, will prepare a paper upon the changes in the amount of notes issued by the national banks since their institution in 1864.

Prof. Edwin W. Kemmerer, of Cornell University (Goldwin Smith Hall), Ithaca, N. Y., will prepare a statistical study of seasonal variations in the demand for currency and capital, as evidenced by changes in the domestic exchange rates upon New York in certain cities, the shipments of cash to and from various parts of the country, the movements of loans and reserves in the banks of leading financial centers, the changes in the loan and discount rates, the exports and imports of gold, the rates of foreign exchange, and the prices of certain active investment bonds.

Prof. David Kinley, of the University of Illinois, Urbana, Ill., will prepare a study of the development of the independent treasury system of the United States from its origin down to the present day.

John E. Gardin, of the foreign exchange department of the National City Bank, New York, will prepare an analysis of the balance of indebtedness of the United States during the last twenty of thirty years, with estimates of the amounts of the several items entering that balance and a discussion of their tendencies.

Samuel A. Weldon, 24 Broad street, New York, of the New York bar, will prepare a digest of the laws actually current in the various States, with regard to state banks, trust companies, and savings banks.

— will prepare a paper upon methods of bank clearances in different parts of the United States, including the settlement of balances and the treatment of checks upon outside towns.

##### Statistics for the United States.

Lawrence O. Murray, Comptroller of the Currency, will obtain:

First. A report of condition from all the national banks, giving specific items according to a special scheme prepared by the commission.

Second. A report from the national banks as to the relative use of coin, paper money, and credit instruments as shown by the deposits and receipts of the banks on given days (like the reports of 1881, 1890, 1892, and 1896). (This report is to be tabulated under the direction of Prof. David Kinley, of the University of Illinois.)

Third. Recapitulative tables for the national banks for the last twenty years, according to a scheme to be prepared.

The state-bank supervisors, in cooperation with Pierre Jay (room 125, State House, Boston, Mass.), president of the National Association of Supervisors of State Banks, will secure from the state banks and trust companies statistics similar to those secured by the Comptroller of the Currency from national banks.

O. P. Austin, Chief of the Bureau of Statistics, Washington, D. C., will secure statistics as to the annual growth of population, business, wealth, and commerce, and as to the exports and imports of gold during the last forty years.

The Commercial and Financial Chronicle, William B. Dana, editor, 140 Front street, New York, will collect (1) the rates of foreign exchange weekly for the last ten years and monthly for the last twenty years between New York and London; (2) weekly shipments and receipts of gold in New York during the same period; (3) quoted market rates for loans and discounts in New York for the same period, to include call loans, time loans, and commercial paper for different lengths of time and of as many kinds as are available.

Fred I. Kent, vice-president Bankers' Trust Company, 7 Wall street, New York, will collect (1) the high and low rates for foreign drafts between (a) New York and London, (b) New York and Berlin, (c) New York and Paris, weekly for the last ten years, and monthly for twenty years; (2) the rates for domestic exchange upon New York in Chicago, New Orleans, St. Louis, and San Francisco during a similar period.

The managers of the clearing houses in all cities of 50,000 or more inhabitants will be asked to collect from the banks in those cities a statement of the shipments and receipts of cash from such banks, month by month from January, 1905, to December, 1908.

The managers of the clearing houses in Chicago, St. Louis, New Orleans, and San Francisco will be asked to furnish statements as to the movements in the deposits, loans, and cash reserves of their banks, week by week for the last ten years.

Other papers to be arranged for.

Mr. TAWNEY. Mr. Speaker, I do not wish to occupy any more of my time, unless the gentleman from South Carolina—

The SPEAKER. The question is on suspending the rules—

Mr. TAWNEY. Mr. Speaker, I promised to yield one minute to the gentleman from South Carolina [Mr. LEVER].

Mr. LEVER. Mr. Speaker, operating, as we are, under a rule forced upon the minority which does not permit any debate to amount to anything and prohibits amendments to any of these appropriation bills, I am denied the privilege of offering several amendments to this bill which, I am sure, would make it a much better bill. If the rule would permit it, I would offer an

amendment striking out the appropriation allowed Dantzler and Myers, who contested the seats of myself and my colleague, Judge PATTERSON. The appropriation amounts to \$2,500 and is a pure gift to these negroes, who had no idea of winning a seat and no other purpose than getting the fees allowed in this bill. I want the country to know the ridiculousness of these contests, and, with unanimous consent, I desire to submit a statement of the contested-election cases in South Carolina for the past twenty years. This farcical procedure, this unnecessary drain upon the Treasury, will never cease until this Congress has the courage to say to these negroes that "Your case must be more than a farce, more than a ridiculous pretense, before any fees will be allowed." Three contests have been filed again for the Sixty-first Congress, and they will never stop until the Republican majority joins with us on this side in refusing fees where the only purpose of the contest is to obtain the fees. I wish I had the chance to test the sense of the House on this matter, but your rule does not permit it, and I can only voice my protest.

The list shows 18 cases, only 2 of which were successful. The list will also show that the votes received by these Republican contestants have grown less and less, until they now practically amount to nothing.

*List of contested election cases from South Carolina from the Fiftieth to the Sixtieth Congresses, both inclusive.*

FIFTIETH CONGRESS.

Seventh district, Robert Smalls (vote 5,961) *v.* William Elliott (vote 6,493).

FIFTY-FIRST CONGRESS.

Seventh district, Thomas E. Miller (vote 7,003) *v.* William Elliott (vote 8,358). Miller seated.

FIFTY-SECOND CONGRESS.

Seventh district, Thomas E. Miller (vote 1,410) *v.* William Elliott (vote 3,792).

FIFTY-FOURTH CONGRESS.

First district, George W. Murray (vote 3,913) *v.* William Elliott (vote 5,650). Murray seated.

FIFTY-FIFTH CONGRESS.

First district, George W. Murray (vote 173) *v.* William Elliott (vote 2,478).

Second district, B. P. Chatfield (vote 635) *v.* W. Jasper Talbert (vote 7,999).

Seventh district, Thomas B. Johnston (vote 1,342) *v.* J. William Stokes (vote 8,065).

FIFTY-SIXTH CONGRESS.

Third district, R. R. Tolbert (vote 332) *v.* Asbury C. Latimer (vote 4,029).

FIFTY-SEVENTH CONGRESS.

Seventh district, A. B. Dantzler *v.* A. F. Lever.

FIFTY-EIGHTH CONGRESS.

First district, Aaron P. Prioleau (vote 175) *v.* George S. Legare (vote 3,749).

Seventh district, A. D. Dantzler (vote 167) *v.* A. F. Lever (vote 4,220).

FIFTY-NINTH CONGRESS.

First district, Aaron P. Prioleau (vote 234) *v.* George S. Legare (vote 6,068).

First district, James A. Noland (vote 346) *v.* George S. Legare (vote 6,068).

Second district, Isaac Myers (vote 419) *v.* James O. Patterson (vote 7,426).

Seventh district, Charles C. Jacobs (vote 563) *v.* Asbury F. Lever (vote 8,726).

SIXTIETH CONGRESS.

First district, Aaron P. Prioleau (vote 28) *v.* George S. Legare (vote 3,965).

Second district, Isaac Myers (vote 226) *v.* J. O. Patterson (vote 4,588).

Seventh district, A. D. Dantzler (vote 133) *v.* A. F. Lever (vote 5,391).

Mr. TAWNEY. Mr. Speaker, I yield one minute to the gentleman from Minnesota [Mr. STEVENS].

Mr. STEVENS of Minnesota. Mr. Speaker, the Committee on Interstate and Foreign Commerce has given consideration to the subject of locks and dams and waterways. There have been many inquiries by Members of the House upon the subject, and a pamphlet has been compiled by the committee at the request of some Members, and I ask unanimous consent to insert this in the RECORD as part of my remarks.

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

Mr. STEVENS of Minnesota. The pamphlet is as follows:

DAMS AND WATER POWER.

WASHINGTON, D. C., February 25, 1909.

To the Committee on Interstate and Foreign Commerce,  
House of Representatives:

Your subcommittee, appointed to consider and report upon the matters of the construction of the dam across Rainy River, Minnesota, the construction of a dam over the James River, Missouri, and the general subject of dams over navigable streams and the water power developed thereby, has conducted hearings which are in print and are documents of your committee, and in various ways has sought to obtain and

compile information. At this time it has not seemed feasible to formulate any plan for legislation the enactment of which could now be definitely recommended. Your subcommittee appreciates the force and importance of the suggestions and recommendations of the President, as set forth in his messages to Congress and in other public documents. Nothing can be of greater consequence to the people than the preservation of the public rights of control and regulation; and of proper tolls, charges, or taxes by public authority over the water powers of the country.

These immense natural resources, in large part dormant, should be developed for the real welfare of the whole country, and not solely for the benefit of those few individuals who had the shrewdness and foresight to acquire such property rights as may be sufficient to dominate and utilize mostly for themselves these privileges. At the same time due regard must be had to the private rights which such individuals may have acquired and of which they can not be deprived without due process of law, and which can not be taken for public use without just compensation. The time will soon come when these water powers should be developed to the advantage of the sections in which they are located, and when great public improvements of varied importance must depend upon such development to properly utilize other vast natural resources. It should be the purpose of Congress to encourage this utilization and development without sacrificing public interests or private rights. If the National Government had the entire jurisdiction and control of all phases of the subject, the problem of suitable legislation would be much easier, though even then its solution would be perplexing and arduous. But when the power of the National Government is so carefully defined and limited by the Constitution of the United States, and when so large a part of the authority over this subject must necessarily remain with the States, and when the boundary of private rights must be ascertained and respected in the instances where such rights exist, and yet the whole range of utilization, control, rights, and charges must be considered in the preparation of any legislation to be passed by Congress, the difficulties of ascertaining accurately the respective powers of the National Government, the States, and the individual owners, of considering the divergent views and interests, and of formulating such provisions as shall be adequate to secure development of these great natural resources, are vastly increased and require much time for their proper understanding, thorough consideration, and final settlement.

Under the circumstances, your subcommittee has thought it wise to submit a partial report to the whole committee advising as to the progress it has made, and presenting the information of record it has gathered upon the subject. The views of the President are given in his veto of the Rainy River dam bill, his letter to Hon. J. ADAM BEDE, and his veto of the James River dam bill, all of which are included in and made a part of this report. The views of the Senate Committee on Commerce are embodied in a report of that committee, a copy of which is herein included. The views of the War Department are contained in a report and memorandum submitted to this committee, and an opinion upon a hearing by Hon. William H. Taft, Secretary of War. Some of the views of your committee may be found in a report of the committee upon the veto message of the President on the Rainy River dam bill.

There is also included in this report a letter containing various interrogatories propounded to Hon. Henry M. Hoyt, Solicitor-General of the United States, and Mr. Hoyt's reply thereto. There is also submitted a tentative draft of a bill "Committee print" reenacting the existing law, and proposing several amendments to the general law approved on the 21st day of June, 1906, "Regulating the construction of dams over navigable streams." This is not designed as a final expression of the views of the subcommittee but rather is submitted as a basis for discussion. It seeks to extend the regulating power of the National Government, through the War Department, to the largest practicable limits under the Constitution, so that there have been drafted two alternative propositions, setting forth different views as to the powers of the National Government: first, that the charge to be exacted by the National Government should be limited by the amount which should be necessary to restore the streams to the condition of navigability existing at the time the grant is made; or, second, such amount as the War Department should deem it wise to exact, to be paid into the Treasury and applied to the purpose of improvement of navigation, which sums must be otherwise provided by taxation as Congress shall direct. There is also proposed in the bill a time limit for the franchises, and a provision for the disposition of the franchises and property at the expiration of the limited term.

Your committee makes no further recommendations at this time, but submits this partial report and invites your attention to the documents herein included.

F. C. STEVENS.  
JOHN J. ESCH.  
WILLIAM RICHARDSON.  
C. L. BARTLETT.

[Congressional Record, April 13, 1908, p. 4854.]

VETO MESSAGE RELATING TO EXTENSION OF TIME FOR CONSTRUCTION OF DAM ACROSS RAINY RIVER.

The Speaker laid before the House the following message from the President of the United States, which was read:

"To the House of Representatives:

"I return herewith, without my approval, House bill 15444, to extend the time for the construction of a dam across Rainy River.

"This bill is returned for several reasons, some of which are general, others special. In this particular case permission to construct this dam was originally given, as being in Rainy Lake River, by the act of May 4, 1898 (30 Stat., 398), which limited the time for commencing the work to one year and for completing it to three years from that date. Further extensions of time were granted as follows: For commencement, three years, and for completion, five years from May 4, 1900, by the act of that date (31 Stat., 167); for construction until May 4, 1907, by the act of June 28, 1902 (32 Stat., 485); for completion until July 1, 1908, by the act of February 25, 1905 (33 Stat., 814). The act of 1905 substituted the Rainy River Improvement Company for the original permittee. All rights given by these acts will expire July 1, 1908, unless the dam is completed on or before that date. In other words, the permittees will then have enjoyed for more than ten years the exclusive privilege of constructing this work, and have apparently failed to take advantage of it, for this bill would extend the time for three years longer to some unnamed day in July, 1911.

"I do not believe that natural resources should be granted and held in an undeveloped condition either for speculative or other reasons. So

far as I am aware, there are no assurances that the grantees are in any better condition promptly and properly to utilize this opportunity than they were at the time of the original act, ten years ago.

"In all permits of this character the duty of declaring a forfeiture, after notice and hearing, for failure to begin or complete construction within the time limited by the permit, or for other breach of conditions, should be definitely imposed upon the proper administrative officer (in this case the Secretary of War). There have been many unfortunate experiences resulting from conditional grants, which, though on their face apparently terminable for breach of condition, proved practically indeterminate because no one official was specifically given power to discover and declare the breach. The general statute regulating dams in navigable waters (act June 21, 1906, 34 Stat., 386), though representing an advance, yet leaves uncertain much that should be definitely expressed in each act permitting the construction of dams under this statute.

"A definite time limit is one of these important omissions. The public must retain the control of the great waterways. It is essential that any permit to obstruct them for reasons and on conditions that seem good at the moment should be subject to revision when changed conditions demand. The right reserved by Congress to alter, amend, or repeal is based on this principle; but actual experience of what happens with indeterminate public-utility franchises proves that they are in the vast majority of cases practically perpetual. Each right should be issued to expire on a specified day, without further legislative, administrative, or judicial action.

"Every permit to construct a dam on a navigable stream should specifically recognize the right of the Government to fix a term for its duration and to impose such charge or charges as may be deemed necessary to protect the present and future interests of the United States in accordance with the act of June 21, 1906. There is sharp conflict of judgment as to whether this general act empowers the War Department to fix a charge and set a time limit. All grounds for such doubt should be removed henceforth by the insertion in every act granting such a permit of words adequate to show that a time limit and a charge to be paid to the Government are among the interests of the United States which should be protected through conditions and stipulations to be imposed either by the War Department or, as I think would be preferable, by the Interior Department.

"The provision for a charge is of vital importance. The navigability of every inland waterway, and of all connected and connectable inland waterways as a whole, should be improved for the purposes of interstate and foreign commerce upon a consistent unified plan by which each part should be made to help every other part. One means available for the improvement of navigation at a particular point on any river may be a dam creating a slack-water pool of sufficient depth. Such a dam may, in many cases, develop power of sufficient value to pay, in whole or in part, for the improvement of navigation at that point, and if there is any surplus it can be spent upon improvements at other points in accordance with the general plan. Since the Government can do by any proper agency what it can do directly, it is in principle immaterial whether this income to construct needed improvements is derived from works constructed directly by the Government or by a corporation acting under federal authority, since federal authority is the one indispensable legal prerequisite for the work, though the charge to be paid to the Government for the power would, of course, differ in the two cases; indeed, the charge would necessarily vary greatly, for where the improvement was both costly and of great benefit to the public the charge would naturally be made low and the time limit long.

"The income derivable from this source would materially aid in the complete improvement of our navigable waters, for which there is now such crying need. The Chief of Engineers of the Army reports that the bills pending at this session of Congress permit the construction of dams in navigable streams capable of developing over 1,300,000 horsepower. These rivers run every hour in the day and every day in the year. To develop this amount of power would, under average conditions, require about 25,000,000 tons of medium-quality coal every year. This natural wealth is the heritage of the people. I see no reason for giving it away, though there is every reason for not imposing conditions so burdensome as to prevent the utilization of the power. The authority to make, modify, or withhold grants manifestly implies both the power of inquiring into the grounds on which the grants are asked and the duty of administering the grants in the public interest.

"We are now at the beginning of great development in water power. Its use through electrical transmission is entering more and more largely into every element of the daily life of the people. Already the evils of monopoly are becoming manifest; already the experience of the past shows the necessity of caution in making unrestricted grants of this great power.

"The present policy pursued in making these grants is unwise in giving away the property of the people in the flowing waters to individuals or organizations practically unknown and granting in perpetuity these valuable privileges in advance of the formulation of definite plans as to their use. In some cases the grantees apparently have little or no financial or other ability to utilize the gift, and have sought it merely because it could be had for the asking.

"In place of the present haphazard policy of permanently alienating valuable public property, we should substitute a definite policy along the following lines:

"First. There should be a limited or carefully guarded grant in the nature of an option or opportunity afforded within reasonable time for development of plans and for execution of the project.

"Second. Such a grant or concession should be accompanied in the act making the grant by a provision expressly making it the duty of the designated official to annul the grant if the work is not begun or plans are not carried out in accordance with the authority granted.

"Third. It should also be the duty of some designated official to see to it that in approving the plans the maximum development of the navigation and power is assured, or at least that in making the plans these may not be so developed as ultimately to interfere with the better utilization of the water or complete development of the power.

"Fourth. There should be a license fee or charge which, though small or normal at the outset, can in the future be adjusted so as to secure control in the interest of the public.

"Fifth. Provision should be made for the termination of the grant or privilege at a definite time, leaving to future generations the power or authority to renew or extend the concession in accordance with the conditions which may prevail at that time.

"THEODORE ROOSEVELT.

"THE WHITE HOUSE, April 13, 1908."

LETTER OF THE PRESIDENT TO MR. BEDE.

THE WHITE HOUSE,  
Washington, May 7, 1908.

MY DEAR MR. BEDE: While I stand absolutely for the policy with regard to the development of water powers announced in my message of February 26, because I believe that policy is just and in the interests of the whole people of the United States, still I am anxious that no injustice should be caused in this particular case in Minnesota which you have brought to my attention. At the time of my veto of the Rainy River dam bill I was not in possession of the information which has since come to me from you, that the dam is already about half completed under previous grants by Congress. That fact does not by any means remove Rainy River dam from the sphere of the new method of protecting the interest of the public, but it does warrant special consideration of the promoters of that project, because they have already expended part of their money under the old policy. There is, I believe, a simple way by which the interests of the people at large and of the Rainy River Improvement Company can be met at the same time, and that without in any degree sacrificing the policy for which I stand or establishing any unfortunate precedents in connection with it.

There are two provisions without which I will not approve any bill granting the rights to develop water power on a navigable stream. The first is a definite limitation in time. That limitation can be made long or short, as the circumstances in each case require. In the present instance I suggest a term of ninety-nine years, which, I doubt not, will be abundantly sufficient for every need of the Rainy River Improvement Company. The second provision relates to a charge for the benefits obtained by any company as the result of the permission granted to it by the United States. In view of the fact that the Rainy River dam is reported to me as half built, I suggest that a specific provision be inserted in the bill fixing the time when the Secretary of War may begin to collect a charge at twenty-five years from the date of the passage of the bill. Thus the Rainy River Improvement Company will be relieved of an immediate charge which it had not anticipated, and at the same time the future interests of the people of the United States will be protected. If these two provisions can be inserted in the bill as passed, I shall be very glad, indeed, to sign it.

In reference to the claim that it is the State and not the Nation which has power in connection with these waters, I would like to call your attention to the fact that as soon as the persons privately interested in these improvements get that position acknowledged, they are absolutely certain to take the further position that the State itself has no power in the matter. For example, the Illinois legislature has been for twelve months fighting about measures for the improvement of the Des Plaines and Illinois rivers and the development of water powers to pay for the improvement, the private citizens who desire to use the waters in their pecuniary interest maintaining that the waters are the property of the riparian owners and can not be used by the State. It seems to me clear that the United States Government, in cases where it can make or withhold a grant according as it chooses, can impose in connection with any grant it actually gives such conditions as may be necessary for the protection of the public. I do not see how there can be any question that it has the right to make the grant only for a limited time. Indeed, I can not imagine any argument being made against this proposition. As for the imposing of a charge, I can conceive of an argument being made that this can not be done. Nevertheless, it also seems to me absolutely clear that we have the right to do it.

In my judgment it is not a case as to whether the Constitution authorizes the action, but as to whether the National Government does or does not choose to take the position that, as a grant of this kind is an exclusive and therefore a monopolistic grant, it is fair that the holder, as a condition of the enjoyment, should give just compensation to the public at large, by whom, through the Government, that grant has been given. It seems to me unwise for Congress to take any other position. The greater the pecuniary gain to the holder of the grant, and the greater the value of the property by reason of this exclusive monopolistic right, the greater should be the compensation to the public at large. The compensation would be available for the use of the public, through the Federal Government, either in still further improving or aiding navigation, or in rebuilding the dam in case the company failed, or in removing an obstruction if it be an obstruction to navigation. It seems to me clear that the right to impose a compensation in any of these cases is an incident to the control which the Federal Government has over navigation, and which it can exercise either negatively by removing obstructions or affirmatively by improving navigation. Whether the United States itself constructs the dam or gives leave to construct it is, to my mind, wholly unimportant as regards the matter we have under consideration.

Sincerely yours,

THEODORE ROOSEVELT.

Hon. J. ADAM BEDE,  
House of Representatives.

HOUSE COMMITTEE REPORT ON RAINY RIVER DAM BILL (H. R. 15444).

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 15444) extending the time for the construction of a dam across Rainy River, having considered the same, report thereon with a recommendation that it pass.

This bill was passed by the House of Representatives on the 4th day of March, 1908, and was passed by the Senate on the 4th day of April, 1908, and on the 13th day of April, 1908, was returned by the President without his approval. The bill was referred to the Committee on Interstate and Foreign Commerce, which gave extended hearings upon the subject-matter of the bill. During the progress of the hearings, on the 5th day of May, Hon. James R. Garfield, Secretary of the Interior, appeared before the committee and made a general statement regarding the attitude of the administration toward this particular bill and its general position toward the question of similar legislation affecting water power. The following appears as a portion of the statement of Secretary Garfield (pp. 87 and 88 of the hearings):

"As regards this particular bill, I am advised that there was not before presented, at the time the bill was vetoed, all the facts which have since developed relating to the character of the work that had been done by the company which is seeking to have this act passed, which is a renewal of previous acts. In the veto message of the President there were five provisions which the President suggested as essential provisions for measures of this character, and it was desired, as to two of those particularly, that a statement be made to the subcommittee to indicate more in detail the reason why those provisions were essential.

"The first one, as to the limitation in time, that instead of there being granted an indefinite or what would be a perpetual right, in case the conditions of construction were complied with, the President has felt that there should be a limited grant made, say, for example, a grant of ninety-nine years.

"Next the question comes up as to what limitations or conditions should be imposed by the Federal Government in making such grants. One which has been felt to be exceedingly necessary is that of making a charge. I am aware that there are legal questions involved in this."

It appeared that this Rainy River is on the international boundary line between the United States and the Province of Ontario; that the company seeking a renewal of its privilege had proceeded with due diligence in carrying out its work; that the work done up to date represents an expenditure of more than \$750,000 in the partial construction of the dam, race ways, etc., the securing of necessary property and rights; that the Dominion parliament of Canada and the provincial parliament of Ontario had granted proper rights and licenses to its associate company in Ontario to do the Canadian portion of this work. It further appeared that this whole project was a unit, and that it was necessary for the successful operation of it that both the American and Canadian rights be secured by one company, and that it be constructed and operated as one plant, in order to produce proper and profitable results to the public and to its owners.

It also appeared that the Dominion and provincial parliaments made this project a part of their navigation system between Lake Superior and Lake of the Woods, and that one of the reasons for the Canadian grants was that this improvement would maintain the waters of Rainy Lake at a higher level during the low-water period and be of great advantage to navigation. (Hearings, p. 133.)

House Document No. 431, Fifty-ninth Congress, first session, page 4, contains the following statement:

"The board believes that any decided betterment of navigation can be brought about only by extensive and costly works, which are not justified by present and prospective commerce. Moreover, this is an international waterway with a greater development and demand for navigation on the Canadian than on the United States side of the river, which condition would suggest that when the necessity for the improvement of the river is recognized it should be undertaken by a mutual arrangement between the two countries.

"In view of the foregoing, the board can not concur in the opinion of the district officer and the division engineer as to the advisability of making a survey. In the board's opinion the present and prospective commerce of this locality and the commercial interests of the American people are not sufficient to justify the probable cost of an effective improvement. It therefore believes that it is not advisable for the United States to undertake the work at the present time.

"For the board:

"R. L. HOXIE,  
Lieut. Col., Corps of Engineers,  
Senior Member Present.

DECEMBER 18, 1905."

This is a report by the Corps of Engineers of the United States upon a survey for navigation and improvements at this point.

In view of these conceded facts both as to the public benefits accruing to Canada and the United States by reason of this improvement, and by reason of the equities of the projectors, who had made large investments in good faith and with due intelligence, relying upon the governmental action of the two countries, it seemed to the representatives of the administration and to your committee that this grant should be continued and this work should be prosecuted to a successful conclusion, provided it could be done by preserving the rights to the people and to the Government of the United States as laid down by the President in his message of disapproval of this bill. Accordingly several conferences have been held between the representatives of the administration and your committee with the endeavor to harmonize any conflicting views so far as the same might be necessary concerning this bill. The parliamentary situation of the bill is such that it is a subject of privilege in the House which must not be lost if the bill be considered at this session of Congress, and that it is not open to any amendments, but must be passed, if at all, as it was disapproved by the President.

The message of disapproval indicated that the "Act to regulate the construction of dams across navigable waters," approved June 21, 1906, was not sufficiently comprehensive in authorizing the War Department to fix a definite time limit and such charges as could be constitutionally exacted by the United States for its grant of any privilege to the company constructing the dam. Your committee realized that such defects might exist, and directed its proper subcommittee to take this whole subject under consideration, to submit such amendments to such general act at the first meeting in December next as should grant to the proper officials of the War Department the largest authority under the Constitution, to fix any definite time limit which should be necessary and such charge as could be made under the circumstances of each particular case. This action is as far as your committee can go during the present session of Congress.

The officers of the Rainy River Improvement Company in their hearings and conferences before this committee and, as we are informed, in their conferences with the officers of the administration, have always indicated their willingness to abide by whatever requirements and conditions should be exacted from them by Congress, or by the officials of the administration as a condition in the extension of their grant for the construction of this dam.

It appeared in the hearings before your committee from Gen. Alex. Mackenzie, Chief of Engineers, that new plans must be presented for this work in connection with the Rainy River project required by Canada. These plans have not yet come to the department. The work they are now doing is based on the old plans which do not accord with the Canadian work. Accordingly the Rainy River Improvement Company has agreed in writing with the Secretary of War that at its earliest convenience it will submit to the Secretary of War and Chief of Engineers, as provided by the general dam act of June 21, 1906, its new plans and specifications, and that as a necessary part of any approval of the same by the Secretary of War and Chief of Engineers there shall be embodied therein the following conditions and agreements:

First. Such reasonable limitations as to the time for such grant as the Secretary of War shall impose, conditioned that the United States shall not be subjected to any expense in the removal of such or any obstruction or improvement caused by said company, either at the expiration of said grant or at any other time that the United States may direct the same to be removed.

Second. That the said Rainy River Improvement Company has agreed and will agree to the payment of such charge to the United States as may be required by the Secretary of War, either under the present law or as may be hereafter determined by authority of Congress.

Third. That this grant is expressly made subject to any impositions hereinafter authorized or directed by Congress embodied in any general law or special modification or change of this or other acts, and that a special reservation to this effect shall be an essential part of such approval of said plans by the Secretary of War and Chief of Engineers.

Fourth. That any application of said company for the approval of its plans and specifications, whenever made, shall be agreed by said parties to be within the purview of a part of and as authorized by the pending act of Congress whenever the same shall become a law; and that all the provisions of the approval of the Secretary of War and Chief of Engineers to said plans and specifications and all conditions as a part thereof shall be a part of the authority of said officers now or hereafter conferred by general or special acts of Congress with reference to this project.

In view of these conditions proposed and agreed to by the Rainy River Improvement Company as an essential part of the approval by the Secretary of War and the Chief of Engineers, it seems to your committee that the requirements of the President in his message of disapproval have been met so far as possible, and that the peculiar circumstances and exigencies of this case are such as require immediate action by Congress. This report and statement have been submitted to the Secretary of the Interior, Hon. James R. Garfield, and appended are his views and report thereon:

SECRETARY'S OFFICE,  
DEPARTMENT OF THE INTERIOR,  
Washington, D. C., May 23, 1908.

DEAR SIR: I have discussed the report of your subcommittee on the Rainy River Improvement Company bill with the President, and I am authorized by him to say that he recognizes the conditions which mark this case off very sharply from any which may hereafter arise, in view of the fact that under an existing law much capital has already been invested by the Rainy River Improvement Company which will represent a dead loss if there is no extension of the time within which the company is required to complete its work, and, furthermore, in view of the fact that the parliamentary situation in Congress is such that no new bill nor amendment to the present bill can now be passed.

It also appears that the Committee on Interstate and Foreign Commerce has announced in the report that at the next session of Congress it will endeavor to remedy the defects of the existing general law on the subject by submitting amendments which will permit the Executive to fix definite time limits and impose reasonable charges in all such cases, while on its part the Rainy River Improvement Company, through its president, has filed with the War Department an agreement that it will submit to and abide by such conditions as may be imposed by the Secretary of War, including a time limit and a reasonable charge, when it files, as it must, the new plans which must be approved by the War Department before it can proceed under the proposed law.

These conditions having been fulfilled, the President feels that it is safe, from the view point of the public interest, and equitable to the Rainy River Improvement Company, to enact the bill into law.

Very respectfully, JAMES RUDOLPH GARFIELD, Secretary.

Hon. FREDERICK C. STEVENS,  
Committee on Interstate and Foreign Commerce,  
House of Representatives.

#### SPECIAL MESSAGE.

To the House of Representatives:

I return herewith without my approval House bill 17707, to authorize William H. Standish to construct a dam across James River, in Stone County, Mo., and divert a portion of its waters through a tunnel into the said river again to create electric power. My reasons for not signing the bill are:

The bill gives to the grantee a valuable privilege, which by its very nature is monopolistic, and does not contain the conditions essential to protect the public interest.

In pursuance of a policy declared in my message of February 26, 1908 (S. Doc. No. 325), transmitting the report of the Inland Waterways Commission to Congress, I wrote on March 13, 1908, the following letter to the Senate Committee on Commerce:

"Numerous bills granting water rights in conformity with the general act of June 21, 1906, have been introduced during the present session of Congress, and some of these have already passed. While the general act authorizes the limitation and restriction of water rights in the public interest and would seem to warrant making a reasonable charge for the benefits conferred, those bills which have come to my attention do not seem to guard the public interests adequately in these respects. The effect of granting privileges such as are conferred by these bills, as I said in a recent message 'taken together with rights already acquired under state laws, would be to give away properties of enormous value. Through lack of foresight we have formed the habit of granting without compensation extremely valuable rights, amounting to monopolies, on navigable streams and on the public domain. The repurchase at great expense of water rights thus carelessly given away without return has already begun in the East, and before long will be necessary in the West also. No rights involving water power should be granted to any corporation in perpetuity, but only for a length of time sufficient to allow them to conduct their business profitably. A reasonable charge should, of course, be made for valuable rights and privileges which they obtain from the National Government. The values for which this charge is made will ultimately, through the natural growth and orderly development of our population and industries, reach enormous amounts. A fair share of the increase should be safeguarded for the benefit of the people, from whose labor it springs. The proceeds thus secured, after the cost of administration and improvement has been met, should naturally be devoted to the development of our inland waterways.' Accordingly I have decided to sign no bills hereafter which do not provide specifically for the right to fix and make a charge and for a definite limitation in time of the rights conferred."

In my veto message of April 13, 1908, returning House bill 15444, to extend the time for the construction of a dam across Rainy River, I said:

"We are now at the beginning of great development in water power. Its use through electrical transmission is entering more and more largely into every element of the daily life of the people. Already the evils of monopoly are becoming manifest; already the experience of the past shows the necessity of caution in making unrestricted grants of this great power.

"The present policy pursued in making these grants is unwise in giving away the property of the people in the flowing waters to individuals or organizations practically unknown, and granting in perpetuity these valuable privileges in advance of the formulation of definite plans

as to their use. In some cases the grantees apparently have little or no financial or other ability to utilize the gift, and have sought it merely because it could be had for the asking."

The Rainy River Company, by an agreement in writing, approved by the War Department, subsequently promised to submit to and abide by such conditions as may be imposed by the Secretary of War, including a time limit and reasonable charge. Only because of its compliance in this way with these conditions did the bill extending the time limit for that project finally become a law.

An amendment to the present bill expressly authorizing the Government to fix a limitation of time and impose a charge was proposed by the War Department. The letter, veto message, and amendment above referred to were considered by the Senate Committee on Commerce, as appears by the committee's report on the present bill, and the proposed amendment was characterized by the committee as a "new departure from the policy heretofore pursued in respect to legislation authorizing the construction of such dams." Their report set forth an elaborate legal argument intended to show that the Federal Government has no power to impose any charge whatever for such a privilege.

The fact that the proposed policy is new is in itself no sufficient argument against its adoption. As we are met with new conditions of industry seriously affecting the public welfare, we should not hesitate to adopt measures for the protection of the public merely because those measures are new. When the public welfare is involved Congress should resolve any reasonable doubt as to its legislative power in favor of the people and against the seekers for a special privilege.

My reason for believing that the Federal Government, in granting a license to dam a navigable river, has the power to impose any conditions it finds necessary to protect the public, including a charge and a limitation of the time, is that its consent is legally essential to an enterprise of this character. It follows that Congress can impose conditions upon its consent. This principle was clearly stated in the House of Representatives on March 28, 1908, by Mr. WILLIAMS, of Mississippi, when he said:

" \* \* \* "There can be no doubt in the mind of any man seeking merely the public good and public right, independently of any desire for local legislation, of this general proposition, that whenever any sovereignty, state or federal, is required to issue a charter or a license or a consent in order to confer powers upon individuals or corporations, it is the duty of that sovereignty, in the interests of the people, so to condition the grant of that power as that it shall redound to the interest of all the people, and that utilities of vast value should not be gratuitously granted to individuals or corporations and perpetually alienated from the people or the State or the Government.

" \* \* \* "It is admitted that this power to erect dams in navigable streams can not be exercised by anybody except by an act of Congress. Now, then, if it requires an act of Congress to permit any man to put a dam in a navigable stream, then two things follow: Congress should so exercise the power in making that grant as, first, to prevent any harm to the navigability of the stream itself, and, secondly, so as to prevent any individual or any private corporation from securing through the act of Congress any uncompensated advantage or private profit."

The authority of Congress in this matter was asserted by Secretary Taft on April 17, 1908, in his report on Senator NEWLANDS's Inland Waterways Commission bill (S. 500), where he said:

"In the execution of any project and as incidental to and inseparably connected with the improvement of navigation, the power of Congress extends to the regulation of the use and development of the waters for purposes subsidiary to navigation."

And by the Solicitor-General in a memorandum prepared after a careful investigation of the subject.

Believing that the National Government has this power, I am convinced that its power ought to be exercised. The people of the country are threatened by a monopoly far more powerful, because in far closer touch with their domestic and industrial life, than anything known to our experience. A single generation will see the exhaustion of our natural resources of oil and gas and such a rise in the price of coal as will make the price of electrically transmitted water power a controlling factor in transportation, in manufacturing, and in household lighting and heating. Our water power alone, if fully developed and wisely used, is probably sufficient for our present transportation, industrial, municipal, and domestic needs. Most of it is undeveloped and is still in national or state control.

To give away, without conditions, this, one of the greatest of our resources, would be an act of folly. If we are guilty of it, our children will be forced to pay an annual return upon a capitalization based upon the highest prices which "the traffic will bear." They will find themselves face to face with powerful interests entrenched behind the doctrine of "vested rights" and strengthened by every defense which money can buy and the ingenuity of able corporation lawyers can devise. Long before that time they may and very probably will have become a consolidated interest, controlled from the great financial centers, dictating the terms upon which the citizen can conduct his business or earn his livelihood, and not amenable to the wholesome check of local opinion.

The total water power now in use by power plants in the United States is estimated by the Bureau of the Census and the Geological Survey as 5,300,000 horsepower. Information collected by the Bureau of Corporations shows that thirteen large concerns, of which the General Electric Company and the Westinghouse Electric and Manufacturing Company are most important, now hold water-power installations and advantageous power sites aggregating about 1,046,000 horsepower, where the control by these concerns is practically admitted. This is a quantity equal to over 19 per cent of the total now in use. Further evidence of a very strong nature as to additional intercorporate relations, furnished by the bureau, leads me to the conclusion that this total should be increased to 24 per cent; and still other evidence, though less conclusive, nevertheless affords reasonable ground for enlarging this estimate by 9 per cent additional. In other words, it is probable that these thirteen concerns directly or indirectly control developed water power and advantageous power sites equal to more than 33 per cent of the total water power now in use. This astonishing consolidation has taken place practically within the last five years. The movement is still in its infancy, and unless it is controlled the history of the oil industry will be repeated in the hydro-electric power industry, with results far more oppressive and disastrous for the people. It is true that the great bulk of our potential water power is as yet undeveloped, but the sites which are now controlled by combinations are those which offer the greatest advantages and therefore hold a strategic position. This is certain to be strengthened by the increasing demand for power and the extension of long-distance electrical transmission.

It is, in my opinion, relatively unimportant for us to know whether or not the promoters of this particular project are affiliated with any of these great corporations. If we make an unconditional grant to this grantee, our control over it ceases. He or any purchaser from him will be free to sell his rights to any one of them at pleasure. The time to attach conditions and prevent monopoly is when a grant is made.

The great corporations are acting with foresight, singleness of purpose, and vigor to control the water powers of the country. They pay no attention to state boundaries and are not interested in the constitutional law affecting navigable streams except as it affords what has been aptly called a "twilight zone," where they may find a convenient refuge from any regulation whatever by the public, whether through the national or the state governments. It is significant that they are opposing the control of water power on the Desplaines River by the State of Illinois with equal vigor and with like arguments to those with which they oppose the National Government pursuing the policy I advocate. Their attitude is the same with reference to their projects upon the mountain streams of the West, where the jurisdiction of the Federal Government as the owner of the public lands and national forests is not open to question. They are demanding legislation for unconditional grants in perpetuity of land for reservoirs, conduits, power houses, and transmission lines to replace the existing statute which authorizes the administrative officers of the Government to impose conditions to protect the public when any permit is issued. Several bills for that purpose are now pending in both Houses, among them the bill (S. 6626) to subject lands owned or held by the United States to condemnation in the state courts, and the bills H. R. 11356 and S. 2661, respectively, to grant locations and rights of way for electric and other power purposes through the public lands and reservations of the United States. These bills were either drafted by representatives of the power companies or are similar in effect to those thus drafted. On the other hand, the administration proposes that authority be given to issue power permits for a term not to exceed fifty years, irrevocable except for breach of condition. This provision to prevent revocation would remove the only valid ground of objection to the act of 1901, which expressly makes all permits revocable at discretion. The following amendment to authorize this in national forests was inserted in last year's agricultural appropriation bill:

"And hereafter permits for power plants within national forests may be made irrevocable, except for breach of condition, for such term, not exceeding fifty years, as the Secretary of Agriculture may by regulation prescribe, and land covered by such permits issued in pursuance of an application filed before entry, location, or application, subsequently approved under the act of June 11, 1906, shall in perpetuity remain subject to such permit and renewals thereof."

The representatives of the power companies present in Washington during the last session agreed upon the bill above mentioned as the most favorable to their interests. At their request frequent conferences were held between them and the representatives of the administration for the purpose of reaching an agreement if possible. The companies refused to accept anything less than a grant in perpetuity and insisted that the slight charge now imposed by the Forest Service was oppressive. But they made no response to the specific proposal that the reasonableness of the charge be determined through an investigation of their business by the Bureau of Corporations.

The amendment of the agricultural bill providing for irrevocable permits, being new legislation, was stricken out under the House rules upon a point of order made by friends of the House bill—that is, by friends of the power companies. Yet, in the face of this record, the power companies complain that they are forced to accept revocable permits by the policy of the administration.

The new legislation sought in their own interest by some companies in the West, and the opposition of other companies in the East to proposed legislation in the public interest, have a common source and a common purpose. Their source is the rapidly growing water-power combination. Their purpose is a centralized monopoly of hydro-electric power development free of all public control. It is obvious that a monopoly of power in any community calls for strict public supervision and regulation.

The suggestion of the Senate Committee on Commerce in their report on the present bill that many of the streams for the damming of which a federal license is sought are, in fact, unnavigable is sufficiently answered in this case by the action of the House Committee on Interstate and Foreign Commerce upon this very measure. As stated in the House on March 18, 1908, by Mr. RUSSELL of Missouri, a bill to declare this river unnavigable was rejected by that committee.

I repeat the words with which I concluded my message vetoing the Rainy River bill:

"In place of the present haphazard policy of permanently alienating valuable public property we should substitute a definite policy along the following lines:

"First. There should be a limited or carefully guarded grant in the nature of an option or opportunity afforded within reasonable time for development of plans and for execution of the project.

"Second. Such a grant or concession should be accompanied in the act making the grant by a provision expressly making it the duty of a designated official to annul the grant if the work is not begun or plans are not carried out in accordance with the authority granted.

"Third. It should also be the duty of some designated official to see to it that in approving the plans the maximum development of the navigation and power is assured, or at least that in making the plans these may not be so developed as ultimately to interfere with the better utilization of the water or complete development of the power.

"Fourth. There should be a license fee or charge which, though small or nominal at the outset, can in the future be adjusted so as to secure a control in the interest of the public.

"Fifth. Provision should be made for the termination of the grant or privilege at a definite time, leaving to future generations the power or authority to renew or extend the concession in accordance with the conditions which may prevail at that time."

Further reflection suggests a sixth condition, viz.:

The license should be forfeited upon proof that the licensee has joined in any conspiracy or unlawful combination in restraint of trade, as is provided for grants of coal lands in Alaska by the act of May 28, 1908.

I will sign no bill granting a privilege of this character which does not contain the substance of these conditions. I consider myself bound, as far as exercise of my executive power will allow, to do for the people, in prevention of monopoly of their resources, what I believe they would do for themselves if they were in a position to act. Accordingly I shall insist upon the conditions mentioned above not only in acts which I sign, but also in passing upon plans for use of water power presented to the executive departments for action. The imposition of conditions has received the sanction of Congress in the general act of 1906, regulating

the construction of dams in navigable waters, which authorizes the imposing of "such conditions and stipulations as the Chief of Engineers and the Secretary of War may deem necessary to protect the present and future interests of the United States."

I inclose a letter from the Commissioner of Corporations, setting forth the results of his investigations and the evidence of the far-reaching plans and operations of the General Electric Company, the Westinghouse Electric and Manufacturing Company, and other large concerns, for consolidation of the water powers of the country under their control. I also inclose the memorandum of the Solicitor-General, above referred to,

I esteem it my duty to use every endeavor to prevent this growing monopoly, the most threatening which has ever appeared, from being fastened upon the people of this nation.

THEODORE ROOSEVELT.

THE WHITE HOUSE, January 15, 1909.

DEPARTMENT OF COMMERCE AND LABOR,  
BUREAU OF CORPORATIONS,  
Washington, January 15, 1909.

SIR: I have the honor to submit herewith a report on certain features of the concentration of water powers.

The water-power situation has been greatly changed by recent improvements in electric-power transmission. Two-hundred-mile transmission is now regarded as commercially possible, even in the cheaper coal areas. A 200-mile radius opens an area of 120,000 square miles for the marketing of power from a given power plant.

A strong movement toward concentrating the control of water powers has accompanied this change. A very significant fact is that this concentration has taken place practically in the last five years. The chief existing concentrations are as follows:

(1) General Electric, being those power companies controlled by or affiliated with the General Electric Company or its subsidiary corporations.

(2) Westinghouse, being those similarly connected with the Westinghouse Electric and Manufacturing Company.

(3) Other concentrations of water power which can not at present be identified with either of the first two.

Intercompany relations are easily concealed. Strictly judicial proof of such community of interests is rarely obtainable, nor is it necessary for practical purposes. It is sufficient to give, as herein, the significant evidential facts, leaving the obvious deductions to be made therefrom.

Therefore the General Electric and the Westinghouse concentrations are classified in the following groups:

(a) Those where a control by one or the other of these parent companies, directly or through subsidiary corporations, is admitted.

(b) Those where such control is inferred from substantial evidence (hereinafter summarized) with reasonable conclusiveness.

(c) Those where such control is at least partially indicated, though not proven, by the available evidence.

This report does not by any means assume to be a complete survey even of the present conditions of concentration. There may be many further affiliations as yet undiscovered.

The exact relations, if any, between these two groups—General Electric and Westinghouse—can not now be stated. General Electric and Westinghouse patents have been pooled since 1896, and certain individuals are interested in both General Electric and Westinghouse power companies.

#### (1) GENERAL ELECTRIC.

The control of the General Electric Company is shown directly or through subsidiary corporations, or indicated by the appearance of the names of certain individuals unquestionably connected with the General Electric Company.

Such subsidiary corporations are:

United Electric Securities Company (Maine, 1890).

Electrical Securities Corporation (New York, 1904).

Electric Bond and Share Company (New York, 1905).

Such individuals most closely connected with General Electric Company water-power control are—

Sydney Z. Mitchell, vice-president and treasurer Electric Bond and Share Company (General Electric; see above), formerly with Stone & Webster, of Boston, to be mentioned later.

J. D. Mortimer, assistant secretary Electric Bond and Share Company (General Electric; see above) and director of American Gas and Electric Company.

C. N. Mason, vice-president Electrical Securities Corporation and of United Electric Securities Company (General Electric; see above).

H. L. Doherty, president American Gas and Electric Company, which in 1908 controlled at least 19 lighting and gas companies in various parts of the United States, and is, in turn, controlled by the Electric Bond and Share Company (General Electric; see above).

Other names which may be mentioned are—

C. A. Coffin, president General Electric Company.

A. W. Burchard, assistant to the president, General Electric Company, and director of American Gas and Electric Company (General Electric).

C. W. Wetmore, director of Electric Bond and Share Company.

Hinsdill Parsons, vice-president General Electric Company and director of Electric Bond and Share Company.

(a) Those water-power companies which are admittedly controlled by the General Electric Company or its subsidiary companies are—

Schenectady Power Company, New York, developments on the Hoosick River at Schaghticoke and Johnsonville, with a total development of 26,000 horsepower. This company is owned outright by the General Electric Company.

Carolina Power and Light Company, at Raleigh, N. C., with 4,000 horsepower installed on the Cape Fear River, and leasing power, in addition, on the Neuse River. The stock of this company is held by the Electric Bond and Share Company (General Electric) and voted by Mr. J. D. Mortimer. C. Elmer Smith, of Smith interests in Westinghouse group, is also interested.

Rockingham Power Company, in North Carolina, on the Yadkin River, in process of construction, with an installation to be of 32,000 horsepower. This company is financed by the Electrical Securities Corporation (General Electric), C. N. Mason, of the latter, being president. C. Elmer Smith (see above) is also interested.

Animas Power and Water Company, Colorado, on the Animas River, with 8,000 horsepower installed, is controlled through the Electric Bond and Share Company (General Electric).

Central Colorado Power Company, in Colorado, on the Grand River, with an installation to be of 18,000 horsepower, is also controlled through the Electric Bond and Share Company (General Electric).

(b) Those water-power companies, the control of which by the General Electric Company or its subsidiary companies is reasonably inferred, are—

Montgomery Light and Water Power Company, near Montgomery, Ala., on the Tallapoosa River, with an installation of 6,000 horsepower. H. L. Doherty, president American Gas and Electric Company (General Electric), is first vice-president of this company.

The Summit County Power Company, at Dillon, Colo., with an installation of 1,600 horsepower, has Mr. H. L. Doherty, of American Gas and Electric Company (General Electric), on its directorate.

Butte Electric and Power Company (Montana), a holding company for various subsidiary power companies, to wit: Montana Power Transmission Company, Madison River Power Company, Billings and Eastern Montana Power Company. These companies comprise six water-power developments in operation, with a total installation of 43,000 horsepower. The holding company (Butte Electric) is apparently controlled jointly by C. W. Wetmore, of Electric Bond and Share Company (General Electric), and C. A. Coffin, president of General Electric Company. P. E. Bisland, secretary, was formerly with Electrical Securities Corporation (General Electric).

Washington Water Power Company has three developments in Washington and Idaho, on the Spokane River, with a total installation of 61,000 horsepower. Mr. Hinsdill Parsons, vice-president of General Electric Company and Electric Bond and Share Company (General Electric), is on the directorate.

Great Western Power Company, in California, on the north fork of the Feather River in Butte County, with an installed capacity of 53,000 horsepower. On its directorate are Mr. A. W. Burchard, of the General Electric Company, and Mr. A. C. Bedford, of the Standard Oil Company.

#### (c) Control partially indicated.

There are also a number of other water-power companies, with a total of about 420,000 horsepower (including installations and power sites), whose connection with the General Electric Company is at least partially indicated, though the evidence thereto is by no means conclusive.

#### (2) WESTINGHOUSE.

The Westinghouse group contains the following companies:

The Security Investment Company;

Electric Properties Company (New York, 1906), successor to Westinghouse, Church, Kerr & Co.; and the

Smith interests, represented by C. Elmer Smith and S. Fahs Smith, of S. Morgan Smith Company, important manufacturers of water turbines. While C. Elmer Smith is interested in at least two General Electric power companies (Carolina and Rockingham; see above), the Smith interests seem especially harmonious with the Westinghouse group, and are so classified.

The individual names most prominently identified are:

John F. Wallace, of New York, president Electric Properties Company.

George C. Smith, of Pittsburg and New York, vice-president and director of the Electric Properties Company.

C. Elmer Smith, of Smith interests.

(a) Those power companies which are admittedly Westinghouse are: Atlanta Water and Electric Power Company, on the Chattahoochee River above Atlanta, Ga., with an installation of 17,000 horsepower. C. Elmer Smith is president and George C. Smith and S. Fahs Smith directors.

Ontario Power Company of Niagara Falls, a Canadian corporation on the Canadian side, with an installation of 66,000 horsepower. Together with its distributing company in the United States, the Niagara, Lockport and Ontario Power Company, it is known as a Westinghouse concern, H. H. Westinghouse being president of the latter, and the majority of its stock being voted by the Electric Power Securities Company of New York, a construction company owned by Westinghouse interests.

(b) Those power companies whose connection with Westinghouse interests is inferred from substantial evidence (hereinafter summarized) are:

Albany Power and Manufacturing Company, near Albany, Ga., with 3,500 horsepower installed, on the Kinchatoonee, and owning besides a site on the Flint River, estimated at 10,000 horsepower, has for its vice-president C. Elmer Smith (Smith interests).

Electric Manufacturing and Power Company, on the Broad River, near Spartanburg, S. C., with 11,000 horsepower installed, as on its directorate E. H. Jennings, of Pittsburg, a director of the Electric Properties Company (Westinghouse).

Savannah River Power Company, on the Savannah River, near Anderson, S. C., has an installed development of 3,000 horsepower, and owns besides a site of 6,000 horsepower. This company has on its directorate C. Elmer Smith (Smith interests).

Gainesville Electric Railway Company, with 1,500 horsepower installed, on the Chestaee River, a tributary of the Chattahoochee, near Gainesville, Ga. Eighty-five per cent of its stock is owned by the North Georgia Electric Company (Smith interests).

North Georgia Electric Company; one development of 3,000 horsepower and at least seven other power sites on the upper waters of the Chattahoochee, and through the Etowah Power Company, personally identified with itself, it owns four other sites on the headwaters of the Coosa River. C. Elmer Smith is vice-president.

Chattanooga and Tennessee River Power Company, in process of construction at Hale Bar, on the Tennessee River, below Chattanooga, in cooperation with the War Department, by which the Government obtains slack-water navigation. The company in return receives ownership of the power of 58,000 horsepower to be installed. This company is being personally financed by A. N. Brady, of New York, a director of the Westinghouse Electric and Manufacturing Company. Mr. Brady is also a director of the American Tobacco Company, whose interests control the Southern Power Company (see below).

Northern Colorado Power Company, which has a steam development at Lafayette, Colo., and is projecting power plants on the Platte, has John F. Wallace and George C. Smith on its directorate (Westinghouse).

#### (c) Control partially indicated.

There are also a number of other water-power companies, with a total of about 102,000 horsepower (including installations and sites), whose connection with the Westinghouse Company is at least partially indicated, though the evidence thereto is by no means conclusive.

#### (3) OTHER CONCENTRATIONS.

The General Electric and Westinghouse companies present the most important examples of water-power concentration, as above set forth. There are, however, a number of other companies and interests further showing the facts and tendencies of concentration.

The more important instances are as follows:

The Gould interests, located in Virginia, with undeveloped powers and power sites on the James and Appomattox amounting to 20,000 horsepower, and owning besides other sites on the Appomattox and Rappahannock rivers.

Southern Power Company, the largest operating power company in the South, has 90,000 horsepower installed in three developments, 31,000 horsepower in process of construction, and at least seven other power sites in North Carolina and South Carolina, with a total potential capacity of 75,000 horsepower. This company supplies 110 cotton mills and other factories in at least 28 towns, including a population of about 200,000. Messrs. B. N. Duke, J. B. Duke, and Junius Parker, of the American Tobacco Company, are officers and directors.

Stone & Webster, of Boston. This concern owns and controls powers and sites in Florida, Georgia, Minnesota, and Wisconsin, and in the Puget Sound region, with a total capacity of about 150,000 horsepower. Mr. Sydney Z. Mitchell, now of the Electric Bond and Share Company (General Electric), was formerly connected with Stone & Webster, and in 1908, according to Moody's Manual, 1908, was still a director in three of Stone & Webster's subsidiary corporations, to wit, Puget Sound Electric Railway, Tacoma Railway and Power Company, and Puget Sound Power Company.

Charles H. Baker interests, having proposed developments in Alabama estimated at 130,000 horsepower.

Commonwealth Power Company, together with the Grand Rapids-Muskegon Power Company (both under same interests), controlling 13 developed water powers in Michigan, with a total installation of 43,000 horsepower. A harmonious connection apparently exists with the Eastern Michigan Power Company, which controls all the power sites on the Au Sable River, Michigan.

United Missouri River Power Company, a holding company controlling at least three subsidiaries, which, with a closely related company, have five developed powers and one in construction, making a total of 57,500 horsepower.

Portland General Electric Company, with developments on the Clackamas and Willamette rivers amounting to 22,500 horsepower, near Portland, Oreg. A. C. Bedford, a director of the Standard Oil Company, is president, and F. D. Pratt, also of Standard Oil Company, is a director.

Pacific Gas and Electric Company. This is a very important holding company of the California Gas and Electric Corporation and the San Francisco Gas and Electric Company. These two latter companies in turn represent the consolidation or acquisition of the stock or property of over 30 power or power-distributing companies in California. They control 11 water-power developments, with a total installed plant of 118,000 horsepower.

Pacific Light and Power Company, with another company controlled by the same interests, known as the "Huntington interests," represent eight developments in California, with a total of 30,000 horsepower. Henry E. Huntington is vice-president and Howard E. Huntington a director.

Edison Electric Company, with six developments in California and a total of 33,000 horsepower.

Hudson River Electric Power Company, a holding company for the Hudson River Water Power Company, Hudson River Power Transmission Company, Empire State Power Company, with developments at Spiers Falls and Mechanicville, on the upper Hudson, and Schoharie Creek, near Amsterdam, N. Y., amounting to 45,000 horsepower installed, and sites owned in the Mohawk, Sacandaga, and Upper Hudson valleys, amounting to 30,000 horsepower, or a total of 75,000 horsepower. C. Elmer Smith was director of the holding company to within a year.

#### SUMMARY.

An estimate of the water power, developed and potential, now controlled by the General Electric interests, admitted or sufficiently proven, is about 252,000 horsepower; by the Westinghouse interests, similarly known, about 180,000 horsepower, and by other large power companies, 875,000 horsepower. This makes a total of 1,307,000 horsepower. Adding the horsepowers of the third class (e), those whose connection with these two great interests is at least probable, to wit, 520,000 horsepower, we have a small group of 13 selected companies or interests controlling a total of 1,827,000 horsepower.

Assuming that the water power at present in use by water-power plants in the United States is 5,300,000 horsepower, as estimated by the United States Census and Geological Survey from figures of installation, it is seen that approximately a quantity of horsepower equal to more than 33 per cent of that amount is now probably controlled by this small group of interests. Furthermore, this percentage by no means tells the whole truth. The foregoing powers naturally represent a majority of the best power sites. These sites are strategic points for large power and market control. Poorer sites will not generally be developed until these strategic sites are developed to their full capacity. And should these strategic sites be "coupled up" they become still more strategic. There are powerful economic reasons for such coupling. The great problem of water-power companies is that of the "uneven load," and not only an uneven load but of an uneven source of power, because of the fluctuating flow of the stream. A coupling up utilizes not only the different storages in the same drainage basin, but, of still greater import, the different drainage flows of different basins. Also by coupling up powers which have largely "day loads" can at night help out other powers which have largely "night loads," and vice versa. Coupling up is rapidly in progress in the United States. The Niagara Falls Power Company and the Canadian Niagara Power Company are coupled. The Southern Power Company, in North Carolina and South Carolina; the Commonwealth Power Company, in Michigan; the Pacific Gas and Electric Company, the Pacific Light and Power Company, and the Edison Electric Company, in California—each concern has its various developments coupled up into one unit.

The economic reasons urging water-power concentration are thus obvious. The facts set forth above show the very rapid and very recent concentration that has already occurred, practically all in the last five years. These economic reasons and business facts indicate clearly the further progress toward concentration that is likely to occur in the near future. It is obvious that the effect on the public of such present and future conditions is a matter for serious public consideration.

Very respectfully yours,

HERBERT KNOX SMITH,  
Commissioner of Corporations.

The PRESIDENT.

[Memorandum by the Solicitor-General on the power of Congress, in granting licenses for dams and other structures in navigable streams, to impose certain conditions.]

MAY 11, 1908.

The general principle that a grant of property or of any right or privilege may be upon conditions needs no citation of authority. If

a grantor may give or withhold, he may give upon terms. The authority to make a grant generally carries with it the authority to withhold, to impose conditions, to modify, and to terminate.

The Pacific railroad charters contained the condition that the government service in transporting mails, troops, supplies, and so forth, should have the preference, and in some cases in consideration of the land grants the transportation was to be free from all toll or other charge upon any property or troops of the United States. (Sec. 6, act of July 1, 1862, 12 Stat., 489, 493. Union Pacific; sec. 3, act of Mar. 3, 1863, id., 772, 773. Missouri Pacific; see also act of July 1, 1864, 13 Stat., 339; sec. 11, act of July 2, 1864, id., 365, 370. Northern Pacific, in which Congress reserved the right to restrict charges for government transportation; sec. 11, act of July 27, 1866, 14 Stat., 202, 297.) In the acts to aid in the construction of telegraph lines "to secure to the Government the use of the same for postal, military, and other purposes," it was provided that the government business shall have priority over all other business, and shall be sent at rates to be annually fixed by the Postmaster-General (e. g., sec. 2, act of July 24, 1866, 14 Stat., 221).

These charters, licenses, and grants were made under the federal authority over interstate commerce and over post-roads, and manifestly the reservations or conditions were germane to the grants and for the benefit of the whole people, being for the benefit of their government. In reference to the proposal in connection with the control of the Government over navigation and the improvement of inland waterways to limit permissive licenses for dams and other structures to a definite time, and to impose a charge for the power developed or for any use of the surplus water, it is objected that this is to usurp power or to pervert and misapply federal power to an end or object to which it has no relation.

There is no doubt of the national power over navigation, and the inquiry presupposes governmental control as proposed and the grant of licenses only in navigable streams. The question is wholly one of power. No one questions the power of Congress over navigation and navigable waters as a branch of its power to regulate interstate and foreign commerce, and the power fails here, it is said, because of the lack of connection between navigation and the purpose for which the power is to be used, because to impose terms for the use of water made possible by structures in aid of navigation or structures permitted and licensed as not seriously interfering with navigation, by limiting the time during which that privilege or right shall be enjoyed and by imposing a charge for it, is not germane to the only branch of power which Congress may constitutionally exercise here; that is, the power over navigation. It is said that the State and not the United States controls and administers the rights which riparian owners may possess in the water or the use of the water; that riparian owners do possess rights of property which may not be taken from them under the guise of a power to regulate navigation; and that the States and not the United States are clothed as matter of sovereignty and dominion with the power over and the property in the waters themselves and the beds of the streams.

But first and in general, whatever the rights of the individual riparian or the particular State, which we will examine later, there is no doubt whatever that the federal authority over navigation is paramount to everything within its sphere, and the only question here would be the truth as a fact of the federal exercise of power, whether it was actually the authority over navigation which is being exercised, and whether the proposed law or laws which carry that authority into effect are a legitimate means of exercising the power and whether there is a genuine and legitimate relation between the power and the objects and purposes to which it is applied.

The question is, then, as to the reality and degree of connection between the power and the method and effect of its exercise. In the recent measures proposed for acquiring lands in the Southern Appalachian and White mountains for national forest purposes the test is that the land shall be situated on the watersheds of navigable streams and shall be more valuable for the regulation of stream flow than for other purposes. The House committee reports show, amid divergent views as to whether the particular thing proposed was in fact a legitimate exercise of the power, that all agreed Congress, having an unquestioned right to improve navigable streams, may take land for that purpose whenever in the judgment of Congress it is necessary to the proper exercise of the power. Thus the committee resolved that the Federal Government has no power to acquire lands within a State solely for forest reserves, but under its constitutional power over navigation may appropriate for the purchase of lands for forest reserves in a State, provided it clearly appears that such reserves have a direct and substantial connection with the conservation and improvement of the navigability of a river actually navigable in whole or in part; and that any appropriation made therefor is limited to that purpose (Mr. JENKINS). Mr. PARKER did not concur, thinking the question at least doubtful, and that the United States has no interest in rivers except for purposes of navigation, and "it may fairly be said that the rivers of the Atlantic slope are not navigable above tidal flow."

Messrs. Littlefield, DIEKEMA, and BANNON have no doubt of the power, and think that if reforesting the watershed at its source is an appropriate means plainly adapted to the end of preventing the depositing in the river of accumulations that would obstruct its navigable portion, Congress has the right to acquire and control for that purpose. But the improvement of navigability in this way, by increasing the flow of the water, must not be theoretical, but physical, tangible, actual, and substantial, demonstrable by satisfactory, competent testimony in order to justify an appropriation. And the protection and improvement of navigability must also be the real, effective, sole, and not the incidental, purpose of the appropriation.

Mr. BRANTLEY holds that Congress has the constitutional power to acquire lands and forest reserves in a State by purchase, condemnation, or otherwise, as an aid to navigation, if it be made to appear to Congress that such reserves would materially or substantially aid navigation.

It is thus evident from all these views that there is no doubt of the power, and that the only real question is whether navigability is substantially aided or whether the proposed exercise of the power is too remote and fanciful to commend itself to the judgment of Congress as an appropriate means.

It is to be said respecting structures in navigable streams that the legislation of Congress has passed through an evolution up to the point now reached and the proposals now made. The Government has built many public works in aid of navigation where the improvement and protection were obvious, by dams, locks, and canals, an example of which is the canalization of the St. Marys River on the connecting waters of the Great Lakes just as they issue from Lake Superior and on the international boundary between this country and Canada. Another feature of this evolution may be noted here in that region. The

United States granted an easement for a right of way through public reserved lands of the United States to the State of Michigan for purposes of this canal, and then the state administration was surrendered and all rights reconveyed to the United States, so that locks and other works in aid of navigation there might be undertaken commensurate with the power and interests of the Nation and adequate for the enormous traffic passing that point and still increasing by leaps and bounds.

Sometimes Congress commits to municipalities or corporations or private individuals the construction and operation of works in aid of navigation where actual and practical navigation already exists and is being improved, as by the act of April 26, 1904 (33 Stat., 309); and at points along such reaches of the stream where, except for the government canals and other works in aid of navigation, the river itself is not actually navigable (e. g., act of May 9, 1906, 34 Stat., 183; *id.*, 211, 1288; act of March 6, 1906, 34 Stat., 52; extract from river and harbor act of March 2, 1907, 34 Stat., 1073, 1094); or permits structures for power development at points in rivers where government plans of navigation, improvement by locks, dams, and canals have already been adopted and the work begun, as at Muscle Shoals on the Tennessee River or on the Coosa River in Alabama; or gives the right to build a dam, maintain and operate power stations in connection with it in consideration of the construction of locks, and a dry dock in place of existing ones owned and operated by the United States, namely, Des Moines Rapids Canal, act of February 9, 1905 (33 Stat., 712); or the particular structure is also subjected to the provisions of the general dam act of June 21, 1906, hereafter to be referred to. (Act of February 25, 1907, 34 Stat., 929; act of April 23, 1906, *id.*, 130; act of March 3, 1905, 33 Stat., 100.)

It is difficult to see any difference in principle between such a case granting the right to develop and use power in consideration of improving navigation facilities and the imposition of any other reasonable amount or kind of charge. Of course an illegal power can not be justified because it has already been illegally exercised; but the actual exercise of the power and the development of the matter under the acts of Congress are instructive and significant.

In the numerous cases where permissive licenses have been given to build dams or other structures in navigable streams at points where they are not at present actually navigable or practically used for purposes of navigation there is no question, first, that the stream being navigable as an integral thing or unit, the control over it as such belongs to Congress and not to the State. The action of Congress is an exclusion of any state authority which might otherwise exist, and the theory appears to be that although the structure may be an interference with the existing navigability, such as it is, it is, in the opinion of Congress, a reasonable interference. Congress by the very fact of its interposition and grant of license is looking to navigable character alone and to the future improvement or protection of navigation, and accordingly invariably Congress either imposes the necessity of making a proper lock or dam in all such cases and sluices or reserves the right to compel the construction in the future of a suitable lock for navigation purposes in connection therewith, subjects all plans to the approval of the Secretary of War, reserves the right at any time to take possession of the dam without compensation and control the same for the purposes of navigation, and imposes the duty of building in connection with the dam or canal or other works a wagon and foot bridge if desired in connection therewith for the purpose of travel; and the right to alter, amend, and repeal the grant or to require the alteration or removal of the structure is also reserved. (Act of June 4, 1906, 34 Stat., 265; act of June 16, 1906, *id.*, 296.)

Not all these conditions appear in every such grant or license, but they all do appear from time to time in different acts, and it is clear that whether Congress is itself actually improving and protecting navigation or authorizing some other agency or instrumentality to do so in its behalf, or permitting a reasonable obstruction in the particular stream and place when the interests of navigation do not forbid, Congress is proceeding altogether under that power, expressly reserves full control in that behalf, and either provides for locks and canals in the particular construction authorized as part of the authority to build, or else reserves the right to do so whenever the interests of navigation demand. There are many instances of such acts. I cite a few: Act of July 3, 1886 (24 Stat., 123); act of February 27, 1899 (30 Stat., 904); act of June 14, 1906 (34 Stat., 266).

These other points are to be observed in this development of the law: The present and future interests of the United States are provided for (sec. 1, act of June 21, 1906, 34 Stat., 386); uniformly there is a stipulation that the United States shall be entitled to free use of the water power developed (*id.*, and many other acts); a general limit of time for construction is imposed (*id.*); it is a standing provision and reservation that the construction authorized shall not interfere with navigation; the licensee shall be liable to riparians for damages caused by overflow, etc., the dam and works authorized shall be limited to the use of the surplus water not required for navigation (act of May 9, 1906, 34 Stat., 183); Congress may revoke, and there are provisions for forfeiture for breach of conditions. Such provisions and conditions, as I have said, appear throughout all these statutes.

Note also the special provisions in the river and harbor act of June 13, 1902 (32 Stat., 358), and in the act of June 28, 1902 (*id.*, 408), by which leases or licenses for the use of water power in the Cumberland River, Tennessee, may be granted by the Secretary of War to the highest responsible bidders, after advertisement, limited to the use of the surplus water not required for navigation and under the condition that no structures shall be built and no operations conducted which shall injure navigation in any manner or interfere with the operations of the Government or impair the usefulness of any government improvement for the benefit of navigation.

In some cases these acts provide not only for sluiceways for logs, etc., but for sluiceways and ladders for fish. It might be as reasonably objected that the United States could make no such condition in connection with its licenses for the preservation of fish in the interest of all the people, because that was solely a matter of state control and largely a matter of riparian right, to say that it could not impose conditions and charges respecting the power developed by the surplus water.

Occasionally the title of the act recognizes the joint purpose or the collateral and subsidiary incident of power. Thus, an act of May 1, 1906 (34 Stat., 155), relative to the Rock River license, is entitled "An act permitting the building of dams, etc., in aid of navigation and for the development of water power."

In an act of June 29, 1906 (34 Stat., 628), permitting the erection of a lock and dam in aid of navigation in the White River, Arkansas, it is provided that the licensee shall purchase and pay for certain lands necessary for the successful construction and operation of the lock and dam and leave them to the United States, and that in consideration of the construction of these structures free of cost to the United States.

the United States grants to the licensee rights possessed by it to use the water power produced by the dam and to convert the same into electric power or otherwise utilize it for a period of ninety-nine years, but to furnish to the United States, free of cost, sufficient power to operate the locks and to light the United States buildings and grounds.

Another instance of authority granted to the Secretary of War to make leases or issue licenses for the use of water power is shown by the river and harbor act of September 19, 1890, respecting the Green and Barren rivers.

Without dwelling further on this subject, it is plain that, considering this whole body of laws, the United States is legitimately exercising the power over interstate commerce under the heading of the improvement and protection of navigation, and is imposing proper—that is, not only just, but legal—terms, conditions, and reservations, and as a question of power this is as clearly true when the United States licenses a structure which is a temporary and partial obstruction to navigation at some point where the Government is not yet ready to complete and unify the navigable use of the stream as where the Government is itself developing an actual plant for the improvement of navigation by constructing the appropriate works. And the connection between the power and its application is as evident and germane even where water power is developed and a charge made for it, because, while that or some other use of the water outside navigation use is the primary or the sole object of the licensee and the navigation use is only incidental to that use, so far as the licensee is concerned, that other use, from the standpoint of the Government and the people at large, is always and only incidental to the improvement and protection of navigation and that use. This is true as a real fact and principle controlling the subject, even if the ultimate improvement of navigation—the actual navigation use, that is—is remote in time and as a practical undertaking, and is contemplated, so to speak, far ahead.

State law, it is true, in general determines the title of riparian owners in the beds of both navigable and nonnavigable streams, and their rights of user in the flowing water. This riparian property and right, which respecting title to the beds of nonnavigable streams as extending ad flum aquae, is pretty uniform throughout the States, varies as to navigable streams according as States have followed the common-law rule of stopping the private title at the shore, or having followed the rule on unnavigable waters and extended it to the middle thread of the stream. Regarding the rights of the riparian in the water, the rules vary from the common-law doctrine in the humid States that the upland owner is entitled to the flow of the water as it was accustomed to flow to the doctrine of prior appropriation for beneficial use in the arid States, including the combination of the two doctrines known as the "California rule." But always and everywhere the use must be reasonable, and there is an order of preference in the uses beginning with domestic use. Even on public navigable rivers the riparian owner has many rights of user subject to the limitation that his use must be reasonable, so as not to injure the rights of others above or below him on the stream, and subject to the public easement of navigation, and generally to the public right of fishing. The riparian owner has, for instance, the right of access, but when the paramount control over navigation interferes this is a barren right, and he is not entitled to compensation; and it seems that even in States where he has the title to the submerged lands out to the middle of the stream the title is a bare, technical title not available for access or any other purpose, or at least not entitling him to compensation if the United States, for any lawful purpose, should appropriate and occupy the subaqueous lands. (*Scranton v. Wheeler*, 179 U. S., 141.)

So much for the private and individual interest of the riparian owner; and it is to be observed respecting the pending proposals that such rights are always capable of being asserted in a court of law; that presumably the Government or the government licensee will have acquired the necessary riparian ownership, and that provision is expressly made in all statutes of this character for compensation by the licensee to the riparian or others for all damages caused.

Now, as to the state interest, there is no doubt that a State may undertake the improvement of a navigable stream within her borders, or license structures over it or in it, until the United States under legislation by Congress assumes jurisdiction. In this matter and in similar instances the Supreme Court has held that there is a concurrent function and power, and that nonaction by Congress amounts to permission to the State to occupy the field. (*Wilson et al. v. The Black Bird Creek Marsh Co.*, 2 Pet., 245, 252-253; *The Passaic Bridges*, 3 Wall., 792; *Pound v. Turck*, 95 U. S., 463; *Escanaba Co. v. Chicago*, 107 U. S., 683; *Morgan v. Louisiana*, 118 U. S., 465; *New York, etc., R. R. Co. v. New York*, 165 U. S., 631; *United States v. Rio Grande Irrigation Co.*, 174 U. S., 690, 703.) But of course it can not be admitted that a State has any jurisdiction or control whatsoever after Congress has determined that the stream is navigable (whether it is explicitly so denominated or not) and proceeds to improve or protect the navigation or navigable capacity. Then the federal jurisdiction becomes plenary, paramount, and exclusive. The very fact that Congress has legislated as it has done respecting the various streams and waters embraced in the legislation above reviewed is conclusive proof that the national jurisdiction has completely ousted state jurisdiction over those waters and at those points. This seems to be the view of the States themselves and on all hands, and I do not understand that this position is disputed even by those who claim that for purposes of power and all other incidental uses of the water other than for navigation the state authority is supreme and exclusive.

It is a mistake to suppose that the federal jurisdiction and the navigability are doubtful because the stream may not be navigable now at the particular point. It is to make it navigable at some time, even if a remote future is contemplated, and slow progress toward a comprehensive and unifying plan—it is to improve navigation, to increase navigable capacity, and in the meantime to protect navigation that the national power interposes. In many senses a navigable stream is a unit. It is none the less navigable stream because there is an obstruction at a particular point (The Montello, 20 Wall., 430), being navigable above or below or both. And while the test of navigability at any particular point is whether the stream is navigable in fact, the upper reaches of a stream and the preservation and maintenance of flow at the sources, although the stream is not navigable there, are clearly within the scope of the power as directed to the continuing protection as well as the immediate improvement of navigation. The case of *United States v. Rio Grande Irrigation Co.* (174 U. S., 690), by the necessary effect of the final order at page 710, sustains the contention that the United States may interpose to control or prevent the irrigation or other use of water above the limit of navigability, if it shall appear as a fact that such use impairs the navigable capacity over that portion of the stream where navigation does exist.

The preliminary report of the Inland Waterways Commission, with the President's message transmitting it to Congress, and the bill introduced in the Senate by Mr. NEWLANDS (S. 500), with the report and recommendations of the Secretary of War upon the same, are very instructive and significant in this matter. The bill reflects and embodies the main ideas and recommendations of the report and will alone serve the purposes of our consideration after one or two references to the report. The report and the President's message point out that a river system from the forest headwaters to the mouth is a unit and that navigation of the lower reaches can not be fully developed without the control of floods and low waters by storage and drainage; that navigable channels are directly concerned with the protection of source waters and with soil erosion, which forms bars and shoals from the richest portions of farms; and that the uses of a stream for domestic and municipal supply, for power, and often for irrigation, must be taken into account. The development of waterways and the conservation of forests are pressing needs and are interdependent. The systematic development of interstate commerce by improvement of inland waterways should proceed in coordination with all other uses of the waters and benefit to be derived from them, which constitute a public asset of incalculable value. The report notes that irrigation projects involving the storage of flood waters (in which, of course, reclamation of arid lands is the chief and primary object) creates canals as well as tending to purify and clarify waters and to conserve supply by seepage during droughts; that, on the other hand, works designed to improve navigation commonly produce headwater and develop power; that western projects are "chiefly thus far for irrigation, but prospectively for navigation and power."

Accordingly the great central idea of Mr. NEWLANDS's measure is the conservation and correlation of the natural resources of the country in navigable waters, which are national resources, because essentially dependent upon and developed from the preservation and regulation of stream flow and the improvement of navigation. For example, section 2 of the bill provides for examinations, surveys, and investigation "with a view to the promotion of transportation; and to consider and coordinate the questions of irrigation, swamp-land reclamation, regulation of streams, utilization of water power, prevention of soil waste, protection of forests, regulation of flow, control of floods, transfer facilities and sites, and the regulation and control thereof, and such other questions regarding waterways as are related to the development of rivers, lakes, and canals for the purposes of commerce."

And again, by section 6, the projects authorized and begun under section 5 "may include such collateral works for the irrigation of arid lands (for reclamation and conservation as specified) and for the utilization of water power as may be deemed advisable in connection with the development of a channel for navigation, or as aiding in a compensatory way in the diminution of the cost of such project."

Section 7 authorizes the commission to be appointed "to enter into cooperation with States, municipalities, communities, corporations, and individuals in such collateral works."

The report of the Secretary of War on this bill, dated April 17, substantially and by inference approves its purpose and general provisions, while making certain specific suggestions. That report notes the provision of coordination between navigation and other uses of the waters in connection with their improvement for the promotion of commerce among the States, and the provision for cooperation with States, municipalities, etc., so as to promote "union of interests through mutual beneficial cooperation," which "feature is recognized by the War Department as highly desirable." The report also notes the provision for correlating the existing agencies in the departments of War, Interior, Agriculture, and Commerce and Labor, and "the utilization and control of water power available in navigable and source streams developed by works for improving navigation." To meet constitutional and legal objections, certain changes are suggested in order to make it clear that the bill contemplates no extension of federal authority beyond its recognized limits, by language which expressly restricts the plan to the development of navigable inland waterways for the purpose of regulating, improving, and protecting interstate and foreign commerce, and also by language which makes the dependence and connection of irrigation and other uses upon the navigation use more clear and certain.

If the power exists, it is for Congress to say whether the occasion for its exercise is real, and whether the connection between the occasion and the method and results of exercise of the power is substantial, and whether the means employed to carry the power into effect are legitimate. The wisdom, expediency, and justice of the means employed are all for Congress to determine. Certainly it is no objection to a power that its exercise is manifestly of vital importance and advantage to the general welfare. As I have suggested already, the interests of navigation may be a secondary or even negligible consideration with the licensees of the Government, but that does not make the government jurisdiction any the less constitutional control over navigation, and the real object of the licensee, whether it be the development of power or irrigation, is none the less merely subsidiary and incidental from the government point of view. If the Government by its own works in actual aid of navigation, or by such works undertaken by the licensees and agents, or by private licensed and permitted structures in navigable streams where navigation is not yet in actual course of improvement, develops power, which is the natural and, indeed, necessary result of such works, it is preposterous to say that the Government can not deal with the subject on the basis of or with any reference to the power thus incidentally or intentionally developed, but must let it go to waste or give it away or turn it over to the State.

I repeat that the development of power or of irrigation from surplus waters is subsidiary and collateral to but nevertheless germane to an actual development of navigation or to an exercise of the navigation jurisdiction where development is in abeyance. Of course the terms to licensees should be fair, and this is a matter for the justice as well as the wisdom of Congress to settle. The period of license should be long enough to permit the enterprise to be financed. In some cases it may very likely be that all charges should be nominal for a reasonable period, and the rate per horsepower unit might ultimately be varied in accordance with different conditions of time, place, population, and other tributary factors.

Take a case in illustration: The proposal for the Long Sault on the St. Lawrence River contemplates a 20-foot channel in the river where now there is no navigable channel at all, and under our conventional arrangements with Great Britain vessels of the United States must use the canal on the Canadian side. This is navigation and an improvement to navigation of tremendous consequence and value. The power developed is enormous and correspondingly valuable. Of course the private enterprise which undertakes this public work is entitled to protection and reward. It may be that the contractors, in consideration of the creation of that most valuable channel, should be relieved from any

government charges for the power developed for a term of years; but, on the other hand, the power developed, which belongs ultimately to, and is held in trust for all the people of the United States, should not be granted forever and for nothing.

I understand that the government engineers and experts estimate that the proper use of the water powers of the country as an asset of the people would in time pay for all contemplated and possible improvement of the navigable inland waterways.

The proposed use of the funds to be produced is further evidence of the essential connection between the improvement of navigation and other uses of water thereby stored and made available, because the charges made are to constitute a permanent and general fund in aid of the development of all navigable waterways. The various States manifest concurrence and willingness toward the government plans, and while that fact would not authorize a scheme otherwise unconstitutional it is of vast practical importance that local jealousies will not be aroused and that the proposals contemplate and would receive cooperation from States, municipalities, and all others locally interested in plans which in the end are for the benefit of the whole people.

Keeping in mind the general principles established and the considerations of proper methods and particular equities which are committed to Congress, the strict constitutionality of the programme proposed can not well be doubted.

[H. R. 17707. Sixtieth Congress of the United States of America, at the second session, begun and held at the city of Washington on Monday, the 7th day of December, 1908.]

An act to authorize William H. Standish to construct a dam across James River, in Stone County, Mo., and divert a portion of its waters through a tunnel into the said river again to create electric power.

*Be it enacted, etc.*, That the consent of Congress is hereby given to William H. Standish, of Reeds Springs, Stone County, Mo., his heirs and assigns, to construct, maintain, and operate a dam in the big bend of the James River in township 23 north, range 24 west, in the county of Stone and State of Missouri, across the said James River at said point and to impound at the narrows in said bend and by canal and tunnel to divert and conduct across said narrows such portion of the water in said river, through said tunnel, into said river again as may be necessary for electric power purposes, all subject to and in accordance with the provisions of the act of Congress entitled "An act to regulate the construction of dams across navigable waters," approved June 21, 1906: *Provided*, That the Secretary of War shall have at all times control of the use of the water, even to the extent of causing the persons, firms, or corporations taking advantage of the privileges granted herein to cease using the water whenever the same may be necessary for navigation: *And provided further*, That should the United States in the work of improving the aforesaid river find it necessary to flood the aforesaid tunnels, or in any way affect the flow of water through them, the owners or operators of aforesaid tunnels shall have no claim against the United States for damage on account of said flooding of the tunnels or said effect on the flow of water through them.

SEC. 2. That the right to alter, amend, or repeal this act is hereby expressly reserved.

J. G. CANNON,  
*Speaker of the House of Representatives.*

CHARLES W. FAIRBANKS,  
*Vice-President of the United States and President of the Senate.*

I certify that this act originated in the House of Representatives.

A. McDOWELL, Clerk.

REPORT OF SENATE COMMITTEE  
DAM ACROSS JAMES RIVER.

The Committee on Commerce, to whom was referred the bill (H. R. 17707) to authorize William H. Standish to construct a dam across James River, in Stone County, Mo., and divert a portion of its waters through a tunnel into the said river again to create electric power, having considered the same, report thereon with a recommendation that it pass without amendment.

Following is a copy of the House report on the bill:

[House Report No. 1256, Sixtieth Congress, first session.]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 17707) to authorize William H. Standish to construct a dam across James River, in Stone County, Mo., and divert a portion of its waters through a tunnel into the said river again to create electric power, having considered the same, report thereon with amendments, and as so amended recommend that it pass.

The bill as amended has the approval of the War Department, as will appear by the endorsements attached and made a part of this report.

Amend the bill as follows:

In line 3, page 1, after the word "That," insert "the consent of Congress is hereby given to."

In lines 4 and 5, page 1, strike out "be, and they are hereby, authorized."

In lines 9 and 10, page 1, strike out "that at the narrows in said bend be, and they are hereby, authorized," and in line 10, page 1, after the word "impound," insert "at the narrows in said bend."

At the end of section 1 add the following:

*Provided*, That the Secretary of War shall have at all times control of the use of the water, even to the extent of causing the persons, firms, or corporations, taking advantage of the privileges granted herein, to cease using the water whenever the same may be necessary for navigation: *And provided further*, That should the United States in the work of improving the aforesaid river find it necessary to flood the aforesaid tunnels or in any way affect the flow of water through them, the owners or operators of aforesaid tunnels shall have no claim against the United States for damage on account of said flooding of the tunnels or said effect on the flow of water through them."

Strike out all of section 2 and renumber section 3 to section 2.

[Second indorsement.]

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
Washington, March 11, 1908.

Respectfully returned to the Secretary of War with recommendation that the accompanying bill (H. R. 17707, 60th Cong., 1st sess.) to authorize the construction of a dam across James River, in Stone County, Mo., and to divert a portion of its waters through a channel into the said river again, to create electric power, be amended as indicated in red thereon.

As thus amended, I am of opinion that the bill makes ample provision for the protection of navigation interests, and I know of no objection to its favorable consideration by Congress so far as those interests are concerned.

SMITH S. LEACH,  
Acting Chief of Engineers.

[Third Indorsement.]

WAR DEPARTMENT, March 12, 1908.

Respectfully returned to the chairman Committee on Interstate and Foreign Commerce, House of Representatives, inviting attention to the foregoing report of the Acting Chief of Engineers, United States Army, and to the accompanying copy of amended bill referred to.

ROBERT SHAW OLIVER,  
Assistant Secretary of War.

Following is a copy of a letter of the President received after the bill was referred to this committee:

THE WHITE HOUSE,  
Washington, March 13, 1908.

SIR: Numerous bills granting water rights in conformity with the general act of June 21, 1906, have been introduced during the present session of Congress, and some of these have already passed. While the general act authorizes the limitation and restriction of water rights in the public interest, and would seem to warrant making a reasonable charge for the benefits conferred, those bills which have come to my attention do not seem to guard the public interests adequately in these respects. The effect of granting privileges such as are conferred by these bills, as I said in a recent message, "taken together with rights already acquired under state laws, would be to give away properties of enormous value. Through lack of foresight we have formed the habit of granting without compensation extremely valuable rights, amounting to monopolies, on navigable streams and on the public domain. The repurchase at great expense of water rights thus carelessly given away without return has already begun in the East, and before long will be necessary in the West also. No rights involving water power should be granted to any corporation in perpetuity, but only for a length of time sufficient to allow them to conduct their business profitably. A reasonable charge should of course be made for valuable rights and privileges which they obtain from the National Government. The values for which this charge is made will ultimately, through the natural growth and orderly development of our population and industries, reach enormous amounts. A fair share of the increase should be safeguarded for the benefit of the people, from whose labor it springs. The proceeds thus secured, after the cost of administration and improvement has been met, should naturally be devoted to the development of our inland waterways." Accordingly, I have decided to sign no bills hereafter which do not provide specifically for the right to fix and make a charge and for a definite limitation in time of the rights conferred.

Sincerely yours,

THEODORE ROOSEVELT.

Hon. WILLIAM P. FRYE,

Chairman Committee on Commerce, United States Senate.

The bill, together with the foregoing letter, was referred to the War Department for its views, which are presented in the following indorsements:

[Second Indorsement.]

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
Washington, April 11, 1908.

1. Respectfully returned to the Secretary of War.  
2. The Committee on Commerce of the United States Senate refers H. R. 17707, Sixtieth Congress, first session, being a bill to authorize William H. Standish to construct a dam across the James River, Missouri, and "to divert a portion of its waters through a tunnel into the said river again, to create electric power."

3. This bill was referred to this department for report during its consideration in the House of Representatives, and, after the usual inquiry through the local engineer officer, was reported on on March 11, 1908, to the effect that, so far as the interests of navigation are concerned, there is no objection to its passage.

4. Subsequently, March 18, 1908, the President of the United States, in a letter to the chairman of the Senate Committee on Commerce, stated that all bills of this character not having provision for a limited life and a remuneration to the United States for the privileges or rights conveyed will fail to receive executive approval. The Senate Committee on Commerce now desires the opinion of the War Department upon the merits of the bill and the propriety of its passage, "in view of the letter of the President to the chairman of the committee."

5. The Chief of Engineers notes that the bill (H. R. 17707) as it now stands does not comply with either of the President's requirements, and it is not believed that such requirements are provided for in the general dam act of June 2, 1906.

6. The following provision, if inserted in H. R. 17707, after the words "nineteen hundred and six," line 6, page 2, will, it is believed, accomplish the objects aimed at: "and the Chief of Engineers and the Secretary of War shall, in accordance with said act, and as a part of the conditions and stipulations provided for therein, fix such limitation of time for the privilege hereby permitted and such charge or charges for the same as they may deem necessary to protect the present or future interests of the United States."

The details as to time and amount in each case will depend upon the facts in each case, including amount of investment relative to the interests of navigation and the amount of future responsibility which may have to be assumed by the Government in the matter of proper maintenance of dams, operation of locks, and other items, including possible failure of grantee, which may bear upon any liabilities which the Government by chance might possibly be called upon to assume. While in the form of legislation suggested no definite time or amount is considered, it is appreciated that in each case such time and amount would require consideration by the grantor in advance of preliminary work by the grantee.

A. MACKENZIE,  
Brig. Gen., Chief of Engineers, U. S. Army.  
[Third Indorsement.]

WAR DEPARTMENT, April 14, 1908.

Respectfully returned to the chairman Committee on Commerce, United States Senate, concurring in the foregoing views of the Chief of Engineers, United States Army.

ROBERT SHAW OLIVER,  
Assistant Secretary of War.

Following is the amendment suggested by the War Department: Insert on page 2, line 6, after the word "six," the following: "And the Chief of Engineers and the Secretary of War shall, in accordance

with the terms of said act, impose conditions and stipulations fixing such limitation of time for the privilege hereby permitted and such charge or charges for the same as they may deem necessary to protect the present or future interests of the United States."

The President, in a communication addressed to the chairman of the Senate Committee on Commerce, dated March 18 last, as well as in his veto message of April 17, relating to the bill (H. R. 15444) to extend the time for the construction of a dam across Rainy River, has declared it to be his policy not to approve of any bill permitting the construction of a dam by private parties across a navigable stream, although due provision is made for the conservation of the stream for the purposes of navigation, unless the bill provides for the payment of royalty or compensation to the United States for the use of the water of the stream for purposes other than navigation.

This is a new departure from the policy heretofore pursued in respect to legislation authorizing the construction of such dams, and in view of this fact it becomes important to inquire whether the Government of the United States has the right to require compensation for the use of water in such streams for purposes other than navigation.

The common-law doctrine of England that a stream is not deemed to be a navigable water course unless the tide ebbs and flows in it is not the law in this country. The question whether a water course is a navigable stream is one of fact. If it is capable of being used for the purposes of trade and commerce in any mode, even for floating rafts of logs and timber, it is deemed to be a navigable stream.

(The Montello, 20 Wall, 430.)

(St. Anthony Water Power Company v. St. Paul Water Commissioners, 168 U. S., 349.)

The title to the water of a navigable stream within the borders of a State is not in the Federal Government, but in the State; and title to the banks and bed of the stream, after the Federal Government has parted with its riparian lands, is either in the State or in the riparian owner, or both, according to the laws of the respective States. These principles have been laid down and applied by the Supreme Court of the United States in the following, among other cases, and is the settled law of the land, to wit: Martin v. Waddell (16 Pet., 367); Pollard v. Hagan (3 How., 212); Goodtite v. Kibbey (9 How., 471); Barney v. Keokuk (94 U. S., 324); St. Louis v. Myers (113 U. S., 560); Packer v. Bird (137 U. S., 661); Hadrin v. Jordan (140 U. S., 371); Kaukauna Water Power Company v. Green Bay and Mississippi Canal Company (142 U. S., 254); Shively v. Bowly (152 U. S., 1); Water Power Company v. Water Commissioners (168 U. S., 349); Kean v. Calumet Canal Company (190 U. S., 452); United States v. The Chandler Dunbar Water Power Company (U. S. Supreme Court, April 20, 1908).

The use of water in such a stream is a matter of state regulation and state control. In many of the States the common-law rule, as defined in the following language of Chancellor Kent, prevails, to wit:

"Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run (currere solebat), without diminution or alteration. No proprietor has a right to use the water to the prejudice of other proprietors above or below him unless he has a prior right to divert it, or a title to some exclusive enjoyment. He has no property in the water itself, but a simple usufruct while it passes along. Aqua currit et debet currere ut currere solebat is the language of the law. Though he may use the water while it runs over his land as an incident to the land, he can not unreasonably detain it or give it another direction, and he must return it to its ordinary channel when it leaves his estate."

In the mining and arid States the rule of prior appropriation for mining and irrigation purposes prevails, and this rule of the States has been recognized by federal statutes (R. S., secs. 2339-2340). In some of the States there is a mixed application, as in California, of the common-law rule and the rule of prior appropriation.

But whatever rule may prevail in any State as to the use of the water in a stream, it is always subject to the following limitations, laid down by the Supreme Court in the case of the United States v. Rio Grande Dam and Irrigation Company (174 U. S., 690):

"Although this power of changing the common-law rule as to streams within its dominion undoubtedly belongs to each State, yet two limitations must be recognized: First, that in the absence of specific authority from Congress a State can not by its legislation destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its water; so far, at least, as may be necessary for the beneficial uses of the government property. Second, that it is limited by the superior power of the General Government to secure the uninterrupted navigability of all navigable streams within the limits of the United States. In other words, the jurisdiction of the General Government over interstate commerce and its natural highways vests in that Government the right to take all needed measures to preserve the navigability of the navigable water courses of the country, even against any state action."

Where the Federal Government is not interested as the owner of riparian lands, the only interest it has in the water of a stream is as to its use for purposes of navigation, and it can lay no claim to the use of the water for any other purpose, not even for irrigation. (Kansas v. Colorado, 206 U. S., 46.)

In this case the United States appeared as intervenor; but inasmuch as it founded its claim not on the question of navigation, but on the question of irrigation, the court held that it had no ground for intervention, and dismissed its petition. In reference to this subject the court says:

"It follows from this that if in the present case the National Government was asserting, as against either Kansas or Colorado, that the appropriation for the purposes of irrigation of the waters of the Arkansas was affecting the navigability of the stream, it would become our duty to determine the truth of the charge. But the Government makes no such contention. On the contrary, it distinctly asserts that the Arkansas River is not now and never was practically navigable beyond Fort Gibson, in the Indian Territory, and nowhere claims that any appropriation of the waters by Kansas or Colorado affects its navigability. "It rested its petition of intervention upon its alleged duty of legislating for the reclamation of arid lands. \* \* \*

"Turning to the enumeration of the powers granted to Congress by the eighth section of the first article of the Constitution, it is enough to say that no one of them, by any implication, refers to the reclamation of arid lands. \* \* \*

"While arid lands are to be found mainly, if not only, in the Western and newer States, yet the powers of the National Government within the limits of those States are the same, no greater and no less than those within the limits of the original thirteen, and it would be strange if, in the absence of a definite grant of power, the National Government could enter the territory of the States along the Atlantic and legislate in respect to improving, by irrigation or otherwise, the lands within

their borders. Nor do we understand that hitherto Congress has acted in disregard to this limitation."

It was the doctrine at common law that a grant of land upon the borders of a navigable stream carried the grant only to high-water mark, while a grant of land bordering upon a nonnavigable stream carried the ownership to the center or thread of the stream, subject to the public easement.

In the case of *Hardin v. Jordan* (140 U. S., 384), the Supreme Court states:

"The United States have not repealed the common law as to the interpretation of their own grants, nor explained what interpretation or limitation should be given to or imposed upon the terms of the ordinary conveyances which they use, except in a few special instances; but these are left to the principles of law and rules adopted by each local government where the land may lie. We have adopted the common law, and must, therefore, apply its principles to the interpretation of their grant."

Further on the court states the same principle in this form:

"In our judgment the grants of the Government for lands bounded on streams and other waters without any reservation or limitation of terms are to be construed as to their effect according to the laws of the State in which the lands lie."

The rule of riparian ownership as to grants of land bordering on a navigable stream is diverse in the various States. Some States hold that the grant extends only to high-water mark; other States hold that it extends to low-water mark, while another class of States—and perhaps the most numerous—hold that the grant extends to the middle of the stream, subject to the public easement in the water of the stream. But whatever may be the law in this respect as to the effect of the grant, it only relates to the proprietorship in the banks and bed of the stream and not to the ownership of the water in the stream.

In those States which hold that the title of the riparian owner only extends to the high or low water mark the title to the bed of the stream is deemed to be in the State; and whether the title to the bed of the stream is in the riparian owner or in the State, in either case the general title to the water of the stream is deemed to be in the State; but it holds it not absolutely, but in trust for all lawful public uses. The State's interest in such a stream is akin to that of a riparian owner, though more comprehensive and general in its nature and does not exist in hostility to or in diminution of the rights of the riparian owner.

(*Rossmiller v. State*, 114 Wis., 169.)

(*Peoples Ice Co. v. Davenport*, 149 Mass., 322.)

(*Brown v. Cunningham*, 82 Iowa, 512.)

(*Braston v. Rockport Ice Co.*, 77 Maine, 100.)

(*Martin et al. v. Waddell*, 16 Peters, 367.)

From the foregoing it will appear that there are three different parties who are interested in the waters of a navigable stream:

1. The United States.

2. The State in which the stream is located.

3. The riparian owner.

The interest of the United States is derived from and rests upon that paragraph of the Constitution which gives Congress the power to regulate interstate commerce, and this power only extends to the extent of conserving the navigability of the stream. Beyond that the Federal Government has no interest or property in the stream.

The interest of the State in the stream is derived from its sovereignty, and it holds its property in the stream in trust for all public uses, but in subrogation to the rights of the Federal Government as to navigation and of the riparian owner. The right to the use of the waters of a stream for any lawful purpose, outside of the right of navigation, belongs wholly to the State and the riparian owner.

(*Martin et al. v. Waddell*, 16 Peters, 367.)

Chief Justice Shaw, in the case of *Elliott v. Fitchburg Railroad Company* (10 Cushing, 191) describes the rights of the riparian owner in the use of water in a stream in the following language, which states the enlarged and modified common-law doctrine:

"The right to flowing water is now well settled to be a right incident to property in the land; it is a right *publici juris*, of such a character that, while it is common and equal to all through whose land it runs, and no one can obstruct or divert it, yet, as one of the beneficial gifts of Providence, each proprietor has a right to a just and reasonable use of it as it passes through his land; and so long as it is not wholly obstructed or diverted or no longer appropriation of the water running through it is made than a just and reasonable use, it can not be said to be wrongful or injurious to a proprietor lower down. What is such a just and reasonable use may often be a difficult question, depending upon various circumstances. To take a quantity of water from a large running stream for agricultural or manufacturing purposes would cause no sensible or practicable diminution of the benefit, to the prejudice of a lower proprietor, whereas taking the same quantity from a small running brook passing through many farms would be of great and manifest injury to those below who need it for domestic supply or watering cattle, and therefore it would be an unreasonable use of the water and an action would lie in the latter case and not in the former. It is therefore, to a considerable extent, a question of degree; still the rule is the same, that each proprietor has a right to a reasonable use of it, for his own benefit, for domestic use, and for manufacturing and agricultural purposes. \* \* \*

"That a portion of the water of a stream may be used for the purpose of irrigating land we think is well established as one of the rights of the proprietors of the soil along or through which it passes. Yet a proprietor can not, under color of that right or for actual purpose of irrigating his own land, wholly abstract or divert the water course or take such an unreasonable quantity of water or make such unreasonable use of it as to deprive other proprietors of the substantial benefits which they might derive from it if not diverted or used unreasonably.

"This rule that no riparian proprietor can wholly abstract or divert a water course, by which it would cease to be a running stream, or use it unreasonably in its passage and thereby deprive a lower proprietor of a quality of his property, deemed in law incidental and beneficial, necessarily flows from the principle that the right to the reasonable and beneficial use of a running stream is common to all the riparian proprietors, and so each is bound to use his common right as not essentially to prevent or interfere with an equally beneficial enjoyment of the common right by all the proprietors. \* \* \*

"The right to the use of flowing water is *publici juris* and common to all the riparian proprietors. It is not an absolute and exclusive right to all the water flowing past their land, so that any obstruction would give a cause of action; but it is a right to the flow and enjoyment of the water, subject to a similar right in all the proprietors to the reasonable enjoyment of the same gift of Providence. It is, therefore, only for an abstraction and deprivation of this common benefit or for an unreasonable and unauthorized use of it that an action will lie."

The doctrine of prior appropriation, already referred to, is thus described by Justice Field in the case of *Jennison v. Kirk* (98 U. S., 453). After describing the system of discovery and appropriation and development of mining claims, he adds the following:

"But the mines could not be worked without water. Without water the gold would remain forever buried in the earth or rock. To carry water to mining localities when they were not on the bank of a stream or lake became, therefore, an important and necessary business in carrying on mining. Here, also, the first appropriator of water to be conveyed to such locality for mining or other beneficial purposes was recognized as having, to the extent of actual use, the better right. The doctrine of the common law respecting the right of riparian owners was not considered as applicable, or only in a very limited degree, to the conditions of miners in the mountains. The waters of rivers and lakes were, consequently, carried great distances in ditches and flumes, constructed with vast labor and enormous expenditures of money, along the sides of mountains and through canyons and ravines, to supply communities engaged in mining, as well as for agriculturists and ordinary consumption. Numerous regulations were adopted, or assumed to exist, from their obvious justness, for the security of these ditches and flumes and for the protection of rights to water, not only between different appropriators, but between them and the holders of mining claims. These regulations and customs were appealed to in controversies in the state courts and received their sanction, and properties to the value of many millions rested upon them. For eighteen years, from 1848 to 1866, the regulations and customs of miners, as enforced and molded by the courts and sanctioned by the legislation of the State, constituted the law governing property in mines and in water on the public mineral lands."

These water rights by prior appropriation, as described by Justice Field, were recognized and confirmed by congressional legislation in 1866 and 1870. Those acts are now sections 2339 and 2340 of the Revised Statutes. Justice Field further adds:

"It will thus be seen that the federal statutes merely gave a formal sanction to the rules already established. Those rules had been built up in reliance on the tacit acquiescence of the United States, the true owner of the lands and waters on which appropriations were made, and these statutes acquiesced therein expressly, 'a voluntary recognition of a preexisting right rather than the establishment of a new one.'"

In the case of *Broder v. Natoma Water Company* (101 U. S., 274), the Supreme Court, in referring to the contention that these statutes established a new right, uses the following language:

"We are of the opinion that it is the established doctrine of this court that rights of miners, who had taken possession of mines and worked and developed them, and the rights of persons who had constructed canals and ditches to be used in mining operations and for purposes of agricultural irrigation, in the region where such artificial use of the water was an absolute necessity, are rights which the Government had, by its conduct, recognized and encouraged and was bound to protect before the passage of the act of 1866, and that the section of the act which we have quoted was rather a voluntary recognition of a preexisting right of possession, constituting a valid claim to its continued use, than the establishment of a new one."

These decisions of Judge Shaw, of Massachusetts, and of Justice Field, of the Supreme Court, describe fully the rights of the riparian owners to the use of the water both under the doctrine of the common law and under the so-called "doctrine of prior appropriation," and the case of *Rossmiller v. The State* (114 Wis., 169), and the cases therein re-referred to, as well as the case of *Martin et al. v. Waddell* (16 Pet., 367), show the interest and property of a State in the waters of a stream.

From the foregoing statement and citation of authorities it is evident that the only use of the waters of a stream in which the United States has any property is its use for purposes of navigation. In the use of the stream for any other purpose the Federal Government has no property and hence has nothing to sell or to exact compensation for.

The plan proposed by the President would deprive the States and the riparian owners of their rights in the use of the water of a navigable stream now vested in them by law, and would concentrate the entire disposal and control in the Federal Government, a power which neither the States nor the riparian owners can, with justice or safety, for a moment concede. But assuming for the sake of the argument that the Federal Government can lay a tribute in such cases as is proposed by the President, it can not be under the interstate-commerce clause of the Constitution, but must be under section 8 of Article I, which reads as follows:

"SEC. 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

Such a tribute must be either a direct tax or in the nature of an impost or excise tax. If a direct tax, it can not be levied directly by the Federal Government, but must be apportioned among the States, leaving each State to make the collection; and if an impost or excise tax, then it must be levied by the rule of uniformity upon every dam and water power in the United States not constructed directly or indirectly by the Federal Government. In other words, there must be a general excise law on the subject. The power of the Federal Government over the navigable streams of the country is no greater in the so-called "western or public-land States" than in the New England States. If a tribute can be levied on a dam and water power in Minnesota or Colorado, it can be levied on a dam and water power in Maine or Massachusetts, for the power of the Federal Government over navigable streams is the same in the one case as in the other. In the case of *Pollock v. Farmers' Loan and Trust Company* (157 U. S., 557) the court states:

"Thus in the matter of taxation the Constitution recognizes the two great classes of direct and indirect taxes and lays down two rules by which their imposition must be governed, namely, the rule of apportionment as to direct taxes and the rule of uniformity as to duties, imposts, and excises."

In the case of *Thomas v. United States* (192 U. S., 363), Chief Justice Fuller says:

"And these two classes, taxes so called, and 'duties, imposts, and excises,' apparently embrace all forms of taxation contemplated by the Constitution. As was observed in *Pollock v. Farmers' Loan and Trust Company* (157 U. S., 429, 557), 'Although there have been from time to time intimations that there might be some tax which was not a direct tax nor included under the words "duties, imposts, and excises," such a tax for more than one hundred years of national existence has as yet remained undiscovered, notwithstanding the stress of particular circumstances has invited thorough investigation into sources of revenue. \* \* \*'

"There is no occasion to attempt to confine the words 'duties, imposts, and excises' to the limits of precise definition. We think that they were used comprehensively to cover customs and excise duties imposed on importation, consumption, manufacture, and sale of certain commodities, privileges, particular business transactions, vocations, occupations, and the like."

An act authorizing the construction of a dam is, so far as the United States is concerned, a mere revocable license or privilege, and if a tax can be imposed on such a privilege it must be general and uniform throughout the United States. It must apply to all dams and water powers on navigable streams throughout the entire country.

Nearly all navigable streams in their upper and more remote courses are not, as a matter of fact, navigable, and in such reaches of the river dams can be erected and water powers created under state authority and state license, and so long as such dams and water powers do not materially injure or diminish the navigability of the stream in its navigable portions the Federal Government has no ground for interference. It has been customary, however, in many of such cases to apply to Congress for a federal license and the granting of it, while not necessary, serves a twofold purpose; first, that it authorizes the Federal Government, through the War Department, to control and direct the construction of the dam, and, second, that it recognizes the fact, which might otherwise require proof, that the dam will not affect the navigability of the stream in its navigable portions.

(*Kansas v. Colorado*, 206 U. S., 46; *United States v. Rio Grande Company*, 174 U. S., 690.)

And in such cases it is of as much advantage to the United States as to the grantee of the license to have congressional action and recognition, but in such cases the Federal Government has nothing to sell, and therefore has no moral or legal ground to demand compensation in any form.

For reasons above given the committee report the bill without the amendment recommended by the War Department.

SUBCOMMITTEE'S LETTER TO HON. HENRY M. HOYT, SOLICITOR-GENERAL.  
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., January 27, 1909.

Hon. HENRY M. HOYT,  
Solicitor-General, Washington, D. C.

DEAR SIR: The subcommittee of the Committee on Interstate and Foreign Commerce of the House of Representatives, to which has been referred H. R. 17707, Sixtieth Congress, first session, together with the veto message of the President and accompanying papers, as well as all legislation to amend the general dam act of June 21, 1906, has under consideration the memorandum submitted by yourself, contained upon pages 16 and following, of the special veto message of the President as printed in House Document No. 1350, Sixtieth Congress, second session. We congratulate you upon the ability of the presentation of your views and appreciate the information contained in your memorandum.

There have arisen in our discussion some questions which do not seem to be covered in your opinion, and the subcommittee would much value any further information or opinion you may see fit to forward to it concerning the propositions herein set forth:

A. You have illustrated your position by the citation of numerous acts of Congress, bills proposed in Congress but not enacted, reports of commissions and expressions of executive departments, but not to any great extent by the citation of cases decided by the courts.

(I) Is there a lack of cases bearing on this point, especially in the Supreme Court of the United States?

(II) If there are such decisions, are they in accord with the opinion you express?

B. If an act should be passed containing such conditions as you indicate, would you recommend that they should be so expressed as to facilitate the power of a court to pass upon them without bringing into question the remainder of the act; and, in case they should be held invalid because beyond the power of Congress, to hold the grant by the act valid and free from those conditions?

C. Assuming that the Congress has full and exclusive authority to control every navigable stream and its waters for purposes of commerce, and therefore can grant to a private concern a privilege or license to construct a dam which may in some respects affect the natural condition of such streams, although the United States has no property rights therein or interest in such construction, or any lands, riparian or other, to be affected thereby, and has made no expenditure for improvement at that point:

(I) Can Congress impose as a condition of such grant the payment of money by the licensee or the imposition of a burden on him which can be used by Congress—

1. For general public purposes as may be provided by law.

2. For the benefit and improvement of the navigation of a designated stream or streams at any point and in any manner which may be determined by Congress.

3. For removing the particular structure which may be authorized by Congress in such grant, or for making further improvements at that place which may substantially make good any disadvantage caused by the exercise of the grant.

D. If in a given case the riparian owner is entitled to the use of the power which may be developed by a navigable stream, without impairing the navigability, can he be deprived of that use in whole or in part by any action or nonaction of the United States? For instance, if on such a stream the riparian owner has acquired lands on both sides of such a stream for the purpose, with others, of developing and selling power produced by that stream, and has now a clear legal title to those lands and to that power, the right to develop such power without impairing navigation being worth, say, \$1,000 per year, has the United States the constitutional authority to prevent such development unless \$500 per year be paid to the United States, or—

(I) Would such action by the United States operate to deprive the owner, without due process of law, of property worth \$500 per year?

(II) Would such private property be taken for public use without just compensation?

E. Should any such payment or burden imposed as the condition of such grant by Congress be construed as a—

1. (I) Tax under the provisions of Article I, section 8, paragraph 1, or section 9, paragraph 4, of the Constitution, known as the "taxing clauses," or—

(II) As a mere incident to the exercise of power under Article I, section 8, paragraph 3, of the Constitution, known as the "commerce clause?"

2. If such charge or compensation be not a tax under any circumstances, would it be possible, as a matter of law—

(I) To exact compensation for such licenses which could be covered into the Treasury as a general or special fund, sufficient to provide for all or nearly all such public improvements, which otherwise must be provided by taxation to be raised under the powers and limitations of the Constitution, or—

(II) Could this be exacted although the work under such license might be a real, valuable, and conceded aid to navigation?

F. Briefly, in such cases—

(I) Can Congress use this license as a means of raising money to carry on general public improvements or perform other public work or—

(II) Is it necessarily confined to making improvements at the particular place, and to substantially the measure of the burden, affected by the license?

(III) If such payment be a tax, would it be a direct tax or not, and how should it be levied and collected?

G. Some grants of territory to the United States, and some treaties with foreign powers respecting boundaries, provide that the navigation of certain streams shall remain open and free. Is the authority of the United States over those streams any less than its power over other navigable streams, with respect to imposing conditions on the development of navigation or mechanical power?

H. The treaty between the United States and Great Britain of 1842, known as the "Webster-Ashburton treaty," in sections 2, 3, and 7, contains substantially the following provision:

"It being understood that all the water communications and all the usual portages, etc., \* \* \* as now actually used shall be free and open to the use of the citizens and subjects of both countries."

The treaty between the United States and Mexico of 1848, articles 6 and 7, contains substantially the following provision:

"The navigation of the rivers (naming them) shall be common and free to the vessels and citizens of both countries, and neither shall, without the consent of the other, construct any work that may impede or interrupt, in whole or in part, the exercise of this right, not even for the purpose of favoring new methods of navigation. Nor shall any tax or contribution be laid, etc., \* \* \* for the purpose of making said rivers navigable or for maintaining them in such state. If it should be necessary or advantageous to establish any tax or contribution, this shall not be done without the consent of both Governments."

The ordinance of 1787, passed by Congress for the government of the Northwest Territory, known as the "Northwest Ordinance," contains the following provision (article 4):

"The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free as well to the inhabitants of said territory as to the citizens of the United States and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor."

The enabling acts by Congress of the following States, viz., Minnesota and Wisconsin, contain substantially the following provision:

"The said rivers and waters leading into the same shall be common highways and forever free as well to the inhabitants of the said State as to all other citizens of the United States without any tax, duty, poll, or impost whatever."

The enabling acts of Alabama, Mississippi, Missouri, and Louisiana add to the end of such paragraph the words "by the State."

1. Do these provisions with respect to the rivers and waters referred to in the above-cited provisions of those treaties and enabling acts and of that ordinance constitute any prohibition or limitation upon the power of Congress to fix such charge as it may deem best upon any project for the construction of a dam within the territory affected, in which the United States has no interest by expenditure of money, ownership of property, or otherwise, which project, as a fact, may improve navigation and facilitate commerce?

2. Can such charge be imposed in such cases to an extent which may prevent the construction of such improvement to navigation when, if such charge be not made, navigation would be improved by the owners of the riparian property?

3. In such cases, must such charge be limited by an amount sufficient to overcome any disadvantage to navigation caused by such grant, and so practically restore the stream to its original state as to its navigability?

4. In fine, is the power of the United States over those streams and waters any less than its power over other navigable streams and waters with respect to imposing conditions on the development of navigation or of mechanical power?

I. Is there any constitutional objection to a provision in a bill authorizing the construction of a dam across a navigable stream for the purpose of improving navigation that the United States may provide a proportion of the expense, to be fixed in some manner provided by law, and in return there should be paid to the United States a compensation, to be fixed or provided by law, in consideration of its contribution, which fund should go into the Treasury for general purposes as may be directed by Congress?

REPLY OF HON. HENRY M. HOYT.

OFFICE OF THE SOLICITOR-GENERAL,  
Washington, D. C., February 23, 1909.

Hon. F. C. STEVENS,  
Chairman, etc., House of Representatives.

MY DEAR SIR: Addressing myself to the letter dated January 27 (which I received February 13) from the subcommittee of the Committee on Interstate and Foreign Commerce, to which was referred H. R. 17707, with the veto message of the President among other associated matters, I beg to say in answer to your first two questions that there is not only a lack but an entire absence of decisions, so far as I am aware, on the particular aspect of the power of Congress over navigable waters discussed in the memorandum to which you refer, prepared by me in May of last year at the request of the President.

In the memorandum I was undertaking to trace the general principle that a grant of any right or privilege may be upon terms and conditions, and to illustrate by legislation enacted the application of the principle as affecting the incidental development of water power and other incidental conditions in cases where Congress itself was improving navigation or authorizing others to do so, or retaining absolute control of the subject for the future in licensing structures in waters not now navigable in fact at the particular point. I also considered the views of members of the Judiciary Committee of your House with reference to a suggested exercise of the power of Congress proposing to acquire forest reserve lands as a step germane to navigability, which at first glance might seem remote from the power, but was not really so.

I thought then, and still think, that the views expressed as to the constitutionality of the particular legislation under consideration or proposed are sound. It is to be remembered that the views set forth were expressed informally in reference to that particular legislation,

and for the special purpose of advice to the President on the matter then before him, and for his information respecting his proper executive action.

The cursive questions you now submit to me, however, regard many different aspects of the general inquiry. They are based upon hypothetical circumstances and search the entire subject through, constitutionally and encyclopedically. The questions relate to a new field of inquiry and are highly judicial in their nature, and of course can not be intelligently answered until the Supreme Court has adjudged some case or cases raising them. To answer the questions now would be merely an attempt speculatively to forecast the course of judicial decision on the subject, and would be a presumption on my part. Under these circumstances it seems to me obvious that it would be highly improper for me to express any opinion, and I am therefore constrained to decline to do so.

Very respectfully, yours,

HENRY M. HOYT,  
Solicitor-General.

REPORT AND MEMORANDUM OF THE WAR DEPARTMENT CONCERNING THE AUTHORITY OF THE UNITED STATES OVER THE USE OF WATER FOR POWER PURPOSES.

[Circular No. 14.]

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
Washington, April 4, 1905.

The following report on a bill introduced and considered at the third session of the Fifty-eighth Congress is published for the information of officers of the Corps of Engineers in charge of river and harbor works, it being thought that the important legal propositions discussed, and a knowledge of the department's position regarding the subject-matter, may be of interest and value:

WAR DEPARTMENT,  
January 17, 1905.

Respectfully returned to the chairman Committee on Interstate and Foreign Commerce, House of Representatives, inviting attention to the accompanying report of the Chief of Engineers, United States Army, of yesterday's date, and to drafts of bills therein referred to. The report seems to me to be very comprehensive, accurate, and instructive.

WM. H. TAFT, Secretary of War.

WAR DEPARTMENT,  
OFFICE OF THE CHIEF OF ENGINEERS,  
Washington, January 16, 1905.

Hon. WM. H. TAFT,  
Secretary of War.

SIR: I have the honor to return herewith a letter, dated the 13th ultimo, from the Committee on Interstate and Foreign Commerce of the House of Representatives, inclosing for the views of the War Department thereon H. R. 16298, Fifty-eighth Congress, third session—

"A bill to provide for and regulate the use of the navigable rivers and streams of the United States for manufacturing, industrial, and other purposes by means of water power obtained therefrom."

2. There are two distinct propositions embraced in the bill, as follows:

(a) To authorize the Secretary of War to grant leases and licenses to private persons or corporations for the use of water power created by dams and other structures built by the Government on navigable waters for the benefit of navigation.

(b) To empower the Secretary of War to authorize private persons or corporations to construct dams and other structures, and to develop and use water power, at points on navigable rivers where the Government has not built such structures.

3. In connection with legislation of this kind careful consideration should be given to the question of the limitations of the power of the Federal Government over navigable waters. By virtue of its power to regulate commerce Congress may exercise control over the navigable waters of the United States, but only to the extent necessary to protect, preserve, and improve free navigation. The Federal Government has no possessory title to the water flowing in navigable streams, nor to the land comprising their beds and shores, and hence Congress can grant no absolute authority to anyone to use and occupy such water and land for manufacturing and industrial purposes. The establishment, regulation, and control of manufacturing and industrial enterprises, as well as other matters pertaining to the comfort, convenience, and prosperity of the people, come within the powers of the States, and the Supreme Court of the United States holds that the authority of a State over navigable waters within its borders, and the shores and beds thereof, is plenary, subject only to such action as Congress may take in the execution of its powers under the Constitution to regulate commerce among the several States.

4. Many of the provisions of the bill under consideration appear to conflict with these principles of law, and particularly sections 3 and 6, which propose to confer upon the United States, and upon any lessee or grantee under the provisions of the bill, the power to condemn any land or other property bordering on or adjacent to the river or stream to be used. Eminent domain is the right to take property for public uses, and is inherent in the United States by virtue of its sovereignty. Private property can be expropriated by the Federal Government, however, for public purposes only—that is, when it is necessary for the use of the Government in the exercise of any of its legitimate powers. To take or to authorize the taking of the property of one individual for the use and benefit of another in carrying on a private business or industry, as proposed by the bill, is not a proper exercise of the right of eminent domain. There may be certain enterprises of a quasi public character, such as electric-light and railway companies, that would desire to avail themselves of the uses of water power, and to which the right to condemn private property could properly be granted; but the granting of such right is believed to be a function of the States, inasmuch as the organization and incorporation of these enterprises, as well as the title and ownership of the property affected, are matters for state control and regulation. In view of the foregoing, I am unable to recommend favorable consideration of the bill in its present form.

5. To legislation authorizing the Secretary of War to lease water power created by works constructed by the Government I see no special objection, but I know of no demand for it in the public interest.

The right of Congress to regulate, control, and dispose of such water power is believed to be unquestionable, inasmuch as the power constitutes a valuable property created at the public expense, and when utilized by private persons or corporations should be paid for. Whether a general policy of this kind should be adopted, however, is a question that should be very carefully considered. Locks and dams are built and operated for the purpose of facilitating navigation and commerce,

and nothing should be permitted that would tend to impair their usefulness or interfere with their operation for this purpose. Partnerships or quasi partnerships between the Government and private persons or corporations have not been generally favored in the past, as experience has shown that they are apt to be attended by many annoying complications. I do not believe that sufficient revenue would be derived from renting water power to compensate for the trouble and inconvenience that might ensue from the adoption of such a policy. Congress has heretofore authorized the renting of land and water power at the locks and dams on the Muskingum River and Green and Barren rivers; but it is understood that this was done for the reason that at the time these works came into the possession of the United States there was in existence a number of leases granted by the former owners which constituted an easement on the property, some of which leases had many years to run. In cases where a new privilege is asked, it has been customary to invite public competition, setting a minimum price; but no active competition has been developed. There is also one company which uses land and water power at Lock No. 4 on the Kentucky River, under a lease granted by the State of Kentucky, which expires in 1977. During the past fiscal year there were in existence 27 different leases, and the total gross revenue received by the Government was only \$4,500, and in a number of instances in the past the Government has been compelled to resort to suits against lessees to collect the rental. While many applications would be made therefor, it is believed that few leases would be made, and then only at favored localities, if adequate compensation were exacted. In the river and harbor act of June 13, 1902, Congress authorized the leasing of water power at the locks and dams on the Cumberland River. Before the enactment of this law a number of persons appeared to be desirous of using water power in this river, but although the law has been in existence more than two years not a single lease has been applied for or granted. If, however, Congress should decide to adopt this policy, I beg to recommend that the legislation take the form of the accompanying draft of a bill which, in my opinion, is so drawn as amply to protect the interests of the Government.

6. Regarding the proposition to empower the Secretary of War to authorize the use and development of water power at localities not improved by the United States, it should be borne in mind that natural water power—that is, power made available by the existence of natural falls and rapids in a river—is appurtenant to riparian ownership, and the right to use it is governed by state laws on the subject of private property. As above set forth, the Federal Government can regulate and control it only to such extent as may be necessary in the interest of navigation. Sections 9 and 10 of the river and harbor act of March 3, 1899, cover cases of this kind, and under this law the interests of the Government can, in my opinion, be better protected than by a law general in its scope, as contemplated by the bill. I do not favor the proposed legislation, but if any is enacted, it should be permissive in its character, simply giving the consent of Congress, with suitable limitations, to the erection of the necessary structures in navigable streams for the development of water power, this consent to be executed through the Chief of Engineers and the Secretary of War, to whom should be left entire control in the matter of plans and details.

A draft of a bill embodying these views is submitted herewith for the consideration of the committee.

Very respectfully,  
A. MACKENZIE,  
Brig. Gen., Chief of Engineers, U. S. Army.

By command of Brigadier-General Mackenzie.

FREDERIC V. ARBOT,  
Major, Corps of Engineers.

Hearing before Hon. William H. Taft, Secretary of War, in connection with the development of the Illinois Valley water power.

WAR DEPARTMENT,  
DISTRICT OF COLUMBIA,  
February 23, 1907—10:30 a. m.

Present: Brig. Gen. Alexander Mackenzie, Chief of Engineers, United States Army; Mr. I. Randolph, representing the State of Illinois; Hon. H. M. SNAPP, Mr. J. W. Woermann, and Mr. Charles A. Monroe, representing the Economy Light and Power Company.

Secretary TAFT. Gentlemen, as I understand this application, it is to prevent me from granting a permit to any person on the Des Plaines River to build a dam for water-power purposes, on the ground that the State is interested in supervising that matter itself. Is that about the size of it?

STATEMENT OF MR. L. RANDOLPH ON BEHALF OF THE STATE OF ILLINOIS.

The position of the State, as I understand it, is this: I am appearing in this matter at the present time for the State, because, as I understand, the Sanitary District has no interest in the present application whatever. The work of the Sanitary District, however, has made possible the development of very, very important water power on the Des Plaines and Illinois rivers. Prior to the completion of that work the water powers on the Des Plaines River were inconsequential. They amounted to but little. The water power on the Illinois River was somewhat better. There was no development at Marseilles. But the opening of the Sanitary District naturally has turned into those rivers a permanent volume of water, which makes the development of the water powers possible of quite a valuable scale.

The interest of the State in this is to see that this asset is developed to the fullest extent and that it shall be so developed as not to interfere with the creation of a waterway such as the State hopes to see put through. \*

Mr. SNAPP. If the General Government has no right either in this property or to the water power developed thereby, there can properly be no determination of this matter by any of the officers of the Government. Now, as a matter of fact, all the property interest in the Des Plaines Valley belongs to private parties. There is absolutely no public ownership of any land in the Des Plaines Valley. The stream is not a navigable stream. In low water the entire flow of the Des Plaines River would come probably through a 6-inch pipe. It falls downhill, falling 100 feet in less than 30 miles. Neither the flow of the water nor the contour of the land makes the stream navigable, and it has been so held.

Secretary TAFT. You say the Des Plaines River is not a navigable stream?

Mr. SNAPP. It is not a navigable stream either in law or in fact. It could not be navigated in low water, in the natural condition of the river, by a birch-bark canoe.

Secretary TAFT. How do we get any jurisdiction of it, General MacKenzie?

Mr. SNAPP. Let me answer, Mr. Secretary, as a lawyer. You undoubtedly have none, and I was going to bring to the attention of the Secretary.

Secretary TAFT. Why do you come here for a permit, then?

(Mr. SNAPP then explains that they did not come for a permit, but for advice to be more safe to proceed.)

Mr. Randolph then states that the river is meandered by the surveys, and thinks that might make it navigable. Secretary Taft answers that has nothing to do with determining whether the river is navigable. A long conversation follows, after which Secretary Taft rendered the following decision, taken down in shorthand and now on file in the War Department with the Chief of Engineers:

“OPINION.

“There are two answers to the contention of the State of Illinois in this matter. The application, if I understand it—and it is rather informal than otherwise—is for this department to take no official action which may interfere with the state control of the water power which may be developed in the Des Plaines River under a proposed improvement by the construction of a 14-foot waterway; and also to take no action which may interfere with the waterway as a waterway.

“There are two answers to that. The department is not going to take any action, and has not taken any action. The advisory step, taken at the instance of Mr. SNAPP, or the person who intended to put some sort of water-power construction in the Des Plaines River, was extra-official, and really was beyond the authority of the Chief of Engineers, except as he was accommodating to express an opinion in the interest of explanation. The truth is that the Des Plaines River, not being a navigable stream, no permit was necessary to put any obstruction into it which the War Department could prevent. But even if it had been a navigable stream, and even if the application had been made, and properly made to this department, to say whether this would interfere with navigation if the department concluded it would not interfere with navigation, then it is not within the power of the department to withhold its expressing such an opinion and granting such a permit, so far as the United States is concerned, for the purpose of aiding the State in controlling the water power. If the State has any control over the water power, which it may exercise in conflict with the claimed rights of the riparian owner, then it must exercise it itself, through its own legislation and through its own executive officers. All the United States does, assuming it to be a navigable stream, is merely to protect the navigation of the stream. With reference to the water power, it has no function except in respect to water power which it itself creates by its own investment in property that it itself owns; and then, of course, it may say how that water power shall be used.

“But with respect to the water power on a navigable stream, which may be exercised without interference with the use of the river for navigation purposes, that is controlled by the laws of the State. It is controlled by the riparian ownership and by the common law as it governs those rights. Therefore I do not see, with reference to this matter, that this department has any function to perform or which it can perform.

“It has merely offered a friendly suggestion, with reference to a possible improvement of the river, which has not been authorized and which until it is authorized can not be regarded as giving any right to this Government to interfere in the use of the stream, the proposed action of the private owners here would not be in conflict with such a plan. That is an expression of an opinion with reference to existing plans, but not with respect to existing conditions.

“Therefore what General Mackenzie has done, out of the kindness of his heart, does not commit this department to any assertion of authority in the matter and certainly does not carry us to the necessity of retracing our steps and saying that they shall go on with this when we had not any power to interfere at all.

“It is not that we approve this; it is not that we disapprove it. It is that we have nothing whatever to do with it. That is the truth of it. If the State wishes to control the matter of the water power, then it is for the legislature, through which it can express that view, in so far as it may constitutionally affect it by legislation.”

General MACKENZIE. That is virtually what was told the governor, Mr. Secretary, and this is the result of one of our indorsements.

Secretary TAFT. All right; I think that disposes of it.

MEMORANDUM.

Certain questions which have had the consideration of the Inland Waterways Commission relate to rights of property and to the extent and power of the Federal Government in the premises under existing law. I submit the following remarks and quotations as having, to my mind, a bearing upon the questions raised.

These facts are presented not with a view of depreciating some of the suggestions which have been advanced as to the importance of federal control in certain matters under consideration by the commission, but as my view as to conditions under existing law as to ownership and as an expression of the thought that to accomplish some of the results considered important it would appear that modifications of law and possibly amendments to the Constitution may be necessary.

First, as to the land.—The title to the lands forming the banks and beds of navigable waters is in the several States by virtue of their inherent sovereignty, and their property and dominion in these areas are supreme, subject only to the general rights of commerce and navigation and the laws and regulations which Congress may make for the protection thereof. This doctrine was fully set forth by the Supreme Court of the United States in the case of *Pollard's Lessee v. Hagan* (3 How., 212), and has been reaffirmed in various subsequent decisions.

“Lands under navigable waters belong to the States, subject to the rights surrendered by the Constitution to the United States. (*Pollard v. Hagan*, 3 How., 229.)

“On admission of a State into the Union the shores of navigable waters lying below high-water mark pass to and are vested in the State, and thereafter Congress can not grant them. (*Goodtitle v. Kibbe*, 9 How., 477.)

“The shores of navigable waters and the soils under them were not granted by the Constitution to the United States, but are reserved to the States, and the new States have the same rights, jurisdiction, and sovereignty over the subject as the original States. (*St. Anthony Falls Water Power Company v. Water Commissions*, 168 U. S., 360.)

“Ownership of and dominion over lands covered by navigable waters within States belong to the States, subject to the right of Congress to control navigations so far as necessary for the regulation of commerce. (*Morris v. United States*, 174 U. S., 216.)”

In the leading case of *Shively v. Bowlby* (52 U. S., 1) the doctrine is exhaustively discussed, and the following is quoted from the conclusions of the court:

“At common law the title and the dominion in lands flowed by the tide were in the King for the benefit of the nation. Upon the settlement of the colonies like rights passed to the grantees in the royal charters, in trust for the communities to be established. Upon the American Revolution these rights, charged with a like trust, were vested in the original States within their respective borders, subject to the rights surrendered by the Constitution to the United States.

“Upon the acquisition of a Territory by the United States, whether by cession from one of the States, or by treaty with a foreign country, or by discovery and settlement, the same title and dominion passed to the United States, for the benefit of the whole people, and in trust for the several States to be ultimately created out of the Territory.

“The new States admitted into the Union since the adoption of the Constitution have the same rights as the original States in the tide waters and in the lands under them within their respective jurisdictions. The title and rights of riparian or littoral proprietors in the soil below high-water mark, therefore, are governed by the laws of the several States, subject to the rights granted to the United States by the Constitution.

“The United States, while they hold the country as a Territory, having all the powers both of national and municipal government, may grant, for appropriate purposes, titles or rights in the soil below high-water mark of tide waters. But they have never done so by general laws; and, unless in some case of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the Territories were acquired, of leaving the administration and disposition of the sovereign rights in navigable waters and in the soil under them to the control of the States, respectively, when organized and admitted into the Union.

“Grants by Congress of portions of the public lands within a Territory to settlers thereon, though bordering on or bounded by navigable waters, convey, of their own force, no title or right below high-water mark, and do not impair the title and dominion of the future State when created, but leave the question of the use of the shores by the owners of uplands to the sovereign control of each State, subject only to the rights vested by the Constitution in the United States.”

While some of the cases cited related to water courses where the tide ebbs and flows, which were the only water courses recognized in England as navigable, the doctrine enunciated is equally applicable to all the navigable waterways of the United States, and the court has so held.

“The common-law doctrine as to the dominion, sovereignty, and ownership of lands under tide waters on the borders of the sea applies equally to the lands beneath the navigable waters of the Great Lakes; and in this country such dominion, sovereignty, and ownership belong to the States, respectively, within whose borders such lands are situated, subject always to the right of Congress to control the navigation so far as may be necessary for the regulation of foreign and interstate commerce. (*Illinois Central R. R. Co. v. State of Illinois*, 146 U. S., 387.)”

In the *Genesee Chief* (12 Howard, 443) the court declared that “the Great Lakes and other navigable waters of the country, above as well as below the flow of the tide, are in the strictest sense entitled to the denomination of navigable waters.”

In *Barney v. Keokuk* (94 U. S., 324), referring to the State of Iowa, the court says:

“It appears to be the settled law of that State that the title of the riparian proprietors on the banks of the Mississippi extends only to ordinary high-water mark, and that the shore between high and low water mark, as well as the bed of the river, belongs to the State. This is also the common law with regard to navigable waters, although in England no waters are deemed navigable except those in which the tide ebbs and flows. In this country, as a general thing, all waters are deemed navigable which are really so; and especially is it true with regard to the Mississippi and its principal branches.”

Waterways which are classed as unnavigable are subject to no public easement in favor of the Federal Government, not even to that of commerce. That the States have absolute sovereignty with respect to the regulation and control of property rights in the lands forming the shores and beds of such waterways within their boundaries may be considered an admitted proposition that hardly needs assertion.

“Where a river is not navigable in fact (unless reserved in the original grant) it is a private stream and the public has no easement in it. The riparian proprietors own the bed and may bridge the river, fence it, erect dams across it, and use the water for power or other purposes, provided they do not infringe upon the rights of those above or below them.” (*Gould on Waters*, sec. 46; *Farnham on Waters*, sec. 29a.)

“Streams which are not navigable in fact are not subject to public easement, and they can be made navigable only by the exercise of the power of eminent domain and the making of compensation for the easements acquired.” (*I Farnham on Waters*, secs. 77 and 79; *Cooley Constitutional Limitations*, 7th ed., p. 862.)

The doctrine of state ownership and control also applies to the public domain and lands owned by the United States.

“A patent of the United States, conveying land lying upon the borders of a navigable river within the boundaries of a State, conveys no title to land lying under the stream, since the United States has no title thereto.” (*Scranton v. Wheeler*, 163 U. S., 703.)

“The power of Congress to make regulations for the sale and disposition of the public lands confers no right to grant land within a State which was below high-water mark in a navigable stream at the time the State was admitted into the Union.” (*Pollard v. Hagan*, 3 Howard, 230.)

In the case of *Hardin v. Jordan* (140 U. S., 371), where the question arose whether a survey or patent of the United States bounded by a lake which was not navigable was limited by the margin or extended to the center of the lake, the court held that “grants by the United States of its public lands bounded on streams and other waters, made without reservation or restriction, are to be construed as to their effect according to the law of the State in which the land lies.”

And the court further says:

“With regard to grants of the Government for land bordering on tide water, it has been distinctly settled that they only extend to high-water mark, and that the title to the shore and lands under water in front of lands so granted inures to the State within which they are situated, if a State has been organized and established there. Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State—a portion of the royalties belonging thereto and held in trust for the public purposes of navigation and fishery—and can not be retained or granted out to individuals by the United States. Such title being in the State, the lands are subject to state regulation and control, under the condition, however, of not

interfering with the regulations which may be made by Congress with regard to public navigation and commerce."

The foregoing citations are from leading cases, a few only of the many that could be referred to. They are deemed sufficient, however, to show that the powers of the State over the soil forming the banks and bed of water courses, both navigable and unnavigable, are plenary so far as the title, disposition, and use of such areas are concerned, restricted only by the easement conferred by the Constitution on the Federal Government for the benefit of navigation and commerce.

*Second, as to the water.*—The rule of the common law is that every riparian owner has a right to the continued natural flow of the stream, and that this right is not a mere easement or appurtenance, but is inseparably annexed to the soil itself.

"Riparian proprietors upon both navigable and unnavigable streams are entitled, in the absence of grant, license, or prescription limiting their rights, to have the stream which washes their lands flow as it is wont by nature, without material diminution or alteration. Each proprietor may, therefore, insist that the stream shall flow to his land in the usual quantity at its natural place and height, and that it shall flow off his land to his neighbor below in its accustomed place and at its natural level. The proprietors have no property in the flowing water, which is indivisible and not the subject of riparian ownership, but may use it for any purpose to which it can be applied beneficially without material injury to others' rights, or for which the fall of the stream may make it available as a motive power." (Gould on Waters, sec. 204.)

Says Chancellor Kent (3 Kent Com., sec. 439):

"Every proprietor of lands on the banks of a river has naturally an equal right to the use of the water which flows in the stream adjacent to his lands, as it was wont to run (*currens solebat*), without diminution or alteration. No proprietor has a right to use the water, to the prejudice of other proprietors, above or below him, unless he has a prior right to divert it, or a title to some exclusive enjoyment. He has no property in the water itself, but a simple ususfruct while it passes along. *Aqua currit et debet currere ut currere solebat* is the language of the law. Though he may use the water while it runs over his land as an incident to the land, he can not unreasonably detain it, or give it another direction, and he must return it to its ordinary channel when it leaves his estate."

This language has been quoted with approval by the Supreme Court, and is considered a correct statement of the common-law rule of riparian rights in flowing water which obtains in all the States of the Union that have adopted this rule. Each State, however, has the power to change by statute the common-law rule as to streams within its borders, and in a number of States this has been done.

In the case of *United States v. Rio Grande Irrigation Company* (174 U. S., 630) the court say:

"Notwithstanding the unquestioned rule of the common law in reference to the right of a lower riparian proprietor to insist upon the continuous flow of the stream as it was, and although there has been in all the Western States an adoption or recognition of the common law, it was early developed in their history that the mining industry in certain States, the reclamation of arid lands in others, compelled a departure from the common-law rule, and justified an appropriation of flowing waters both for mining purposes and for the reclamation of arid lands, and there has come to be recognized in those States, by custom and by state legislation, a different rule—a rule which permits, under certain circumstances, the appropriation of the waters of a flowing stream for other than domestic purposes."

Regarding such legislation, the court holds "that as to every stream within its dominion a State may change the common-law rule and permit the appropriation of the flowing waters for such purposes as it deems wise," subject, however, to two limitations:

"First, that in the absence of specific authority from Congress a State can not by its legislation destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its waters, so far at least as may be necessary for the beneficial use of the government property. Second, that it is limited by the superior power of the General Government to secure the uninterrupted navigability of all navigable streams within the limits of the United States."

In the case of *Kansas v. Colorado* the question presented for consideration and decision was whether the State of Kansas had a right to the continuous flow of the waters of the Arkansas River as that flow existed before any human interference therewith—or the State of Colorado the right to appropriate the waters of that stream so as to prevent that continuous flow—or whether the matter was subject to the superior authority of the United States and, consequently, to national legislation, regulation, and control. The court discussed the whole question; sustained the validity of state legislation on the subject; and held that the rights of the States in regard to the flow of the Arkansas River were not subordinate to any superior right on the part of the National Government to control the system of the reclamation of arid lands, but "that each State has full jurisdiction over the lands within its borders, including the beds of streams and other waters."

The petition of intervention filed on behalf of the Government was dismissed by the court "without prejudice to the rights of the United States to take such action as it shall deem necessary to preserve or improve the navigability of the Arkansas River."

Following the line of this decision, the powers of the Federal Government may be more fully expressed as follows:

1. Paragraph 2, section 3, Article IV, of the Constitution provides that—

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

By virtue of this provision of the Constitution the Federal Government has complete jurisdiction over the Territories, and—

"Congress has full power of legislation, subject to no restrictions other than those expressly named in the Constitution, and therefore may legislate in respect to all arid lands within their limits.

"As to those lands within the limits of the States, at least of the Western States, the National Government is the most considerable owner and has power to dispose of and make all needful rules and regulations respecting its property. We do not mean that its legislation can override state laws in respect to the general subject of reclamation. While arid lands are to be found mainly, if not only, in the Western and newer States, yet the powers of the National Government within the limits of those States are the same, no greater and no less, than those within the limits of the original thirteen, and it would be strange if in the absence of a definite grant of power the National Government could enter the territory of the States along the Atlantic and legislate in respect to improving, by irrigation or otherwise, the lands within their borders."

As the owner of the lands bordering on water courses within the States, and either constituting a part of the original public domain or

acquired for special purposes, the Federal Government has all the rights of a riparian proprietor under state laws, and may make all needful rules and regulations for the beneficial use of its property.

2. Section 8, Article I, of the Constitution provides, *inter alia*, that the Congress shall have power "to regulate commerce with foreign nations and among the several States and within the Indian tribes."

By virtue of this provision the Federal Government has dominant jurisdiction over interstate commerce and its natural highways, and consequently the right and power to take all needed measures and to enact all legislation necessary to preserve, protect, and improve navigable water courses and to secure their uninterrupted navigability, even against any state action. In this regard its powers are supreme and exclusive, and for this purpose it may regulate and control the flow of water and occupy and use the underlying lands without liability to the State or the riparian owners.

Commerce includes navigation. The power to regulate commerce comprehends the control for that purpose, and to the extent necessary, of all the navigable rivers of the United States which are accessible from a State other than those in which they lie. For this purpose they are the public property of the Nation and subject to all the requisite legislation by Congress. This necessarily includes the power to keep these open and free from any obstruction to their navigation interposed by the States or otherwise; to remove such obstructions where they exist; and to provide by such sanctions as they may deem proper, against the occurrence of the evil and for the punishment of the offenders. For these purposes Congress possesses all the powers which existed in the States before the adoption of the National Constitution. (Gilman v. Philadelphia, 3 Wall, 724.)

"Whatever the nature of the interest of a riparian owner in the submerged lands in front of his upland bordering on a public navigable water, his title is not as full and complete as his title to fast land which has no direct connection with the navigation of such water. It is a qualified title, a bare technical title, not at his absolute disposal, as is his upland, but to be held at all times subordinate to such use of the submerged lands and of the waters flowing over them as may be consistent with or demanded by the public right of navigation. (Scranton v. Wheeler, 179 U. S., 141.)

"All navigable waters are under the control of the United States for the purpose of regulating and improving navigation, and although the title to the shore and submerged soil is in the various States and individual owners under them, it is always subject to the servitude in respect to navigation created in favor of the Federal Government by the Constitution. (Gibson v. United States, 166 U. S., 269.)

"In a navigable stream the public right is paramount, and the owner of the fee of the land on either side of the stream or in its bed holds title subject to the paramount right of navigation over the waters of the river. (West Chicago Street Railroad v. Chicago, 201 U. S., 506.)"

The foregoing pages are designed simply to indicate in a general way the respective jurisdictions of the federal and state governments over the subject-matter. It is believed that the citations made are pertinent, and that they set forth clearly the general doctrine as judicially enunciated.

It is suggested, however, that knowledge of state enactments are essential to complete information on the subject. The attitude of the several States differ materially; some adhere to the common-law rule of limiting the rights of a private riparian owner to high-water mark, reserving to themselves complete ownership below that point; others make private grants to low-water mark, and still others extend such rights to the middle of the stream without restrictions of any kind. A careful examination of the statutes of the various States will be necessary to ascertain the actual existing status of those property rights with which the commission is concerned.

#### A bill to regulate the construction of dams across navigable waters.

*Be it enacted, etc.* That when, hereafter, authority is granted by Congress to any persons to construct and maintain a dam for water power or other purposes across any of the navigable waters of the United States, such dam shall not be built or commenced until the plans and specifications for its construction, together with such drawings of the proposed construction and such map of the proposed location as may be required for a full understanding of the subject, have been submitted to the Secretary of War and Chief of Engineers for their approval, or until they shall have approved such plans and specifications and the location of such dam and accessory works; and when the plans for any dam to be constructed under the provisions of this act have been approved by the Chief of Engineers and by the Secretary of War it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of such plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War: *Provided*, That in approving said plans and location such conditions and stipulations may be imposed as the Chief of Engineers and the Secretary of War may deem necessary to protect the present and future interests of the United States, which may include the condition that such persons shall construct, maintain, and operate, without expense to the United States, in connection with said dam and appurtenant works, a lock in locks, booms, sluices, or any other structures which the Secretary of War and the Chief of Engineers at any time may deem necessary in the interest of navigation, or in accordance with such plans as they may approve, and also that whenever Congress shall authorize the construction of a lock, or other structures for navigation purposes, in connection with such dam, the person owning such dam shall convey to the United States, free of cost, title to such land as may be required for such constructions and approaches, and shall grant to the United States a free use of water power for building and operating such constructions: *Provided further*, That in acting upon said plans as aforesaid, the Chief of Engineers and the Secretary of War shall consider the bearing of said structure upon a comprehensive plan for the improvement of the waterway over which it is to be constructed and for the full development of water power; and as a part of the conditions and stipulations imposed by them, shall provide for improving and developing navigation, and fix such charge or charges for the privilege granted, [as may be sufficient to restore conditions with respect to navigability as existing at the time such privilege be granted or reimburse the United States for doing the same,] [as may be proper and legal,] the proceeds of such charge or charges to be paid into the Treasury to be applied to the improvement of navigation.

*SEC. 2.* That the right is hereby reserved to the United States to construct, maintain, and operate, in connection with any dam built under the provisions of this act, a suitable lock or locks, or any other structures for navigation purposes, and at all times to control the said

dam and the level of the pool caused by said dam to such an extent as may be necessary to provide proper facilities for navigation.

SEC. 3. That the person, company, or corporation building, maintaining, or operating any dam and appurtenant works, under the provisions of this act, shall be liable for any damage that may be inflicted thereby upon private property, either by overflow or otherwise. The persons owning or operating any such dam shall maintain, at their own expense, such lights and other signals thereon and such fishways as the Secretary of Commerce and Labor shall prescribe.

SEC. 4. That all rights acquired under this act shall cease and be determined if the person, company, or corporation acquiring such rights shall at any time fail, after receiving reasonable notice thereof, to comply with any of the provisions and requirements of the act, or with any of the stipulations and conditions that may be prescribed as aforesaid by the Chief of Engineers and the Secretary of War, and in such case the Secretary of War is hereby authorized and directed to revoke any such right or privilege and to declare the same void, without prejudice to the equities of any such person, company, or corporation at the time of revocation: *Provided*, That in the event of any revocation under the foregoing provisions of this section or by Congress the United States shall pay the owners of any dam and appurtenant works built under authority of this act, as full compensation, the reasonable value thereof, exclusive of the value of the authority granted, such reasonable value to be determined by mutual agreement between the Secretary of War and the said owners, and in case they can not agree, then by proceedings instituted in the United States circuit court for the condemnation of such properties: *And provided also*, That the authority hereby granted shall terminate at the end of ninety-nine years from the date of the original approval of the project under this act, unless sooner revoked as herein provided, or Congress shall otherwise direct, and in the event of such termination payment may be made in the manner and to the amount provided as aforesaid.

SEC. 5. That any persons who shall fail or refuse to comply with the lawful order of the Secretary of War and the Chief of Engineers, made in accordance with the provisions of this act, shall be deemed guilty of a violation of this act, and any persons who shall be guilty of a violation of this act shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine not exceeding \$5,000, and every month such persons shall remain in default shall be deemed a new offense and subject such person to additional penalties therefor; and in addition to the penalties above described the Secretary of War and the Chief of Engineers may, upon refusal of the persons owning or controlling any such dam and accessory works to comply with any lawful order issued by the Secretary of War or Chief of Engineers in regard thereto, cause the removal of such dam and accessory works as an obstruction to navigation at the expense of the persons owning or controlling such dam, and suit for such expense may be brought in the name of the United States against such persons, and recovery had for such expense in any court of competent jurisdiction. Said provision as to expense shall not apply wherever the United States has been previously reimbursed or has received such charges or compensation as is provided by this act to be paid to the United States, and the removal of any structures erected or maintained in violation of the provisions of this act or the order or direction of the Secretary of War or Chief of Engineers made in pursuance thereof may be enforced by injunction, mandamus, or other summary process, upon application to the circuit court in the district in which such structure may, in whole or in part, exist, and proper proceedings to this end may be instituted under the direction of the Attorney-General of the United States at the request of the Chief of Engineers or the Secretary of War; and in case of any litigation arising from any obstruction or alleged obstruction to navigation created by the construction of any dam under this act, the cause or question arising may be tried before the circuit court of the United States in any district in which any portion of said obstruction or dam touches.

SEC. 6. That whenever Congress shall hereafter by law authorize the construction of any dam across any of the navigable waters of the United States, and no time for the commencement and completion of such dam is named in said act, the authority thereby granted shall cease and be null and void unless the actual construction of the dam authorized in such act be commenced within one year and completed within three years from the date of the passage of such act.

SEC. 7. That the right to alter, amend, or repeal this act is hereby expressly reserved as to any and all dams which may be constructed in accordance with the provisions of this act, and the United States shall incur no liability for the alteration, amendment, or repeal thereof to the owner or owners or any other persons interested in any dam which shall have been constructed in accordance with its provisions.

SEC. 8. That the word "persons" as used in this act shall be construed to import both the singular and the plural, as the case demands, and shall include corporations, companies, and associations.

Mr. TAWNEY. Mr. Speaker, I do not care to use any more of my time and I yield back the balance.

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

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

Mr. CLARK of Missouri. The yeas and nays, Mr. Speaker.

The yeas and nays were ordered.

The question was taken; and there were—yeas 161, nays 99, answered "present" 13, not voting 112, as follows:

YEAS—161.

Acheson	Butler	Dickema	Gardner, Mass.
Alexander, N. Y.	Calderhead	Douglas	Gardner, Mich.
Allen	Campbell	Draper	Gardner, N. J.
Ames	Capron	Durey	Gilham
Anthony	Chamney	Dwight	Gillett
Barchfeld	Chapman	Edwards, Ky.	Goebel
Bartholdt	Cole	Ellis, Oreg.	Graff
Bates	Cook, Colo.	Englebright	Greene
Beale, Pa.	Cousins	Esch	Grona
Bennet, N. Y.	Crumpacker	Fairchild	Gurnsey
Bennett, Ky.	Currier	Focht	Haggott
Bingham	Cushman	Foss	Hale
Boutell	Dalzell	Foster, Ind.	Hall
Brownlow	Darragh	Foster, Vt.	Hamilton, Iowa
Burke	Davis	French	Hamilton, Mich.
Burleigh	Dawson	Fuller	Hammond
Burton, Del.	Denby	Gaines, W. Va.	Harding

Haskins	Küstermann	Moon, Tenn.	Sperry
Hawley	Lafean	Morse	Stafford
Hayes	Landis	Murdock	Steenerson
Henry, Conn.	Law	Needham	Sterling
Higgins	Lawrence	Nicholls	Stevens, Minn.
Hinshaw	Longworth	Norris	Sullivan
Holliday	Loud	Olcott	Swasey
Howell, N. J.	Loudenslager	Olmsted	Tawney
Howell, Utah	Lovering	Parker	Taylor, Ohio
Howland	McCall	Payne	Thistlewood
Hubbard, Iowa	McCreary	Perkins	Thomas, Ohio
Hubbard, W. Va.	McGuire	Pollard	Tirrell
Huff	McKinlay, Cal.	Porter	Vreeland
Hughes, W. Va.	McKinley, Ill.	Pray	Waldo
Humphrey, Wash.	McKinney	Prince	Wanger
Jenkins	McLachlan, Cal.	Reeder	Washburn
Jones, Wash.	McLaughlin, Mich.	Reynolds	Weeks
Keifer	McMillan	Rodenberg	Wheeler
Kennedy, Iowa	Madison	Sherman	Wilson, Ill.
Kennedy, Ohio	Malby	Slamp	Wood
Kinkaid	Mann	Smith, Cal.	Woodyard
Knapp	Marshall	Smith, Iowa	
Knopf	Martin	Smith, Mich.	
Knowland	Miller	Snapp	

NAYS—99.

Adair	Finley	Hughes, N. J.	Robinson
Adamson	Fitzgerald	Hull, Tenn.	Rothermel
Aiken	Flood	Humphreys, Miss.	Russell, Mo.
Alexander, Mo.	Fornes	James, Ollie M.	Russell, Tex.
Barnhart	Foster, Ill.	Johnson, Ky.	Sabath
Bartlett, Ga.	Gaines, Tenn.	Jones, Va.	Saunders
Beall, Tex.	Garner	Kellher	Shackelford
Bell, Ga.	Garrett	Kitchin	Sheppard
Booher	Gillespie	Lee	Sherley
Brodhead	Godwin	Lenahan	Sims
Brundidge	Gordon	Lever	Slayden
Burnett	Goulden	Lewis	Small
Byrd	Gregg	Lloyd	Smith, Tex.
Candler	Griggs	McDermott	Splight
Carlton	Hackney	Macon	Stanley
Clark, Mo.	Hardwick	Moore, Tex.	Stephens, Tex.
Clayton	Hardy	Murphy	Sulzer
Cox, Ind.	Harrison	O'Connell	Thomas, N. C.
Craig	Hay	Page	Tou Velle
Crawford	Heflin	Patterson	Underwood
De Armond	Heim	Peters	Watkins
Denver	Henry, Tex.	Rainey	Webb
Dixon	Hitchcock	Randell, Tex.	Wiley
Edwards, Ga.	Hobson	Ransdell, La.	Wilson, Pa.
Favrot	Houston	Richardson	

ANSWERED "PRESENT"—13.

Bonyng	Ellis, Mo.	McMorran	Ryan
Carter	Ferris	Overstreet	
Cooper, Wis.	Fulton	Padgett	
Davenport	Livingston	Parsons	

NOT VOTING—112.

Andrus	Coudrey	Johnson, S. C.	Pearre
Ansberry	Cravens	Kahn	Pou
Ashbrook	Davidson	Kimball	Pratt
Bannon	Dawes	Kipp	Pujo
Barclay	Driscoll	Lamar, Fla.	Rauch
Bartlett, Nev.	Ellerbe	Lamar, Mo.	Reid
Bede	Estopinal	Lamb	Rhinock
Birdsall	Fassett	Langley	Riordan
Bowers	Floyd	Lanning	Roberts
Boyd	Foelker	Lassiter	Rucker
Bradley	Fordney	Leake	Scott
Brantley	Foulkrod	Legare	Sherwood
Broussard	Fowler	Lindbergh	Smith, Mo.
Burgess	Gill	Lindsay	Southwick
Burleson	Glass	Lorimer	Sparkman
Burton, Ohio	Goldfogle	Lowden	Sturgiss
Calder	Graham	McGavin	Talbott
Caldwell	Hackett	McHenry	Taylor, Ala.
Cary	Hamil	McLain	Townsend
Cassel	Hamlin	Madden	Volstead
Caulfield	Haugen	Maynard	Wallace
Clark, Fla.	Hepburn	Mondell	Watson
Cockran	Hill, Conn.	Moon, Pa.	Weems
Cocks, N. Y.	Hill, Miss.	Moore, Pa.	Weisse
Conner	Howard	Mouser	Willett
Cook, Pa.	Hull, Iowa	Mudd	Williams
Cooper, Pa.	Jackson	Nelson	Wolf
Cooper, Tex.	James, Addison D. Nye		Young

So the rules were suspended and the bill was passed. The Clerk announced the following additional pairs:

Until further notice:

- Mr. MUDD with Mr. TALBOTT.
- Mr. MADDEN with Mr. BURLESON.
- Mr. BRADLEY with Mr. ELLERBE.
- Mr. ANDRUS with Mr. ASH BROOK.
- Mr. BARCLAY with Mr. BRANTLEY.
- Mr. BEDE with Mr. BURGESS.
- Mr. BOYD with Mr. CALDWELL.
- Mr. CASSEL with Mr. CRAVENS.
- Mr. CAULFIELD with Mr. ESTOPINAL.
- Mr. DRISCOLL with Mr. GILL.
- Mr. FORDNEY with Mr. GLASS.
- Mr. HAUGEN with Mr. HOWARD.
- Mr. HEPBURN with Mr. LAMB.
- Mr. HILL of Connecticut with Mr. JOHNSON of South Carolina.
- Mr. HULL of Iowa with Mr. KIMBALL.
- Mr. LANGLEY with Mr. KIPP.

Mr. LINDBERGH with Mr. McHENRY.

Mr. LOWDEN with Mr. WILLIAMS.

Mr. McMORRAN with Mr. PUJO.

Mr. MONDELL with Mr. McLAIN.

Mr. MOUSER with Mr. MAYNARD.

Mr. NELSON with Mr. RAUCH.

Mr. PEARRE with Mr. RUCKER.

Mr. ROBERTS with Mr. SHERWOOD.

Mr. SCOTT with Mr. SPARKMAN.

Mr. SOUTHWICK with Mr. TAYLOR of Alabama.

Mr. TOWNSEND with Mr. WILLETT.

Mr. WATSON with Mr. WALLACE.

Mr. BURTON of Ohio with Mr. RYAN.

The result of the vote was announced as above recorded.

ADDITIONAL JUDGE, WESTERN DISTRICT OF WASHINGTON.

Mr. JENKINS. Mr. Speaker, I desire to call up the conference report on the disagreeing votes of the two Houses on amendments of the Senate to the bill H. R. 27061, an act to provide for the appointment of an additional judge in and for the western district of Washington.

The SPEAKER. The Clerk will read the report.

The conference report and statement are as follows:

CONFERENCE REPORT.

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 27061) to provide for the appointment of an additional judge in and for the western district of Washington, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate and agree to the same.

That the House recede from its disagreement to the amendment of the title of the bill, and agree to the same.

JOHN J. JENKINS,  
D. S. ALEXANDER,  
HENRY D. CLAYTON,  
*Managers on the part of the House.*

CHAUNCEY M. DEPEW,  
J. B. FORAKER,  
LEE S. OVERMAN,  
*Managers on the part of the Senate.*

STATEMENT.

Statement of House conferees accompanying report of committee of conference on H. R. 27061 under and pursuant to House Rule XXIX:

An amendment of the Senate provided for the appointment of an additional judge of the district court of the United States for the district of Oregon, and it is recommended that the House recede from its disagreement and agree to the same; and that the House recede from its disagreement to the amendment of the title of the bill and agree to the same.

JOHN J. JENKINS,  
D. S. ALEXANDER,  
HENRY D. CLAYTON,  
*Managers on the part of the House.*

Mr. JENKINS. Mr. Speaker, I move the adoption of the report.

Mr. MANN. Mr. Speaker—

The SPEAKER. Does the gentleman from Wisconsin [Mr. JENKINS] yield to the gentleman from Illinois [Mr. MANN]?

Mr. JENKINS. I yield to the gentleman from Illinois for five minutes.

Mr. MANN. Mr. Speaker, this is a bill which, as it passed the House, provided for a new district judge for one of the districts of Washington. Some reason was given for that when the bill passed the House. The Senate has added to that an amendment providing for a new district judge for Oregon. It seems to me that the Senate has somewhat taken advantage of an opportunity to indulge in a little logrolling with the House. If there be occasion for a new district judge for Oregon, that matter should have been presented to the House by itself and not as a rider upon a bill providing for a new district judge for Washington. These items ought to stand by themselves and not to be forced upon the House. The question of a district judge for Oregon has never been considered in the House, and we ought not to permit the Senate, when we pass a bill providing for a district judge in one State, to force us to agree to a judge in another State, when the matter has not been presented to the House for our action, and which ought to have been reported from the Committee on the Judiciary.

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

Mr. MANN. Certainly; I yield for a question.

Mr. TAWNEY. Do I understand the gentleman to say that this matter has never been considered by the House at all?

Mr. MANN. It has never been considered by the House, so far as I know.

Mr. TAWNEY. But has come here added as an amendment by the Senate?

Mr. MANN. It has been added to this bill as an amendment by the Senate.

Mr. TAWNEY. Disagreed to, went into conference, and now comes back with a final conference report?

Mr. MANN. That is as I understand it.

Mr. TAWNEY. Which is now under consideration?

Mr. MANN. Which is now under consideration, giving an additional district judge for Oregon. I do not know whether it requires another district judge or not. I know if you provide another district judge for each two Members of Congress, you have got to increase the number very greatly.

The gentleman from Washington, when he addressed this House on this bill, asking for a district judge for Washington, undertook to give special reasons for a district judge in Washington, and upon his statement of those special reasons the House passed the bill; and we are now in the position, if we do not reject the report, of acceding to the creation of another district judge for Oregon, concerning which we have never heard, concerning which no report has been made to the House. I hope the conference report will not be agreed to.

Mr. CLARK of Missouri. Will the gentleman allow me to ask him a question?

Mr. MANN. Certainly.

Mr. CLARK of Missouri. If Illinois were furnished United States judges in proportion to this Oregon matter, you would have 12 or 13 district judges out there, would you not?

Mr. MANN. That would be about what it would amount to.

Mr. CLARK of Missouri. You have come over to my platform of the other day, that the Senate ought to be resisted in these matters.

Mr. MANN. That has been my platform for some time. I am not in favor of creating district judges and circuit judges by any logrolling in the Senate.

Mr. CLARK of Missouri. I am not in favor of the Senate bullying the House in that way.

Mr. JENKINS. Mr. Speaker, I feel it due to the House and to the committee, and particularly to the conference committee, that a statement be made to the House. There has been no logrolling so far as the Senate is concerned. The facts are that the Committee on the Judiciary unanimously agreed upon the facts and evidence presented to the committee that the State of Washington was entitled to another district judge. The House, by an overwhelming vote, approved of the judgment of the Committee on the Judiciary and passed a bill, and it went to the Senate.

Now, I do not think it fair to characterize the action of the other body as logrolling. They have as good a right to amend bills as this House has to amend bills of the Senate. In their wisdom they saw fit to attach an amendment giving the State of Oregon an additional district judge. They insist that the evidence is overwhelming in favor of the proposition, and when that bill came back here with that amendment, on my motion the House disagreed to the amendment. Our attention was invited to it, and the Senate asked the House for a conference, and this House in its wisdom agreed to a conference—

Mr. HENRY of Texas. Will the gentleman yield to me for a minute?

Mr. JENKINS. Certainly.

Mr. HENRY of Texas. Has any bill ever been introduced by any Representative of the State of Oregon, and has any such bill been before the Committee on the Judiciary?

Mr. JENKINS. Why, yes; there has been a bill introduced by the gentleman from Oregon [Mr. ELLIS], I will say to my colleague.

Mr. HENRY of Texas. When was it introduced?

Mr. JENKINS. I can not say, now.

Mr. HENRY of Texas. Was it ever considered by the Committee on the Judiciary?

Mr. JENKINS. I want to make my statement, so that gentlemen will have all the facts before the House.

As I said a moment ago, an amendment was made by the Senate. They had the right to do it. And a conference having been asked and the conferees appointed, the conferees met and were forced either to smother the bill giving the State of Washington an additional judge, or we had to come to this House and throw the responsibility upon the House.

Now, the conference committee did not feel like leaving the State of Washington without an additional judge, but felt as though the House ought to take the responsibility. Therefore the conference committee brought the matter here, and it is now before the House.

Mr. MANN. I hope the gentleman did not think I was making any reflection upon the conference committee, because that is a method of presenting the question fairly to the House.

Mr. JENKINS. Of course, by what was said here the other day it was clear that those who spoke with reference to the matter were not very favorable to this additional judge; but there is so much said on the part of Members of this House and throughout the country about committees smothering legislation and depriving the House of its constitutional right to pass upon questions, that this committee thought it was due to the House to bring this entire matter here and let the House say whether or not this judge should be denied to the people of Washington, when we are satisfied that they are entitled to one. Now, the evidence produced before the conference committee satisfied the House conferees that the State of Oregon was entitled to an additional judge, and in order that the House may be in possession of all the facts, I desire to yield ten minutes to the gentleman from Oregon [Mr. ELLIS].

Mr. ELLIS of Oregon. Mr. Speaker, in regard to this bill, we are not asking anything here to-day but what we think is absolutely fair and just, and with all the facts before this House as to the existing conditions there, I am satisfied when it comes to a vote that those of you in possession of those facts will see that what we are asking is absolutely fair.

Now, we do not make any claim that Washington is not entitled to all the people of that State are asking, but we can make a better showing here to-day in facts and figures than can possibly be made by that district. In the first place, the State of Oregon is all in one judicial district, comprising over 96,000 square miles, and in order to reach the court many people must travel six or seven hundred miles. There are men under indictment there now who have been under indictment for four long years, some of them clamoring for trial, and they have not been able to have it. They must bring witnesses in many instances a distance of not less than 650 miles, which virtually amounts to a denial of justice, if the defendant is a poor man, because he can not stand the expense of getting his witnesses into court.

Mr. HENRY of Texas. Four or five years ago did we not give you an additional judge for the State of Oregon?

Mr. ELLIS of Oregon. You did not.

Mr. HENRY of Texas. I desire to say that at that time I investigated the question, and I believed you were entitled to an additional judge then. So I shall not oppose this bill.

Mr. ELLIS of Oregon. I want to say, in making a comparison of the number of cases on the dockets of the two courts, I say nothing in the disparagement of Washington, but the territory embraced in the western district of Washington does not embrace one-third of the territory embraced in the district of Oregon. Washington already has two judges, but Oregon has only one.

Mr. TAWNEY. How many subdivisions are there in your district?

Mr. ELLIS of Oregon. It is not subdivided at all. It is all in one district.

Mr. TAWNEY. I understand it is all in one district, but in how many places are terms of court held?

Mr. ELLIS of Oregon. The court is held in the city of Portland and in no other place. This bill provides for holding court in two other places, one 231 miles east of Portland, and one about 300 miles south of Portland.

Mr. TAWNEY. Would not the people of the State be benefited more by providing for, say, three divisions, and requiring the present judge to hold court at each one of those three places—a regular term?

Mr. ELLIS of Oregon. If it was possible for the present judge to do it; but the state of the business is so congested that it is absolutely impossible for him to do it. Business is now years behind in that district. There were pending on the 6th day of July last, admiralty cases, 121; bankruptcy cases, 145; civil cases in which the United States was a party, 105; in which it was not a party, 394; criminal cases, 58.

In the western district of Washington, there are pending: Admiralty cases, 113; bankruptcy, 157; civil, in which the United States is a party, 79; civil cases, in which the United States is not a party, 291; criminal cases, 52; a total of 692, or 131 more cases pending in the district of Oregon than in the western district of Washington, comprising practically one-third of the territory, with railroad facilities right at hand and water transportation, while in a large part of the State of Ore-

gon they must use the old-fashioned stagecoach in getting to and from points, and travel six or seven hundred miles.

Then there were fines imposed in the district of Oregon during the fiscal year amounting to \$17,541. In the western district of Washington they amounted to \$4,200—over \$13,000 difference in favor of Oregon in fines collected. It seems to me, Mr. Speaker, that under that condition of facts we are entitled to an additional judge.

A bill was introduced creating an additional district in Oregon, and I was before the committee, and others from Oregon were before the committee, urging it; but the committee of the House, as well as the committee of the Senate, seemed to be disposed not to create additional districts, and therefore the matter drifted along, until we find ourselves in the present predicament. We feel that it is an absolute necessity, and in order that justice may be meted out, in order that those under indictment may have a speedy trial, in order that the business men may have justice in our State, in order that those who live at a great distance from court may have justice by getting their cases before the court and having a hearing, I insist that the measure is absolutely just and equitable and should pass the House. [Applause.]

Mr. JENKINS. Mr. Speaker, I now yield ten minutes to the gentleman from Alabama [Mr. CLAYTON].

Mr. CLAYTON. Mr. Speaker, in reply to the suggestion—if I caught the words of the gentleman correctly—that the Judiciary Committee of the House may not be always careful in the way of creating new judgeships, I desire to say that since I have been a member of that committee the committee has repeatedly turned down propositions to create new judges and new districts.

Mr. MANN. And this is one of them.

Mr. CLAYTON. The gentleman will permit me to finish my statement. This committee, Mr. Chairman, and the records of the committee will bear me out, has rejected and rejects at every session of Congress numbers of bills creating new districts and new judges. It has adopted a rule and has unfailingly adhered to it, and that rule is not to create a judgeship or a district unless there is absolute necessity for such made manifest to that committee.

I believe my memory is correct when I say that not only has that been the rule of the committee, but it has gone further than that even, and has, as a rule, required the approval of the Department of Justice predicated upon an investigation and report made by the Attorney-General as to the state of the public business in the particular locality where the judge is desired, or where the new district is desired. That committee has always been very careful.

Now, Mr. Speaker, my recollection of this particular matter is that several years ago a bill creating a new judge in the State of Oregon passed the committee. I know that the people there have persistently asked this of the Judiciary Committee, and on account of its growth and population, on account of the development and the remarkable increase in litigation, and on account of the vast distance to be traveled, have asked for this legislation. It has been demonstrated that this judgeship is a necessity.

However, the Judiciary Committee of the House did not at this session bring itself to the conclusion that this bill should be put through at this session in regard to the judgeship of Oregon. But the gentleman from Washington and the members of the bar from that State appeared before this committee and presented what I consider an unanswerable case in behalf of a new judgeship in the State of Washington, and the Department of Justice urged it and presented irrefutable arguments in favor of it. The House committee and this House gave a judge to the State of Washington, but it did not give a judge to the State of Oregon.

Now, when the Washington bill got to the Senate, the Senate amended that bill by tacking on the Oregon judgeship proposition. Mr. Speaker, as much as we may regret the growth of business in the United States courts, the fact is it is increasing from year to year. I have stood here for ten years and tried to do at least one thing that would cut down the business of the federal courts at least in one particular.

I have asked you repeatedly to repeal the bankrupt law, for its repeal would tend to relieve the federal courts. But you have refused to do that. I have opposed the enactment of new statutes that increased the business of the federal courts. But the majority has overruled us and passed them. We have passed a great many laws necessary in the progress of the development of our country; they have also increased the business of the federal courts. The business of the federal courts, like everything else in this country, is increasing, and the business of the federal courts in the State of Oregon is growing just

as rapidly as the business developments and population of that great State are growing.

It would be a poor policy for this great Government of ours to set up the plan of withholding justice and withholding accessible courts, withholding a proper number of judges for the due and proper administration of the law. We must see to it that justice is without bargain, sale, or denial, and, in my judgment, it will prove a matter of economy to create this judgeship in the mileage that will be saved to jurors and witnesses. Speaking for the people of Oregon who are interested as litigants in that court, it would be a great saving to them in the matter of convenience and in the matter of railroad transportation. [Applause.]

This State of Oregon, in my opinion, should have this extra judge. Mr. Speaker, I could not stand up here in the House of Representatives and acknowledge, as I do now, that in the greatest State in this Union, not greatest in territory, but the greatest in resources, considering her territory, and the greatest in population without regard to numbers—the State of Alabama—has three federal judges, if I did not believe that the State of Oregon needs this new judge. We found it necessary to have three judges in Alabama in order that justice might be administered economically and freely and without denial in that great Commonwealth. Nearly every State in this Union is growing, particularly in the West and in the South, and we can not stop the growth, and Congress must legislate to meet the growth and the demands for the administration of public justice economically and conveniently to the people.

If the House of Representatives was right in creating a judgeship for the State of Washington—and you have voted that it was right in doing that, for you passed that bill here some days ago—manifestly it would be right to pass the proposition for the State of Oregon. Some gentleman has asked me why this increase of business out there? Mr. Speaker, the admiralty practice in the Western States that have water transportation is very much larger than it is in many of the older States. A large part of the business of transportation is done on the water, and wherever there is a large water commerce that means necessarily much litigation growing out of suits in admiralty, involving large amounts and consuming much time in its trial.

The SPEAKER. The time of the gentleman has expired.

Mr. JENKINS. I yield the gentleman one minute more.

Mr. CLAYTON. Then, Mr. Speaker, there are various sorts of lawsuits growing out of land transactions in that new country and out of all sorts of rights, mining rights, timber rights, water rights, a great class of litigation that is incident to the development of any great and growing Commonwealth such as the State of Oregon is. This bill, in my judgment, ought to pass as amended. [Applause.]

Mr. JENKINS. Mr. Speaker, I yield one minute to the gentleman from Oregon [Mr. HAWLEY].

Mr. HAWLEY. Mr. Speaker, in addition to what has already been said by my colleague, I wish to call attention to the following facts: In 1907 there were 66 civil cases in which the United States was a party, and in 1908 there were 105, an increase of 39. There was no increase in the criminal cases for those two years. Of the civil cases in which the United States was not a party, in 1907 there were 403 cases, and in 1908 515, an increase of 79. In other cases there was an increase of 124. So the total increase in cases on the docket was from 581 in 1907 to 823 in 1908, an increase of 242 cases in one year. Mr. Speaker, we need the district judge for the business of Oregon, and I hope the bill will pass.

Mr. JENKINS. Mr. Speaker, I yield five minutes to the gentleman from Illinois [Mr. MANN].

Mr. MANN. Mr. Speaker, I hold in my hand the report of the Attorney-General for the last fiscal year, giving the amount of business in the two courts, the district of Oregon and the western district of Washington. I notice that in the district of Oregon during the last fiscal year there were disposed of 16 civil cases in which the United States was a party and 51 cases in the western district of Washington. In that same year there were disposed of civil cases in which the United States was not a party 60 in the district of Oregon and 249 in the western district of Washington.

I fail to see how these figures show the necessity for an extra judge—16 cases, 8 jury trials in the whole district in the course of a year in civil cases in which the United States was a party, as against 51 in the western district of Washington, and 60 civil cases in which the United States was not a party terminated in Oregon as against 249 terminated in the western district of Washington. If there be reason for the creation of an additional judge in the western district of Washington, certainly the amount of business terminated in the district of Oregon does not justify a new judge there—not an additional judge.

Mr. SIMS. How many land-law suits did they have there?

Mr. MANN. I do not know whether I can pick up the land law, but I can the admiralty. The gentleman from Alabama referred to the number of admiralty suits.

Mr. ELLIS of Oregon. If the gentleman will permit me, I will say this, that in some of the litigation pending in Oregon were some of these land cases, which took a great deal of time, a great number of days in a single case, so the number of cases is no criterion.

Mr. MANN. That will not continue all of the gentleman's life, I hope. Now, let us take the admiralty cases to which the gentleman from Alabama referred. There were 13 terminated in the district of Oregon and 63 terminated in the western district of Washington. Does that show the necessity for an additional judge in Oregon? It may be true that there have been some extensive land-fraud cases there, but I do hope that the gentlemen representing Oregon will not undertake to say that these land-fraud cases there are to continue during the life of the State.

Mr. JENKINS. Mr. Speaker, I yield ten minutes to the gentleman from New York [Mr. ALEXANDER].

Mr. ALEXANDER of New York. Mr. Speaker, some gentlemen present will remember that the other day I spoke of the courts of the ninth circuit, saying that they had been under consideration and investigation, and fully reported upon to the Judiciary Committee. My colleague [Mr. CLAYTON] has already referred to that report. It came in connection with Oregon and Washington, and the report then made by the Attorney-General convinced the subcommittee that Oregon needed relief as well as Washington. Two years ago a bill was passed by the Senate for 2 circuit judges. We did not then have sufficient data upon which to determine whether it should be 2 circuit judges or 2 district judges. But after the investigation it was manifest that 2 additional judges were needed in the ninth circuit. Now, the ninth circuit is everything west of the Rocky Mountains. It had only 9 district judges and 3 circuit judges, while the eighth circuit has 18 district judges and 4 circuit judges.

Mr. SHACKLEFORD. What States are embraced in that?

Mr. ALEXANDER of New York. The Missouri and Mississippi Valley States. Everything west of the Rocky Mountains is within the ninth circuit, and the two additional district judges provided in this bill evens it up and gives the necessary help. The entire State of Oregon is one district, and it was thought inadvisable to divide it into two districts, but to give it an additional judge. Let me compare—

Mr. SIMS. Will the gentleman permit? Has the committee determined on an evening up? In other words, has the Mississippi country too many judges?

Mr. ALEXANDER of New York. The committee is influenced by what is necessary in the ninth circuit. We are not "evening things up."

Mr. SIMS. The gentleman said the Mississippi country had so many, and to "even it up" you were giving another one over here.

Mr. ALEXANDER of New York. Oh, no. I meant to give the ninth circuit what it needs, just as the eighth circuit has what it needs.

Mr. SIMS. In proportion to population, has not the ninth circuit a much fewer number of judges than the eighth?

Mr. ALEXANDER of New York. The ninth circuit, in proportion to population, may have as many judges as the eighth, but it is short in proportion to the work to be done.

Mr. MANN. It has a great deal more in proportion to population.

Mr. ALEXANDER of New York. In Oregon the civil cases pending July 1, 1907, to which the United States was a party, were 66; in the western district of Washington, 70. On July 1, 1908, civil cases pending in Oregon were 105, in Washington 79. Pending July 1, 1907, criminal cases in Oregon, 58; in Washington, 52. Pending July 1, 1908, criminal cases in Oregon, 58; in Washington, western district, 52. Of civil cases pending July 1, 1907, to which the United States was not a party, in Oregon, 436, and in Washington, 381.

Mr. SIMS. Another question. Why did the gentleman's committee of the House then turn down the Oregon proposition?

Mr. ALEXANDER of New York. We did not turn down the Oregon proposition.

Mr. SIMS. But you refused to report it.

Mr. ALEXANDER of New York. We did not refuse—

Mr. SIMS. Then you failed to report it.

Mr. ALEXANDER of New York. We failed to report it because we did not want to create another district.

The subcommittee to which these bills have been referred has studied them with relation to the ninth circuit, and we knew where the judges were needed.

Mr. ELLIS of Oregon. Will the gentleman yield for a question?

Mr. ALEXANDER of New York. Certainly.

Mr. ELLIS of Oregon. Is it not a fact that Oregon came asking for an additional district and not an additional judge, and the committee was opposed to creating more districts?

Mr. ALEXANDER of New York. That is the principal reason why we did not report it. The committee is opposed to increasing districts, but in favor of increasing judges when necessary.

Mr. CLAYTON. Will my colleague on the committee yield to me for one question?

Mr. ALEXANDER of New York. Yes.

Mr. CLAYTON. The gentleman from Illinois [Mr. MANN] in his speech furnished some figures showing that comparatively a few number of cases had been disposed of in the Oregon courts. That is not the question. I ask the gentleman's permission to say to the House that on July 1, 1907, there were 36 civil cases pending in the federal courts.

Mr. ALEXANDER of New York. I just read a comparative statement.

Mr. CLAYTON. A comparative statement will show the amount of business which has lately begun in the courts. We can not judge by the amount of business that is turned out of the courts, but by how much there is in the court there that ought to be turned out of the court.

Mr. ALEXANDER of New York. Yes. Mr. Speaker, I am going to add just one word more.

Mr. PARSONS. Can the gentleman explain why so few cases have been disposed of in the courts in the Oregon district?

Mr. ALEXANDER of New York. Well, one reason is, perhaps, that the judge of the Oregon district may not be as rapid a worker as Judge Hanford, of the Washington district. Judge Hanford has a reputation of being one of the most rapid workers in the United States. The judge of Oregon is equally as able, but perhaps not quite so rapid. The work, considering the amount of it, is not behind the work in other districts.

Mr. STEPHENS of Texas. The gentleman is an able lawyer and can answer one question, possibly, that will throw some light on the subject. Can not this new judge you are creating for Washington also have a district cut out in Oregon and fill the vacancy of both States by creating one judge? Can not a new district be made in Oregon and let him hold court in two States?

Mr. ALEXANDER of New York. No. The policy is to increase the judges when necessary, and not create more districts. We have too many districts in the country.

Mr. STEPHENS of Texas. As a legal proposition, could not one judge hold in two different States?

Mr. ALEXANDER of New York. Oh, yes; he often does so. He is called from one district to the other, as work demands attention.

Mr. SIMS. Can the gentleman assure us he will get a rapid worker now?

Mr. JENKINS. Mr. Speaker, I ask for a vote.

The SPEAKER. The question is on agreeing to the conference report.

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

Mr. MANN. I ask for a division.

The House divided; and there were—ayes 140, noes 56.

So the conference report was agreed to.

#### BUILDING ASSOCIATIONS, DISTRICT OF COLUMBIA.

Mr. SMITH of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill S. 6055, with amendment, which I send to the Clerk's desk.

The SPEAKER. The Clerk will report the bill with amendment.

The bill as amended was read, as follows:

An act (S. 6055) to amend section 691 of subchapter 7, building associations, of the Code of Law for the District of Columbia.

*Be it enacted, etc.* That section 691, subchapter 7, of the Code of Law of the District of Columbia, relating to building associations, be amended so that the same shall read:

“SEC. 691. Objects.—The object of such corporation shall be the accumulation of a capital in money to be derived from the savings and accumulations by the members thereof, to be paid into said corporation in such sums and at such times as may be designated by the by-laws of said corporation, from which the members thereof may obtain advances upon their shares of stock: *Provided*, That the Comptroller of the Currency, in addition to the powers conferred upon him by law for the examination of national banks, is further authorized, whenever he may deem it useful, to cause examination to be made into the condition of any building association incorporated under the provisions of this chapter, as well as any other building or loan association located or doing business in the District of Columbia. The expenses necessarily incurred in making any such examination shall be paid by such association to the Comptroller of the Currency at the time of the making of such examination: *And provided further*, That every building or loan association located and doing business in the District of Columbia shall make to the Comptroller of the Currency at least one report during each year,

according to the form which may be prescribed by him, verified by the oath or affirmation of the president or secretary of such association and attested by the signature of at least three of the directors. The said comptroller shall also have power to take possession of any company or association whenever in his judgment it is insolvent or is knowingly violating the laws under which such company is incorporated, and to liquidate the same in the manner provided in the laws of the United States in respect to national banks: *Provided further*, That from and after the 1st day of July, A. D. 1909, no person, company, association, partnership, or corporation, except corporations organized under and availing themselves of the privileges of this act, and except building associations heretofore organized and in actual operation before the passage of this act, shall conduct or carry on in the District of Columbia the kind of business named in this act without strict compliance in all particulars with the provisions of this act. Any person, officer, or agent of any company, firm, or corporation who shall willfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall on conviction thereof be punished by a fine of not more than \$1,000 or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court. That any willful false swearing in regard to any certificate, or report, or public notice required by the provisions of this act shall be perjury, and shall be punished as such according to the laws of the District of Columbia. And any misappropriation of any of the money of any corporation or company formed under or availing itself of the privileges of this act, or of any building or loan association located or doing business in the District of Columbia, or any money, funds, or property intrusted to any such corporation, company, or association, shall be held to be larceny and shall be punished as such under the laws of said District.”

SEC. 2. That there be added to the Code of Law of the District of Columbia a new section, to stand as section 691a, and to read as follows:

“SEC. 691a. That any association or corporation organized and existing under the laws of any State or Territory to do, or now doing, in the District of Columbia, a deposit, investment, loan, or mortgage business, or otherwise having any of the features of a building association, shall be subject to all the provisions of the foregoing section of this act in respect of the powers of the Comptroller of the Currency thereover, and any such association or corporation shall at all times keep on deposit with the Comptroller of the Currency in money, or stocks, bonds and mortgages, or other securities to be approved by said officer, not less than 25 per cent of its capital and surplus as security for its depositors and creditors, and as a guarantee for the faithful performance of its contracts, and may also make such further deposits of its assets as above described with the comptroller for such purpose as it may from time desire so to do.”

Mr. SIMS. I demand a second.

The SPEAKER. The second is ordered under the rules.

Mr. SMITH of Michigan. I yield five minutes to the gentleman from Pennsylvania [Mr. BROADHEAD].

Mr. BROADHEAD. Mr. Speaker, the purpose of this bill is to provide an official examination of the affairs and accounts of building and loan associations doing business in the District of Columbia. It also provides that such building and loan associations shall make at least one report a year to the Comptroller of the Currency, and gives the Comptroller power to declare such building and loan associations insolvent and take charge of their affairs when, in his judgment, the facts require such action.

Mr. MADDEN. Does this bill provide a periodical examination of the accounts and assets of these associations?

Mr. BROADHEAD. It provides for an examination of their affairs and accounts in the discretion of the Comptroller of the Currency.

Mr. MADDEN. Does it provide for the same character of examination of building and loan associations organized in outside States doing business in the District?

Mr. BROADHEAD. Yes. There is also a provision that all building and loan associations, domestic as well as foreign, shall deposit 20 per cent of their assets, either in money or in stock or in bonds or in other securities, in the hands of the Comptroller. The purpose of all this is to protect the people who invest in building and loan associations, a large majority of whom are persons of small means.

Mr. MADDEN. There is no system of examination now of the building and loan associations doing business in the District?

Mr. BROADHEAD. None; and this bill is to fill that omission.

Mr. MADDEN. So that nobody knows whether their assets or accounts are worth anything or not?

Mr. BROADHEAD. No. There is no provision for examinations of building and loan associations in the District.

Mr. MADDEN. This is a work in the right direction.

Mr. BROADHEAD. I think that it is; and I think, therefore, the bill should pass.

This bill is meant to apply only to companies doing the business of building and loan associations, and is, indeed, a step in the right direction; but it is only a step. It seems to me there are many other steps that should be taken toward the perfecting of the laws of this District pertaining to the organization, regulation, and control of corporations doing business here.

Mr. Speaker, the remaining days of this Congress are too few, and the business now pressing on us is too great to permit of any further successful effort toward improving that part of the District Code pertaining to corporations other than the passage of this present bill. But let me take this opportunity of submitting a few observations which may be of some use to a succeeding Congress in the way of suggestions of how the District corporation laws might be amended to advantage.

First. After examination of the code it appears to me that any three or more persons may form a corporation and carry on any enterprise (with two or three exceptions, such as a bank, railroad, or real estate business) by executing and filing in the office of the recorder of deeds a certificate in the prescribed form. The law does not require that any one of the organizers should be a citizen of the District; yet later on it provides that after the first year the stockholders shall annually elect "not less than three nor more than fifteen trustees," a majority of whom must be citizens of the District. Why permit all of the organizers and all of the trustees to be non-residents during the first year, and immediately after the first year make it obligatory that a majority of the trustees be citizens of the District? As to this the suggestion is that the code be amended so as to provide that at least one of the original incorporators and at least one of the trustees or directors shall at all times be a bona fide resident of the District, whose address shall be filed with the recorder of deeds. There is sufficient reason why at least one director should be a resident of the District to facilitate service of process, but there does not seem to be sufficient reason to hamper outside capital from coming into the District by requiring that after the first year a majority of the whole board of trustees must be residents. This amendment was provided in the bill introduced on December 2, 1907, by the gentleman from New York [Mr. GOULDEN] (See H. R. 227) and submitted to the District Commissioners, who found no fault with it. The bill is still in committee.

Second. Under the code as it now stands, domestic corporations can not be organized to buy, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real-estate agents or brokers. Exactly why the existence of domestic real-estate companies should be prohibited is not clear to me. Such companies tend to systematically develop large tracts of vacant land outside of large cities. The beautiful suburbs of Philadelphia and many other cities are examples. But, assuming that the prohibition is a good one; that having heretofore been carefully considered and written in the law, it is to that extent res adjudicata, then why not prohibit foreign real-estate corporations from doing business in the District? There is nothing in the code now that would prohibit a real-estate corporation, incorporated in some State, from entering here and doing business in the District. In this respect the suggestion is that either the prohibition against domestic corporations should be repealed or the code amended so as to exclude foreign corporations from doing a real-estate business from which the domestic corporation is excluded. A bill placing the same prohibition against foreign corporations as exists against domestic corporations was introduced by the gentleman from Texas [Mr. SHEPPARD] on March 7, 1908 (H. R. 18880), and referred to the Committee on the District of Columbia on the same day, and, on March 9, 1908, referred to the Commissioners of the District; but I can find no reply from the commissioners. The bill is therefore still pending before the District Committee.

Third. At present, upon the filing of the certificate of organization, no fees are charged, excepting those for recording. Graduated filing fees should be provided for. Such provision was contained in the bill which I have just referred to, introduced by the gentleman from New York [Mr. GOULDEN]; but, as I said, the bill is still pending in committee.

Fourth. A provision should be inserted in the code requiring the address of the resident director to be on file in the recorder's office. Upon the death or resignation of such resident director the company should be compelled, within ten days after such death or resignation, to name a successor, who shall also be a resident and whose address shall be immediately filed in the recorder's office. This provision is to facilitate the service of processes. In the absence of such resident director from the District for a period of ten days or more, service of process should be deemed good and sufficient service upon the corporation by leaving such process at the post-office address of said director or in charge of a person of full age and years of discretion and the mailing of same to the said post-office address as filed.

The provision in the code at present, I think, opens the door to a great deal of uncertainty in regard to the service of process on corporations. It is short, indefinite, and reads as follows:

SEC. 112. Corporations. In a suit against a corporation, whether foreign or domestic, if process can not be served, such corporation may be proceeded against as a nonresident defendant by notice by publication.

The provision relative to nonresidents provides that publication may be substituted for personal service upon any defendant

who can not be found and who is shown by affidavit to be a nonresident or to have been absent from the District for at least six months. No order for the substitution of publication for personal service can be made until a summons for the defendant shall have been issued and returned "not to be found" and the nonresidence of the defendant or his absence shall be proved by affidavit to the satisfaction of the court, and whereupon an order of publication is issued and published at least once a week for at least three successive weeks, and so on.

It would seem much simpler in every respect to have a corporation designate a certain person, whose address shall continually be kept on file in the recorder's office, upon whom service can be had. It would make it easier for the plaintiff and would insure the defendant corporation of receiving notice, whereas a published notice once a week might escape attention.

Fifth. The code should provide that a majority of all the stock of the corporation should be represented either in person or by proxy at meetings where directors or trustees are elected. The code at present provides that the affairs of corporations shall be managed by not less than 3 nor more than 15 trustees, who shall be stockholders, and, after the first year, a majority of whom shall be citizens of the District, who shall be annually elected by the stockholders at such time and place as shall be determined by the by-laws; and that notice of such election shall be published not less than thirty days previous to such meeting in some newspaper published in the District; and that the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy.

The suggestion, you will see, is that at such meeting the election shall be made by the attending stockholders, either in person or by proxy, provided that a majority of all the stock is thus represented.

Sixth. What seems to me to be one of the most serious defects in the corporation laws of the District is the provision relative to the annual reports to be made by companies doing business in the District. Section 617 of the code apparently provides that every such company shall annually make a report which shall be published in a newspaper in the District, stating the amount of capital and the proportion actually paid, and the amount of existing debts, which report shall be signed by the president and shall be verified by his oath and filed in the office of the recorder of deeds.

And it is provided in section 618 that if any company fail to comply with this provision any creditor of the corporation or other person interested may, by petition, have a mandamus compelling such publication to be made, the cost of such proceedings to be paid by the corporation; and, further, upon such failure the trustees of such company shall be jointly and severally liable for the debts of the company then existing and for all that shall be contracted before such report shall be made.

It will be noticed that the penalty is wholly insufficient. This insufficiency is apparent without further analysis. Since January 1, 1902, when the District law went into effect, more than 7,000 incorporation papers have been filed, of which number 5,000 are for corporations organized for other than charitable purposes; that is, they were organized and did or are now doing business for gain. The law is meant to compel such companies to file annual reports for the information of those interested; yet less than 300 out of the 5,000 observe the law. Each year the number is growing less and less, and by next year or the year after the law will not be observed by any of them.

It is suggested that the code should be amended providing for a suitable penalty for failure to file such reports. The corporation counsel of the District should be furnished by the recorder of deeds with a list of all the corporations having failed to comply with this provision, and it should be the duty of the corporation counsel to proceed against such corporation to restrain it from continuing to conduct its business in the District and to collect a fine to be imposed for such neglect.

A remedy for the existing omission in the code was proposed by the gentleman from Texas [Mr. SHEPPARD] on March 7, 1908 (H. R. 18881) and by the gentleman from California [Mr. KAHN] by a bill he introduced March 14, 1908 (H. R. 19310), which was referred to the Committee on the District of Columbia and by that committee to the District Commissioners, who made the following favorable report thereon:

EXECUTIVE OFFICE,  
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,  
Washington, April 2, 1908.

Hon. S. W. SMITH,  
Chairman of Committee on District of Columbia,  
House of Representatives.

SIR: The commissioners have the honor to recommend favorable action upon H. R. 19310, entitled "A bill to amend sections 617, 618, and 619 of the Code of Law for the District of Columbia, and for other

purposes," which was referred to them at your instance for examination and report.

This bill proposes to amend sections 617, 618, and 619 of the District Code so as to insure the filing of annual reports by domestic corporations. The code at present provides that these annual reports shall be made public and filed in the office of the recorder of deeds, but it neglects to provide such a penalty as insures the observance of the law. Since January 1, 1902, when the District law went into effect, the commissioners are informed by the recorder of deeds, more than 7,000 incorporation papers have been filed for record by that officer. The great majority of such papers were certificates of incorporation of companies organized under the provision of subchapter 4 of chapter 18 of the code. That is, companies formed for business purposes—for gain. It is estimated by the recorder of deeds that at least 5,000 such concerns have been organized here since January 1, 1902, but less than 300 of these 5,000 companies have, during the present year, filed the annual reports which the law requires of them, the recorder stating that the number complying with this law grows smaller each year.

The bill under consideration makes the law effective by authorizing prosecutions against all corporations failing to comply with the law, with the view of restraining them from doing business in the District, while it also makes any willful false swearing in regard to any certificate, report, statement, or notice required by chapter 18 of the code relating to corporations, perjury and punishable as such, and also makes any misappropriation of any money of any organization formed under the provisions of the District corporation laws, larceny and punishable as such, as well as the misappropriation of any money, funds, or property intrusted to such corporation.

Very respectfully,

HENRY B. F. MACFARLAND,

President Board of Commissioners of the District of Columbia.

Seventh. Now, Mr. Speaker, as to foreign corporations doing business in the District. In the first place, the existing law is unsatisfactory in respect to obtaining service of process on foreign corporations. Until the amendment of the code, approved February 1, 1907, it provided merely that process should be served on the agent of said corporation. Exactly as to who was the agent gave rise to much litigation. Whereupon the code was amended so as to provide that, as to a foreign corporation transacting business in the District without having any place of business or resident agent therein, service could be had upon any officer or agent or employee of such corporation.

This seems to go too far the other way, as a foreign corporation might be sued by service upon some insignificant employee—a day laborer, for instance—and the officers of the company who should defend the action would have no real notice of the impending suit; whereupon, I suppose, they would have to go into court with a petition praying to be permitted to enter a defense—maybe after a judgment had been entered for non-appearance. Then, again, arises the question as to whether the person served was the agent or was the employee of the corporation defendant.

The case of *Ricketts v. The Sun Printing and Publishing Company*, found in Twenty-seventh Appeal Cases, District of Columbia, page 222, is a case where much time was taken up merely upon the question of whether the process was good or not.

Again, a more recent case, that of *Karr v. New York Continental Jewell Filtration Company*, reported in volume 31, Appeal Cases, District of Columbia, page 459, is another instance where much time was wasted upon a mere question of the sufficiency of service. In this latter case the defendant corporation had a contract for the construction of the tunnel under Capitol Hill in connection with the recent railroad improvements there. The contract included the work necessary to readjust the street grades after the completion of the tunnel. The plaintiff sued for damages for personal injuries after the completion of the tunnel, but before the work of readjusting the street grades was finished, and service was had upon a laborer and upon a civil engineer who had been employed by the company in the construction of the tunnel. The plaintiff came into court specially and moved to vacate the service on the ground that the defendant corporation had turned over the work to readjust the street grades to another corporation, and that the persons served were their employees, and not those of the defendant. In both cases the time of the court, as well as valuable time of the litigants, was taken up by the question of what constitutes the agent or employee of a foreign corporation qualified to receive service under the District Code.

These cases illustrate the uncertain state of the law upon this question. The point is, first, the law should be so written as to enable the courts to get down to the merits of the case and not waste a year or two upon such question as the validity of service, growing out of the uncertainty of the law, the merits of the case being thereby postponed.

The suggested remedy is that every foreign corporation doing business in the District shall appoint, in writing, the recorder of deeds of said District its attorney for the purpose of receiving service of process, the duty of the recorder being to immediately inform the corporation defendant. This suggested remedy is found in the bill introduced by the gentleman from California [Mr. KAHN] on March 12, 1908 (H. R. 19175). This bill was referred to the Committee on the District of Columbia,

and by that committee to the commissioners, who approved the bill. It is still pending before the committee.

Eighth. Foreign corporations should also file annual reports and pay a graduated fee thereon, and such provision should also be applicable to domestic corporations. This suggested change was proposed by the gentleman from Texas [Mr. SHEPPARD] in the bill he introduced March 8, 1908 (H. R. 18882), which was favorably reported upon by the commissioners and is still pending before the District Committee.

Ninth. The certified copies of the charters of foreign corporations should be filed with the recorder of deeds, and permits should be issued to them to operate within the District. This, too, is the suggestion of the gentleman from Texas [Mr. SHEPPARD] in his bill H. R. 18884.

It will be seen that the defects of the present code have occurred to several Members of this House, who have from time to time introduced bills for the purpose of remedying such defects. These bills have been referred to the commissioners, and upon almost all of them the commissioners have made favorable reports to the District Committee. But the question of remedying the existing code is still pending before that committee. It is an important subject, and therefore it is perfectly right that considerable time and attention should be given to it. The committee might have reported a bill this session, but I think the consideration of the subject was delayed by the committee by reason of the commissioners' letter, dated April 27, 1908, which is as follows:

EXECUTIVE OFFICE,  
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,  
Washington, April 27, 1908.

Hon. S. W. SMITH,  
Chairman of Committee on District of Columbia,  
House of Representatives.

SIR: The Commissioners of the District of Columbia have the honor to suggest with reference to House bill 227, "to amend the Code of Law for the District of Columbia regarding corporations," which was referred to them at your instance for their views, that owing to the large number of bills affecting corporations, both local and foreign, which have been introduced at this session of Congress, that no action be taken upon any of these measures during the present session, but during the recess the commissioners will give consideration to the various bills with the view of transmitting to Congress upon its reassembling a measure which will present in codified form, the changes which are proposed to be accomplished and which, in the judgment of the commissioners and the recorder of deeds, ought to be enacted.

Very respectfully,

HENRY L. WEST,  
Acting President of the Board of Commissioners  
of the District of Columbia.

It will be noticed, Mr. Speaker, that the commissioners, on April 27, 1908, suggested that no action be taken in this matter for the reason that during the recess occurring between the first and second sessions of the Sixtieth Congress the commissioners would give consideration to the various bills with a view to transmitting to Congress, upon its reassembling in December, 1908, a measure which would present in codified form the changes which are proposed to be accomplished, and which, in the judgment of the commissioners, should be enacted. I regret to say that the commissioners did not present such a bill. The commissioners' letter of April 27, 1908, was never followed up by the commissioners.

In the light of the several bills to which reference was made in the commissioners' letter, and to which I have referred, I endeavored to prepare a bill which presents in codified form the several changes in the code of which I have been speaking. In the preparation of this bill it is proper I should mention and give due credit to Mr. J. F. Smith, the fourth assistant corporation counsel, who gave me his most valuable assistance upon my personal request. He comes from the district which I have the honor to represent, and I took advantage of personal friendship to draw upon his knowledge of this subject. The bill which I introduced February 13, 1909 (H. R. 28108), although drawn with the help of Mr. Smith, I can not present as coming from the office of the corporation counsel of the District. The bill, however, was referred by the Committee on the District of Columbia to the commissioners, and I herewith present the commissioners' letter, from which it will be noticed that there is no objection filed to the bill. The letter is as follows:

EXECUTIVE OFFICE,  
COMMISSIONERS OF THE DISTRICT OF COLUMBIA,  
Washington, February 18, 1909.

Hon. J. DAVIS BRODHEAD,  
House of Representatives.

DEAR SIR: With respect to your request of the 15th instant for a report upon bill (H. R. 28108) to amend the Code of Law for the District of Columbia regarding corporations, the commissioners have to state that in so far as they have been able to give it their examination and attention, it is unobjectionable except that the taxes now paid by

insurance companies, namely, 1½ per cent on the net premium receipts, are considered sufficient for such organizations, and they have so reported to the chairman of the District Committee.

The copy of H. R. 26747, having the same title, with proposed amendments thereon, is herewith returned.

Very respectfully,  
HENRY L. WEST,  
Acting President of the Board of Commissioners  
of the District of Columbia.

I now present for the consideration of the House the bill which I introduced on February 13, 1909, H. R. 28108, not with the hope of its being passed at this session, for the time is too short and there are too many other important bills ahead of it, but with the hope that it may be of some use to a succeeding Congress in the framing of a more perfect measure.

[To amend the Code of Law for the District of Columbia regarding corporations.]

*Be it enacted, etc.* That from and after the passage of this act sections 605, 606, 607, 608, 609, 617, 618, and 619 of the Code of Law for the District of Columbia be amended so as to read as follows:

“SEC. 605. Any three or more persons, one of whom shall be an actual and bona fide resident of the District, who desire to form a corporation for the purpose of carrying on any enterprise or business which may be lawfully conducted by an individual, excepting banks of circulation or discount, railroads, and such other enterprise or business as may be otherwise specially provided for in this code, shall make, sign, and acknowledge, before some officer qualified by law to take the acknowledgment of deeds, and file in the office of the recorder of deeds of the District of Columbia a certificate in writing: *Provided*, That nothing herein contained shall be held to authorize the organization of corporations to buy, hold, sell, or deal in real estate, except corporations organized for the purpose of transacting the business ordinarily carried on by real-estate agents or brokers: *And provided further*, That corporations organized outside of the District of Columbia to buy, hold, sell, or deal in real estate, except corporations to transact the business ordinarily carried on by real-estate agents or brokers, shall not be permitted to operate in the District of Columbia.

“SEC. 606. In such certificates shall be stated—

“First. The corporate name of the company and the object or objects for which it is formed.

“Second. The term of its existence, which may be perpetual.

“Third. The amount of the capital stock of the company and the number of shares of which said stock shall consist.

“Fourth. The number of directors who shall manage the concerns of the company for the first year and their names, at least one of which directors shall be an actual and bona fide resident of the District of Columbia, whose post-office address in said District shall be stated in said certificate.

“Fifth. The name of the place in the District of Columbia at which the office of the said company is to be located and the post-office address in said District of the said office.

“SEC. 607. Upon the filing of such certificate in accordance with the provisions of the preceding sections, the persons who have signed and acknowledged the same shall pay or cause to be paid to the recorder of deeds, in lieu of other fees therefor, the following sums, to be computed upon the amount of the capital stock of the company as stated in such certificate: Upon the first \$25,000, or fractional part thereof, if any, \$10; upon each \$25,000, or fractional part thereof, if each \$100,000, or fractional part thereof, if any, in excess of \$500,000, additional; upon each \$50,000, or fractional part thereof, if any, in excess of \$100,000, up to and including \$500,000, \$5 additional; upon each \$100,000, or fractional part thereof, if any, in excess of \$500,000, up to and including \$1,000,000, \$5 additional; and upon each million dollars, or fractional part thereof, if any, in excess of \$1,000,000, \$25 additional.

“Upon the filing of such certificate and the payment of the fees as herein provided, the recorder of deeds shall issue a charter, upon a form authorized by the official attorney for the District of Columbia, which, together with the certificate, shall be duly recorded in the office of the recorder of deeds, and upon the issuance of such charter the persons who shall have signed and acknowledged the certificate, and their successors, shall be a body politic and corporate in fact and in name, by the name stated in such certificate and charter, and by that name have succession and be capable of suing and being sued in any court of law or equity in the District; and they and their successors may have a common seal, and make and alter the same at pleasure, and they shall by their corporate name be capable in law of purchasing, holding, and conveying any real or personal estate whatever which may be necessary to enable the company to carry on its operations named in such certificate, but shall not mortgage or convey such estate or give any lien thereon, except in pursuance of a vote of the stockholders of the company.

“Any action at law or in equity may be begun against such corporation by the service of process upon the director resident in the District of Columbia, as named in its certificate aforesaid, and, in the absence of said resident director from the District of Columbia for the period of ten days or more, service of such process, which shall be deemed good and sufficient service of the same upon the corporation of which he is a director, may be made by leaving such process at the post-office address of the said resident director, in charge of a person of mature years and discretion, or by mailing the same to the said resident director at his post-office address: *Provided, however*, That the company of which such resident director is a director may, in its annual report, or in a certificate duly executed and filed with the recorder of deeds, name a successor to the director named in the certificate filed for the purposes of incorporation, which successor shall also be a resident of the District of Columbia, giving the post-office address of such successor, upon whom the service of process may be made in like manner and with like effect as if made upon the director named in the aforesaid certificate as a resident of the District of Columbia, and from time to time, as occasion may require, such company shall, by a certificate filed as aforesaid, designate a person, actually resident in the District of Columbia, upon whom process may be served as hereinbefore provided, and service of process upon the person last so designated shall be good and sufficient service upon such company. In case of the death or resignation of the director resident within the District of Columbia, or of any successor of such resident, named under the aforesaid provision, the company of which such deceased was a director shall, within ten days thereafter, name a successor to such deceased resident director, who shall also be a resident and upon whom service of process may be made in like manner and with like effect as if made upon the director

named in the aforesaid certificate as a resident of the District of Columbia.

“SEC. 608. The stock, property, and concerns of such company shall be managed by not less than three and not more than fifteen directors, one of whom shall be a bona fide resident of the District of Columbia, whose post-office address shall be kept on file in the office of the recorder of deeds of the District of Columbia, who shall, respectively, be stockholders, and who shall, except for the first year, be annually elected by the stockholders at such time and place as shall be determined by the by-laws of the company.

“SEC. 609. Notice of the time and place of holding such elections shall be published not less than thirty days previous thereto in at least one daily newspaper of general circulation printed and published in the District, or shall be given to each stockholder in such other manner as may be provided by the by-laws of the company, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy, providing a majority of the stock is represented. All the elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the company, and the persons receiving the greatest number of votes shall be directors; and when any vacancy shall happen among the directors it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company.

“SEC. 617. That every corporation heretofore incorporated under the provisions of the Code of Law for the District of Columbia, and every corporation, except insurance corporations, which may hereafter be incorporated under the said provisions shall, within twenty days from the 1st of January of each year, make and file in the office of the recorder of deeds of the District of Columbia, to be by said officer duly recorded, a statement signed and sworn to by its president and secretary before an officer authorized to take acknowledgments of deeds of real estate situated in the said District, containing the following information:

“First. The name of the corporation and the place or places where its business operations are carried on, giving, wherever practicable, the street and number of the building, and whether or not it has actually entered upon the prosecution of its business.

“Second. The amount of the total authorized capital stock of the corporation, the number of shares into which the same is divided, and the par value of each share, and if there be more than one class of stock outstanding, a description of the different classes, and the amount actually paid thereon, and in case there shall have been bonds issued, the amount of its bonded indebtedness.

“Third. The names and residences of each of the directors and officers and their respective terms of office, and the date of the last preceding annual meeting and election of its directors, together with the date appointed for the next annual meeting for the election of directors, and if any part of the management of the corporation has been delegated to an executive committee, the names, residences, and terms of office of the persons comprising such committee.

“Fourth. The value of its property and assets of every description.

“Fifth. The total amount of its outstanding debts.

“SEC. 618. That it shall be the duty of the recorder of deeds of the District of Columbia during the month of February of each year to certify to the corporation counsel of said District a list of all corporations having failed to comply with the provisions of the preceding section, and it shall be the duty of said corporation counsel, within sixty days after the receipt of said report, to proceed against said corporation by proper legal proceedings to restrain such corporation from doing business in said District, and upon judgment in such proceedings against any such corporation it shall be enjoined as aforesaid, and it shall be the duty of the corporation counsel aforesaid to institute the proper legal proceedings within sixty days after receiving notice from any other source of any such default of any such corporation.

“SEC. 619. That any willful false swearing in regard to any certificate, report, statement, or notice required by the provisions of this chapter shall be perjury and shall be punished as such according to the laws of the District of Columbia. Any misappropriation of any money of any corporation, company, or association organized under the provisions of this chapter, or of any money, funds, or property intrusted to it, shall be held to be larceny and shall be punished as such under the laws of said District.

“SEC. 619a. That from and after the passage of this act every company incorporated under the laws of the District of Columbia, except cemetery companies, and companies incorporated for literary, charitable, or religious purposes, shall pay to the recorder of deeds of the District of Columbia, on filing a certificate or application for incorporation, as provided by said act, in lieu of other fees therefor, the same sums, to be computed upon the amount of the capital stock of the company, as stated in such certificate or application, as are set forth in section 607 of the code as amended by this act.

“SEC. 619b. That whenever the words ‘trustee’ or ‘trustees’ occur in any of the sections of subchapter 4 of chapter 18 of the Code of Law for the District of Columbia not hereby specifically amended the words ‘director’ or ‘directors’ shall be substituted therefor, and such sections are hereby so amended.

#### FOREIGN CORPORATIONS.

“SEC. 619c. That every foreign corporation now engaged in business in said District, and every foreign corporation hereafter engaging in business in said District, shall file in the office of the recorder of deeds of said District a certified copy of its charter or certificate of incorporation, together with a statement signed and sworn to by its president, treasurer, and a majority of its directors, trustees, or managers, showing the amount of its authorized capital stock and the amount thereof which has been paid in, and if any part of such payment has been made otherwise than in cash such statement shall set forth the particulars thereof: *Provided*, That the provisions of this section shall not apply to insurance corporations or to corporations and associations created for religious or charitable purposes only: *And provided further*, That foreign corporations desiring to operate within the District of Columbia shall file with the recorder of deeds certified copies of their charters before permission to operate therein shall be granted; and no such corporation shall operate within the District of Columbia without first having received a permit so to do from the Commissioners of the said District, nor until the assessor of said District shall certify in writing to said commissioners that at least 10 per cent of the authorized capital of such corporations has been paid in cash: *Provided*, That the provisions of this section shall not apply to insurance companies.

“SEC. 619d. That every foreign corporation now engaged in business in the District of Columbia, and every foreign corporation hereafter engaging in business in said District, except insurance companies, shall

appoint in writing the recorder of deeds of said District and his successors in office to be its attorney, upon whom all process in any action or proceeding against it may be served; and in such writing such corporation shall agree that any process against it which is served on such attorney shall be of the same legal force and validity as if served on the corporation, and that such appointment shall continue in force as long as any liability remains outstanding against the corporation in said District. Such original appointment shall be acknowledged before some officer authorized to take acknowledgment of deeds, and shall be filed in the office of said recorder of deeds, and a copy certified by him or by the deputy recorder of deeds shall be sufficient evidence of such appointment and agreement. Service upon said attorney shall be sufficient service upon the principal, and may be made by leaving a duly attested copy of the process with said recorder of deeds at his office, or, in the absence of the recorder, with the deputy recorder of deeds of said District: *Provided*, That the post-office address of every such corporation shall be filed with said recorder of deeds with its power of attorney, and from time to time statements of any change of address of said corporation: *Provided further*, That immediately after being served with or accepting any such process or notice, the said recorder of deeds shall make and file with said power of attorney a copy of such process or notice, with a notice indorsed thereon of the time of service or acceptance, as the case may be, and transmit such process or notice by registered mail to such corporation at the address last furnished, as aforesaid, and said recorder of deeds shall keep a record of all process served upon him, showing the date and hour when such service was made.

“SEC. 619e. That every foreign corporation doing business in the District of Columbia, and every foreign corporation hereafter engaged in business in said District, shall, within thirty days after an increase or reduction of its capital stock or change in par value of its shares, file in the office of the recorder of deeds of said District a certificate thereof substantially like that required of domestic corporations under like conditions.

“SEC. 619f. That every foreign corporation doing business in the District of Columbia, and every foreign corporation hereafter engaging in business in said District which is not required by law to make annual returns to some other official in said District, shall, annually, within thirty days after each and every annual meeting, make and file a report in the office of the recorder of deeds containing, in addition to the information required from domestic corporations, a statement as to the time when the annual franchise tax, if any, was paid in its home State, and the amount of such tax.

“SEC. 619g. That no foreign corporation now carrying on, and no foreign corporation which may hereafter carry on, in said District of Columbia a banking, insurance, mortgage, loan, investment, or trust business, and no person engaged in any such business shall carry it on in or under a name which, previous to such use, was in lawful use by a corporation which was established under the laws of the District of Columbia and was carrying on the same or a similar business or in or under a name so similar thereto as to be liable to be mistaken for it. The supreme court of the District of Columbia shall have jurisdiction in equity to enforce the foregoing provisions of this section. Whoever violates the provisions of this section shall be punished by a fine of not more than \$1,000.

“SEC. 619h. That the recorder of deeds of the District of Columbia shall carefully preserve in his office all documents required by this act to be filed with him, and cause the same to be accurately recorded and indexed in well-bound books to be kept in his office, and for so filing and recording said documents he shall, before receiving them for record, collect the fees now prescribed for filing, indexing, and recording other instruments: *Provided*, That in addition to the fees before mentioned in this section every foreign corporation shall pay to the said recorder of deeds the following fees: For filing a copy of its charter or certificate of incorporation as hereinbefore required, \$10; for filing the financial statement required to be filed with its said charter or certificate of incorporation, 5; for filing a certificate of increase or reduction of capital stock, \$3; for filing an annual return or report, \$2; for filing any other statement, power of attorney, or any other document required by law to be filed, \$1.

“SEC. 619i. That no action shall be maintained by any foreign corporation in the District of Columbia until it shall have complied with the provisions of this act.

“SEC. 619j. That any corporation violating or failing to comply with the provisions of sections 617, 619c, 619d, 619e, or 619f of this act shall forfeit \$50 as a penalty for such violation or failure, to be recovered by suit at the instance of the District of Columbia in any court of competent jurisdiction, and each day's violation or continuance of such failure shall be considered to give a new and distinct right of action therefor; and it shall be the duty of the recorder of deeds of the District of Columbia during the month of July of each year to certify to the corporation counsel of said District a list of all corporations so in default on the 1st day of said month; and it shall be the duty of the said corporation counsel within sixty days after the receipt of said report to proceed against said corporation by proper legal proceedings to restrain such foreign corporation from doing business in the District of Columbia, and upon judgment in such proceedings against any such corporation it shall be enjoined as aforesaid, and it shall be the duty of the corporation counsel aforesaid to institute the proper legal proceedings within sixty days after receiving notice from any other source of any default of any corporation.

“SEC. 619k. That any company hereafter incorporated in the District of Columbia to transact the business of life, fire, marine, and inland and casualty insurance, including accident, health, liability, plate-glass, steam-boiler, burglary and theft, credit, and sprinkler insurance, shall have a capital stock of not less than \$100,000. Whenever any such District of Columbia or foreign corporation, now or hereafter incorporated and transacting business in the District of Columbia, shall become insolvent or impaired to the extent of 25 per cent of its capital stock it shall be the duty of the superintendent of insurance to suspend its license, and unless such impairment is made good within sixty days thereafter it shall be the duty of the said superintendent to revoke its license to do business in the District, and any insurance company or association doing business without a license, or after its license has been revoked, shall be liable to the penalties imposed by section 648 of the code.

“SEC. 619l. That each and every company heretofore chartered under the laws of the District of Columbia shall pay to the recorder of deeds an annual registration fee of \$10 on or before the 1st day of May of each year; and every company which shall be hereafter chartered under the laws of the District of Columbia shall also pay to the recorder of deeds an annual registration fee of \$10 on or before the 1st day of May of each year after the filing of its charter: *Provided*, That any such company having an authorized capital stock of over \$50,000 and less than

\$100,000 shall pay an annual registration fee of \$20; and every such company having an authorized capital stock of \$100,000 and less than \$200,000 shall pay an annual registration fee of \$30; and every such company having an authorized capital stock of \$200,000 and less than \$1,000,000 shall pay an annual registration fee of \$50; and every such company having an authorized capital stock of \$1,000,000 or more shall pay an annual registration fee of \$100.

“Each and every company incorporated outside the District of Columbia and doing business in the District of Columbia shall, on or before the 1st day of May of each year, pay to the recorder of deeds the following registration fees:

“Every such company having an authorized capital stock of \$25,000 or less, an annual registration fee of \$25.

“Every such company having an authorized capital stock of over \$25,000 and not exceeding \$100,000, an annual registration fee of \$100.

“Every such company having an authorized capital stock of over \$100,000, an annual registration fee of \$100, and in addition thereto an annual registration fee of \$10 for every \$100,000 of authorized capital stock over and above \$100,000 and not exceeding \$1,000,000; and if such authorized capital stock exceeds \$1,000,000, then such company shall pay a still further additional fee of \$1 for every \$100,000 over and above \$1,000,000.

“Any company organized within or without the District of Columbia which shall fail to pay the fee herein provided shall because of such failure forfeit its right to do business in the District of Columbia, which forfeiture shall be consummated without judicial ascertainment by the recorder of deeds entering upon the margin of the ledger kept in his office relating to such companies the word ‘Forfeited,’ giving the date of such forfeiture, and any company whose right to do business may thus be forfeited shall be denied the right to sue and defend in any of the courts of the District of Columbia, and in any suit against such company on a cause of action arising before such forfeiture no affirmative relief may be granted to such defendant company unless its right to do business is revived as provided hereinafter.

“The recorder of deeds shall, on or before the 1st day of March of each year, notify every company affected by this section by mailing a notice, addressed in its corporate name, to the post-office address as filed in his office as hereinbefore provided, written or printed, that such fee will be due at a date named therein, a record of the date of which mailing shall be kept by said officer, and which mailing of such notice and the said record thereof shall constitute legal and sufficient notice for all the purposes of this act; and in thirty days after the 1st day of May of each year said officer shall publish for ten consecutive days in at least one daily newspaper of general circulation printed and published in the District of Columbia a list of the companies whose right to do business in the District of Columbia has been forfeited for noncompliance with this section: *Provided*, That any company which shall within six months after such publication pay the fee and \$5 additional thereto for each month or fractional part of a month which shall elapse after such forfeiture shall be relieved from the forfeiture of its right to do business by reason of such failure, and when such fee and the said penalty are fully paid to the recorder of deeds it shall be the duty of said officer to revive and reinstate said right to do business by erasing or canceling the word ‘Forfeited’ from his ledger and substituting therefor the word ‘Revived,’ giving the date of such revival: *Provided further*, That this act shall not be construed to repeal any law prescribing fees to be collected by the recorder of deeds.

“SEC. 619m. That all the provisions of this act applicable to foreign corporations shall likewise be applicable to all foreign joint stock companies and foreign associations doing business in said District, excepting those created only for religious or charitable purposes.

“SEC. 619n. That this act shall take effect from and after the expiration of thirty days immediately following its passage, and from and after the expiration of said period all acts and parts of acts contrary to the provisions of this act or inconsistent therewith be, and the same hereby are, repealed.”

Mr. SIMS. Mr. Speaker, I was not a member of the subcommittee that investigated this bill. The gentleman from Pennsylvania, who has just taken his seat, was. It is a Senate bill, reported with an amendment, and after being reported some gentlemen spoke to me and some wrote to me in opposition to the bill, or to the House amendment to the Senate bill, which required the deposit of 25 per cent of the capital and surplus of companies chartered in the States doing business in the District.

Mr. MADDEN. I want to suggest to the gentleman whether it would not be competent for those associations to deposit interest-bearing securities, so that they would not lose anything by having to make the deposit.

Mr. BROADHEAD. Oh, yes.

Mr. SIMS. I was going to say that complaint was made to me that as the local building and loan associations did not have to make any deposit, it would be a discrimination against those outside corporations to require them to make one.

I am unfamiliar with the business of building and loan associations. I wish to submit a letter and have it read, written by Mr. CLAYTON, who signs the memorandum furnished me. Since this report of the House District Committee an amendment has been made, or offered, and is moved to be passed as a part of this bill, which, so far as I know or so far as I am able to see, removes the complaint that was made to me in reference to this bill, and I will ask that this memorandum be printed in the RECORD as a part of my remarks.

The SPEAKER. Is there objection? The Chair hears none.

Mr. SIMS. I demanded a second; and unless some other gentleman wishes to say something in opposition to the bill, I do not care to use any more time.

The memorandum is as follows:

When the war revenue act of 1898 was passed, building associations were expressly excepted from its provisions, on the stated ground that

they were cooperative societies, promotive of thrift among people of small means.

When, in 1902, the House Committee on Appropriations reported the so-called "personal tax act for the District of Columbia," building associations were omitted from it as subjects of taxation, but when the bill came out of conference and was passed it was discovered that a paragraph had been inserted taxing them 4 per cent per annum on their gross earnings. The late Representative Powers, of Maine, told the writer that this was done on representation made in behalf of trust companies, that building associations were competitors with them and ought to be taxed equally with them.

In 1904, after a full hearing before a subcommittee of the House District Committee, the tax was reduced to 2 per cent, and so remains.

In 1906 Commissioner Macfarland concluded that building associations ought to make reports to the Comptroller of the Currency and be subject to his examination, like savings banks, and the corporation counsel began the draft of a bill, which he did not complete, because he needed a consultation with building association officers and because the District Commissioners wished priority given to other measures that they deemed more urgent.

In February, 1907, Commissioner Macfarland produced the draft of a bill not prepared by the corporation counsel, and as to which neither the corporation counsel nor any building-association officer had been consulted, and was about to send it to Congress with recommendation for enactment, when it was held up on representation to the commissioners that the bill would close up every building association in the District.

In 1908 Commissioner Macfarland agreed to modify his bill so as to remove the provisions that a committee of building-association lawyers deemed destructive, on condition that the building associations would not oppose the modified bill, and they never have done so, though in place of his fragmentary bill they would have preferred such an amendment of the District Code as would enable them to incorporate under it.

The modified Macfarland bill is Senate bill 6055 of the present Congress. It has passed the Senate and is now on the House Calendar with an amendment proposed by Mr. A. B. Browne, of the local bar (see H. Rept. No. 2065). On page 2 of the report the reason given for the amendment is an alleged performance of officers of a building association organized under the laws of Montana. But there never was a building and loan association in the District with a Montana charter, and the reference is obviously to the Etna Banking and Trust Company, of Helena, Mont.

The amendment purports to relate only to building associations, but it is so worded as to have a much wider sweep, the words "otherwise having any of the features of a building association" including any trust company, bank, savings bank, or other financial organization whatsoever, because one feature of a building association is to receive money from its members, another to do a loan and mortgage business with its members, and so this language would include any financial institution whatsoever chartered outside the District. It would include those local building associations that have been contemplating conversion into mutual savings associations under some state law as a means of escaping the pursuit that has been made of them for nearly seven years by rival financial interests, and which will doubtless be continued for seven years more, if necessary.

If permitted, the building associations can produce a bill that will put them efficiently under government supervision while permitting them to live.

Mr. SMITH of Michigan. I call for a vote.

The question was taken, and the rules were suspended and the bill was passed.

Mr. BROADHEAD. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD upon this subject.

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

#### HALL OF THE HOUSE.

Mr. McCALL. Mr. Speaker, I move to suspend the rules and pass the following resolution, which I send to the Clerk's desk.

The SPEAKER. The gentleman from Massachusetts moves to suspend the rules and pass the resolution which the Clerk will report.

The Clerk read as follows:

Joint resolution (H. J. Res. 265) to rearrange and reconstruct the Hall of the House of Representatives, and for other purposes.

*Resolved, etc.*, That the Superintendent of the Capitol Building and Grounds is hereby directed to change and reconstruct the Hall of the House of Representatives, and change the seating arrangements therein, substantially in accordance with the plan marked "Scheme B," transmitted by him to the Speaker under date of December 7, 1908, under the terms of the House resolution No. 419, of the first session of the Sixtieth Congress. The said changes and reconstruction shall be made under the direction of the Speaker, the present chairman of the House Committee on the Library, the present chairman of the Select Committee on the Distribution of Rooms, and WILLIAM M. HOWARD, of Georgia, who shall also have authority to determine the character of the seating arrangements and furniture, the division of the lobby and cloakroom space, and to make slight changes from the plans of said "Scheme B." But they shall not be authorized to decrease the area at the floor level as shown on said "Scheme B" by more than 400 square feet, and they shall not increase the area at said level as shown on said "Scheme B."

SEC. 2. That to carry out the purpose of this resolution the expenditure of \$350,000, or so much thereof as may be necessary, is hereby authorized; and said disbursements made under this resolution shall be made by the Secretary of the Interior, on vouchers approved by the Superintendent of the United States Capitol Building and Grounds, as the appropriations for the Capitol building are approved and disbursed.

Mr. THOMAS of North Carolina. Mr. Speaker, I demand a second.

The SPEAKER. The gentleman from North Carolina demands a second. A second is ordered under the rule. The gentleman is entitled to twenty minutes and the gentleman from Massachusetts is entitled to twenty minutes.

Mr. CLARK of Missouri. Mr. Speaker, I move that that rack down in front, with the diagram on it, be taken out, and that the House come to order and let the gentleman from Massachusetts proceed with his speech.

The SPEAKER. The gentleman from Massachusetts, as the Chair understands, has just asked to have it brought in.

Mr. CLARK of Missouri. If that is true, I will withdraw that motion, provided the gentlemen down there in front will sit down.

The SPEAKER. The Chair would be gratified if the real czar of the House could get order. The Chair concluded he would just wait. [Laughter.]

Mr. McCALL. Mr. Speaker, the object of the resolution before the House is, first of all, to reduce the size of this Chamber to the proportions of a chamber which a legislative body ought to occupy, and make it a fit place for deliberation. Then the resolution has the incidental purpose of improving the system of ventilation, by extending the House to the outer walls of the Capitol, giving us a direct connection with the outer air. Some gentlemen might not regard that consideration as second to the first one, because it is a matter vital to the health of the Members. As is well known, this Chamber in which we are sitting is by far the largest of any of the legislative chambers in the world. It is absolutely impossible, it is scarcely necessary for me to say, for a man of ordinary voice to be heard throughout this whole room. It takes a very unusual voice to make itself heard. In the ordinary business of this House a Member who is sitting upon one of the outer rows is compelled to do one of three things if he remains in the House, either to sit listlessly and know nothing of what is going on, or to come down to the center of the Hall and commit larceny by taking the seat of some other Member, or to stand up in the area in front of the Speaker.

I think there is no difference of opinion upon the part of writers of great authority who have witnessed the proceedings of the House from the gallery as to the vast character of the Hall, the bad effect that it has upon the character of our deliberations, and also the influence it exerts to make the proceedings tedious and uninteresting; but I will read to you only from two writers of authority, one a British writer and the other an American writer.

Mr. Bryce, in his *American Commonwealth*, gives a lively and yet a very correct description of the condition of things here. He says of the Hall that—

It is more than thrice as large as the English House of Commons, with a floor about equal in area to that of Westminster Hall, 139 feet long by 93 feet wide and 36 feet high. \* \* \* The proportions are so good that it is not till you observe how small a man looks at the farther end, and how faint ordinary voices sound, that you realize its vast size. \* \* \*

When you enter, your first impression is of noise and tumult, a noise like that of short, sharp waves in a highland loch fretting under a squal against a rocky shore. The raising and dropping of desk lids, the scratching of pens, the clapping of hands to call the pages—keen little boys who race along the gangways—the patter of many feet, the hum of talking on the floor and in the galleries, make up a din over which the Speaker, with the sharp taps of his hammer, or the orators, straining shrill threats, find it hard to make themselves audible. I never heard American voices sound so harsh or disagreeable as they do here. Nor is it only the noise that gives the impression of disorder. Often three or four Members are on their feet at once, each shouting to catch the Speaker's attention. \* \* \* Less favorable conditions for oratory can not be imagined, and one is not surprised to be told that debate was more animated and practical in the much smaller room which the House formerly occupied.

Not only is the present room so big that only a powerful and well-trained voice can fill it, but the desks and chairs make a speaker feel as if he were addressing furniture rather than men, while of the Members few seem to listen to the speeches. It is true that they sit in the House instead of running out in the lobbies, as people do in the British House of Commons, but they are more occupied in talking or writing or reading newspapers than in attending to the debate. To attend is not easy, for only a shrill voice can overcome the murmurous roar; and one sometimes finds the newspapers, in describing an unusually effective speech, observe that "Mr. So-and-So's speech drew listeners about him from all parts of the House." They could not hear him where they sat, so they left their places to crowd in the gangways near him. "Speaking in the House," says an American writer, "is like trying to address the people in the Broadway omnibuses from the curbstone in front of the Astor House \* \* \*."

Men of fine intellect and of good ordinary elocution have exclaimed in despair that in the House of Representatives the mere physical effort to be heard uses up all the powers, so that intellectual action becomes impossible. The natural refuge is in written speeches or in habitual silence, which one dreads more and more to break.

It is hard to talk calm good sense at the top of your voice, hard to unfold a complicated measure. A speaker's vocal organs react upon his manner, and his manner on the substance of his speech. It is also hard to thunder at an unscrupulous majority or a factious minority when they do not sit opposite to you, but all around you and behind you, as is the case in the House. The Americans think this an advantage, because it prevents scenes of disorder. They may be right, but what order gains oratory loses. It is admitted that the desks are a mistake, as encouraging inattention by enabling men to write their letters, but though nearly everybody agrees that they would be better away nobody supposes that a proposition to remove them would succeed.

Then President Woodrow Wilson, perhaps the most authoritative American writer upon our system of congressional government, speaking of the House, says:

There are, to begin with, physical and architectural reasons why businesslike debate of public affairs by the House of Representatives is out of the question. To those who visit the galleries of the Representative Chamber during a session of the House these reasons are as obvious as they are astonishing.

It would be natural to expect that a body which meets ostensibly for consultation and deliberation should hold its sittings in a room small enough to admit of any easy interchange of views and a ready concert of action, where its Members would be brought into close, sympathetic contact, and it is nothing less than astonishing to find it spread at large through the vast spaces of such a chamber as the Hall of the House of Representatives, where there are no close ranks of cooperating parties, but each Member has a roomy desk and an easy revolving chair: an immense, capacious Chamber, disposing its giant dimensions freely beneath the great level lacunar ceiling, through whose glass panels the full light of day pours in. The most vivid impression the visitor gets in looking over that vast Hall is the impression of space.

A speaker—

Mr. Wilson goes on—

most needs have a voice like O'Connell's, the practical visitor is apt to think as he sits in the gallery, to fill even the silent spaces of that room; how much more to overcome the disorderly noises that buzz and rattle through it when the Representatives are assembled—a voice clear, sonorous, dominant, like the voice of a clarion. One who speaks there with the voice and lungs of the ordinary mortal must content himself with the audience of those Members in his own immediate neighborhood, whose ears he rudely assails in vehement efforts to command the attention of those beyond him, and who, therefore, can not choose but hear him.

It is a matter of everyday experience that we have constant calls for order. Probably in the course of an ordinary session the Speaker is engaged in using his gavel vigorously upon the desk for three or four weeks in the aggregate, and he does well that he does not have to use it more.

I shall not take any more of the time of the House at this moment, except to say that I believe it is vital to the efficiency of the House of Representatives, and, to make it meet its full purpose as the representative Chamber of the American people, that we should make some such a change as is proposed in this resolution.

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

Mr. McCALL. Certainly.

Mr. COOPER of Wisconsin. How much will the proposed change reduce the area of the House?

Mr. McCALL. The proposed change would reduce the area of the floor about 2,100 feet and the area of the galleries about 3,100 feet. It will reduce the cubical contents of the Hall from three hundred and eighty odd thousand feet to a little less than 260,000 cubic feet, or about one-third.

Mr. COOPER of Wisconsin. That would still leave it larger than the Senate Chamber?

Mr. McCALL. Larger than the Senate Chamber, both in area and in cubical contents. The Hall of the House would then contain a little less than 260,000 cubic feet, and the Senate Chamber has 210,000 feet.

Mr. NICHOLLS. Will the gentleman yield for a question?

Mr. McCALL. I will yield to the gentleman from Pennsylvania.

Mr. NICHOLLS. Will the reduction in the cubical contents of the room also reduce the amount of air available for Members to breathe, so that thereby it would be a detriment?

Mr. McCALL. The architects report that we should have as perfect a system of ventilation, as good a system of artificial ventilation, as we have now. We should also have 5 windows opening directly to the outer air, and the Speaker's desk would be put back to a level with the lobby, so that we would have another connection with the outer air, as much as the architects think it would be safe to have with reference to the health of Members. We have proportionately reduced the gallery space, so I do not think the number of cubic feet of air to each person in the Hall would be materially reduced, and our source of pure air would be much greater.

Mr. NICHOLLS. Would not the amount of air which would necessarily be changed in order to provide pure air have to come in more rapidly, and therefore endanger the health of Members from draft?

Mr. McCALL. I think there would be very little difference on that point. We should have nearly as many cubic feet of air for each person on the floor and in the galleries as we now have.

Mr. JONES of Virginia. Will the gentleman yield for a question?

Mr. McCALL. Certainly.

Mr. JONES of Virginia. I would like to ask the gentleman if he thinks the Hall so reduced would be large enough to accommodate both Houses in convention?

Mr. McCALL. It would. Both Houses have met in the Senate Chamber. We should have nearly 1,500 feet more floor space than has the Senate Chamber. Now, Mr. Speaker, I wish to make this request: I ask unanimous consent that there may be an extension of time for debate on this question.

The SPEAKER. How much?

Mr. McCALL. Thirty minutes on a side, instead of twenty minutes.

The SPEAKER. The gentleman from Massachusetts asks that there be thirty minutes' debate on each side instead of twenty. Is there objection?

There was no objection.

Mr. SIMS. Will the gentleman yield to me?

Mr. McCALL. I will yield to the gentleman from Tennessee.

Mr. SIMS. I want to ask the gentleman if he thinks any change could be made in the way of getting the desks out of here, and reducing the space of the Hall, that would not be of benefit over what we now have?

Mr. McCALL. I think it would take an ingenious architect to devise a worse system than we now have. I will say that I have not entered into the details of these plans because they have been exhibited in the lobby for several days, and Members have had an opportunity to examine them.

Mr. HUMPHREYS of Mississippi. Will the gentleman yield?

Mr. McCALL. Certainly.

Mr. HUMPHREYS of Mississippi. This resolution does not provide for any particular kind of furniture, does it?

Mr. McCALL. No; it was the purpose of the committee not to involve this general proposition with too many details, but to leave other matters over for consideration, either as to the style of chairs or anything else of that character. We had no thought of having simply benches; there are a number of styles of chairs that may be adopted, and the question of the style and kind of furniture is left open.

Mr. HUMPHREYS of Mississippi. The resolution does not commit us to the particular style of chair shown in the picture?

Mr. McCALL. No.

Mr. HUMPHREYS of Mississippi. We can have the swivel chair if we desire?

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

Mr. THOMAS of North Carolina. Mr. Speaker, this is a very important matter, involving a very radical change in the Hall and the seating arrangements of the House. I demanded a second because I thought the membership of the House was entitled to have a full and free discussion of this joint resolution. Personally I dislike always to disagree with the chairman of the committee, the distinguished gentleman from Massachusetts; hence I did not, as a member of the Committee on the Library, file a minority report. I felt, however, that it was my duty to reserve the right to take any position I chose upon the floor of the House in order that I might state my own position and in order that we might have a full discussion of this resolution.

Mr. Speaker, this proposition to change the seating arrangement of the Hall of the House of Representatives—

Mr. CAMPBELL. Mr. Speaker, I am very anxious to hear what the gentleman now addressing the House has to say, but on account of the confusion made by the swinging of the chairs here and because of the size of the Hall, it is utterly impossible to hear what the gentleman is saying.

The SPEAKER. The gentleman makes the point that the House is not in order. The point is well taken. The House will be in order.

Mr. THOMAS of North Carolina. Mr. Speaker, as I was saying, this proposition to change the seating arrangement of the Hall of the House is by no means a new one. At the last session of this Congress the Library Committee reported a resolution providing for the removal of the desks and the placing of benches in the Hall of the House, and that proposition, after quite a full debate, was voted down by a vote of 141 to 105.

Subsequently a resolution was brought in providing that the Superintendent of the Capitol should consult with architects and experts upon ventilation and acoustics, with a view to the rearrangement of the construction of the Hall of the House of Representatives, to place it in direct contact with the outer wall or walls of the building, to improve its ventilation and acoustical properties, and to reduce its size, and to report with plans on the first Monday of December, 1908. The Superintendent of the Capitol has made his report, giving preference to what is known as "Scheme B," which is the diagram now exhibited in the Hall of the House. The idea of changing the seating arrangements of the Hall was carried into effect in 1859, and

benches were put in the Hall, and in 1860, the very next year, the plan having proven a failure, by a somewhat close vote the benches were removed and the desks were again placed in the Hall.

Again, in 1901, a proposition was made to change the seating arrangement, and that proposition, which was moved as an amendment to an appropriation bill, was voted down. At that time in the debate the present Speaker of the House of Representatives said:

Mr. Chairman, with some length of service in this House, I have noticed that when any Member had a message to his fellow-Members that they wanted to hear, there was no difficulty in their hearing it. So much for that. We have heard gentlemen quite well during this little debate of twenty minutes on a side. Now, the Architect of the Capitol tells me he can a little decrease the size of the desks and put them into blocks of four or five, and then it is quite practicable to seat all the Members in the Hall under the new apportionment. Three legs is enough for a bunch of these desks, and my own judgment is, with the necessity for a quorum, that we will get along better to retain the seats a little bit decreased in size and put closer together, and have more room than we now have. I ask for a vote.

Mr. Speaker, the proposition to change the seating arrangement and take out the desks has been always a subject of much controversy. Mr. Asher Hinds, in his Parliamentary Precedents, says such a move was made in 1829 upon the ground that the seating arrangement with the desks caused a confusion detrimental to the public business. The desks were advocated as a matter of convenience. Again, in 1841, the desks were subject to criticism, and in 1842. In 1847 the removal of the desks was again proposed, but without result. So that it appears from Hinds's Precedents of the House of Representatives that up to date numerous efforts have been made to take out the desks and change the seating arrangement of the House; but each time it has been unsuccessful, the resolution having been voted down by the Members of the House except in one instance. In 1859 the desks were removed, but quickly restored in 1860.

At the last session of Congress the proposition was to put in benches instead of chairs for seats and remove the desks, which was also voted down by the Members of the House.

The resolution of last session provided for benches for seats and was a temporary arrangement. This resolution pending is for a permanent arrangement of the Hall as to seats and a reconstruction of the Hall to cost \$350,000. It is intended to provide not only for better ventilation and better acoustics in the Hall of the House, but makes a radical change and a permanent change in the seating arrangement and entire construction of the Hall. I admit that this new plan, this proposed change, is better than the benches proposed at the last session of Congress, and yet I have found it very difficult and impossible to give my assent to the change. This is a magnificent and imposing Hall in the first place, and I am very doubtful if it could be materially improved in appearance. It is comfortable, and if the ventilation could be made better I believe, and I have never been able to change my opinion on the subject, that the retention of the present desks and seating arrangement would be best for comfort and convenience of the Members.

It is said that a change should be made in the Hall of the House because Members can then be heard better in debate; but, as was said by the present Speaker of the House in the speech from which I quoted, in 1901, one who has any speech of importance upon any important subject can be heard now. In the third place, I believe that it will be difficult, if we take the desks out, to keep a quorum of Members here.

Mr. GOULDEN. Will the gentleman please tell us what the proposed change is?

Mr. THOMAS of North Carolina. I will, in a few moments. A quorum in Committee of the Whole is 100, and in the House it is a majority of the Members. Now, in the British Parliament and other parliamentary bodies in the world a quorum is much smaller. I may be wrong about the matter, but I fear if we remove these desks, leaving only chairs and a book rack, the effect will be to divide this body into two classes—those who wish to debate and those who do not debate—and we will thereby have a greatly decreased attendance upon the public business and will find it difficult to keep a quorum.

Mr. Speaker, I am apprehensive that this change will be unsatisfactory and that it may prove, as in the past, a failure. Mr. Speaker, how much time have I remaining?

The SPEAKER. The gentleman has eighteen minutes remaining.

Mr. PARSONS. Will the gentleman yield for a question?

Mr. THOMAS of North Carolina. Yes.

Mr. PARSONS. Were there desks in the old House of Representatives, in the old Chamber?

Mr. THOMAS of North Carolina. That is my understanding; yes. The desks have always been in the Hall of the House, whether the old Chamber or this new Chamber. Now, Mr. Speaker, I do not wish to consume much more time. I

wish to say in answer to my friend from New York [Mr. GOULDEN] that the proposed change decreases materially the size of the Hall. It would be one-third less in size—

Mr. COOPER of Wisconsin. Will the gentleman permit a question?

Mr. THOMAS of North Carolina. When I have finished this sentence. It will be one-third less in size than it is now, and one-third larger than the Senate Chamber.

The scheme proposes chairs with book rack, which is a very much better arrangement than the benches proposed last session. The change contemplates removal of the desks, and chairs with book rack in front—not necessarily fixed or stationary chairs, but chairs in a half circle as now, with a book rack in front of each chair in which to keep books and papers. It also contemplates moving the Speaker's chair back to the south wall of the corridor, in front of the lobby, the present lobby remaining as it is. It contemplates having windows over the press gallery, giving better ventilation and more light from the south side of the Capitol, the river side. But with all the improvements in the plan proposed in this resolution of this session I can not help believing that eventually the change will be unsatisfactory. I may be mistaken. I now yield to the gentleman from Wisconsin.

Mr. COOPER of Wisconsin. I heard the gentleman say something about the proposition last spring to put in benches. That is not the proposition now?

Mr. THOMAS of North Carolina. Not at all; it is materially different.

Mr. COOPER of Wisconsin. Another gentleman talked about taking out the desks. That conveys the impression that there will be no facilities for writing.

Mr. THOMAS of North Carolina. I explained that to the House.

Mr. COOPER of Wisconsin. There will be ample facilities for writing and taking notes, and also for books and papers, as I understand.

Mr. THOMAS of North Carolina. There will be a kind of writing table and a book rack underneath in front of each chair. Now, Mr. Speaker, to show that I am not wedded to any particular plan, and I am only doing what I conceive to be my duty in voicing my own individual sentiments upon this matter and in having the matter debated fully, I am going to yield to a Member of the House who is in favor of the passage of the joint resolution. I now yield to the gentleman from Virginia [Mr. SAUNDERS].

The SPEAKER. How much time?

Mr. THOMAS of North Carolina. Three minutes.

Mr. SAUNDERS. Mr. Speaker, this proposition before the House is an intensely practical one and should receive the unanimous support of this body.

Whatever may be said concerning the spacious proportions, and stately appearance of our present Chamber, it is admittedly defective for the purposes of a working, deliberative body. It is the largest legislative hall in the world, though its membership is much smaller than that of either the House of Commons in England, or the Chamber of Deputies in France.

I believe I am correct in saying that the membership of the House of Commons is about 675, and that of the Chamber of Deputies about 560.

The pending proposition is to reduce the size of the Chamber, so as to bring the Members closer together, and to induce more real debate. When a like proposition was under consideration in May last, it was pointed out with great force by its advocates, that there were comparatively few Members with voices sufficiently sonorous to fill the Chamber, even in a quiet House. In the confusion that frequently prevails, and which is an inevitable incident of our present arrangements, he is fortunate indeed, who can make himself heard beyond his immediate surroundings. At such times, the Members on the outer tier of seats, are absolutely shut out from what is going on. In no real sense therefore, do they participate in the deliberations of the House, since such a participation requires, some knowledge at least, of what is being said, and of the arguments pro and con, upon the subject under consideration.

In the debate of last session, it was stated that a former Speaker of this body, Mr. Reed, decidedly favored a change in the present seating arrangements of our Chamber, and he was quoted as saying that this change was the one thing needed to make the House of Representatives what it ought to be; that the present room was too large; and that confusion would continue, until this rearrangement was effected.

Many objections are urged against the change. One is that we do not want to exchange our chairs for benches. Well, benches are not a necessary part of the proposed rearrangement. Another objection is that the chairs and desks were once taken

out, and benches put in, and after a short trial, the desks were restored.

But inquiry develops that desks were restored to enable the Members to "frank their documents and write their letters while attending the sessions of the House."

It is true that Members now write letters in the House, and possibly frank some documents, and this practice will continue so long as the desks remain. But there is no longer any excuse for this action. All the Members now have secretaries to relieve them of this clerical detail work, and in the Office Building we have the most ample accommodations for our files, books, letters, and papers of all sorts.

Another objection urged, is that with the desks removed, the Members will have no place in which either to store books of reference, and data of all sorts, needed in the course of debate, or upon which to write amendments to bills and resolutions under discussion. But there is no scheme of rearrangement suggested, which does not provide for such a place, though it may not be in the form of a desk. As to the larger books of reference that may be needed in debate, they are conveniently stored in a room adjacent to our Chamber, and can be readily furnished by the attendant in charge, as occasion requires.

Another objection urged is that in some sense this is an American system—that our arrangements as to chairs, and desks, are sanctioned by American usage—that this is an American Chamber, so to say—and that we must not copy the arrangements of the British House of Commons, the French Chamber of Deputies, or of any foreign deliberative assembly. Mr. Speaker, there is one thing at least, that is American, and that is we want the best of everything. If from the experience of others, we can devise any improvement upon existing conditions, whatever they may be, we ought to avail ourselves of that experience. The present arrangements are bad enough, so bad that they suggest that we try, at least, an experiment in search of something better. The acoustics of our Chamber are bad, and the ventilation wretched.

If our experiment proves to be unsatisfactory, we can, without difficulty, return to the old conditions.

But, Mr. Speaker, why continue to debate a proposition which can only be determined by actual trial, a trial which it is competent for us to make with but little cost, or trouble.

As a rule, innovations of any sort, however meritorious, are vehemently opposed. It is equally true, that existing conditions, however startling and objectionable, find their ardent defenders.

It seems to be a part of human philosophy, to bear the ills we know, in preference to a trial of suggested evil. Every student of English history knows that the infamous rotten borough system, found its warmest supporters among the greatest statesmen of cotemporary English life.

It is certainly true that the men who can be heard throughout the Chamber, not on special occasions when they have some special message to deliver, but in the course of ordinary debate, under the usual conditions, are few and exceptional. It is further true that many men whom the House would be willing to hear, are deterred from making the effort, by the exertion required.

If I may borrow the felicitous phrase of another gentleman, "I would like to see muscular oratory exchanged for intellectual oratory, and instead of a contest of violent vociferation, one of deliberate debate."

There are many features of the suggested change which ought to commend themselves to this House, and as a business body we ought not to be deterred from making an experiment that may lead to better things, by suggestions that we are aping other countries and following foreign precedents.

If other countries can furnish, or suggest, improvements on our present methods, even if they are consecrated by the experience of generations, let us avail ourselves of light from whatever quarter it may happen to come.

We need not fear the sneer that we are aping anyone, provided that what we may ultimately adopt, is approved by that robust common sense which, above everything else, is characteristic of the American people. In this connection I wish to make the following quotation from the speech of the Hon. Mr. McCall of Massachusetts: "This resolution is first of all to reduce the size of this Chamber to the proportions of a chamber which a legislative body ought to occupy, and make it a fit place for deliberation. Then it has the incidental purpose of improving the system of ventilation, by extending the House to the outer walls of the Capitol, giving us a direct connection with the outer air."

We can not afford not to make this experiment. If we want to improve, we must keep on trying.

Mr. HENRY of Texas. Mr. Speaker, during the closing days of last session the gentleman from Massachusetts [Mr. McCall] reported a proposition for removal of the seats and desks from

the Hall. His plan did not contemplate changing its architectural proportions and dimensions. To this proposal I was opposed and entered my protest. After its defeat I was anxious that something should be done to give us more comfort and better ventilation. It seemed to me then that it was wholly inadvisable to remove the desks and chairs, substituting benches for them, unless the plan of the House could be changed so as to give us better acoustic properties and more wholesome atmosphere. After this resolution was defeated I went to the gentleman from Massachusetts [Mr. McCall] and urged him to introduce his resolution anew, providing for a survey of the House, in order that the Hall might be extended to the outer walls southward, eastward, or westward for the purpose of giving outside ventilation. The gentleman from Massachusetts [Mr. McCall] assented to this view, introduced his resolution on May 12, 1908, and it was passed during the last session of Congress.

The present report and plans are the result of that resolution and action. And now, Mr. Speaker, having carefully examined the report of the gentleman from Massachusetts [Mr. McCall] and the plans recommended by the Superintendent of the Capitol Building and Grounds, it gives me great pleasure to say they have my cordial approval. [Applause.]

Let us contemplate for a moment the changes proposed. This new plan retains the rectangular hall, but leaves it surrounded by pillars and other details of architecture which make it a great improvement over the present one. While this plan reduces it in size, it will still remain one-third larger than the Senate Chamber. As the Hall exists at present, its dimensions are as follows: Greatest length on the floor, 113½ feet; greatest breadth on the floor, 67½ feet; length at gallery level, 139 feet; breadth at gallery level, 93 feet. Its height is 36 feet from floor to ceiling. The area on the present floor is 7,600 square feet. The area at the gallery level is 12,927 square feet. The new plan provides that the greatest length on the floor shall be 87 feet; the greatest breadth on the floor, 64 feet. The length at the gallery level shall be 118 feet. The breadth at the gallery level shall be 115 feet. The area on the floor shall be 5,440 square feet. The area at the gallery level shall be 9,616 square feet.

These changes will reduce the cubical contents of the Hall about one-third and greatly increase the cloakroom space. The seating arrangement under this new plan will admit the use of ample individual chairs, as in the Senate of the United States, or chairs joined together and continuing between the aisles. There will also be an extended rack in front of each row of chairs, giving to each Member a space on which to write and a desk and pockets large enough to hold papers and several volumes. The scheme provides for removing the Hall to the south and eliminates the corridor directly back of the Speaker's desk. The press gallery would then be directly over the present Members' lobby and open to the southward along the south front of the House, with five large windows in direct communication with the open air. This arrangement would give an abundance of outer air, ventilation, and sunshine.

A short historical reference is not out of order here. In 1859 the House, by a close vote, directed that the desks be removed and benches substituted, although the dimensions of the Hall were not changed. In February, 1860, by a vote of 95 yeas to 86 nays, the desks were restored. With the spacious and comfortable Office Building for the use of Members, the vote would now be different. With the removal of the desks and chairs, undoubtedly the present space on the floor is not needed. We have now offices in the new Office Building where our papers, books, and documents are kept and our daily routine work, not necessary on the floor, can be done. When it is contemplated that the hall of the House of Commons is but 60 feet long by 45 feet wide, with an area of but 2,700 square feet, and seats 673 members, it can readily be seen that the present floor space is not necessary. Allow me to state that my experience of more than twelve years on the floor of this House has demonstrated to me that I can speak with greater ease in the open air in Texas to several thousand people than in the House of Representatives under present conditions. There should be a change, and this plan proposes removing the partition wall south of where I stand and the one above the Speaker's desk, retaining the rectangular form of the House and pushing it southward to the open air. When these partition walls are taken out, we have five spacious windows in direct connection with the open air to the southward, giving pure atmosphere and abundant ventilation.

The Speaker's stand will be moved southward, corresponding with its present position. There will be large lobbies to the northward in the present Hall corresponding to the Senate marble room, and on the four corners of the new one will be

large retiring and smoking rooms. These changes will increase the convenience of Members by giving them much larger smoking rooms and ample space for conference and conversation beyond the hearing of the proceedings on the floor. Behind the seats will be folding leaves with sufficient room for writing, making notes, and placing manuscript while a Member is speaking. By this change, reducing the House of Representatives one-third in size, and removing the desks and seats, the Chamber can be made to easily seat 450 Members.

Mr. Speaker, there is not much more to be added by me to what I have already said. The controlling element with me touching this resolution is one pertaining to better ventilation and more wholesome atmosphere on this floor. As the present Chamber is constructed it has proven to be almost a death trap, and undoubtedly the health and lives of many Members have been endangered by the foul air we breathe. The present House is simply a hall within a hall, a box within a box, and should have been changed years ago.

Mr. WEBB. Will the gentleman allow me to ask him a question?

Mr. HENRY of Texas. Certainly.

Mr. WEBB. I have noticed that this Scheme B reduces the seating capacity of the gallery from 594, as at present, to 288. Do you not think that is reducing the number of people who can come to hear the deliberations of this House below the number that ought to be provided for?

Mr. HENRY of Texas. Under the present plans, as I understand them, if it is desired, the capacity of the galleries can be enlarged to twice the space here mentioned.

Mr. WEBB. This resolution adopts Scheme B, and Scheme B says that 288 seats can be furnished in the gallery.

Mr. McCALL. If the gentleman will permit me.

Mr. HENRY of Texas. Certainly.

Mr. McCALL. The architect reports that he can much extend the gallery space in Scheme B.

Mr. WEBB. In that case it is more acceptable.

Mr. HENRY of Texas. That is the purport of my remark.

Mr. STANLEY. Those who come to the galleries usually come to see, rather than to hear.

Mr. HENRY of Texas. They usually see more than they hear under present conditions in the House.

Mr. WALDO. Will the gentleman allow me to ask him a question?

The SPEAKER. The time of the gentleman has expired.

Mr. HENRY of Texas. Will the gentleman give me just one minute?

Mr. McCALL. I yield one minute more to the gentleman.

Mr. WALDO. Is there any provision in this scheme for desks under which a Member can have more space when he is making extended remarks?

Mr. HENRY of Texas. I understand not, but there is space in front there that could be used.

And now, gentlemen, for the sake of comfort, health, and orderly proceeding, let us vote to remove the partitions and open this great Hall to the south, letting in God's fresh air and bright sunshine, that it may sweep through these corridors and purify the surroundings, bringing intellectual vigor and physical strength to the Representatives of the people. [Loud applause.]

Mr. McCALL. Mr. Speaker, I have received the following letter from the gentleman from Texas [Mr. BURLESON], which I desire to read:

COMMITTEE ON APPROPRIATIONS,  
HOUSE OF REPRESENTATIVES,  
Washington, D. C., February 27, 1909.

MY DEAR MR. McCALL: I regret very much that I will not be able to be on the floor when consideration of your resolution for the remodeling of the Assembly Hall of the House of Representatives is given. I have always taken a deep interest in the movement for this reform and do not hesitate to state that I believe favorable action on your resolution will not only make the discharge of our duties more pleasant and satisfactory to ourselves, but will result in more carefully considered legislation for our country.

Sincerely yours,

A. S. BURLESON.

In reference to what I said about the galleries, I meant that under Scheme B the gallery accommodations can be very much extended over what is now shown in the plan. Will the gentleman from Mississippi occupy three minutes?

Mr. WILLIAMS. Mr. Speaker, I have voted against all plans that have heretofore been brought in for the reconstruction architecturally of the House and for the alteration and the reconstruction of the conveniences of the Members. I voted against all plans with benches, because I knew that I myself would not be comfortable upon a bench, and did not think that anybody else would be. I voted against the schemes presented because none of them reached the essential point. The essential thing that ought to be mandatory, in my mind, is direct com-

munication with the open air. Now, this plan carries us down to the south wall of the building and gives us direct communication with the open air.

There are two causes of existing conditions. One is bad air, and the other is hot air in the shape of private conversation, constantly interrupting the Members who are trying to speak. The reason of the constant conversation is that the Member does not hear and he does not want to be bored to death sitting stock still and holding his hands. Now, if this plan is adopted Members can hear, and those who can hear and are hearing will be very impatient with those who will not let them hear even better. And those who can hear as a rule will want to hear, and that will bring about silence in itself.

But the great thing that makes me advocate the plan is this: That it does not bring benches in, but leaves chairs; and secondly, that it carries us to the open air. No sort of artificial ventilation that I have ever seen is worth a copper cent.

I never knew any way of getting pure air except by getting immediate access to open air. I want to see this plan tried. Perhaps it is a little out of taste for me to say anything in favor of it, because I am going out, and I will never have to suffer its inconveniences if there shall be any. Equally, however, I shall never enjoy its conveniences, if such shall be the result.

When the matter was up before, I think it was I who suggested, or maybe proposed, a motion that there should be instructions that the architect, in making his plans, should see if he could not move this box within a box in which we sit to the corner of this building, or if not to its corner, at least to one of its sides, so as to get at the open air.

Mr. LLOYD. Do you understand that this takes us to the outer wall, or just to the second wall?

Mr. WILLIAMS. It takes us to the outer wall so far as air connection by windows is concerned.

Mr. THOMAS of North Carolina. I do not think the gentleman fully understands the matter.

Mr. WILLIAMS. It takes us to the outer air so far as its communication with the Hall is concerned, because it leaves those arches with absolutely free communication with the windows.

Mr. THOMAS of North Carolina. For the information of Members will the gentleman allow me to state what I understand Scheme B will do?

Mr. WILLIAMS. If it is a question concerning the details of the plans concerning which the gentleman desires to interrogate me, the gentleman had better ask the gentleman from Massachusetts [Mr. McCALL], who can answer more accurately than I.

#### MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed with amendments bill of the following title, in which the concurrence of the House of Representatives was requested:

H. R. 28243. An act to provide for the repair, maintenance, and preservation of public works on rivers and harbors, and for other purposes.

The message also announced that the Senate had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 26394) making appropriations for the naval service for the fiscal year ending June 30, 1910, and for other purposes, had further insisted upon its amendments Nos. 58 and 59, disagreed to by the House of Representatives, had agreed to the further conference asked by the House on the disagreeing votes of the two Houses thereon, and had appointed Mr. HALE, Mr. PERKINS, and Mr. TILLMAN as the conferees on the part of the Senate.

The message also announced that the Senate had passed the following resolutions:

*Resolved*, That the Senate has heard with profound sorrow the announcement of the death of the Hon. DANIEL L. D. GRANGER, late a Representative from the State of Rhode Island.

*Resolved*, That the business of the Senate be now suspended, in order that fitting tribute may be paid his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

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

Also:

*Resolved*, That the Senate has heard with profound sorrow of the death of Hon. AXIOSO A. WILLEY, late a Member of the House of Representatives from the State of Alabama.

*Resolved*, That the business of the Senate be now suspended, in order that a fitting tribute may be paid to his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the widow and family of the deceased.

Also:

*Resolved*, That the Senate expresses its profound sorrow on account of the death of the Hon. LLEWELLYN POWERS, late a Member of the House of Representatives from the State of Maine.

*Resolved*, That the business of the Senate be now suspended in order that fitting tribute may be paid to his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Also:

*Resolved*, That the Senate has heard with profound sorrow of the death of the Hon. ASBURY C. LATIMER, late a Senator from the State of South Carolina.

*Resolved*, That as a mark of respect to the memory of the deceased Senator the business of the Senate be now suspended to enable his associates to pay proper tribute to his high character and distinguished public services.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and transmit a copy thereof to the family of the deceased Senator.

Also:

*Resolved*, That the Senate expresses its profound sorrow on account of the death of the Hon. ADOLPH MEYER, late a Member of the House of Representatives from the State of Louisiana.

*Resolved*, That the business of the Senate be suspended in order that fitting tribute may be paid to his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

Also:

*Resolved*, That the Senate has heard with profound sorrow of the death of Hon. ABRAHAM LINCOLN BRICK, late a Member of the House of Representatives from the State of Indiana.

*Resolved*, That the business of the Senate be now suspended in order that a fitting tribute may be paid to his memory.

*Resolved*, That the Secretary communicate a copy of these resolutions to the House of Representatives and to the family of the deceased.

#### RIVER AND HARBOR BILL.

Mr. BURTON of Ohio. Mr. Speaker, I ask unanimous consent that the House nonconcur in the Senate amendments to the bill (H. R. 28243) to provide for the repair, maintenance, and preservation of public works on rivers and harbors, and for other purposes, and ask for a conference.

The SPEAKER. The gentleman from Ohio asks unanimous consent that the House disagree to the Senate amendments to the following bill, of which the Clerk will read the title, and ask for a conference.

The Clerk read the title of the bill.

The SPEAKER. Is there objection?

There was no objection, and the Speaker appointed as conferees on the part of the House Mr. BURTON of Ohio, Mr. ALEXANDER of New York, and Mr. SPARKMAN.

#### HALL OF THE HOUSE.

The House resumed consideration of House joint resolution 265.

Mr. THOMAS of North Carolina. Mr. Speaker, for the information of Members of the House, I wish to say, in reply to what has been said by the gentleman from Mississippi, that Scheme B does not contemplate carrying the Hall back to the extreme south end of the Capitol. It does contemplate taking out the partition which runs back of the Speaker's chair; but the Members' lobby will remain as it now is. The only way in which we will get air will be by the windows in the press gallery.

Mr. McCALL. I was going to ask the gentleman whether the five windows in the press gallery will not open directly into the Hall?

Mr. THOMAS of North Carolina. They will.

Mr. McCALL. Then, of course, we shall be connected with the outer air.

Mr. THOMAS of North Carolina. In that way; yes.

Mr. WILLIAMS. We shall be moved back to the wall behind the present one, and the gallery will run from that wall slopingly up to the outer wall, and will reach, at the back part of the outer wall, the south wall of the building.

Mr. McCALL. Yes.

Mr. WILLIAMS. With the windows in there?

Mr. McCALL. Yes.

Mr. WILLIAMS. So that the bad air can escape and the fresh air can come in. The polluted atmosphere of the rooms is caused by the inability of the bad air to escape from the place we are in rather than by the intrusion of any bad air from the outside.

Mr. THOMAS of North Carolina. Now, Mr. Speaker, I wish to say one word more and I shall feel that I have discharged my duty. I am just as much in favor of proper ventilation and good acoustics in the Hall as anybody, but the proposition is not alone for pure air and better acoustics. The resolution means new seating arrangements and complete reconstruction of the Hall. The joint resolution carries an appropriation of

\$350,000, and when the change is made it will be a permanent change.

Mr. STERLING. Will the gentleman yield?

Mr. THOMAS of North Carolina. I will.

Mr. STERLING. I would like to ask the gentleman if the committee has any estimate as to what this change will cost?

Mr. THOMAS of North Carolina. Three hundred and fifty thousand dollars.

Mr. STERLING. And how soon will the change be made?

Mr. THOMAS of North Carolina. I do not know; I suppose it will be made some time during the recess of Congress after the extra session.

Mr. STERLING. Would it not take a year to do the work?

Mr. THOMAS of North Carolina. I am unable to tell the gentleman, and I will have to refer him to the Superintendent of the Capitol.

Mr. STERLING. Has the gentleman any assurance that the acoustic properties of the Hall will be any better after the change, or is it an experiment?

Mr. THOMAS of North Carolina. As I understand, the acoustic properties will be better simply because of the decrease of the size of the Hall, which will still retain its rectangular shape, and be decreased in size one-third.

Mr. STANLEY. I want to ask the gentleman from Massachusetts a question. Will the gentleman yield?

Mr. McCALL. Yes.

Mr. STANLEY. These windows, I believe, are on the south side of the building?

Mr. McCALL. Yes.

Mr. STANLEY. And they are large enough to let in the sunlight?

Mr. McCALL. When we wish to let it in.

Mr. STANLEY. The reason I ask is this: The gentleman from Massachusetts is a much better scientist than I, but I understand that the physical presence of sunlight in a room or a building of this kind is as necessary as to have fresh air, in order to keep it in a healthful condition.

Mr. McCALL. I can not be sure about that; but, as the gentleman says, these windows are on the south side of the building. Now, Mr. Speaker, I yield two minutes to the gentleman from New York [Mr. PAYNE].

Mr. PAYNE. Mr. Speaker, when Mr. Reed was Speaker of the House he came to the conclusion that no man could preserve order in the House while the Hall was so large. Every Speaker, and everyone who has presided over this House, has found the same difficulty and for the same reason. When the proposition came up a year ago to make the Hall smaller, it was coupled with one or two other propositions that prevented me from voting for it. In the first place, it took out all the desks so that no Member could make any memorandum during the sessions of the House, for debate or otherwise, and then it left us without a place in which we could put papers that might be needed at any moment for use in debate.

This plan overcomes that difficulty, and substitutes another but smaller desk on which a Member can make memoranda, and a place where he can put his papers. That plan also increased the difficulty about ventilation. We have now a sort of box within a box that shuts us from the outside air. The plan last year proposed a partition on each side of the Hall, cutting off about 30 feet and tending to make a third box inside of the present box, keeping us from the outer air.

At that time I opposed it, and said that some plan ought to be devised by which we could move the Hall to the outer air. There is plenty of air and light outside, and God knows we need it enough here, and I thought we ought to have it. It was somewhat on that suggestion, made by myself and others, that the House voted down the plan.

[The time of Mr. PAYNE having expired, the gentleman from Massachusetts, Mr. McCALL, yielded one minute more.]

Mr. PAYNE. Then a resolution was passed referring this matter to the Superintendent of the Capitol, requiring him to devise a plan that would bring the Hall to the outside air. This plan does it, and not only gives us windows above, but gives us an opportunity to get outside air from the windows below by opening the doors at the south end of the Hall. It reduces the size of the Hall one-third; it leaves a lobby at the back of the present Hall where Members can meet visitors, and it seems to me it answers every requirement, except possibly one. I do not know but that I should be better pleased if it cut the Hall down still more. I see the plans call for 450 seats.

I would like it if a plan could be adopted that cut it down to 400, if that would make it effectual forever to keep the membership of the House below 400. [Applause.] I would go a

little further and amend the Constitution in that respect, if I could, because you can not trust the Members of the House under the influences that come here to increase the number of Members every time a new apportionment is made. I hope the plan will be adopted.

Mr. DOUGLAS. Mr. Speaker, I would like to ask the gentleman from Massachusetts a question and to settle something that I have not been able to settle in my own mind. As I understand it, there is a lobby back of the seats, a Member's lobby. What becomes of the space above that lobby, which is up here now.

Mr. McCALL. A large part of that space will be taken up by the gallery being made deeper. Did the gentleman from Alabama [Mr. CLAYTON] desire time?

Mr. CLAYTON. Mr. Speaker, the gentleman from Massachusetts [Mr. McCALL] kindly agreed to give me three minutes, but I think it perfectly manifest that the House is in thorough accord with the gentleman's views, and therefore, being in accord with those views also, I think it unnecessary to say anything further.

Mr. McCALL. How is it as to the gentleman from New York [Mr. COCKRAN]?

Mr. COCKRAN. I think it is unnecessary to say anything more.

Mr. McCALL. Mr. Speaker, I ask for a vote.

The SPEAKER. The question is on suspending the rules and agreeing to the resolution.

The question was taken, and the rules were suspended, and the resolution was passed.

#### WASHINGTON, SPA SPRINGS AND GRETNA RAILROAD COMPANY.

Mr. SMITH of Michigan. Mr. Speaker, I move to suspend the rules and pass the bill (S. 9006) to amend an act authorizing the Washington, Spa Springs and Gretta Railroad Company of Maryland to enter the District of Columbia, approved February 18, 1907, which I send to the desk and ask to have read.

The Clerk read as follows:

*Be it enacted, etc.*, That section 18 of an act authorizing the Washington, Spa Springs and Gretta Railroad Company of Maryland, a corporation created by the laws of the State of Maryland and authorized by an act of Congress approved February 18, 1907, to extend its line into the District of Columbia, be, and the same is hereby, amended to read as follows:

"SEC. 18. That the construction of the said extension on the lines of said railroad company within the District of Columbia shall be commenced within six months from the passage of this act and shall be completed and cars in operation within one year from the passage of this act, in default of which this act shall be void and of no effect: *Provided*, That the tracks of the Washington, Spa Springs and Gretta Railroad shall be located approximately in the middle of Bladensburg road, as the same shall be ultimately widened to a width of 90 feet; and that the Washington, Spa Springs and Gretta Railroad Company shall, in conjunction with its track construction, grade and macadamize, to such section and profile as is approved by the Commissioners of the District of Columbia, a width of 15 feet on both sides of its track construction; and that the Washington, Spa Springs and Gretta Railroad Company shall bear and defray all costs of this widening, which shall be done to the entire satisfaction of the Commissioners of the District of Columbia: *And provided further*, That all the rights, duties, obligations, and requirements as to permits and deposits contained in the act of February 18, 1907, authorizing the Washington, Spa Springs and Gretta Railroad Company of Maryland to enter the District of Columbia shall, in conjunction with this amendment, remain in full force and effect."

The SPEAKER. Is a second demanded?

Mr. SIMS. I demand a second.

The SPEAKER. A second is ordered.

Mr. SMITH of Michigan. Mr. Speaker, this railroad company was authorized to extend its lines into the District of Columbia by an act passed in February, 1907. Through no fault of the railroad company, it has been unable to complete its line in the meantime.

Mr. SIMS. Mr. Speaker, there seems to be no objection to this bill.

Mr. SMITH of Michigan. I certainly do not desire to take up any more time than necessary.

Mr. BUTLER. I do not understand what the bill is.

Mr. SMITH of Michigan. It is a bill to amend section 18 of the law passed February 18, 1907, authorizing the Washington, Spa Springs and Gretta Railroad Company to come into the District over the Bladensburg highway. If there are no further questions, I ask for a vote.

The SPEAKER. The question is on the motion of the gentleman from Michigan to suspend the rules and pass the bill.

The question was taken, and the motion was agreed to.

#### COMMISSION ON NAVAL ORGANIZATION.

The SPEAKER laid before the House the following message from the President of the United States (S. Doc. No. 743),

which was read and, with the accompanying papers, referred to the Committee on Naval Affairs and ordered printed:

#### To the Senate and House of Representatives:

I send you herewith the final report of the Commission on Naval Reorganization, which outlines a new departmental system. Accompanying is the letter from Mr. Justice Moody sent to me in transmitting the report. I have expressed to Justice Moody and his associates my profound sense of obligation for the admirable work they have done.

I invite your attention to the sound and conservative character of this report. It is in full accord with American policy, for it recognizes the complete supremacy of the civil power as regards the military no less than the civil or manufacturing side of naval administration. Nothing drastic is recommended as to the bureaus or other agencies by means of which the purely business affairs of the Navy Department are now administered. These are simply coordinated and brought under the general control of the Secretary in such manner as to secure unity of effort and action. The recommendation for the creation of the two councils, the Secretary's general council and his military council, are based upon the fundamental and all-essential proposition that a navy exists and ought only to exist for war and for war alone; for the efficacy of the navy in securing and guaranteeing peace depends absolutely upon its evident efficiency for war. Preparation for war can only be thorough and complete if the Secretary has the same expert military assistance and the same advisers in time of peace as in time of war. The proposed plan has this object in view. It should be remembered that perfection of organization and training and perfect preparedness cost no more than slipshod inefficiency in so spending money as to disregard, or even prevent or impede, proper training and preparedness. The plan outlined does not imply any greater expenditure of money than at present. It provides merely that the money should be spent wisely instead of as at present spending it so that a certain proportion is wasted in friction or in useless work. Training and preparation are essential elements of success in war. It is necessary to have the best ships and to have a sufficient number of them; but the number and character of ships will not necessarily bring victory. Efficiency in organization and personnel must be the main dependence in securing victory where there is even an approximate equality in material.

To supplement and finish the work of this commission another commission must eventually be designated, to take up the proposed plan and complete it as to details; but no plan can be satisfactory if there is deviation from the essential military principles specified in this report. These principles are those which all sound naval experts have come to recognize as fundamental. I call your attention to the fact that the commission, whose conclusions I lay before you, was composed of five rear-admirals, two ex-Secretaries of the Navy, and an ex-Member of the House of Representatives, who, throughout his term of service in the House, was one of the most able and resolute champions that the navy has ever had in Congress.

THEODORE ROOSEVELT.

THE WHITE HOUSE, February 27, 1909.

HARRY KIMMELL.

The SPEAKER laid before the House the following message from the President of the United States, which was read:

#### To the House of Representatives:

In compliance with the resolution of the House of Representatives, the Senate concurring, of February 26, 1909, I return herewith House bill No. 17214, entitled "An act for the relief of Harry Kimmell, a commander on the retired list of the United States Navy."

THEODORE ROOSEVELT.

THE WHITE HOUSE, February 27, 1909.

Mr. HUFF. Mr. Speaker, I move a rereference of that bill to the Committee on Naval Affairs.

The SPEAKER. Without objection, the bill and message will be referred to the Committee on Naval Affairs.

There was no objection.

#### LEAVE OF ABSENCE.

By unanimous consent, Mr. BARTLETT of Nevada was granted leave of absence indefinitely, on account of sickness.

FOREST HILL CEMETERY, SCRANTON, PA.

Mr. NICHOLLS. Mr. Speaker, I ask unanimous consent to discharge the Committee of the Whole House on the state of the Union from further consideration of the bill which I send to the Clerk's desk at this time and that the said bill be passed.

The SPEAKER. The gentleman from Pennsylvania asks unanimous consent that the Committee of the Whole House be

discharged from the consideration of the following bill and it be considered at this time. The Clerk will report the bill.

The Clerk read as follows:

A bill (H. R. 28055) to authorize the Secretary of War to donate one condemned brass or bronze cannon and cannon balls to the soldiers' plot in Forest Hill Cemetery, Scranton, Pa.

*Be it enacted, etc.*, That the Secretary of War be, and he is hereby authorized and directed to donate to the soldiers' plot in Forest Hill Cemetery, Scranton, Pa., one condemned brass or bronze cannon, with suitable outfit of cannon balls, which may not be needed in the service; the same to be placed by the Lieutenant Ezra S. Griffin Post, No. 139, Grand Army of the Republic, on the soldiers' plot in the Forest Hill Cemetery, located at Scranton, Pa., in honor of the soldiers and sailors from that county who served their country and State: *Provided*, That no expense shall be incurred by the United States in connection with the donation of the above-mentioned articles of ordnance property.

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

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

#### 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. 15681. An act for the relief of the Compañía de los Ferrocarriles de Puerto Rico; and

H. R. 4286. An act for the relief of John Shull.

The SPEAKER announced his signature to enrolled bill of the following title:

S. 9067. An act to grant pensions and increase of pensions to certain soldiers and sailors of the civil war and to certain widows and dependent relatives of said soldiers.

#### 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 and joint resolution:

H. R. 21896. An act to amend section 86 of an act to provide a government for the Territory of Hawaii, to provide for additional judges, and for other judicial purposes;

H. R. 27068. An act to extend the time for the completion of the Alaska Central Railway, and for other purposes;

H. R. 24149. An act granting to the Montana, Wyoming and Southern Railway a right of way across the Fort Keogh Military Reservation, Mont.;

H. R. 15939. An act authorizing the Secretary of Commerce and Labor to exchange property;

H. R. 25823. An act to amend an act entitled "An act to extend the time for the completion of the Valdez, Marshall Pass and Northern Railway, and for other purposes," approved February 21, 1907;

H. R. 12499. An act for the relief of Clarence Frederick Chapman, U. S. Navy; and

H. J. Res. 231. Joint resolution authorizing the Director of the Census to collect and publish additional statistics.

#### SITE FOR ALEXANDER HAMILTON MEMORIAL, ETC., WASHINGTON, D. C.

Mr. HAMILTON of Michigan. Mr. Speaker, I ask unanimous consent for the immediate consideration of House joint resolution 225, authorizing the selection of a site and the erection of a pedestal for the Alexander Hamilton Memorial in Washington, D. C.

The SPEAKER. The gentleman from Michigan asks unanimous consent to discharge the Committee of the Whole House from the further consideration of the following resolution and to consider the same. The Clerk will report the resolution.

The Clerk read as follows:

Joint resolution 225 authorizing the selection of a site and the erection of a pedestal for the Alexander Hamilton Memorial in Washington, D. C.

*Resolved, etc.*, That the chairman of the Committee on the Library of the Senate, the chairman of the Committee on the Library of the House of Representatives, the Secretary of the Treasury, and the president and secretary of the Alexander Hamilton National Memorial Association are hereby created a commission and authorized to select a site upon the property belonging to the United States in the city of Washington, other than the Capitol and Library grounds, for the erection of the Alexander Hamilton Memorial, to be presented by the Alexander Hamilton National Memorial Association to the people of the United States.

Sec. 2. That for the preparation of the site so selected and the erection of a pedestal upon which to place the said memorial, under the direction of the commission hereby created, the sum of \$10,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated.

The SPEAKER. Is there objection?

Mr. SULZER. Mr. Speaker, reserving the right to object, I only desire to say just a word in connection with this resolution. I would be much more pleased if it also provided for a

monument to Thomas Jefferson. The latter did much more for his country than Hamilton. There is no monument in Washington to Thomas Jefferson, and it seems to me that the people for whom he did so much and this great Government he helped to mold and shape have been neglectful in the matter. I have no objection to a monument to Hamilton, but I would like to see a great memorial to Jefferson in the Capital City of the Republic.

Mr. PAYNE. Mr. Speaker, I want to say to my colleague that if the friends of Thomas Jefferson see fit to propose a monument in the city of Washington, I have no doubt the site will be selected very cordially by the Government of the United States.

Mr. SULZER. And \$10,000 appropriated?

Mr. PAYNE. This is a monument to be put up by the Alexander Hamilton Memorial Association.

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

The joint resolution was ordered to be engrossed and read a third time, was read the third time, and passed.

#### OUTWARD ALIEN MANIFESTS ON CERTAIN VESSELS.

Mr. BENNET of New York. Mr. Speaker, I ask unanimous consent for the present consideration of the bill S. 7785.

The SPEAKER. The gentleman from New York asks unanimous consent for the present consideration of the bill which the Clerk will report.

The Clerk read as follows:

An act (S. 7785) relative to outward alien manifests on certain vessels.

*Be it enacted, etc.*, That until the provisions of section 12 of the immigration act of February 27, 1907, relating to outward alien manifests, shall be made applicable to passengers going out of the United States to Canada by land carriage, said provisions shall not apply to passengers going by vessels employed exclusively in the trade between the ports of the United States and the Dominion of Canada and the Republic of Mexico.

The committee amendment was read, as follows:

Line 4, after the word "February," strike out the word "twenty-seventh" and insert in lieu thereof the word "twentieth."

The SPEAKER. Is there objection?

Mr. SULZER. Mr. Speaker, reserving the right to object, I would like to have some explanation of this bill.

Mr. BENNET of New York. I shall be very glad to give it to my colleague. When we passed the immigration act in 1907, we added a new provision that hereafter there should be statistics collected of the outgoing aliens, so as to show at the end of the year what was the net increase or decrease of the alien population. These statistics are valuable. But between Canada and the United States there is a constant daily passage of Canadians. It is of no value to collect those statistics. We expressly exempted railroads crossing the border between Canada and the United States from the operation of the law, because the statistics would not only be valueless but misleading, but we neglected to exempt in that act that steamship company which runs from Boston to a port somewhere in Canada, and in so far as statistics are collected of the daily passage of aliens between the two countries they are not only valueless but misleading, and this bill corrects that defect.

Mr. HARRISON. How does this correct it?

Mr. BENNET of New York. By providing that until we make a law applicable to railways it shall not be applicable to the steamship line.

Mr. WILSON of Pennsylvania. By what method do you determine the number of Canadians that come to this country and remain here, if you gather no statistics there?

Mr. BENNET of New York. I will say to my friend from Pennsylvania [Mr. WILSON] that at the border stations and on the railroads we make every attempt through our immigration officials to obtain the number of Canadians that come here and remain here permanently. But the Canadians that cross the river at Detroit daily and come into the United States at Niagara and go back at night there is no use in attempting—

Mr. WILSON of Pennsylvania. The position of the gentleman is that no matter which way you attempt to get the statistics they will be inaccurate?

Mr. BENNET of New York. Absolutely; yes, sir.

Mr. SABATH. Mr. Speaker, the ranking member of the Committee on Immigration [Mr. BURNETT] is opposed to this bill, and he is not here, and for that reason I am obliged to object.

Mr. BENNET of New York. Mr. Speaker, I move to suspend the rules and pass the bill.

Mr. SABATH. You may get it through when he is here.

Mr. SULZER. I trust that that motion will not prevail.

Mr. BENNET of New York. Mr. Speaker, I withdraw the request.

Mr. SABATH. I do it because Mr. BURNETT is not present.

## SPECIAL PEACE OFFICERS AND EMPLOYEES, ALASKA SCHOOL SERVICE.

Mr. CALE. Mr. Speaker, I move to suspend the rules and take up for consideration the bill S. 8058, as amended.

The SPEAKER. The Clerk will report the bill.

The Clerk read as follows:

A bill (S. 8058) authorizing the Attorney-General to appoint as special peace officers such employees of the Alaska school service as may be named by the Secretary of the Interior.

Strike out all after the enacting clause and insert:

"That the Attorney-General shall have power to appoint, in his discretion, any person employed in the Alaska school service who may be designated by the Secretary of the Interior as a special peace officer of the division of the district of Alaska in which such person resides; and such special peace officer shall have authority to arrest, upon warrant duly issued, any native of the district of Alaska charged with the violation of any of the provisions of the Criminal Code of Alaska (act March 3, 1899, 2d supp. Rev. Stat., p. 1003) or any amendment thereof, or any white man charged with the violation of any of said provisions to the detriment of any native of the district of Alaska; and such peace officer shall also have authority to make such arrests, without warrant, for a crime committed or attempted in his presence, or when the person arrested has committed a felony, although not in his presence, or when a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it; and any person so arrested shall be taken, in accordance with such rules and regulations as may be prescribed by the Attorney-General, and without unnecessary delay, before a United States commissioner or other judicial officer for trial: *Provided*, however, That no person so appointed shall be entitled to any fees or emoluments of any character whatsoever for performing any of the services herein mentioned, but may be allowed, in the discretion of the Attorney-General, expenses actually and necessarily incurred in connection with such services."

The SPEAKER. Is there objection?

There was no objection.

So the rules were suspended and the bill was passed.

## PUBLIC LANDS, IMPERIAL COUNTY, CAL.

Mr. SMITH of California. Mr. Speaker, I move to discharge the Committee of the Whole House on the state of the Union from the further consideration of the bill H. R. 28190, and ask unanimous consent for its present consideration.

The SPEAKER. The Clerk will report the bill.

Mr. SMITH of California. Mr. Speaker, I want to ask also that the bill S. 9373 be substituted. They are identical, although it had not been reported back from the committee.

Mr. PAYNE. Let us find out whether the Senate bill is here, if the gentleman is going to try to pass it.

Mr. SABATH. What is it about? I would like to know.

The SPEAKER. The gentleman from California [Mr. SMITH] asks unanimous consent to discharge the Committee on the Public Lands from the further consideration of the bill S. 9373, and pass the same, there being a similar bill reported from that committee on the calendar. The Clerk will read.

The Clerk read as follows:

An act (S. 9373) to provide for the sale of isolated tracts of public land in Imperial County, Cal.

*Be it enacted, etc.*, That all the allotted portions of townships 13, 14, 15, and 16 south, of ranges 11, 12, 13, 14, 15, and 16, and of fractional township 17 south, of ranges 15 and 16, all east of San Bernardino meridian, which are 10 chains or less in width and lie between or about on entered or patented lands, shall be sold at private sale for cash, at such price and under such regulations as the Secretary of the Interior shall prescribe, but not at less than \$2.50 an acre: *Provided*, That any entryman or owner of such entered or patented tracts shall have a preferred right to buy one-half of all such lots as about on lands held under his entry or owned by him within six months after the time when the said Secretary shall fix the price of such tracts, and this preferred right shall not prevent such entryman or owner from buying all of any such abouting lots as may remain unsold at the expiration of said six months.

Mr. GAINES of Tennessee. Mr. Speaker, reserving the right to object, I would like to ask the gentleman—

Mr. SMITH of California. I will explain what it is. There was a resurvey of the public lands in the Imperial Valley.

Mr. GAINES of Tennessee. Why do you sell it for cash during this panic? Why do you not make it six, twelve, and eighteen months?

Mr. SMITH of California. The tracts interlying, where the two surveys come together, are very small, sometimes only a fraction of an acre, and frequently 2 or 3 acres, to the half mile of frontage on the farm. In some cases farmers have located their buildings unintentionally just outside of their farms. The largest lot I know of is about 13 acres.

Mr. GAINES of Tennessee. That does not answer, I think, my inquiry. Why do you sell for cash instead of giving them a chance on time?

Mr. SMITH of California. They have so much money in that country that they do not want time.

Mr. GAINES of Tennessee. How much is it worth per acre?

Mr. SMITH of California. As it lies in a desert state, it is worth about nothing. But when it is under irrigation it is worth about a hundred dollars an acre.

Mr. HARRISON. Is any of it cultivated now?

Mr. SMITH of California. I think in some cases the farmers have extended their irrigation beyond the boundaries of their claim proper.

Mr. HARRISON. It is to enable the farmers that have encroached beyond the irrigation section to purchase the land?

Mr. SMITH of California. Yes, sir.

Mr. HARRISON. How much is there in the largest body of land?

Mr. SMITH of California. The largest body is 13 acres and a fraction, and that would be divided by this bill between the two farms where it lies, giving each one about 6 acres.

Mr. CLAYTON. Mr. Speaker, I would like to ask the gentleman a question. I observe from the reading of the bill that it provides that this land may be sold at private sale.

Mr. SMITH of California. Yes, sir.

Mr. CLAYTON. Now, is there any Senegambian in that wood pile—private sale?

Mr. SMITH of California. Well, I will give you the color of the gentleman, and you can name him. [Laughter.] It is not desired that anybody should go in and get these little narrow strips to the annoyance of the farmers; and it gives the farmer there the first privilege of buying any of that land abutting on his land.

Mr. CLAYTON. This is to be a private sale, but, as I understand it, in no sense a secret matter? There will be publicity, so that there is no Senegambian in it?

Mr. SMITH of California. I do not think there is.

Mr. CLARK of Missouri. Is this land down in the fruit belt?

Mr. SMITH of California. No, sir. It is in the Imperial Valley, where the chief occupation is raising alfalfa, melons, and general farm products.

Mr. CLARK of Missouri. It is worth about \$100 to \$150 an acre, is it not, when you get water on it?

Mr. SMITH of California. Yes, sir.

Mr. CLARK of Missouri. I object.

Mr. SMITH of California. I hope the gentleman will not object. As the land lies in a state of nature, it is not productive.

Mr. CLARK of Missouri. I understand land around there is not worth three whoops unless it is irrigated.

Mr. SMITH of California. It derives its great value from irrigation. I hope the gentleman will not object. The Land Department is very anxious to clear up the titles to this land.

Mr. CLARK of Missouri. The Land Department is not anxious to get rid of government lands, is it?

Mr. SMITH of California. In this particular case, it is.

Mr. CLARK of Missouri. How much will land sell for around there?

Mr. SMITH of California. Why, in a state of nature it practically has no price.

Mr. CLARK of Missouri. How much do they have to pay to enter it?

Mr. SMITH of California. About \$2.50 an acre. It is nearly all homesteaded.

Mr. CLARK of Missouri. This land is already surrounded by farms that are irrigated, is it not?

Mr. SMITH of California. It lies in little narrow strips from 5 to 10 rods wide, where the surveys have not come together, and that leaves a little narrow strip between two farms, and they want to sell that little narrow strip to the abutting farmers. The largest area is 13 acres, and they want to divide that between two farmers, each one getting about 6½ acres.

Mr. CLARK of Missouri. What is the provision in this bill about the price?

Mr. SMITH of California. Not less than \$2.50 an acre, or whatever other price the Secretary of the Interior may fix.

Mr. CLARK of Missouri. And the fellows who want to go on it have already applied?

Mr. SMITH of California. They will.

Mr. CLARK of Missouri. And that shuts out anybody else?

Mr. SMITH of California. I do not think anybody would want to buy any of these little strips, where there is not more than a few acres, unless they wanted to annoy the abutting farmers.

Mr. CLARK of Missouri. Did you not say that there were 30 acres in one place?

Mr. SMITH of California. Thirteen acres between two of the farms. It nearly all lies in a long narrow strip.

Mr. CLARK of Missouri. I withdraw my objection.

Mr. SMITH of California. A discrepancy was made in the surveys, and this permits the farmers to buy the land abutting.

The SPEAKER. Is there objection?

Mr. SULZER. I desire to ask the gentleman one more question. This is a very good bill and ought to pass, ought it not?

Mr. SMITH of California. Yes, sir; I think so.

The SPEAKER. The Chair hears no objection.

The bill was ordered to a third reading, read the third time, and passed.

The SPEAKER. A corresponding House bill (H. R. 28190), of the same title, on the House Calendar, will be laid on the table.

RECESS.

Mr. PAYNE. Mr. Speaker, I move that the House take a recess until 11 o'clock on Monday morning.

The motion was agreed to; and accordingly (at 6 o'clock and 53 minutes p. m.) the House was declared in recess.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report of examination and survey of Jamaica Bay, Rockaway Inlet, and waters having outlet in Dead Horse Inlet, New York (H. Doc. No. 1488)—to the Committee on Rivers and Harbors and ordered to be printed with illustrations.

A letter from the chairman of the Immigration Commission, transmitting a statement relative to the work and expenditures of the commission (H. Doc. No. 1489)—ordered to be printed as a House document.

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the findings filed by the court in the case of Lewis B. Brasher against The United States (H. Doc. No. 1491)—to the Committee on War Claims and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

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

Mr. HOBSON, from the Committee on Naval Affairs, to which was referred the bill of the House (H. R. 27429) to promote the cause of international peace and arbitration, reported the same with amendments, accompanied by a report (No. 2282), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. BARTHOLDT, from the Committee on Public Buildings and Grounds, to which was referred the bill of the House (H. R. 28377) for the erection of a public building for the Geological Survey and other offices, reported the same without amendment, accompanied by a report (No. 2284), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. WANGER, from the Committee on Expenditures in the Post-Office Department, to which was referred House Document No. 1076, regarding expenditures for traveling expenses, Post-Office Department, submitted a report (No. 2283) thereon, which report was ordered printed.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. SMITH of California, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 27457) to withdraw from entry and sale and granting to the city of Los Angeles, Cal., certain lands therein described, reported the same with amendment, accompanied by a report (No. 2281), which said bill and report were referred to the Private Calendar.

ADVERSE REPORTS.

Under clause 2 of Rule XIII, adverse reports were delivered to the Clerk and laid on the table, as follows:

Mr. KITCHIN, from the Committee on Claims, to which was referred the bill of the House (H. R. 6041) for the relief of the Bath Iron Works and others, reported the same adversely, accompanied by a report (No. 2279), which said bill and report were laid on the table.

He also, from the same committee, to which was referred the bill of the House (H. R. 15101) for the relief of the Bath Iron Works and others, reported the same adversely, accompanied by a report (No. 2280), which said bill and report were laid on the table.

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. BARTHOLDT: A bill (H. R. 28377) for the erection of a public building for the Geological Survey and for other offices—to the Committee on Public Buildings and Grounds.

By Mr. BROWNLLOW: A bill (H. R. 28378) to limit the effect of the regulation of commerce between the several States and with foreign countries in certain cases—to the Committee on the Judiciary.

By Mr. RYAN: A bill (H. R. 28379) to promote the safety of employees and travelers on railroads by compelling common carriers by railroad to properly man their trains—to the Committee on Interstate and Foreign Commerce.

By Mr. HINSHAW: A bill (H. R. 28380) providing for the establishment of a national park in Gage County, Nebr.—to the Committee on the Public Lands.

By Mr. GAINES of Tennessee: A bill (H. R. 28381) concerning inventions by government employees—to the Committee on Patents.

By Mr. BEDE: A bill (H. R. 28382) to legalize the construction of a bridge across the Mississippi River at Hill City, Aitkin County, Minn.—to the Committee on Interstate and Foreign Commerce.

By Mr. WILSON of Illinois: Resolution (H. Res. 601) for the appointment of two additional clerks to the Committee on Enrolled Bills—to the Committee on Accounts.

By Mr. GAINES of Tennessee: Resolution (H. Res. 602) creating a "department of highways and good roads"—to the Committee on Rules.

By Mr. BENNET of New York: Resolution (H. Res. 603) relative to protection of the person of the President of the United States—to the Committee on Rules.

By Mr. JENKINS: Joint resolution (H. J. Res. 264) proposing an amendment to the Constitution of the United States, providing for succession to the Presidency and Vice-Presidency—to the Committee on the Judiciary.

By Mr. McCALL: Joint resolution (H. J. Res. 265) providing for certain changes in the arrangement of the Hall of the House of Representatives—to the Committee on the Library.

By Mr. ALLEN: Joint resolution (H. J. Res. 266) to change name of Branch avenue, in the District of Columbia, to Huntington avenue—to the Committee on the District of Columbia.

By Mr. STEVENS of Minnesota: Memorial of the legislature of Minnesota, urging improvement of the Minnesota River and the Red River of the North—to the Committee on Rivers and Harbors.

By Mr. CALDER: Memorial of the legislature of Wyoming, relating to creation of forest reserves—to the Committee on the Public Lands.

By Mr. BURLEIGH: Memorial of the legislature of Maine, in favor of the volunteer retired list bill—to the Committee on Military Affairs.

By Mr. GRONNA: Memorial of the legislature of North Dakota, relating to the issuance of bonds for the improvement of rivers, harbors, and waterways—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. ANTHONY: A bill (H. R. 28383) granting a pension to Franklin Barbour—to the Committee on Pensions.

Also, a bill (H. R. 28384) granting a pension to William H. Scheer—to the Committee on Pensions.

By Mr. CHAPMAN: A bill (H. R. 28385) for the relief of Andrew Yewell—to the Committee on Claims.

Also, a bill (H. R. 28386) granting an increase of pension to Jacob J. Staiger—to the Committee on Invalid Pensions.

By Mr. EDWARDS of Georgia: A bill (H. R. 28387) granting an increase of pension to Joseph A. Noble—to the Committee on Invalid Pensions.

By Mr. GREENE: A bill (H. R. 28388) for the relief of Spencer Borden—to the Committee on Claims.

By Mr. HOUSTON: A bill (H. R. 28389) for the relief of the estate of James D. Hays—to the Committee on War Claims.

Also, a bill (H. R. 28390) granting an increase of pension to William Davis—to the Committee on Invalid Pensions.

By Mr. JOHNSON of Kentucky: A bill (H. R. 28391) for the relief of the estate of Joseph M. Moss, deceased—to the Committee on War Claims.

By Mr. KIMBALL: A bill (H. R. 28392) for the relief of the estate of J. Howard Sheffer, deceased—to the Committee on War Claims.

Also, a bill (H. R. 28393) for the relief of Ambrose D. Val-landingham—to the Committee on War Claims.

By Mr. LANGLEY: A bill (H. R. 28394) granting a pension to Patrick Daly, jr.—to the Committee on Invalid Pensions.

Also, a bill (H. R. 28395) granting a pension to George F. Goss—to the Committee on Invalid Pensions.

Also, a bill (H. R. 28396) for the relief of G. W. Adkins—to the Committee on War Claims.

Also, a bill (H. R. 28397) for the relief of Elizabeth Caskey—to the Committee on War Claims.

Also, a bill (H. R. 28398) granting an increase of pension to James H. Phelps—to the Committee on Invalid Pensions.

By Mr. McHENRY: A bill (H. R. 28399) granting a pension to Edwin H. Moyer—to the Committee on Invalid Pensions.

Also, a bill (H. R. 28400) granting an increase of pension to James M. Wiest—to the Committee on Invalid Pensions.

Also, a bill (H. R. 28401) granting an increase of pension to Jacob B. Gettes—to the Committee on Invalid Pensions.

Also, a bill (H. R. 28402) granting an increase of pension to William H. Morton—to the Committee on Invalid Pensions.

By Mr. SWASEY: A bill (H. R. 28403) granting a pension to Freeman B. Andrews—to the Committee on Invalid Pensions.

Also, a bill (H. R. 28404) to remove the charge of desertion from the military record of Frank Cooper—to the Committee on Military Affairs.

Also, a bill (H. R. 28405) granting an increase of pension to Winfield S. Howe—to the Committee on Invalid Pensions.

#### PETITIONS, ETC.

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

By Mr. ANSBERRY: Petition of Defiance (Ohio) Lodge, No. 147, Benevolent and Protective Order of Elks, for a reserve in Wyoming for the American elk—to the Committee on the Public Lands.

By Mr. ANTHONY: Petitions of the Topeka Milling Company, of Topeka; the Kelley & Lysle Milling Company, of Leavenworth; the C. Hoffman & Son Milling Company, of Enterprise; and the Inter Ocean Mills (Willis Norton & Co.), of Topeka, all in the State of Kansas, outlining certain changes desired in the tariff schedule on flour and in its application in our relations with foreign countries—to the Committee on Ways and Means.

By Mr. BUTLER: Petition of Mary Adelaide Jeffries, of Swarthmore, Pa., favoring S. 5117 and H. R. 18445, to investigate and develop methods of treatment of tuberculosis—to the Committee on Appropriations.

By Mr. CALDER: Petition of National Forest Conservation League, favoring a duty of \$2 per thousand on certain kinds of lumber—rough fir, cedar, spruce, etc.—to the Committee on Ways and Means.

Also, petition of Westinghouse, Church, Kerr & Co., against any further legislation calculated to hamper railroads—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Veteran Association of the Fifth New York Volunteer Infantry, favoring S. 1045, to protect monuments on battlefields of Bull Run—to the Committee on Military Affairs.

Also, petition of Thomas A. Dowling, of Brooklyn, N. Y., urging passage of the pension bill for soldiers' widows—to the Committee on Invalid Pensions.

Also, petition of the Louisiana Purchase Exposition committee on legislation, proposing a monument to Thomas Jefferson on the site of the St. Louis Exposition, to be built out of any surplus remaining in settlement of its affairs—to the Committee on Appropriations.

Also, petition of the National Lime Manufacturers' Association, of Riverton, Va., for an appropriation to enable the Geological Survey to investigate the manufacture of lime—to the Committee on Appropriations.

Also, petition of the board of directors of the National Business League of America, against a national consular school—to the Committee on Foreign Affairs.

By Mr. DARRAGH: Petition of L. S. Morey and 22 other citizens of Edmon, Mich., against passage of Senate bill 3940—to the Committee on the District of Columbia.

By Mr. DAWSON: Petition of Iowa Retail Hardware Association, against parcels-post and postal savings bank legislation—to the Committee on the Post-Office and Post-Roads.

By Mr. ESCH: Petition of C. Meyer and other citizens of Eleva, Wis., against a reduction of tariff on farm products—to the Committee on Ways and Means.

By Mr. FOCHT: Petition of citizens of Newport, Pa., favoring H. R. 18445, for treatment of tuberculosis—to the Committee on Appropriations.

By Mr. FORNES: Petition of National Pocahontas Memorial Association of New York City, protesting against S. 4453, for monument to Pocahontas at Jamestown, Va.—to the Committee on the Library.

Also, petition of National Business League of America, against a national consular school—to the Committee on Foreign Affairs.

By Mr. FOWLER: Petition of the Quinn & Boden Company, of Rahway, N. J., against H. R. 28192—to the Committee on Patents.

Also, petition of Rahway Lodge, No. 1075, Benevolent and Protective Order of Elks, for an American elk reservation in Wyoming—to the Committee on the Public Lands.

Also, petition of the Mothers' Association and Rev. A. C. Nickerson, of Plainfield, N. J., favoring H. R. 24148, for federal bureau for children—to the Committee on Expenditures in the Interior Department.

By Mr. FULLER: Petition of board of directors of National Business League of America, against creation of a national consular school—to the Committee on Foreign Affairs.

Also, petition of the Haddorff Piano Company, of Rockford, Ill., against the parcels post and postal savings banks—to the Committee on the Post-Office and Post-Roads.

Also, petition of J. B. Ralston & Son, opposing parcels-post and postal savings bank legislation—to the Committee on the Post-Office and Post-Roads.

Also, petition of David Hunter, of Rockford, Ill., against parcels-post and postal savings bank laws—to the Committee on the Post-Office and Post-Roads.

By Mr. GILLETT: Petition of citizens of Athol, Mass., favoring removing from the widows' pension laws the bar of the date of marriage—to the Committee on Invalid Pensions.

Also, petition of citizens of Orange and Fitchburg, favoring legislation for the investigation of tuberculosis—to the Committee on Appropriations.

Also, petition of New Salem Grange, Patrons of Husbandry, favoring parcels-post and postal savings bank laws—to the Committee on the Post-Office and Post-Roads.

Also, petition of Greenwich Grange, Patrons of Husbandry, of Greenwich Village, favoring a national highways commission—to the Committee on Agriculture.

By Mr. GOULDEN: Petition favoring the children's bureau bill—to the Committee on Expenditures in the Interior Department.

Also, petition of the United Confederate Veterans of New Orleans, La., for amendment to Hepburn rate bill, giving free transportation to members of the Grand Army of the Republic posts and United Confederate Veterans camps—to the Committee on Interstate and Foreign Commerce.

Also, petition of National Pocahontas Memorial Association of New York City, protesting against S. 4453, for monument to Pocahontas at Jamestown—to the Committee on the Library.

By Mr. GRONNA: Petition of Minot (N. Dak.) Lodge, No. 1089, Benevolent and Protective Order of Elks, favoring a reserve for the American elk—to the Committee on the Public Lands.

By Mr. HAMMOND: Petition of N. J. Desch & Co. and 11 other citizens of Minnesota Lake, Minn., against a parcels post—to the Committee on the Post-Office and Post-Roads.

Also, petition of J. N. Jacobsen and 29 other citizens of Hills, Minn., against tax on tea or coffee—to the Committee on Ways and Means.

Also, petition of Rosenberger & Currier, favoring repeal of duty on raw and refined sugars—to the Committee on Ways and Means.

By Mr. HAUGEN: Petition of citizens of Fourth Congressional District of Iowa, against a duty on tea and coffee—to the Committee on Ways and Means.

By Mr. HAYES: Petitions of Joseph Maher and 245 others, of Tacoma and Seattle and intervening towns, and J. N. Snodgrass and 367 others, of Tacoma and other parts of Washington, favoring an effective Asiatic exclusion law against all Asiatics excepting merchants, students, and travelers—to the Committee on Foreign Affairs.

By Mr. HENRY of Connecticut: Petitions of Mashapaug Lake Grange, No. 101; L. L. Lowry and others; Somers Grange, No. 105; and Andover Grange, No. 76, for a national highways commission and federal aid in construction of highways (H. R. 15837)—to the Committee on Agriculture.

By Mr. HOWELL of New Jersey: Petitions of F. S. Shinn and John R. Parker, of Lakewood, N. J., favoring repeal of duty on raw and refined sugars—to the Committee on Ways and Means.

By Mr. HUFF: Paper to accompany bill for relief of W. Scott King (H. R. 27449)—to the Committee on Military Affairs.

By Mr. HULL of Iowa: Petition of Iowa Retail Hardware Association against parcels-post and postal savings bank legislation—to the Committee on the Post-Office and Post-Roads.

By Mr. JOHNSON of Kentucky: Papers to accompany bills for relief of estate of Alexander Williams; H. M. Moss, heir of Joseph M. Moss; and Mary H. Letcher, executrix of estate of Thomas K. Letcher—to the Committee on War Claims.

By Mr. KIMBALL: Papers to accompany bills for relief of Ruth W. Spurr, heir of J. Howard Sheffer; J. N. Yager and other heirs of S. C. Yager; George W. McIntyre; and Ambrose D. Vallandingham—to the Committee on War Claims.

Also, petition of Paris (Ky.) Lodge, No. 373, Benevolent and Protective Order of Elks, for a reserve in Wyoming for the American elk—to the Committee on the Public Lands.

By Mr. LONGWORTH: Petition of Newtown Council, No. 230, and Walnut Hills Council, No. 125, Junior Order United American Mechanics, for an effective exclusion law against all Asiatics save merchants, students, and travelers—to the Committee on Foreign Affairs.

By Mr. LOUD: Petition of merchants of Pinconning, Mich., against parcels-post and postal savings bank laws—to the Committee on the Post-Office and Post-Roads.

By Mr. MARSHALL: Memorial of the senate and house of representatives of North Dakota, favoring issuance of \$500,000,000 2 per cent bonds for waterway improvement—to the Committee on Rivers and Harbors.

Also, petition of Heinrich Steinhauer, for legislation to prevent the inhuman and brutal treatment of German-Russian immigrants at Ellis Island—to the Committee on Immigration and Naturalization.

By Mr. POLLARD: Petition of Nebraska legislature, for appropriation for a clock on the post-office building in Lincoln, Nebr.—to the Committee on Public Buildings and Grounds.

By Mr. PRAY: Petition of Great Falls Lodge, No. 214; Bozeman Lodge, No. 463; Billings Lodge, No. 394; Missoula Lodge, No. 383; Virginia City Lodge, No. 390; and Silver Bow Lodge, No. 240, Benevolent and Protective Order of Elks, all in the State of Montana, for reservation for the care of the American elk—to the Committee on the Public Lands.

Also, petition of citizens of Montana, against Sunday-closing bill (S. 3940)—to the Committee on the District of Columbia.

By Mr. REYNOLDS: Petition of Johnstown (Pa.) Lodge, No. 175, Benevolent and Protective Order of Elks, for a reserve in Wyoming for the American elk—to the Committee on the Public Lands.

By Mr. ROBERTS: Petition of citizens at Ford Hall meeting, Boston, Mass., evening of February 21, favoring H. R. 24148, for federal bureau for children—to the Committee on Expenditures in the Interior Department.

Also, petition of Melrose (Mass.) Lodge, No. 1631, Benevolent and Protective Order of Elks, for a reserve in Wyoming for the American elk—to the Committee on the Public Lands.

By Mr. SHERLEY: Paper to accompany bill for relief of C. Lee Hawkins, administrator of estate of Reuben W. Hawkins—to the Committee on War Claims.

By Mr. SIMS: Paper to accompany bill for relief of M. D. Meriwether—to the Committee on War Claims.

Also, petition of Pleasant Springs Colored Farmers' Progressive Union, No. 74, for the granting of a pension to those colored people who were slaves at and prior to the year 1861—to the Committee on Pensions.

By Mr. SNAPP: Petition of certain residents of Elwood, Ill., favoring parcels-post and postal savings bank legislation—to the Committee on the Post-Office and Post-Roads.

By Mr. SPERRY: Resolutions of the men's class of the United Church of New Haven, Conn., favoring the children's bureau bill—to the Committee on Expenditures in the Interior Department.

Also, resolutions of the Connecticut Congress of Mothers, favoring the children's bureau bill—to the Committee on Expenditures in the Interior Department.

By Mr. STEPHENS of Texas: Petition of Amarillo Lodge, Benevolent and Protective Order of Elks, for an American elk reservation in Wyoming (H. R. 21980)—to the Committee on the Public Lands.

By Mr. STEVENS of Minnesota: Joint memorial of state legislature of Minnesota, against enactment of the McCumber grain-inspection bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Millers' Club of Minnesota, against tax levied on American flour by European countries—to the Committee on Ways and Means.

Also, petition of the Minnesota Mercantile Company, of Stillwater, Minn., favoring repeal of duty on raw and refined sugars—to the Committee on Ways and Means.

Also, petition of St. Paul (Minn.) Lodge, No. 50, Benevolent and Protective Order of Elks, for a reserve in Wyoming for the American elk—to the Committee on the Public Lands.

Also, petition of St. Paul Board of Trade, for a national highways commission and federal aid in construction of highways (H. R. 15837)—to the Committee on Agriculture.

By Mr. SWASEY: Papers to accompany bills for relief of Frank Cooper and Freeman B. Andrews—to the Committee on Invalid Pensions.

Also, paper to accompany bill for relief of Winfield S. Howe—to the Committee on Invalid Pensions.

Also, petition of citizens of Greene, Me., in favor of the parcels-post bill—to the Committee on the Post-Office and Post-Roads.

By Mr. THISTLEWOOD: Petition of Commercial Club of Metropolis, Ill., favoring appropriation for improvement of inland waterways—to the Committee on Rivers and Harbors.

By Mr. WANGER: Preamble and resolution disapproving of the creation of a national consular school, adopted by the board of directors of the National Business League of America at Chicago, February 15, 1909—to the Committee on Foreign Affairs.

By Mr. WEBB: Petition of merchants of Cleveland County, against the parcels post and postal savings banks—to the Committee on the Post-Office and Post-Roads.

By Mr. WHEELER: Petition of Joseph A. Schofield and 92 others, of Warren County, Pa., against removal of duty on crude oil—to the Committee on Ways and Means.

By Mr. WILEY: Petition of E. P. Rigsby and others, of Shell, Ala., against reduction of the duty on lumber—to the Committee on Ways and Means.

By Mr. WOOD: Petition of citizens of Trenton, N. J., favoring the children's bureau bill—to the Committee on Expenditures in the Interior Department.

Also, petition of Princeton Agricultural Association and Mercer Grange, No. 77, Patrons of Husbandry, of Hopewell, N. J., for a national highways commission and federal aid in construction of highways (H. R. 15837)—to the Committee on Agriculture.

Also, petition of Lambertville (N. J.) Lodge, No. 1070, Benevolent and Protective Order of Elks, for a reserve in Wyoming for the American elk—to the Committee on the Public Lands.

## SENATE.

MONDAY, March 1, 1909.

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. Edward E. Hale.

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

The VICE-PRESIDENT. The Journal stands approved.

### COMPANIES B, C, AND D, TWENTY-FIFTH INFANTRY.

Mr. HOPKINS. Mr. President, on the 23d of February the Senate had under consideration the bill (S. 5729) to correct the records and authorize the reenlistment of certain noncommissioned officers and enlisted men belonging to Companies B, C, and D of the Twenty-fifth U. S. Infantry who were discharged without honor under Special Orders, No. 266, War Department, November 9, 1906, and the restoration to them of all rights of which they have been deprived on account thereof.

That bill, as I understand it, was a substitute for what is known as the "Foraker bill," touching the Brownsville matter. I was not present at the time of the consideration of the bill. There were two votes taken upon the bill; one on the amendment that was offered by the senior Senator from Virginia [Mr. DANIEL] to strike out section 2 of the bill, and the other on the passage of the bill itself.

I find that in the arrangement of pairs I am recorded in favor of the amendment and against the bill. This is an error. Had I been present I should have voted against the amendment offered by the Senator from Virginia, and I should have voted for the bill on its final passage. I desire to make this statement in order to correct the RECORD as I find it.