stone Grange, No. 2, of Montgomery County, Pa., for the enactment of Senate bill 5842, relating to oleomargarine; to the Committee on Agriculture.

Also, petition of Thomas Haigh, of Richland Center, Pa., commander of Post No. 145, Grand Army of the Republic, Department for Pennsylvania, for an appropriation for the immediate construction of the Lincoln memorial road from Washington to Gettysburg; to the Committee on the Library.

Also, preambles and resolutions of the Manufacturers' Club of Philadelphia, against the enactment of legislation for so-called reciprocity with Canada as provided in the recent agreement; to the Committee on Ways and Means.

Also, petition of Local Union No. 465, United Brotherhood of Carpenters and Joiners of America, of Ardmore, Montgomery County, Pa., for the construction of the battleship *New York* in a Government navy yard; to the Committee on Naval Affairs.

By Mr. WOOD of New Jersey: Petition of Grande View Grange, No. 124, Patrons of Husbandry, Flemington, N. J., and Ringoes Grange, No. 12, Patrons of Husbandry, Ringoes, N. J., against Canadian reciprocity treaty; to the Committee on Ways and Means.

Also, petition of Robert T. Messler and other citizens of Somerville, N. J., and George M. Gill, of Orange, N. J., against increase of postage on second-class matter; ot the Committee on the Post Office and Post Roads.

Also, petition of De Laval Separator Co., of New York, against placing centrifugal cream separators on the free list; to the Committee on Ways and Means.

Also, petition of Raritan Valley Grange, No. 101, Patrons of Husbandry, of South Branch, N. J., and Heightstown Grange, No. 96, of Cranbury, N. J., against reciprocal tariff with Canada; to the Committee on Ways and Means.

Also, petition of Manuel Kline, jr., and other citizens of Trenton, N. J., for building battleship *New York* in a Government navy yard; to the Committee on Naval Affairs.

---

## SENATE.

### FRIDAY, *February 17, 1911.*

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

The VICE PRESIDENT resumed the chair.

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

#### USELESS PAPERS IN DEPARTMENT OF COMMERCE AND LABOR.

The VICE PRESIDENT. The Chair lays before the Senate a communication from the Secretary of Commerce and Labor, transmitting, pursuant to law, a list of useless papers in that department which are not needed or useful in the transaction of the current business. The communication and accompanying papers will be referred to the Select Committee on the Disposition of Useless Papers in the Executive Departments, and the Chair appoints the Senator from Arkansas [Mr. CLARKE] and the Senator from New Hampshire [Mr. GALLINGER] members of the committee on the part of the Senate. The Secretary will notify the House of the appointment thereof.

#### UNIVERSAL RACE CONGRESS.

The VICE PRESIDENT laid before the Senate a communication from the executive committee of the Universal Race Congress of London, England, extending an invitation to the Congress of the United States to attend the first universal race congress to be held in the University of London July 26 to 29, 1911, which was referred to the Committee on Foreign Relations.

#### SENATOR FROM TEXAS.

Mr. BAILEY presented the credentials of CHARLES A. CULBERSON, chosen by the Legislature of the State of Texas a Senator from that State for the term beginning March 4, 1911, which were read and ordered to be filed.

#### MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by W. J. Browning, its Chief Clerk, announced that the House had agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 6953) authorizing contracts for the disposition of waters of projects under reclamation acts, 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. 31237) making appropriation for the support of the Army for the fiscal year ending June 30, 1912; further insists upon its disagreement to the amendments of the Senate Nos. 18 and 49 to the bill; recedes from its disagreement to the amendment of the Senate No. 23, and agrees to the same with an amendment, in which it requested the concurrence of the Senate; agrees to the further conference asked for by the Senate on the disagreeing votes of the two Houses thereon; and had appointed Mr. HULL of Iowa, Mr. PRINCE, and Mr. SULZER managers at the conference on the part of the House.

#### ENROLLED BILLS SIGNED.

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

H. R. 11798. An act to enable any State to cooperate with any other State or States, or with the United States, for the protection of the watersheds of navigable streams, and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers;

H. R. 24123. An act for the relief of the legal representatives of William M. Wightman, deceased;

H. R. 27837. An act to amend the provisions of the act of March 3, 1885, limiting the compensation of storekeepers, gaugers, and storekeeper-gaugers, in certain cases, to $2 a day, and for other purposes;

H. R. 31056. An act to ratify a certain lease with the Seneca Nation of Indians; and

H. R. 31662. An act granting five years' extension of time to Charles H. Cornell, his assigns, assignees, successors, and grantees, in which to construct a dam across the Niobrara River, on the Fort Niobrara Military Reservation, and to construct electric light and power wires and telephone line and trolley or electric railway, with telegraph and telephone lines, across said reservation.

#### PETITIONS AND MEMORIALS.

The VICE PRESIDENT presented a memorial of the Home Market Club, of Boston, Mass., remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which was referred to the Committee on Finance.

He also presented a petition of the Boot and Shoe Club, of Boston, Mass., praying for the ratification of the proposed reciprocal agreement between the United States and Canada, which was referred to the Committee on Finance.

He also presented the memorial of Pearl Wight, of New Orleans, La., remonstrating against the passage of the so-called Scott antioption bill relative to dealing in cotton futures, which was referred to the Committee on Interstate Commerce.

He also presented resolutions adopted at a meeting of the National Association of Box Manufacturers held at Memphis, Tenn., praying for the establishment of a permanent tariff board, which were ordered to lie on the table.

He also presented resolutions adopted by the Iowa Association of the Philippine Islands, relative to the death of the late Senator JONATHAN P. DOLLIVER, of Iowa, which were ordered to lie on the table.

Mr. BEVERIDGE. I present a telegram from Thomas McCullough, manager of the National Association of Box Manufacturers, which I ask be printed in the RECORD.

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

MEMPHIS, TENN., *February 16, 1911.*

Senator A. J. BEVERIDGE,
*Washington, D. C.:*

The following resolutions were passed by the National Association of Box Manufacturers. Please use in promoting the cause of a permanent tariff commission:

"*Resolved*, That we, the National Association of Box Manufacturers, in convention assembled at Memphis, Tenn., on this, the 16th day of February, 1911, do heartily indorse the establishment of a permanent tariff commission.

"*Resolved*, That this resolution shall be forwarded to the President of the United States and to both branches of Congress."

THOS. MCCULLOUGH, *Manager.*

Mr. BEVERIDGE. I also present the following telegrams to be printed in the RECORD without reading.

The VICE PRESIDENT. The telegrams will be printed in the RECORD if there be no objection.

Mr. SCOTT. I certainly will object, because we all get such telegrams, and if we put them all in the RECORD it would be so large that it would take a cart to haul it.

Mr. BEVERIDGE. If the Senator objects I will simply say that most of them are from my own State, and that they are on both sides.

Mr. SCOTT. If the Senator will look across the aisle, he will see the telegrams the Senator from North Carolina [Mr. OVERMAN] has in his hand to present.

Mr. BEVERIDGE. I always look at him when I have an opportunity, but I should like to have these telegrams printed in the RECORD.

Mr. SCOTT. I object.

The VICE PRESIDENT. Objection is made.

The telegrams were ordered to lie on the table, as follows:

Telegrams from C. J. Lindsay, manager of the C. J. Lindsay News Co., of Indianapolis, Ind.; the Van Camp Hardware & Iron Co., of Indianapolis, Ind.; Elkin Wallick, of Indianapolis, Ind.; A. J. Rowland, president of the International Sunday School Council, of Philadelphia, Pa.; John R. Bonnell, of Crawfordsville, Ind.; the Indianapolis Book & Stationery Co., of Indianapolis, Ind.; Charles A. Phelps, of Fort Wayne, Ind.; the Adsell League, of South Bend, Ind., representing advertising interests in South Bend, Mishawaka, La Porte, Goshen, Elkhart, Michigan City, and Ligonier, in the State of Indiana, and Niles in the State of Michigan; Hibben Hollweg & Co., of Indianapolis, Ind.; the United Motor Co., of Indianapolis, Ind.; Ed. Norris, treasurer Tribe of Ben Hur, of Indianapolis, Ind.; the Farmers' Guide, of Huntingdon, Ind.; the Agricultural Epitomist, of Spencer, Ind.; the Apperson Bros. Auto Co., of Kokomo, Ind.; the Ward Fence Co., of Decatur, Ind.; the Modern Priscilla Publishing Co., of Boston, Mass.; William H. Rankin, vice president of the Mahon Advertising Co., of Chicago, Ill.; A. L. Haddon, of Terre Haute, Ind.; J. A. Everitt, editor of the Up-to-Date Farmer, of Indianapolis, Ind.; the Leader Printing Co., of New York City, N. Y.; the Christian Herald, of New York City, N. Y.; Havens & Geddes Co., of Indianapolis, Ind.; B. Morgan Shepherd, president of the Agricultural Press League, of Richmond, Va.; the Standard Metal Co., of Indianapolis, Ind.; James R. Rose & Co., of Indianapolis, Ind.; the Mooney-Mueller Drug Co., of Indianapolis, Ind.; Smith & Butterfield Co., of Evansville, Ind.; W. V. McCormick, of Crawfordsville, Ind.; Ketselman Bros., of Muncie, Ind.; Richard W. Knott, editor of the Evening Post and Home and Farm, of Louisville, Ky.

Mr. OVERMAN. I present certain telegrams of leading citizens and manufacturers of North Carolina protesting against the passage of the antioption cotton bill. I ask that the first telegram which consists of only a few words may be read and that the names attached to the others be printed in the RECORD.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the telegram will be read.

The telegram was read and referred to the Committee on Interstate Commerce, as follows:

WILSON, N. C., *February 16, 1911.*

Hon. LEE S. OVERMAN,
*United States Senator, Washington, D. C.:*

Scott bill detrimental cotton interest South. Would appreciate your appearing before committee in opposition to the bill.

W. S. HARRISS.
HADLEY HARRISS & CO.
P. L. WOODWARD & CO.
F. S. DAVIS.
W. M. FARMER.

Mr. OVERMAN presented telegrams, in the nature of memorials, from Thomas Crabtree, of Greensboro; Woodlaws Manufacturing Co., Armon Manufacturing Co., and Nims Manufacturing Co., of Mount Holly; Gem Yarn Mills, of Cornelius; W. C. Heath, of Monroe; German American Co., of Spray; The Cons Co., of Spray; J. A. Taylor, William Elworth, M. J. Corbett, and J. H. Brown, of Wilmington; Alex Sprunt & Sons, of Wilmington; C. B. Bryant, of Charlotte; Hedgpeth & Rucker, of Greensboro; W. L. Hall, of Greenville; T. F. Jones, of Wadesboro; J. S. Carr, A. H. Boyden, and C. B. Barber, of Raleigh; J. H. Cutter & Co., of Charlotte; and Boyden Overman Co., of Salisbury, all in the State of North Carolina, and C. S. Webb, of Greenville, S. C., remonstrating against the passage of the so-called Scott antioption bill relative to dealing in cotton futures, which were referred to the Committee on Interstate Commerce.

Mr. BURROWS presented a petition of sundry citizens of Kalamazoo, Mich., praying for the adoption of an amendment to the Constitution of the United States providing for the election of United States Senators by popular vote, which was ordered to lie on the table.

Mr. GALLINGER presented memorials of George W. Russell, of Atkinson; of James C. Pipe, of Stratham; of M. A. Meader and G. T. Kimball, of North Haverhill; of J. W. Sanborn, of Pittsfield; of Friendship Grange, Patrons of Husbandry; and of Fruitdale Grange, No. 106, Patrons of Husbandry, all in the State of New Hampshire, remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

Mr. BULKELEY presented memorials of Local Grange of Trumbull; of Housatonic Grange; and of Fairfield County Pomona Grange, all of the Patrons of Husbandry, in the State of Connecticut, remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

He also presented a petition of Local Union No. 79, United Brotherhood of Carpenters and Joiners, of New Haven, Conn., praying for the enactment of legislation to further restrict immigration, which was referred to the Committee on Immigration.

He also presented petitions of Wolf Den Grange, of Pomfret; of Norfield Grange, of Weston; of Housatonic Grange; of Local Grange of Trumbull; of Highland Grange; of Local Grange of East Lyme; of Unity Grange; and of Harmony Grange, all of the Patrons of Husbandry, in the State of Connecticut, praying for the passage of the so-called parcels-post bill, which were referred to the Committee on Post Offices and Post Roads.

Mr. BRISTOW presented memorials of Madison Grange, of Greenwood County; of Local Grange, of Linwood; of Local Grange, of Stanley; and of Local Grange, of Eudora, all of the Patrons of Husbandry, in the State of Kansas, remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

He also presented an affidavit in support of the bill (S. 10398) granting an increase of pension to Samuel C. Whitwam, which was referred to the Committee on Pensions.

He also presented an affidavit in support of the bill (S. 9989) granting an increase of pension to Darius Wells, which was referred to the Committee on Pensions.

He also presented sundry papers to accompany the bill (S. 9989) granting an increase of pension to Darius Wells, which were referred to the Committee on Pensions.

Mr. SHIVELY presented telegrams in the nature of petitions from the American Metal Co., of Indianapolis; the Indianapolis Saddlery, of Indianapolis; the Mooney-Mueller Drug Co., of Indianapolis; the Trotter Henry Co., of Indianapolis; the American Valve Co., of Indianapolis; of G. A. Schnull, of Indianapolis; the Standard Metal Co., of Indianapolis; of James R. Ross & Co., of Indianapolis; the Havens & Geddes Co., of Indianapolis; the Indianapolis Book & Stationery Co., of Indianapolis; and of William Fogarty, of Indianapolis, all in the State of Indiana, praying that an increase be made in the rate of postage on periodicals and magazines, which were ordered to lie on the table.

He also presented telegrams, in the nature of memorials, of the Apperson Bros. Auto Co., of Kokomo; of Ekin Wallick, of Indianapolis; of Juliett V. Strouse, of Terre Haute; of J. A. Everitt, editor Up-to-Date Farmer, of Indianapolis; of Ed. Noris, treasurer Tribe of Ben Hur, of Indianapolis; of the Climax Coffee & Baking Powder Co., of Indianapolis; the National Press Association, of Indianapolis; the Adsell League, of South Bend; of A. M. Reed, of Muncie; of the Crawfordsville Typographical Union, of Crawfordsville, all in the State of Indiana; of Leo Rae Axtell, of New Orleans, La.; of the Priscilla Publishing Co., of Boston, Mass., and of Norman E. Mack, of Buffalo, N. Y., remonstrating against any increase being made in the rate of postage on periodicals and magazines, which were ordered to lie on the table.

He also presented telegrams, in the nature of memorials, of Finley Baker, of La Fayette; of George J. Marott, of Indianapolis; of R. J. Scholz, of Indianapolis; of H. T. Montgomery, A. R. Bates, D. P. Moore, and R. Z. Snell, of South Bend, all in the State of Indiana, remonstrating against the passage of the so-called Scott antioption bill, relative to dealing in cotton futures, which were referred to the Committee on Interstate Commerce.

He also presented memorials of D. G. Stager, secretary of the International Printing Pressmen and Assistants' Union, No. 19, of Fort Wayne; of Harrold E. Schaible, newspaper agent, of La Fayette; of Kitselman Bros., of Muncie; of George W. Duke, secretary of the Commercial Club, of Kokomo; of the Farmers' Guide, of Huntington; of C. S. Houghland, counselor Indiana State Medical Society, of Milroy; of A. L. Haddon, of Terre Haute; of George A. Ryan, editor of Western Horseman, of Indianapolis; of the Ward Fence Co., of Decatur; of the C. J. Lindsay News Co., of Indianapolis; and of the United Motor Indianapolis Co., of Indianapolis, all in the State of Indiana, and of the Chicago Examiner, of Chicago, Ill., remonstrating against any increase being made in the rate of postage on magazines and periodicals, which were ordered to lie on the table.

He also presented a memorial of the directors of the Milk Producers' Association, of Chicago, Ill., and a memorial of the Milk Producers' Association adopted at its annual meeting at Chicago, Ill., February 6, 1911, remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

He also presented a telegram, in the nature of a petition, from A. Kiefer Drug Co., of Indianapolis, Ind., praying that an increase be made in the rate of postage on periodicals and magazines, which was ordered to lie on the table.

He also presented a petition of Local Union No. 1317, United Brotherhood of Carpenters and Joiners of America, of Indiana Harbor, Ind., praying for the enactment of legislation to further restrict immigration, which was referred to the Committee on Immigration.

Mr. FRYE presented memorials of Local Grange, of Limestone; Aroostook-Pomona Grange, of Aroostook County; Goodwill Grange, of Amherst; Local Grange, of Winthrop, all of the Patrons of Husbandry; of M. Irwin, superintendent of the local mill of the International Paper Company, of Solon; and of sundry citizens of Livermore Falls and Chisholm, all in the State of Maine, remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

Mr. JONES. I present a joint memorial of the Legislature of the State of Idaho, which I ask may be printed in the RECORD and referred to the Committee on Military Affairs.

There being no objection, the joint memorial was referred to the Committee on Military Affairs and ordered to be printed in the RECORD, as follows:

House joint memorial No. 3.

*To the honorable the Senators and Representatives of the United States in Congress assembled:*

Your memorialist, the Legislature of the State of Idaho, prays that the land and buildings comprising the Fort Walla Walla Military Reservation and barracks may be granted to Whitman College. The reasons deemed sufficient to justify this memorial are set forth in the following statement:

The War Department has determined that the military service does not require the maintenance of a military post at Fort Walla Walla, and the troops have been withdrawn, except a few necessary caretakers, so that in future the preservation of the property will be a burden upon the Government, without any compensating benefit.

The property is, by reason of its situation and character, adapted to the needs of Whitman College; its use by the college will be the best use to which it can be devoted, and the Nation will derive the greatest benefit from the property by intrusting it to an institution in every way worthy and capable of using it in the cause of higher education.

There is within the boundaries of the reservation a soldiers' cemetery, containing the graves of a number of men who died while in the military service of the United States. This cemetery has been well kept by the officers and soldiers heretofore stationed at Fort Walla Walla, and if the prayer of your memorialist shall be granted the trustees of Whitman College will assume an obligation to so care for this soldiers' cemetery as to show perpetually the respect due to our country's defenders.

Texas and Hawaii became annexed to the United States without contributing anything to the wealth of the Nation as a land proprietor, and other acquisitions of territory, except the Oregon country, were purchased and paid for out of the National Treasury, but more than 300,000 square miles of country, comprising the States of Oregon, Washington, Idaho, and parts of Montana and Wyoming, became part of our national domain through the instrumentality of patriotic pioneers, of whom Dr. Marcus Whitman was a type and a leader. They penetrated the wilderness and wrested that country, with its wealth of land, forests, mines, waters, and fisheries, from the grasp of a foreign corporation, and held it until the growth of the public sentiment forced the Government to bring to a conclusion the diplomatic controversy with respect to its ownership by the treaty with Great Britain of 1846, whereby the American title was finally recognized and established.

The scene of one of the tragedies of American history is in the immediate vicinity of Fort Walla Walla. There a monument commemorates the lives of Dr. Whitman and his wife and a dozen of their associates, part of the vanguard of American civilization who were massacred by the aboriginal inhabitants. Our Nation loves to honor those whose names illuminate the pages of its history. For that purpose the Government has willingly expended liberal appropriations in payment for statuary, monuments, and paintings produced by the most talented artists of the world, and the granting of Fort Walla Walla as a contribution to the college founded by an intimate friend and coworker of Dr. Whitman to honor his memory, and which has appealed to the sentiment of public-spirited, patriotic citizens, bringing responses in liberal contributions to its endowment, will be heartily approved by the people at large. In return for the national aggrandizement resulting directly from the exertion, privations, and sacrifices of the Oregon pioneers, the Nation can well afford to bestow one section of land and the buildings which it does not require for use as a gift to an institution of learning which the people of the three Northwestern States have adopted as an object of their solicitude and pride.

Whitman College is a privately endowed, nonsectarian, Christian college, intended to supply the need of those States for such an institution of higher education. It commands the respect and has the earnest sympathy of learned people and good people in every section of the United States, and its destiny is to grow in importance as the country surrounding it shall advance in all the ways that mark the development of arts and sciences. No more fitting monument has been erected, not to a worthier man.

The State of Washington and its citizens have paid for and donated to the United States the land comprised within two military posts, viz, Fort Lawson, near Seattle, and Fort Wright, near Spokane, each including more than 1,000 acres. These lands were purchased after they became valuable and after they had been selected for military use, and the acquisition thereof for the use of the Government involved labor and patience on the part of the public-spirited citizens in soliciting contributions of land and money and in overcoming objections of owners, and their present value is many times greater than the highest estimate of the value of Fort Walla Walla.

Therefore your said memorialist earnestly recommends the passage of the said resolution, and represents that the State of Idaho desires the granting of the land and buildings of the said Fort Walla Walla Military Reserve be made to Whitman College.

This memorial passed the house of representatives on the 23d day of January, 1911.

CHARLES D. STOREY,
*Speaker of the House of Representatives.*

This memorial passed the senate on the 24th day of January, 1911.

L. H. SWEETSER,
*President of the Senate.*

This memorial received by the governor on the 25th day of January, 1911, at 11.20 o'clock, and approved on the 25th day of January, 1911.

JAMES H. HAWLEY, *Governor.*

I hereby certify that the within house joint memorial No. 3 originated in the House of Representatives of the Legislature of the State of Idaho during the eleventh session.

JAMES H. WALLIS,
*Chief Clerk of the House of Representatives.*

STATE OF IDAHO,
DEPARTMENT OF STATE.

I, W. L. Gifford, secretary of state of the State of Idaho, do hereby certify that the annexed is a full, true, and complete transcript of house joint memorial No. 3, by Black and Galloway, recommending the passage of a resolution granting what is known as Fort Walla Walla Military Reserve and buildings thereon to Whitman College, in the State of Washington (passed the house January 23, 1911; passed the senate January 24, 1911), which was filed in this office the 25th day of January, A. D. 1911, and admitted to record.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State.

Done at Boise City, the capital of Idaho, this 26th day of January, A. D. 1911.

W. L. GIFFORD, *Secretary of State.*

Mr. JONES. I present a joint memorial of the Legislature of the State of Oregon, which I ask may be printed in the RECORD and referred to the Committee on Military Affairs.

There being no objection, the joint memorial was referred to the Committee on Military Affairs and ordered to be printed in the RECORD, as follows:

Joint memorial, praying that a grant of the land and buildings of the Fort Walla Walla Military Reservation be made to Whitman College.

*To the President and Congress of the United States of America:*

Your memorialist, the Legislature of the State of Oregon, prays that the land and buildings comprising the Fort Walla Walla Military Reservation and barracks may be granted to Whitman College. The reasons deemed sufficient to justify this memorial are set forth in the following statement:

The War Department has determined that the military service does not require the maintenance of a military post at Fort Walla Walla, and the troops have been withdrawn except a few necessary caretakers, so that in future the preservation of the property will be a burden upon the Government without any compensating benefit.

The property is, by reason of its situation and character, adapted to the needs of Whitman College; its use by the college will be the best use to which it can be devoted, and the Nation will derive the greatest benefit from the property by intrusting it to an institution in every way worthy and capable of using it in the cause of higher education.

There is within the boundaries of the reservation a soldiers' cemetery, containing the graves of a number of men who died while in the military service of the United States. This cemetery has been well kept by the officers and soldiers heretofore stationed at Fort Walla Walla, and if the prayer of your memorialist shall be granted the trustees of Whitman College will assume an obligation to so care for this soldiers' cemetery as to show perpetually the respect due to our country's defenders.

Texas and Hawaii became annexed to the United States without contributing anything to the wealth of the Nation as a land proprietor, and other acquisitions of territory, except the Oregon country, were purchased and paid for out of the National Treasury, but more than 300,000 square miles of country, comprising the States of Oregon, Washington, Idaho, and parts of Montana and Wyoming, became part of our national domain through the instrumentality of patriotic pioneers, of whom Dr. Marcus Whitman was a type and a leader. They penetrated the wilderness and wrested that country, with its wealth of land, forests, mines, waters, and fisheries, from the grasp of a foreign corporation and held it until the growth of public sentiment forced the Government to bring to a conclusion the diplomatic controversy with respect to its ownership by the treaty with Great Britain of 1846, whereby the American title was finally recognized and established.

The scene of one of the tragedies of American history is in the immediate vicinity of Fort Walla Walla. There a monument commemorates the lives of Dr. Whitman and his wife and a dozen of their associates, part of the vanguard of American civilization who were massacred by the aboriginal inhabitants. Our Nation loves to honor those whose names illuminate the pages of its history. For that purpose the Government has willingly expended liberal appropriations in payment for statuary, monuments, and paintings produced by the most talented artists of the world, and the granting of Fort Walla Walla as a contribution to the college founded by an intimate friend and coworker of Dr. Whitman to honor his memory, and which has appealed to the sentiment of public-spirited, patriotic citizens, bring responses in liberal contributions to its endowment, will be heartily approved by the people at large. In return for the national aggrandizement, resulting directly from the exertion, privations, and sacrifices of the Oregon pioneers, the Nation can well afford to bestow one section of land, and the buildings which it does not require for use, as a gift to an institution of learning which the people of the three Northwestern States have adopted as an object of their solicitude and pride.

Whitman College is a privately endowed, nonsectarian, Christian college, intended to supply the need of those States for such an institution of higher education. It commands the respect and has the earnest sympathy of learned people and good people in every section of the United States, and its destiny is to grow in importance as the country surrounding it shall advance in all the ways that mark the development of arts and sciences. No more fitting monument has been erected nor to a worthier man.

The State of Washington and its citizens have paid for and donated to the United States the land comprised within two military posts, viz,

Fort Lawton, near Seattle, and Fort Wright, near Spokane, each including more than 1,000 acres. These lands were purchased after they had become valuable and after they had been selected for military use, and the acquisition thereof for the use of the Government involved labor and patience on the part of public-spirited citizens in soliciting contributions of land and money and in overcoming objections of owners, and their present value is many times greater than the highest estimate of the value of Fort Walla Walla.

Adopted by the house January 23, 1911.
JOHN P. RUSK, *Speaker of the House.*

Concurred in by the senate February 1, 1911.
BEN SELLING, *President of the Senate.*

Indorsed: House joint memorial No. 4.
W. F. DRAGER, *Chief Clerk.*

Filed February 2, 1911.
F. W. BENSON, *Secretary of State.*

STATE OF OREGON,
OFFICE OF THE SECRETARY OF STATE.

I, F. W. Benson, secretary of state of the State of Oregon, and custodian of the seal of said State, do hereby certify:

That I have carefully compared the annexed copy of house joint memorial No. 4 with the original thereof, which was adopted by the house January 23, 1911, and concurred in by the senate February 1, 1911, together with the indorsements thereon, as filed in the office of the secretary of state of the State of Oregon February 2, 1911; and that it is a correct transcript therefrom and of the whole of such original.

In testimony whereof, I have hereunto set my hand and affixed hereto the seal of the State of Oregon.

Done at the capitol at Salem, Oreg., this 3d day of February, A. D. 1911.

[SEAL.] F. W. BENSON, *Secretary of State.*

Mr. JONES. I present a memorial of the Legislature of the State of Washington, which I ask may be printed in the RECORD and referred to the Committee on Military Affairs.

There being no objection, the memorial was referred to the Committee on Military Affairs and ordered to be printed in the RECORD, as follows:

Memorial praying that a grant of the land and buildings of the Fort Walla Walla Military Reservation be made to Whitman College.

*To the President and Congress of the United States of America:*

Your memorialist, the Legislature of the State of Washington, prays that the land and buildings comprising the Fort Walla Walla Military Reservation and Barracks may be granted to Whitman College. The reasons deemed sufficient to justify this memorial are set forth in the following statement:

The War Department has determined that the military service does not require the maintenance of a military post at Fort Walla Walla, and the troops have been withdrawn except a few necessary caretakers, so that in future the preservation of the property will be a burden upon the Government without any compensating benefit.

The property is, by reason of its situation and character, adapted to the needs of Whitman College, its use by the college will be the best use to which it can be devoted, and the Nation will derive the greatest benefit from the property by intrusting it to an institution in every way worthy and capable of using it in the cause of higher education.

There is within the boundaries of the reservation a soldiers' cemetery containing the graves of a number of men who died while in the military service of the United States. This cemetery has been well kept by the officers and soldiers heretofore stationed at Fort Walla Walla, and if the prayer of your memorialist shall be granted the trustees of Whitman College will assume an obligation to so care for this soldiers' cemetery as to show, perpetually, the respect due to our country's defenders.

Texas and Hawaii became annexed to the United States without contributing anything to the wealth of the Nation as a land proprietor, and other acquisitions of territory, except the Oregon country, were purchased and paid for out of the National Treasury, but more than 300,000 square miles of country, comprising the States of Oregon, Washington, Idaho, and parts of Montana and Wyoming became part of our national domain through the instrumentality of patriotic pioneers, of whom Dr. Marcus Whitman was a type and a leader. They penetrated the wilderness and wrested that country with its wealth of land, forests, mines, waters, and fisheries from the grasp of a foreign corporation and held it until the growth of public sentiment forced the Government to bring to a conclusion the diplomatic controversy with respect to its ownership by the treaty with Great Britain of 1846, whereby the American title was finally recognized and established.

The scene of one of the tragedies of American history is in the immediate vicinity of Fort Walla Walla. There a monument commemorates the lives of Dr. Whitman and his wife and a dozen of their associates, part of the vanguard of American civilization, who were massacred by the aboriginal inhabitants. Our Nation loves to honor those whose names illuminate the pages of its history. For that purpose the Government has willingly expended liberal appropriations in payment for statuary, monuments, and paintings produced by the most talented artists of the world, and the granting of Fort Walla Walla as a contribution to the college founded by an intimate friend of Whitman to honor his memory, and which has appealed to the sentiment of public-spirited, patriotic citizens, bringing responses in liberal contributions to its endowment, will be heartily approved by the people at large. In return for the national aggrandizement resulting directly from the exertion, privations, and sacrifices of the Oregon pioneers, the Nation can well afford to bestow one section of land and the buildings which it does not require for use as a gift to an institution of learning which the people of the three Northwestern States have adopted as an object of their solicitude and pride.

Whitman College is a privately endowed, nonsectarian Christian college intended to supply the need of those States for such an institution of higher education. It commands the respect and has the earnest sympathy of learned people and good people in every section of the United States, and its destiny is to grow in importance, as the country surrounding it shall advance in all the ways that mark the development of arts and sciences.

The State of Washington and its citizens have paid for and donated to the United States the land comprised within two military posts, viz, Fort Lawton, near Seattle, and Fort Wright, near Spokane, each including more than 1,000 acres. These lands were purchased after they had become valuable and after they had been selected for military use, and the acquisition thereof for the use of the Government involved labor and patience on the part of public-spirited citizens in soliciting contributions of land and money and in overcoming objections of owners, and their present value is many times greater than the highest estimate of the value of Fort Walla Walla.

Mr. JONES presented a memorial of sundry citizens of Everett, Wash., remonstrating against the establishment of the proposed Department of Health, which was referred to the Committee on Public Health and National Quarantine.

He also presented a petition of sundry citizens of North Yakima, Wash., praying that an investigation be made into the affairs of the wireless telegraph companies of the country, which was referred to the Committee on Interstate Commerce.

Mr. ROOT. I present a resolution adopted by the Senate of the Legislature of the State of New York, which I ask may be printed in the RECORD and referred to the Committee on Post Offices and Post Roads.

There being no objection, the resolution was referred to the Committee on Post Offices and Post Roads and ordered to be printed in the RECORD, as follows:

STATE OF NEW YORK, IN SENATE,
*Albany, February 6, 1911.*

Whereas the present limitations upon the size and weight of articles which may be carried by the United States mails do not accord with the progressive policies of other countries on this subject; and

Whereas a general extension of the parcels-post system so as to increase the size and weight of the articles which may be so carried will greatly promote the convenience of the public:

*Resolved (if the assembly concur)*, That the legislature respectfully requests the Senators and Representatives in the Congress of the United States to effect the passage of a law at the present session extending the parcels-post system accordingly.

By order of the senate.
PATRICK E. MCCABE, *Clerk.*

In assembly, February 14, 1911. Concurred in without amendment.
By order of the assembly.
LUKE MCHENRY, *Clerk.*

Mr. SCOTT presented a memorial of sundry citizens of Chester, W. Va., remonstrating against the enactment of legislation providing for an increase in the rate of postage on periodicals and magazines, which was ordered to lie on the table.

Mr. WETMORE presented a petition of Rhode Island Lodge, No. 147, International Association of Machinists, of Providence, R. I., and a petition of Commodore Perry Council, No. 14, Junior Order United American Mechanics, of Wakefield, R. I., praying for the enactment of legislation to further restrict immigration, which were referred to the Committee on Immigration.

Mr. DEPEW presented petitions of the Republican League of Clubs of the State of New York, the Buffalo Lumber Exchange, the North Buffalo Residents and Business Men's Association, the Master Plumbers' Association of Buffalo, and the Brewmasters' Association of Buffalo, of the Common Council of the city of Oswego, the North Tonawanda Board of Trade, the Kingston Chamber of Commerce, the French and Canadian Democratic Association of Greater New York, and sundry citizens of Watertown and New York City, all in the State of New York, praying for the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

He also presented memorials of Wallkill River Grange, No. 983; Carthage Grange; Cambridge Valley Grange, No. 1090; Wharton Valley Grange, No. 991; Wadhams Mills Grange; Stockton Grange, No. 316; Kendrew Grange, No. 891; Chester Grange, No. 984; Dryden Grange, No. 1112; La Fargeville Grange, No. 15; Grange No. 576 of East Schuyler; Palmyra Grange, No. 123; Richfield Grange, No. 771; Minaville Grange, No. 668; Mallonsburg Grange, No. 954; Knowlesville Grange, No. 1124; Gouverneur Grange, No. 303; Nicholville Grange, No. 797; Bombay Grange, No. 924; Marion Grange, No. 214; Mansfield Grange, No. 1030; Poughkeepsie Grange, No. 839; Indian River Grange, No. 19; Sennett Grange, No. 1054; Chester Grange, No. 984; Minisink Grange, No. 907; Mandana Grange, No. 917; East Fayette Grange, No. 40; Lorraine Grange, No. 117; Stephens Mills Grange, No. 308; Villenova Grange, No. 604; Waterport Grange, No. 1059; and Gates Grange, No. 421, all of the Patrons of Husbandry; of the St. Lawrence County Board of Trade, the Gouverneur Dairy Board of Trade, and of sundry citizens of Rushville, Three Mile Bay, New York City, Morrisville, Niagara Falls, Peconic, Wadhams, East Aurora, Albany, and Munnsville, all in the State of New York, remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

Mr. BOURNE. I present a joint memorial of the Legislature of the State of Oregon, which I ask may be printed in the RECORD and referred to the Committee on Military Affairs.

There being no objection, the joint memorial was referred to the Committee on Military Affairs and ordered to be printed in the RECORD, as follows:

Joint memorial praying that a grant of the land and buildings of the Fort Walla Walla Military Reservation be made to Whitman College.

*To the President and Congress of the United States of America:*

Your memorialist, the Legislature of the State of Oregon, prays that the land and buildings comprising the Fort Walla Walla Military Reservation and barracks may be granted to Whitman College. The reasons deemed sufficient to justify this memorial are set forth in the following statement:

The War Department has determined that the military service does not require the maintenance of a military post at Fort Walla Walla, and the troops have been withdrawn except a few necessary caretakers, so that in future the preservation of the property will be a burden upon the Government, without any compensating benefit.

The property is, by reason of its situation and character, adapted to the needs of Whitman College; its use by the college will be the best use to which it can be devoted, and the Nation will derive the greatest benefit from the property by intrusting it to an institution in every way worthy and capable of using it in the cause of higher education.

There is within the boundaries of the reservation a soldiers' cemetery, containing the graves of a number of men who died while in the military service of the United States. This cemetery has been well kept by the officers and soldiers heretofore stationed at Fort Walla Walla, and if the prayer of your memorialist shall be granted, the trustees of Whitman College will assume an obligation to so care for this soldiers' cemetery as to show, perpetually, the respect due to our country's defenders.

Texas and Hawaii became annexed to the United States without contributing anything to the wealth of the Nation as a land proprietor, and other acquisitions of territory, except the Oregon country, were purchased and paid for out of the National Treasury, but more than 300,000 square miles of country, comprising the States of Oregon, Washington, Idaho, and parts of Montana and Wyoming, became part of our national domain through the instrumentality of patriotic pioneers, of whom Dr. Marcus Whitman was a type and a leader. They penetrated the wilderness and wrested that country, with its wealth of land, forests, mines, waters, and fisheries, from the grasp of a foreign corporation and held it until the growth of public sentiment forced the Government to bring to a conclusion the diplomatic controversy, with respect to its ownership, by the treaty with Great Britain of 1846, whereby the American title was finally recognized and established.

The scene of one of the tragedies of American history is in the immediate vicinity of Fort Walla Walla. There a monument commemorates the lives of Dr. Whitman and his wife and a dozen of their associates, part of the vanguard of American civilization who were massacred by the aboriginal inhabitants. Our Nation loves to honor those whose names illuminate the pages of its history. For that purpose the Government has willingly expended liberal appropriations in payment for statuary, monuments, and paintings produced by the most talented artists of the world, and the granting of Fort Walla Walla as a contribution to the college founded by an intimate friend and coworker of Dr. Whitman to honor his memory, and which has appealed to the sentiment of public-spirited, patriotic citizens, bringing responses in liberal contributions to its endowment, will be heartily approved by the people at large. In return for the national aggrandizement resulting directly from the exertion, privations, and sacrifices of the Oregon pioneers, the Nation can well afford to bestow one section of land and the buildings which it does not require for use as a gift to an institution of learning which the people of the three Northwestern States have adopted as an object of their solicitude and pride.

Whitman College is a privately endowed, nonsectarian, Christian college, intended to supply the need of those States for such an institution of higher education. It commands the respect and has the earnest sympathy of learned people and good people in every section of the United States, and its destiny is to grow in importance as the country surrounding it shall advance in all the ways that mark the development of arts and sciences. No more fitting monument has been erected, nor to a worthier man.

The State of Washington and its citizens have paid for and donated to the United States the land comprised within two military posts, viz, Fort Lawton, near Seattle, and Fort Wright, near Spokane, each including more than 1,000 acres. These lands were purchased after they had become valuable and after they had been selected for military use, and the acquisition thereof for the use of the Government involved labor and patience on the part of public-spirited citizens in soliciting contributions of land and money and in overcoming objections of owners, and their present value is many times greater than the highest estimate of the value of Fort Walla Walla.

Adopted by the house January 23, 1911.

JOHN P. RUSK, *Speaker of the House.*

Concurred in by the senate February 1, 1911.

BEN SELLING, *President of the Senate.*

—

STATE OF OREGON,
OFFICE OF THE SECRETARY OF STATE.

I, F. W. Benson, secretary of state of the State of Oregon, and custodian of the seal of said State, do hereby certify that I have carefully compared the annexed copy of house joint memorial No. 4 with the original thereof, which was adopted by the house January 23, 1911, and concurred in by the senate February 1, 1911, and that it is a correct transcript therefrom and of the whole of such original.

In testimony whereof I have hereunto set my hand and affixed hereto the seal of the State of Oregon.

Done at the capitol at Salem, Oreg., this 4th day of February, A. D. 1911.

F. W. BENSON, *Secretary of State.*

Mr. OLIVER. I present a concurrent resolution of the General Assembly of the State of Pennsylvania, asking for the passage of the Sulloway pension bill. I ask that it may lie on the table and be printed in the RECORD.

Mr. CULBERSON. I suggest that being the resolution of a legislature of a State it ought to be read.

Mr. OLIVER. I ask that it be read.

There being no objection, the resolution was read and ordered to lie on the table, as follows:

IN THE SENATE, *February 14, 1911.*

Whereas House bill No. 29346, known as the Sulloway bill, granting pensions to certain enlisted men, soldiers, sailors, and officers, who served in the War of the Rebellion and the War with Mexico, has passed the House of Representatives in the Congress of the United States and is now pending in the Senate: Therefore be it

*Resolved* (*if the house of representatives concur*), That we heartily indorse all of the provisions of said bill, and respectfully request our Senators in Congress to vote for and use every honorable means to secure its passage by the Senate of the United States just as it passed the House of Representatives, without alteration or amendment as to benefits provided.

*Resolved*, That the secretary of the Commonwealth be authorized to send a certified copy of the foregoing preamble and resolution to Hon. BOIES PENROSE and Hon. GEORGE T. OLIVER, Senators from Pennsylvania in the Congress of the United States.

Approved, the 15th day of February, A. D. 1911.

JOHN K. TENER.

—

COMMONWEALTH OF PENNSYLVANIA,
OFFICE OF THE SECRETARY,
*Harrisburg, February 16, 1911.*

PENNSYLVANIA, *ss:*

I do hereby certify that the foregoing and annexed is a full, true, and correct copy of concurrent resolution No. 11 of the general assembly, approved February 15, 1911, as the same remains on file and appears of record in this office.

In testimony whereof I have hereunto set my hand and caused the seal of the secretary's office to be affixed the day and year above written.

[SEAL.]

ROBERT MCAFEE,
*Secretary of the Commonwealth.*

Mr. GORE. I present a concurrent resolution of the Legislature of the State of Oklahoma, which I ask may be printed in the RECORD and referred to the Committee on Indian Affairs.

There being no objection, the concurrent resolution was referred to the Committee on Indian Affairs and ordered to be printed in the RECORD, as follows:

Senate concurent resolution No. 17.

A resolution memorializing Congress to pass an act providing for the sale of the coal and asphalt lands of the Choctaw and Chickasaw Nations.

Whereas there has been introduced in the Congress of the United States a bill providing for the sale of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations; and

Whereas said bill has been drafted and agreed upon by all interests affected, Indians and white people alike, thereby removing the objections to said legislation that have heretofore existed, and all interest affected is now urging its passage—the Indians because it will carry out the solemn treaty stipulations contained in the supplementary agreement of 1902 for the sale of their coal and asphalt lands and the distribution per capita of the proceeds, and the white people because it would result in the development and taxation of a large area of land now wholly undeveloped and untaxable, thereby lightening the burden of taxation and resulting in great good to the whole people of the State of Oklahoma: Therefore be it

*Resolved by the senate* (*the house of representatives concurring therein*), That the Congress of the United States be, and the same is hereby, memorialized to pass an act at the present session of Congress that will result in the early sales of the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations and the distribution of the proceeds per capita among the Indians.

*Resolved*, That a copy of this resolution be forwarded to Hon. T. P. GORE and the Hon. ROBERT L. OWEN and to the Members of Congress of Oklahoma, and that they be requested to present the same to Congress.

Passed by the senate February 6, 1911.

J. ELMER THOMAS,
*President pro tempore of the Senate.*

Passed by the house of representatives February 6, 1911.

W. A. DURANT,
*Speaker of the House of Representatives.*

Mr. BURNHAM presented memorials of Friendship Grange, No. 110, of Northfield; Fruitdale Grange, No. 106, of Mason; Carroll Grange, No. 160, of Ossipee; Local Grange No. 93, of Campton; Miller Grange, No. 34, of Temple; and Local Mountain Grange, No. 130, of Ossipee, all of the Patrons of Husbandry, in the State of New Hampshire, and of the Cooperative Milk Producers' Co. and the Home Market Club, of Boston, Mass., remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

Mr. RAYNER presented petitions of Washington Camp, No. 60, Patriotic Order Sons of America, of Boonsboro; of Banner Council, No. 43, of Keedysville; and of Local Council of Chester, Junior Order United American Mechanics, all in the State of Maryland, praying for the enactment of legislation to further restrict immigration, which were referred to the Committee on Immigration.

He also presented resolutions adopted by the National Canners' Association, in convention at Milwaukee, Wis., favoring the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

He also presented memorials of sundry citizens of Maryland, remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

Mr. OWEN presented petitions of the Board of Trade and Merchants' Association of Fitchburg, Mass.; of the Chamber of Commerce of Allentown, Pa.; of the Chamber of Commerce of Oakland, Cal.; of the Merchants' Association and Chamber of Commerce of Altoona, Pa.; of the Chamber of Commerce of San Jose, Cal.; of the Board of trade of Worcester, Mass.; of the Chamber of Commerce of Merced, Cal.; of the Board of Trade of Pasadena, Cal.; of the Board of Trade of Indianapolis, Ind.; of the Board of Trade of Richmond Hill, New York City, N. Y.; and of the Committee of One Hundred on National Health of New York City, N. Y., praying for the establishment of a national department of health, which were referred to the Committee on Public Health and National Quarantine.

Mr. KEAN presented a petition of Gaddon Grange, No. 38, Patrons of Husbandry, of Haddonfield, N. J., and a petition of Local Grange No. 29, Patrons of Husbandry, of Elmer, N. J., praying for the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

He also presented memorials of Local Grange No. 153, of Raritan; of Local Grange No. 51, of Mullica Hill; of Local Grange No. 184, of Plainsboro; and of Local Grange No. 88, of Locktown, all of the Patrons of Husbandry, in the State of New Jersey, remonstrating against the ratification of the proposed reciprocal agreement between the United States and Canada, which were referred to the Committee on Finance.

He also presented memorials of sundry citizens of Paterson, Cranford, Plainfield, Rahway, Orange, Newark, Englewood, and Tenafly, in the State of New Jersey, and of the Millville Manufacturing Co., of Philadelphia, Pa., remonstrating against the passage of the so-called Scott antioption bill relative to dealing in cotton futures, which were referred to the Committee on Interstate Commerce.

He also presented a petition of Washington Camp No. 84, Patriotic Order Sons of America, of Gloucester City, N. J., praying for the enactment of legislation to further restrict immigration, which was referred to the Committee on Immigration.

He also presented the petition of Adam Aberle, of Union, N. J., praying for the passage of the so-called old-age pension bill, which was ordered to lie on the table.

He also presented a petition of the New Jersey Branch, National German-American Alliance, praying that an appropriation be made for the erection of a monument at Germantown, Pa., to commemorate the founding of the first permanent German settlement in America, which was referred to the Committee on the Library.

He also presented memorials of the Winthrop Press, of New York; the Civics Club of the Oranges, of Orange, N. J.; and of sundry citizens of Elizabeth, Arlington, and Montclair, in the State of New Jersey, and of sundry citizens of Brooklyn, N. Y., and Philadelphia, Pa., remonstrating against any change being made in the rate of postage on periodicals and magazines, which were referred to the Committee on Post Offices and Post Roads.

Mr. WARREN presented a petition of sundry citizens of Pennsylvania, praying for the enactment of legislation to readjust and enlarge the scope of our present parcels-post system, which was referred to the Committee on Post Offices and Post Roads.

### POSTAGE ON MAGAZINES.

Mr. YOUNG. I present an editorial appearing in the New York Evening Journal of February 16, which presents from the publishers' standpoint in a conservative and courteous manner the publishers' side of the pending postage question. I ask that it may be printed in the RECORD in order that Senators may have an opportunity to see it. It is, seemingly, a very carefully prepared editorial.

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

An effort is made to increase the post-office rates on magazines from 1 cent a pound to 4 cents a pound. The increase does not affect newspapers, and is to apply only to the announcements of business men in the advertising pages. In other words, the opinions of writers, including the so-called "muck-rakers," will continue to go through the mails at 1 cent a pound. But the statements issued by business men as to their enterprises in their efforts to reach the public, promote business, give employment, and improve products will be taxed at four times the rate charged for the rest of the magazine.

It is understood that this change is urged by the President and by the Postmaster General, Mr. Hitchcock. We believe sincerely that the President's decision and that of Mr. Hitchcock are not based upon a full understanding of conditions or the inevitable result of the proposed legislation.

And we know quite positively that the opposition as expressed by magazine owners is extremely foolish in many cases, and in one case at least—that of Everybody's Magazine—is disingenuous as well as foolish.

The President has been told by Mr. Hitchcock, who acts unquestionably in good faith, that the post office of the United States loses $60,000,000 a year by the carrying of the magazines at the present prices.

That sounds very impressive at first. But Mr. Hitchcock will admit that if to-morrow all of the magazines ceased publication absolutely and no longer went through the mails at all, the Government would be poorer than it is to-day and the post-office deficit would be bigger than it is to-day.

For if Mr. Hitchcock were to put all the magazines out of the mails he would not be able to discharge one letter carrier. He would not be able to dispense with a single mail car. He would not be able to cut down his force of clerks. In fact, he could not run the post office for $10,000,000 a year less, to say nothing of $60,000,000 a year less, than at present if all of the magazines were eliminated.

The machinery of the United States post office, as it stands, is necessary to the distribution of the mail, without the magazines.

There can be no question about saving $60,000,000 on the railroad transportation of magazines carried by the post office, for the simple reason that in spite of the extortionate rates paid to railroads for services rendered to the post office, the total amount received by the railroads from the Government does not amount to $60,000,000 all told.

Mr. Hitchcock is sincerely anxious to represent the people fairly and to give them the best results in the management of the post office. For this we give him credit, and any magazine owner, publisher, or newspaper editor who fails to give him credit is foolish as well as unjust. But Mr. Taft and Mr. Hitchcock, intelligent men, both know that it is possible to economize in ways that are extremely costly.

If, for instance, Mr. Hitchcock suddenly found himself manager of a large office building in New York City, he would discover that the elevators in such a building are run at a dead loss. If, however, he started in to make the elevator self-supporting, if he charged 1 cent a ride to the first floor, and 20 cents for a ride to the twentieth story, he could very easily make the elevators show a profit, but he would ruin the income of the office building.

In the post office the condition is somewhat the same, except that the efforts to regulate expenses and profit, as planned, would be even more disastrous than such a plan as we have suggested in connection with office-building elevators.

The advertisements that go through the mails promote business in the United States and promote the prosperity of all the people of the United States.

New businesses, such as those that have built up Battle Creek and other American cities, are based largely upon the possibilities of reaching the public through intelligent advertising.

Such advertising not only means the employment of labor on a large scale, the development of American industry, increase of comfort in the community, and increase of general prosperity, but it means also tremendous increase in the most profitable department of post-office business.

Every man who advertises successfully through the magazines compels the writing of many thousands of letters that pay 2 cents each and yield a great profit to the Government.

Mr. Hitchcock is in charge of a gigantic organization, one that involves the spending and the collecting of many tens of millions. We are convinced that careful investigation will show him that the advertising which he thinks is carried at a loss through the mails in reality far more than pays for itself by stimulating profitable business, and we suggest, respectfully, that it would be wise to ascertain exactly the real effect of this important branch of American business before taking steps to discourage it and cripple it.

It is stated in behalf of the post office authorities that they do not wish in any way to interfere with the prosperity of the legitimate magazines of high class, but that they seek to control and discourage illegitimate, dishonest publications that pretend to be organs of publicity and are in reality nothing but "catalogues."

The Post Office Department says that it is unjust to compel a merchant to pay 9 cents per pound for his catalogue and allow a man who falsely calls himself a magazine editor to mail what is nothing but a catalogue for 1 cent per pound.

This would be most just, if it were accurate. But some of the so-called catalogues are really the great trade papers. And while it is doubtless true, as has been suggested by post-office officials, that to discourage these trade papers and throw them out of the mail would add greatly to advertising in the newspapers and in the high-class magazines, no honest newspaper editor or magazine owner would want to find prosperity or increase advertising in that way.

The great trade papers of the country are absolutely essential to the business men of the country. The hardware man, the grocer, the tailor, all of the men engaged in business, are deeply interested in the particular trade papers connected with their line of work, and the news in those trade papers is as vital to them as the news of the greatest European events in the daily press.

The fact is that the circulation of business men's announcements through the mail is a most important part of the great problem of American distribution. Wide distribution of new ideas and inventions of business men is essential to the prosperity of the country.

Mr. Taft and Mr. Hitchcock would be very slow to do anything to interfere with the running of water through irrigation pipes to the lands that need irrigation.

We tell Mr. Taft and Mr. Hitchcock sincerely that what the pipes are to irrigation, magazines and the other important periodicals, including the great and legitimate trade newspapers, are to the business and to the prosperity of this country.

It is because we know that Mr. Taft and Mr. Hitchcock and the other subordinates of Mr. Taft are as sincere in this as in other matters that we feel anxious that before taking or urging any steps that would irrevocably interfere with the prosperity of a large class of citizens they inform themselves in advance and to the minutest details as to the results of such action.

In the first place, if it be true, as it undoubtedly is, that certain illegitimate, bogus publications swindle the Government and the people, masquerading as legitimate publications, why is there not intelligence enough in the Government to suppress them without suppressing and injuring legitimate concerns?

A wise farmer kills the snakes on his farm without finding it necessary to kill everything that moves, including pigs and chickens and ducks. The present post-office plan is to knock everything over the head first and then see what happens afterwards. That is not a wise plan.

Mr. Taft and Mr. Hitchcock should inform themselves as to the number of important legitimate business men who have built up large enterprises, based upon reliance on monthly magazines as selling agencies. These agencies, actual commercial travelers for these large advertisers, go into the millions of homes and tell the stories of American business men. It would not be possible in one year, or in 10 years, to establish any system of distribution, advertisement, and trade

recruiting that would take the place of these monthly distributing agents.

We hope that Mr. Taft and Mr. Hitchcock will ask themselves earnestly whether it is wise to cut off from the business men the agents upon which they rely without giving them at least a reasonable time in which to find other means of carrying on their business without injury to themselves or their employees.

It would be a good thing also for the President and for the Postmaster General to find out exactly how many well-paid American citizens are engaged in work and depend for a living on the enterprise of business men who, in turn, rely upon advertising for marketing their wares.

The post office is a vital part of the life of the people. Its activities have become essential. Those activities should under no circumstances be interfered with or experimented with, except with the greatest caution and after fullest investigation.

We suggest to the President and the Postmaster General that the Government could better afford to wait a year, even assuming all that is alleged against the magazines to be true, than run any risk of interfering seriously with many of the most important business enterprises of the United States.

We are especially anxious that what we believe to be a serious mistake should not be made in this case, because we appreciate the work that Mr. Taft has done and the work that has been done under his direction by Mr. Hitchcock toward making the post office what it should be, more and more a useful servant of the people. Recently announced plans of the Post Office Department, under Mr. Taft's administration, embody many wise features worthy of public approval and gratitude, including the increase in the postal savings-bank facilities, the beginning, at least, of an intelligent parcels-post system, and many other steps. The record of the present Postmaster General, making the post office a detector of crime and a discourager of swindling, is of the highest order. These things the people appreciate, and such a record should not be marred by an action which is at best hasty and which is misconstrued by those that do not understand the President as an expression of personal resentment because certain unimportant bilious publications have attacked him personally and unjustly.

Mr. CHAMP CLARK, who is to be the director of the House of Representatives, presiding over the Democratic majority, has taken an excellent stand in regard to this matter, one that is clear-headed and worthy of all praise.

But there should be in the case no question of politics or of party.

The vital point is this: The post office suddenly and without sufficient warning, without proof of careful investigation as to results, changes its methods, its charges to a vital degree, and actually and specifically singles out for a special tax and for special punishment the announcements of business men, whose activities are devoted to the general welfare and the general prosperity.

It is unfortunate that owners and editors of magazines—many of whom are the beneficiaries of a somewhat accidental success and rather easily earned conspicuousness—should have organized and expressed in a silly fashion their opposition to the suggested change in post-office rates.

These excitable and tactless gentlemen have acted as a nervous settler might be expected to act upon the arrival of red Indians. They have filled the air with accusations of all sorts and have made the very foolish mistake of defending themselves with false statements.

* * * * * * *

The fact is that the Postmaster General and the President of the United States are using their intelligence and their best judgment in an effort to serve the people and protect the public's interest. Others that know perhaps more, by special training, about the magazine question than the President or the Postmaster General, believe that a mistake is being made, one that will have serious consequences not foreseen.

Mr. Taft and his Postmaster General are perfectly willing to hear reasonable statements and take them into account. Senator PENROSE, the head of the Senate Committee on Post Offices and Post Roads, is a man with a clear comprehension of business conditions. Every Member of the House of Representatives can easily find out for himself the part that magazine advertising plays in the business of the community, the extent to which it helps business and labor.

It ought not to be, and, we believe, it will not be, very difficult to persuade those in authority to think carefully and wait at least a reasonable length of time before they pass a law that would be the first in the history of the United States aimed directly at business men and at the efforts of business men to increase American manufactures and American distribution.

Mr. GORE subsequently said: I ask unanimous consent to have printed as a public document the views of certain publishers of the country in relation to the proposed increase in postage on second-class mail matter.

The VICE PRESIDENT. The Senator from Oklahoma asks unanimous consent for the printing as a Senate document of the views of certain publishers upon the subject which he has designated. Is there objection?

Mr. GALLINGER. Mr. President, it seems to me that that matter was ordered printed, or that some other Senator made a similar request this morning.

Mr. GORE. If that be true, of course I withdraw the request.

The VICE PRESIDENT. The matter was not ordered printed as a public document, but upon the request of the Senator from Iowa [Mr. YOUNG] it was ordered printed in the CONGRESSIONAL RECORD.

Mr. GORE. Then I withdraw the request.

### REPORTS OF COMMITTEES.

Mr. SCOTT, from the Committee on Public Buildings and Grounds, to which was referred the bill (S. 10299) to enlarge the site of the Federal building at Akron, Ohio, reported it without amendment.

Mr. BRIGGS, from the Committee on Military Affairs, to which was referred the bill (H. R. 15616) for the relief of Louis Durst, reported it with an amendment and submitted a report (No. 1184) thereon.

Mr. BRIGGS. I am directed by the Committee on Military Affairs, to which was referred the bill (S. 7494) to correct the military record of Louis Durst, to ask for its indefinite postponement, as a House bill on the same subject has been reported favorably from the committee.

The VICE PRESIDENT. The bill will be postponed indefinitely.

Mr. DU PONT, from the Committee on Military Affairs, to which was referred the bill (S. 7640) to correct the military record of James M. Sweat, reported it with amendments and submitted a report (No. 1185) thereon.

Mr. JOHNSTON, from the Committee on Military Affairs, to which was referred the bill (S. 3831) for the relief of James Tulley, submitted an adverse report (No. 1186) thereon; which was agreed to, and the bill was postponed indefinitely.

Mr. WARNER, from the Committee on Military Affairs, to which was referred the bill (H. R. 8185) for the relief of Valentine Fraker, reported it without amendment and submitted a report (No. 1187) thereon.

Mr. WARNER. I am directed by the Committee on Military Affairs, to which was referred the bill (S. 1545) to amend and correct the records of Company D, Seventh Regiment Provisional Enrolled Missouri Militia, by including the name of Valentine Fraker therein, with the dates of his enlistment and discharge, to ask that it be indefinitely postponed, as a similar House bill has been heretofore reported favorably.

The VICE PRESIDENT. The bill will be postponed indefinitely.

Mr. FRAZIER, from the Committee on Military Affairs, to which was referred the bill (H. R. 3982) for the relief of David F. Wallace, reported it with an amendment and submitted a report (No. 1188) thereon.

Mr. CLARKE of Arkansas. I am directed by the Committee on Interstate Commerce, to which was referred the bill (H. R. 24073) to prohibit interference with commerce among the States and Territories and with foreign nations, and to remove obstructions thereto, and to prohibit the transmission of certain messages by telegraph, telephone, cable, or other means of communication between States and Territories and foreign nations, to report it with amendments striking out sections 3, 4, 6, and 7 of the bill and without recommendation.

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

Mr. BURNHAM, from the Committee on Claims, to which was referred the bill (H. R. 26367) to pay certain employees of the Government for injuries received while in the discharge of duty, reported it with amendments and submitted a report (No. 1190) thereon.

Mr. WARREN, from the Committee on Public Buildings and Grounds, to which were referred the following bills, reported them each with amendments:

S. 10744. A bill to provide for the purchase of a site for the erection of a public building thereon at Sundance, in the State of Wyoming; and

S. 10790. A bill to provide for the acquisition of a site and the erection thereon of a public building at Newcastle, Wyo.

### LANDS IN IDAHO.

Mr. HEYBURN. I ask unanimous consent to call up for consideration the bill (S. 10791) to eliminate from forest and other reserves certain lands included therein for which the State of Idaho had, prior to the creation of said reserves, made application to the Secretary of the Interior under its grants that such lands be surveyed.

I would say that this is a measure that is necessary in order to complete an arrangement which is pending between the officers of the State and the executive officers of the Government.

Mr. BEVERIDGE. Will it take any discussion?

Mr. HEYBURN. No; there should be no discussion of it.

The VICE PRESIDENT. The Secretary will read the bill for the information of the Senate.

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

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

### MANEUVERING GROUNDS, ETC., IN TENNESSEE.

Mr. FRAZIER. From the Committee on Military Affairs I report back the joint resolution (H. J. Res. 146) creating a commission to investigate and report on the advisability of the establishment of permanent maneuvering grounds and camp of inspection for troops of the United States at or near the Chickamauga and Chattanooga National Military Park, with an

amendment in the nature of a substitute, and I submit a report (No. 1189) thereon. I ask for its immediate consideration.

The VICE PRESIDENT. Is there objection to the present consideration of the joint resolution?

Mr. SMOOT. I should like to ask the Senator whether it was reported from the Committee on Military Affairs.

Mr. FRAZIER. Yes; it is a unanimous report of the Committee on Military Affairs. It is a substitute, to take the place of two joint resolutions passed by the House on the same subject. It carries no appropriation but the actual expenses of the board.

Mr. JONES. I ask the Senator if the resolution simply refers to land in Tennessee?

Mr. FRAZIER. It does.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution, which had been reported from the Committee on Military Affairs with an amendment to strike out all after the resolving clause and insert:

*Resolved, etc.*, That the President of the United States be, and he is hereby, authorized and directed to appoint a commission consisting of five officers of the Army of the United States to make a full and complete investigation, and consider carefully whether or not it is advisable to make, establish, and maintain a maneuvering ground and camp of inspection rifle and artillery ranges for United States troops at or near the Chickamauga and Chattanooga National Military Park. Said commission shall fully consider the advantages and disadvantages of the lands contiguous to or near to said park for the purposes herein stated, and report fully as to probable numbers of acres of land necessary to purchase, and the probable cost of the same, and as to all facts and conditions material to be considered in the premises. The report shall be filed in the War Department by December 1, 1911, and communicated to Congress thereafter as soon as practicable by the President.

SEC. 2. That said board or commission shall also examine carefully all lands within the State of Tennessee that may be proposed to be donated to the United States for the establishment and maintenance thereon of a maneuvering encampment and rifle and artillery ranges for the assembling of troops from the group of States composed of Tennessee, Kentucky, Mississippi, Alabama, Georgia, Florida, North Carolina, and South Carolina and report on the advisability of establishing such camps, rifle and artillery ranges on such lands proposed to be donated, and whether the lands proposed to be donated are suitable and desirable for such purposes, and how much land would be properly required for said purposes, and whether the lands proposed to be donated are sufficient in quantity for the purposes proposed and conveniently located for use by troops from said States, and the facilities for transportation of troops and supplies to and from said lands, and such other facts as may be material to be considered in the premises.

SEC. 3. That the said board or commission shall serve without compensation, but shall be paid actual necessary expenses.

The amendment was agreed to.

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

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

The joint resolution was read the third time and passed.

The title was amended so as to read: "A joint resolution creating a commission to investigate and report on the advisability of the establishment of permanent maneuvering grounds, camp of inspection, rifle and artillery ranges for troops of the United States at or near the Chickamauga and Chattanooga Military Park, and to likewise report as to certain lands in the State of Tennessee proposed to be donated to the United States for said purposes."

Mr. FRAZIER, from the Committee on Military Affairs, to which was referred the joint resolution (H. J. Res. 189) authorizing the Secretary of War to accept the title to any lands which may be donated to the United States which, in his opinion, may be a suitable place for maneuvering, encampment, rifle and artillery ranges, and convenient for assembling troops from the group of States composed of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, and South Carolina, reported adversely thereon, and the joint resolution was postponed indefinitely.

### JAMES DONOVAN.

Mr. BULKELEY. From the Committee on Military Affairs I report back favorably without amendment the bill (H. R. 26018) for the relief of James Donovan, and I submit a report (No. 1181) thereon. I ask unanimous consent for its present consideration.

The Secretary read the bill; and there being no objection, the Senate, as in Committee of the Whole, proceeded to its consideration. It provides that in the administration of any laws conferring rights, privileges, or benefits upon honorably discharged soldiers, James Donovan, who was a private in Company E, First Regiment United States Cavalry, shall hereafter be held and considered to have been honorably discharged from the military service of the United States as a member of said company and regiment, but other than as above set forth no bounty, pay, pension, or other emolument shall accrue prior to or by reason of the passage of this act.

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

### ADDITIONAL DISTRICT JUDGE IN COLORADO.

Mr. CLARK of Wyoming. From the Committee on the Judiciary I report back favorably without amendment the bill (S. 9914) to provide for the appointment of one additional district judge in and for the district of Colorado, and I ask for its immediate consideration.

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

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

### MINNESOTA RIVER DAMS.

Mr. NELSON. From the Committee on Commerce I report back favorably without amendment the bill (S. 10836) to authorize the Minnesota River Improvement & Power Co. to construct dams across the Minnesota River, and I ask for its present consideration. It is very short.

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

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

### YELLOW FEVER COMMISSION.

Mr. SMOOT. From the Committee on Printing I report back favorably with an amendment Senate resolution 330, submitted by the Senator from Oklahoma [Mr. OWEN] on the 27th ultimo, providing for the printing of the compilation relative to the work of Maj. Walter Reed and the Yellow Fever Commission, and I ask for its present consideration.

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

The amendment was, in line 2, before the word "thousand," to strike out "three" and insert "one," so as to make the resolution read:

*Resolved*, That there be printed, with accompanying illustrations, for the use of the Senate, 1,000 copies of the compilation relative to the work of Maj. Walter Reed and the Yellow Fever Commission.

The amendment was agreed to.

The resolution as amended was agreed to.

### REPORT ON BILLS OF EXCHANGE.

Mr. SMOOT, from the Committee on Printing, to which was referred Senate resolution 337, submitted by Mr. CULLOM on the 6th instant, reported it without amendment, and it was considered by unanimous consent and agreed to, as follows:

*Resolved*, That there be printed for use of the American commissioner to the International Conference on Bills of Exchange held at The Hague during 1910, 400 copies of his report, which report was recently transmitted to Congress by the President.

### STEPHENSON GRAND ARMY MEMORIAL.

Mr. SMOOT. From the Committee on Printing I report back, with amendments, Senate concurrent resolution 7, submitted by the Senator from Rhode Island [Mr. WETMORE] on July 20, 1909, and I ask for its present consideration.

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

The amendments were, in line 3, before the word "thousand," to strike out "fourteen" and insert "seven"; in line 6 to strike out "four thousand" and insert "fifteen hundred"; and in line 7 to strike out "eight thousand" and insert "three thousand five hundred," so as to make the resolution read:

*Resolved by the Senate (the House of Representatives concurring)*, That there be printed and bound, in the form of eulogies, including illustrations, 7,000 copies of the proceedings on the occasion of the dedication of the Stephenson Grand Army Memorial, in Washington, July 3, 1909, of which 1,500 shall be for the use of the Senate, 3,500 for the use of the House of Representatives, and 2,000 to be delivered to the Stephenson Grand Army Memorial Committee.

The amendments were agreed to.

The concurrent resolution as amended was agreed to.

### ELECTRIC RAILWAY AT VICKSBURG, MISS.

Mr. JOHNSTON. From the Committee on Military Affairs I report back favorably without amendment the bill (H. R. 26685) to authorize E. J. Bomer and S. B. Wilson to construct and operate an electric railway over the National Cemetery Road at Vicksburg, Miss., and submit a report (No. 1182) thereon. I ask for its present consideration.

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

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

PRINTING OF DISTRICT CODE.

Mr. GALLINGER. From the Committee on the District of Columbia I report back favorably without amendment the joint resolution (S. J. Res. 144) authorizing the printing of 2,500 copies of the Code of Law for the District of Columbia, and I submit a report (No. 1183) thereon. I ask unanimous consent for its present consideration.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the joint resolution. It authorizes the Public Printer to print 2,500 copies of the Code of Law for the District of Columbia, as recompiled, indexed, and annotated by William F. Meyers, master of laws, of the executive office of the District of Columbia, under supervision of Edward H. Thomas, Esq., corporation counsel, District of Columbia; 100 copies for the use of the Committee on the District of Columbia, United States Senate; 100 copies for the use of the Committee on the District of Columbia, House of Representatives; and 100 copies for the Commissioners of the District of Columbia; and it authorizes the Public Printer to sell the surplus copies at a rate per copy to be fixed by him approximating but not less than the cost of printing and binding.

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

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. FRYE:

A bill (S. 10837) for the relief of Joseph P. Davis; to the Committee on Military Affairs.

By Mr. GAMBLE (by request):

A bill (S. 10838) for the relief of John W. Stockett (with accompanying paper); to the Committee on Claims.

By Mr. FRAZIER:

A bill (S. 10839) to provide for an experiment in the improvement of certain highways by the Secretary of Agriculture in cooperation with the Postmaster General, and for other purposes; to the Committee on Agriculture and Forestry.

By Mr. GORE:

A bill (S. 10840) granting a pension to Thomas J. Lester (with accompanying papers); to the Committee on Pensions.

By Mr. OWEN:

A bill (S. 10841) for the relief of Frank J. Boudinot; to the Committee on Claims.

By Mr. PAGE:

A bill (S. 10842) for the relief of Victor Beaulac and others; to the Committee on Claims.

By Mr. WARREN:

A bill (S. 10843) for the settlement of claims for damages to and loss of private property; to the Committee on Claims.

By Mr. BURNHAM:

A bill (S. 10844) for the relief of John H. Baker and others (with accompanying paper); to the Committee on Claims.

By Mr. CLAPP:

A bill (S. 10845) granting an increase of pension to Calvin Hitt (with accompanying papers); to the Committee on Pensions.

By Mr. SMITH of Michigan:

A bill (S. 10846) to correct the military record of David Hauk (with accompanying paper); to the Committee on Military Affairs.

By Mr. FLETCHER:

A bill (S. 10847) for the relief of Robert Craig and others; to the Committee on Claims.

By Mr. BRADLEY:

A bill (S. 10848) for the relief of the trustees of the Christian Church of Cadiz, Ky.; to the Committee on Claims.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. BRISTOW submitted an amendment relative to the fixing of fees for the grazing of sheep on the national forests, etc., intended to be proposed by him to the agricultural appropriation bill, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

Mr. DIXON submitted an amendment proposing to increase the appropriation for the improvement of the national forests from $490,000 to $700,000, intended to be proposed by him to the agricultural appropriation bill, which was referred to the Committee on Agriculture and Forestry and ordered to be printed.

Mr. BURROWS submitted an amendment proposing to appropriate $1,656.25 to pay Charles H. McGurrin, being the balance due him for copies of testimony furnished, by order of the chairman of the Committee on Privileges and Elections, to members of the subcommittee making investigation of charges against WILLIAM LORIMER, a Senator from the State of Illinois, 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. OWEN submitted an amendment proposing to appropriate $52,000 for the maintenance, etc., of the Platt National Park, 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. WARREN submitted an amendment proposing to appropriate $22,802.42 for payment of 183 approved claims for damages to and loss of private property belonging to citizens of the United States, Hawaii, and the Philippines Islands that have arisen previous to August 1, 1910, etc., intended to be proposed by him to the general deficiency appropriation bill, which was referred to the Committee on Military Affairs and ordered to be printed.

WITHDRAWAL OF PAPERS—JOHN B. GARVEY.

On motion of Mr. SCOTT, it was

*Ordered*, That leave be granted to withdraw from the files of the Senate, without leaving copies, the papers in the case of Senate bill 71 granting a pension to John B. Garvey, Sixty-first Congress, first session, no adverse report having been made thereon.

STENOGRAPHER TO COMMITTEE ON EXPENDITURES IN DEPARTMENT OF STATE.

Mr. ROOT submitted the following resolution (S. Res. 352), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

*Resolved*, That the Committee on Expenditures in the Department of State be, and it is hereby, authorized to employ a stenographer, at a salary of $1,200 per annum, to be paid out of the contingent fund of the Senate, until March 31, 1911.

Mr. KEAN subsequently, from the Committee to Audit and Control the Contingent Expenses of the Senate, to which was referred the foregoing resolution, reported it without amendment, and it was considered by unanimous consent, and agreed to.

ABSECON INLET, N. J.

Mr. BRIGGS submitted the following resolution (S. Res. 353), which was considered by unanimous consent and agreed to:

*Resolved*, That the Chief of Engineers of the Army be instructed to transmit to the Senate the estimates of cost for the improvement of Absecon Inlet, in the State of New Jersey, the same being now before the board of review.

CONVEYANCE OF MAIL MATTER BY PRIVATE EXPRESS.

Mr. GORE. I offer the resolution which I send to the desk and ask for its immediate consideration.

The VICE PRESIDENT. The resolution submitted by the Senator from Oklahoma will be read.

The Secretary read the resolution (S. Res. 354), as follows:

*Resolved*, That the Postmaster General be requested to inform the Senate whether there have been frequent, continuous, and systematic violations of section 181 of the Criminal Code of the United States, effective January 1, 1910, and if so, what steps have been taken to prevent and punish such violations.

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

Mr. HEYBURN. I ask that the resolution may be again read. I did not catch a part of it from the reading.

The VICE PRESIDENT. Without objection, the resolution will be again read.

The Secretary again read the resolution.

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

Mr. HEYBURN. Mr. President, the resolution is so indefinite that one hardly knows whether to object. I wish the Senator from Oklahoma would ask the indulgence of the Senate to state what the violations referred to in the resolution consist of.

Mr. GORE. I think the suggestion is entirely proper, and I will ask to have the section referred to in the joint resolution read to the Senate.

The VICE PRESIDENT. Without objection, the Secretary will read as requested.

Mr. BORAH. Mr. President, is the resolution submitted by the Senator from Oklahoma before the Senate?

The VICE PRESIDENT. The request of the Senator from Oklahoma is for unanimous consent for its present consideration.

Mr. BORAH. The resolution is evidently going to lead to debate.

Mr. HEYBURN. Let the section be read so that we may know what it is.

Mr. PENROSE. Mr. President, I ask that the resolution may be again read.

The VICE PRESIDENT. The resolution has just been read, and the Secretary was about to read the section of the law referred to therein.

The Secretary read as follows:

SEC. 181. Whoever shall establish any private express for the conveyance of letters or packets, or in any manner cause or provide for the conveyance of the same by regular trips, or at stated periods, over any post route which is or may be established by law, or from any city, town, or place, to any other city, town, or place, between which the mail is regularly carried, or whoever shall aid or assist therein shall be fined not more than $500, or imprisoned not more than six months, or both: *Provided*, That nothing contained in this section shall be construed as prohibiting any person from receiving and delivering to the nearest post-office, postal car, or authorized depository for mail matter, any mail matter properly stamped.

Mr. PENROSE. Now I ask to have the resolution again read.

The VICE PRESIDENT. Without objection, the Secretary will again read the resolution.

The Secretary again read the resolution.

The resolution was considered by unanimous consent and agreed to.

TEACHERS' PENSION LAWS.

Mr. GALLINGER. I ask that Senate Document No. 585, Sixtieth Congress, second session, relative to the teachers' pension laws in the United States and Europe, be reprinted as corrected to date, and also that 200 additional copies be printed for the use of the Senate document room.

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

COMPILATION OF RECIPROCITY TREATIES.

Mr. JONES. I present a compilation of reciprocity treaties between the United States and foreign countries. I desire to have the compilation printed, and I move that it be referred to the Committee on Printing for its consideration.

The motion was agreed to.

PRESIDENTIAL APPROVALS.

A message from the President of the United States, by Mr. Latta, Executive clerk, announced that the President had approved and signed the following acts and joint resolutions:

On February 14, 1911:

S. 2469. An act for the relief of Alfred Childers;

S. 7252. An act granting an annuity to John R. Kissinger;

S. 10594. An act to authorize S. G. Guerrier, of Atchison, Kans., to construct a bridge across the Missouri River near the city of Atchison, Kans.; and

S. J. Res. 101. Joint resolution providing for the printing of 2,000 copies of Senate Document No. 357, for use of the Department of State.

On February 16, 1911:

S. 1028. An act to appoint Warren C. Beach a captain in the Army and place him on the retired list;

S. 10595. 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; and

S. J. Res. 124. Joint resolution reaffirming the boundary line between Texas and the Territory of New Mexico.

On February 17, 1911:

S. 6702. An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto.

INTOXICANTS AMONGST INDIANS.

The VICE PRESIDENT laid before the Senate the following message from the President of the United States (S. Doc. No. 824), which was read and referred to the Committee on Indian Affairs and ordered to be printed:

*To the Senate and House of Representatives:*

Half a century ago treaties were entered into with Indian tribes occupying a portion of the present State of Minnesota, in all of which were contained provisions prohibiting the introduction, manufacture, use, and traffic in intoxicants in the country which was the subject of the treaties. In the years which have elapsed since making these treaties conditions have largely changed, the Indian population has been reduced, large white settlements have been made, and great cities like St. Paul and Minneapolis have come to occupy a portion of what, at the date of the treaties, was denominated Indian country.

Notwithstanding these facts, this territory still remains subject to the regulations respecting the traffic in liquors originally imposed for the protection of the Indians. Such an anomalous condition of affairs should no longer continue, and the regulation of traffic in liquors in those areas now almost exclusively occupied by white people should be left to them. In those instances where the treaties authorize the President to repeal or modify the provisions, I have exercised that right. Some of the treaties, however, provide that the provisions referred to shall continue and be in force until otherwise provided by Congress.

By the treaty of February 27, 1855 (10 Stat., 1172), with the Winnebago Tribe of Indians that tribe ceded to the United States a tract of land granted to them by the treaty made October 13, 1846, within the Territory—now the State—of Minnesota, lying north of St. Peters River and west of the Mississippi River, estimated to contain about 897,900 acres, and in part consideration of the cession the United States agreed to grant to the said Indians as their permanent home a certain tract to be selected as therein provided. The treaty contained the following provision:

ART. 8. The laws which have been or may be enacted by Congress regulating trade and intercourse with the Indian tribes shall continue and be in force within the country herein provided to be selected as the future permanent home of the Winnebago Indians; and those portions of said laws which prohibit the introduction, manufacture, use of, and traffic in ardent spirits in the Indian country shall continue and be in force within the country herein ceded to the United States until otherwise provided by Congress.

As there are but few, if any, Indians residing within said area, and the Indian Office reports that there is no occasion for the continuance in force and effect of the treaty provision above referred to, I recommend that legislation be enacted declaring the treaty provision above quoted to be of no further force or effect.

By the treaty of September 30, 1854 (10 Stat., 1109), made with the Chippewa Indians of Lake Superior and the Mississippi, ceding to the United States a large area, comprising the extreme northeastern portion of the State of Minnesota, it was provided:

ART. 7. No spirituous liquors shall be made, sold, or used on any of the lands herein set apart for the residence of the Indians, and the sale of the same shall be prohibited in the territory hereby ceded until otherwise ordered by the President.

No legislation has ever been enacted pursuant to this stipulation, and for this reason the same has remained entirely ineffective.

According to the latest Indian census reports, there are within the area ceded by this treaty about 1,253 Indians, most of whom are located within the portion of said territory hereinafter described, whose welfare requires effective laws restricting traffic in liquor in their neighborhood.

I therefore recommend that appropriate legislation be enacted, extending the laws of the United States prohibiting the introduction and sale of spirituous liquors in the Indian country throughout that portion of the territory ceded by said treaty, particularly described as follows:

Beginning at a point where the line between townships 45 and 46 north intersects the line between ranges 15 and 16 west of the fourth principal meridian; thence north along said line to the northeast corner of township 53 north, range 16 west; thence west along the line between townships 53 and 54 north to the point where it intersects the western boundary established by said treaty of September 30, 1854; thence following the said treaty line in a southwesterly direction to the point where it intersects the line between townships 45 and 46 north; thence due east along said line to the point of beginning, and all that portion of the State of Minnesota which lies east of the fourth principal meridian.

By the treaty of February 22, 1855 (10 Stat., 1165), with the Mississippi bands of Chippewa Indians, an area extending almost entirely across the northern part of the State of Minnesota and from its northerly boundary practically to its center was ceded to the United States, the provision thereof concerning intoxicating liquor being as follows:

ART. 7. The laws which have been or may be enacted by Congress, regulating trade and intercourse with the Indian tribes, to continue and be in force within and upon the several reservations provided for herein; and those portions of said laws which prohibit the introduction, manufacture, use of, and traffic in ardent spirits, wines, or other liquors in the Indian country shall continue and be in force within the entire boundaries of the country herein ceded to the United States until otherwise provided by Congress.

The records of the Indian Bureau show that there are within said area, under the jurisdiction of the superintendents of the White Earth and Leech Lake Reservations, 7,196 Indians, who can be amply protected by limiting the territory as to which said treaty provisions shall remain in force and effect to the area within and contiguous to said reservations, particularly described as follows:

Beginning at the mouth of the Wild Rice River; thence in a northeasterly direction along the line established by said treaty of February 22, 1855, to the point where it intersects the line between townships 32 and 33 west of the fifth principal meridian; thence south along said line to the northeast corner of township 146 north, range 33 west of the fifth principal meridian; thence east along said line to the northeast corner of township 146 north, range 25 west of the fifth principal meridian; thence north along the third guide meridian to the northwest corner of fractional township 58 north, range 27 west of the fourth principal meridian; thence east to the northeast corner of said township; thence south along the line between ranges 26 and 27 west of the fourth principal meridian to the southeast corner of township 53 north, range 27 west of the fourth principal meridian; thence west to

the southwest corner of said township; thence south along the third guide meridian to the point where it crosses the Mississippi River; thence down the said river to the mouth of Crow Wing River; thence in a westerly direction, following the southern boundary of said treaty to the point where it intersects the line between townships 35 and 36 west of the fifth principal meridian; thence north along said line to the northeast corner of township 136 north, range 36 west; thence west along the line between townships 136 and 137 north to the point where it intersects the boundary line established by said treaty; thence along said boundary to the point of beginning.

I therefore recommend that Congress modify the article of said treaty quoted above so as to exclude from the operations of its provisions all of the territory ceded by said treaty to the United States, except that immediately above described.

WM. H. TAFT.

THE WHITE HOUSE, *February 17, 1911.*

DISPOSITION OF WATERS UNDER RECLAMATION PROJECTS.

Mr. WARREN submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 6953) authorizing contracts for the disposition of waters of projects under the reclamation act, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendments of the House numbered 9, 12, and 13, and agree to the same.

That the Senate recede from its disagreement to the amendments of the House numbered 1, 2, 3, 4, 5, and 6, and agree to the same with amendments as follows: Strike out all of the matter in section 1 of the bill, and all of the matter proposed to be inserted in said section, and insert in lieu thereof the following:

That whenever in carrying out the provisions of the reclamation law, storage or carrying capacity has been or may be provided in excess of the requirements of the lands to be irrigated under any project, the Secretary of the Interior, preserving a first right to lands and entrymen under the project, is hereby authorized, upon such terms as he may determine to be just and equitable, to contract for the impounding, storage, and carriage of water to an extent not exceeding such excess capacity with irrigation systems operating under the act of August 18, 1894, known as the Carey Act, and individuals, corporations, associations, and irrigation districts organized for or engaged in furnishing or in distributing water for irrigation. Water so impounded, stored, or carried under any such contract shall be for the purpose of distribution to individual water users by the party with whom the contract is made: *Provided, however,* That water so impounded, stored, or carried shall not be used otherwise than as prescribed by law as to lands held in private ownership within Government reclamation projects. In fixing the charges under any such contract for impounding, storing, or carrying water for any irrigation system, corporation, association, district, or individual, as herein provided, the Secretary shall take into consideration the cost of construction and maintenance of the reservoir by which such water is to be impounded or stored and the canal by which it is to be carried, and such charges shall be just and equitable as to water users under the Government project. No irrigation system, district, association, corporation, or individual so contracting shall make any charge for the storage, carriage, or delivery of such water in excess of the charge paid to the United States except to such extent as may be reasonably necessary to cover cost of carriage and delivery of such water through their works.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 7, and agree to the same with an amendment as follows: Strike out the apostrophe which appears in said amendment; and the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 8, and agree to the same with an amendment as follows: In the matter proposed to be inserted strike out the apostrophe which appears after the word "corporations" and insert in lieu thereof a comma; and the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 10, and agree to the same with an amendment as follows: Strike out the apostrophe which appears in said amendment; and the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House numbered 11, and agree to the same with an amendment as follows: In the matter proposed to be inserted strike out the apostrophe which appears after the word "corporations" and insert in lieu thereof a comma; and the House agree to the same.

Amendment as to title: That the Senate recede from its disagreement to the amendment of the House as to the title, and agree to the same with an amendment as follows: In lieu of the title proposed in said amendment insert the following: "An act to authorize the Government to contract for impounding, storing, and carriage of water, and to cooperate in the construction and use of reservoirs and canals under reclamation projects, and for other purposes;" and the House agree to the same.

F. E. WARREN,
W. L. JONES,
J. W. BAILEY,
*Managers on the part of the Senate.*

W. A. REEDER,
RALPH D. COLE,
W. R. SMITH,
*Managers on the part of the House.*

The report was agreed to.

CHARLES RIVER (MASS.) BRIDGES.

Mr. DEPEW submitted the following report:

CONFERENCE REPORT.

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 26150) to authorize the cities of Boston and Cambridge, Mass., to construct drawless bridges across the Charles River, between the cities of Cambridge and Boston, in the State of Massachusetts, 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 amendment of the Senate to section 1 of the bill, and agree to the same with an amendment as follows, to wit: Strike out of the Senate amendment the following:

"*Provided further,* That the State of Massachusetts shall, within a reasonable time after the completion of said bridges, or any of them, by legislative enactment provide for adequate compensation to the owner or owners of wharf property now used as such on said river above any of said bridges, for damages, if any, sustained by said property by reason of interference with access by water to said property now enjoyed, because of the construction of said bridges without a draw."

and insert in lieu thereof the following:

"*Provided further,* That before the construction of said bridges or any of them is begun, the State of Massachusetts shall by legislative enactment provide for adequate compensation for the owner, owners, lessee or lessees of property abutting on said river above any of the said bridges, for damages if any caused to said property or leasehold interests therein by reason of interference with the access by water to said property, due to the construction of bridges without draws: *Provided further,* That said legislative enactment shall provide for the appointment of three commissioners to hear the parties in interest and assess the damages to said property; their decision as to the amount of damages and questions of fact to be final; said commissioners to be appointed by the supreme judicial court of Massachusetts."

And the Senate agreed to the same.

Also, amend the title of the bill by striking out the present title and inserting in lieu thereof as the title of the bill the following: "To authorize the construction of drawless bridges across a certain portion of the Charles River in the State of Massachusetts."

CHAUNCEY M. DEPEW,
S. H. PILES,
WM. J. STONE,
*Managers on the part of the Senate.*

JAMES R. MANN,
C. G. WASHBURN,
W. C. ADAMSON,
*Managers on the part of the House.*

The report was agreed to.

ELECTION OF SENATORS BY DIRECT VOTE.

Mr. BORAH. Mr. President, I ask that the unfinished business may be now laid before the Senate.

The VICE PRESIDENT. Without objection, the Chair lays before the Senate the unfinished business, the title of which will be stated.

The SECRETARY. A joint resolution (S. J. Res. 134) proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States.

Mr. BORAH. Mr. President, I desire to ask leave this morning to print in my remarks of yesterday some excerpts from

some of the opinions which I did not feel like taking the time of the Senate then to read.

The VICE PRESIDENT. Is there objection to the request of the Senator from Idaho? The Chair hears none.

Mr. HEYBURN. I merely suggest for the record that this joint resolution is not before the Senate as the unfinished business, but by unanimous consent.

The VICE PRESIDENT. It is before the Senate by unanimous consent now, certainly.

Mr. RAYNER obtained the floor.

Mr. OVERMAN. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

| | | | |
|---|---|---|---|
| Bacon | Culberson | Johnston | Richardson |
| Bankhead | Cullom | Jones | Root |
| Beveridge | Cummins | Kean | Scott |
| Borah | Curtis | La Follette | Shively |
| Brandegee | Depew | Lodge | Simmons |
| Briggs | Dillingham | McCumber | Smith, S. C. |
| Bristow | Dixon | Martin | Smoot |
| Brown | Fletcher | Newlands | Stephenson |
| Bulkeley | Flint | Nixon | Stone |
| Burnham | Foster | Overman | Sutherland |
| Burrows | Frazier | Owen | Taylor |
| Carter | Frye | Page | Thornton |
| Chamberlain | Gallinger | Paynter | Tillman |
| Clapp | Gamble | Penrose | Warner |
| Clark, Wyo. | Gore | Percy | Warren |
| Clarke, Ark. | Gronna | Perkins | Watson |
| Crane | Guggenheim | Piles | Wetmore |
| Crawford | Heyburn | Rayner | Young |

The VICE PRESIDENT. On the roll call 72 Senators have answered to their names. A quorum of the Senate is present.

Mr. RAYNER. Mr. President, I propose to be as brief in this discussion as possible, and I desire to say that if there are any questions that Senators propose to ask me relevant to the points I am making I shall be glad to answer them if I can. My remarks this morning will be upon the Sutherland amendment in connection with the suggestions made by the junior Senator from New York [Mr. ROOT] in reference to the election of Senators by the people.

The first point I want to suggest to the Senate is this, that I propose to speak by the adjudications and not upon an important question of this sort to venture opinions of my own, because I believe that every subject we are discussing is covered by decisions of the Supreme Court of the United States; and while I shall not refer to many of them, and only to extracts from a few of them, I shall rest this argument upon the cases.

The first proposition is this: I do not think that the Sutherland amendment—and I call it the Sutherland amendment because it is an amendment—with a single exception accomplishes any purpose whatever; and I do not think it ought to be forced upon us by Members upon the other side who are in favor of the passage of the original joint resolution.

I believe to-day, Mr. President, under the cases—and I am not a liberal interpreter of the Constitution—that the Federal Congress, without the Sutherland amendment, has the right to protect the polls against fraud, corruption, violence, and intimidation at Federal elections.

I want to read now, because it covers the whole case, an extract from the case the Senator from Idaho referred to yesterday, but did not read in full. I think it settles this point, and this is the most important point in the whole controversy.

If I am right about that, then I appeal to Senators upon the Republican side who are earnestly in favor of the election of Senators by the people not to burden us with an amendment that accomplishes no purpose at all, and which might imperil the passage of the original joint resolution with the votes that will be cast against it upon this side of the Chamber.

Mr. NELSON. Mr. President——

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

Mr. RAYNER. Yes, sir.

Mr. NELSON. Why would it imperil the passage of the joint resolution to abrogate that provision of the Constitution?

Mr. RAYNER. It will imperil it very much if the Democratic side votes against it.

Mr. NELSON. Why would they vote against it?

Mr. RAYNER. Mr. President, I am not a political mind reader. If the Senator from Minnesota will come over and converse with some of them he will find why they will vote against it.

I do not know how our side stands. I am merely speaking for myself. I am not here to procure votes. I am here to tell the truth and state my own opinion upon the authorities, whether it gains votes or loses votes. I want to say to him again that the adoption of the Sutherland amendment will imperil the passage of the joint resolution. It is a fact. You want a two-thirds vote to pass the joint resolution. The Senator from Minnesota is in favor of it, and so am I. We want a two-thirds vote to pass it. It takes only a majority vote to pass this Sutherland amendment, and I am appealing now to Senators who are in favor of the joint resolution and who believe as I do in the joint resolution and do not want any subterfuge to defeat it. When I use the word "subterfuge" I use it with entire deference to the Senator from Utah, because I know he does not intend it as a subterfuge, because he has already stated that even if the amendment be defeated he would nevertheless vote for the original proposition.

Let me read a few extracts from the case. I will not weary you with a long citation of authorities. I want to see if we can not agree upon some points. This is a complicated and delicate proposition we are arguing now. It demands a thorough analysis before one can come to a conclusion upon it. I have a practical object in view. It is not for the purpose of making a speech, because I would rather not make it than make it. I want to see if we can not persuade the Republican Members who are in favor of the original joint resolution that there is no necessity of putting the Sutherland amendment into the body of the joint resolution, and that we can do everything we ought to do and everything we want to do without the Sutherland amendment just as well as we can do it with the Sutherland amendment. That is the purpose of my argument.

Now, if I am right about that, if I can convince the Senate that the Sutherland amendment is unnecessary, except for purposes that I know you do not want to effect, then why put it in and why not give us the joint resolution as it stands, when this side, to say the least of it, is divided upon the proposition with the Sutherland amendment in?

Mr. NELSON. Will the Senator allow me a brief question?

Mr. RAYNER. Certainly.

Mr. NELSON. Does the Sutherland amendment inject any new provision into the Constitution that is not already there?

Mr. RAYNER. It does, most decidedly.

Mr. NELSON. I should like to have the Senator point it out.

Mr. RAYNER. I will point it out without any trouble at all. It injects a new feature into the Constitution because there is nothing in the Constitution now about the popular election of Senators. The constitutional provision which applies to the election of Senators by the legislature is one thing, and it is an entirely different thing when it applies to the election of Senators by the people, and it is governed by different principles.

Mr. SUTHERLAND. Mr. President——

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

Mr. RAYNER. I do.

Mr. SUTHERLAND. Does not the amendment I have introduced preserve the constitutional language precisely as it is now in section 4, and is not the only effect of it not to introduce any new principle into the Constitution, but simply, when we provide for the election of Senators by direct vote of the people, to provide a new application of an existing principle?

Mr. RAYNER. This is not the effect. Absolutely, it provides for a new principle. There was never an easier proposition to prove than that it provides for an entirely new principle, because now it is impossible to go behind the organization of the legislature.

Mr. SUTHERLAND. Mr. President——

Mr. RAYNER. One moment; let me finish the answer, and then the Senator can ask me another question. It is impossible now to go behind the organization of the legislature. Congress could not to-day pass an enactment covering the election of a legislature that elects a Senator of the United States. But when you once apply the Senator's proposition to a popular election, then Congress to a certain extent, as I will show presently, can interfere with the popular election.

Mr. President, it is the same language, but it is the same language applied to an entirely different order of things——

Mr. SUTHERLAND. Will the Senator from Maryland permit me one other suggestion?

Mr. RAYNER. Of course. I shall argue all these questions, but nevertheless I will submit to a question.

Mr. SUTHERLAND. When the Constitution was first adopted it provided that Congress should have the power to regulate commerce among the several States. At the time that language was adopted there was no such thing as a railroad, a telegraph, or a telephone line in the country. Those things were subsequently invented and subsequently put into operation. The language of the Constitution giving Congress power to regulate commerce at once applied to those new things. Would the Senator say that that was making a new principle or simply

the application of an existing principle of the Constitution to a new condition of affairs?

Mr. RAYNER. I have so much to say to-day that I am sorry I can not argue about telegraph companies and railroad companies. I am on the election of Senators by the people, and I do not see any similarity between the election of Senators by the people and telephone and telegraph companies. The election of Senators by the people presents a case sui generis, and while I fully grasp the Senator's suggestion, I submit the comparison is not well presented.

Mr. SUTHERLAND. I was trying to illustrate——

Mr. RAYNER. With due deference to the Senator from Utah, I can not see the slightest similarity between the two cases.

Mr. SUTHERLAND. Mr. President——

Mr. RAYNER. Will the Senator let me go on? I have not really begun yet. Will he let me go on and read this extract?

The VICE PRESIDENT. The Senator from Maryland desires not to be further interrupted.

Mr. RAYNER. Not for a few moments, until I have commenced the argument.

Mr. SUTHERLAND. I understood the Senator was willing to submit to interruptions.

Mr. RAYNER. Submitting to interruptions, which I am perfectly willing to do, is one thing, but submitting to interruptions before I have substantially commenced to speak is another.

Let me read. I read from a case that came from my own State, the case of Ex parte Seibold, in One hundredth United States:

> It is the duty of the States to elect Representatives to Congress. The due and fair election of these Representatives is of vital importance to the United States. The Government of the United States is no less concerned in the transaction than the State government is. It certainly is not bound to stand by as a passive spectator when duties are violated and outrageous frauds are committed. It is directly interested in the faithful performance by the officers of election of their respective duties. Those duties are owed as well to the United States as to the State. This necessarily follows from the mixed character of the transaction—State and national. A violation of duty is an offense against the United States, for which the offender is justly amenable to that Government. No official position can shelter him from this responsibility. In view of the fact that Congress has plenary and paramount jurisdiction over the whole subject, it seems almost absurd to say that an officer who receives or has custody of the ballots given for a Representative owes no duty to the National Government which Congress can enforce; or that an officer who stuffs the ballot box can not be made amenable to the United States. If Congress has not, prior to the passage of the present laws, imposed any penalties to prevent and punish frauds and violations of duty committed by officers of election, it has been because the exigency has not been deemed sufficient to require it and not because Congress has not the requisite power.

In Ex parte Clark and Ex parte Yarbrough the doctrine declared in Seibold's case is reaffirmed, the court saying in the latter case:

> If this Government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to the General Government, it must have the power to protect the elections on which its existence depends from violence and corruption.
>
> * * * * * * *
>
> The power in either case arises out of the circumstance that the function in which the party is engaged or the right which he is about to exercise is dependent on the laws of the United States.
>
> In both cases it is the duty of that Government to see that he may exercise this right freely, and to protect him from violence while so doing or on account of so doing. This duty does not arise solely from the interest of the party concerned, but from the necessity of the Government itself, that its service shall be free from the adverse influence of force and fraud practiced on its agents, and that the votes by which its Members of Congress and its President are elected shall be the free votes of the electors and the officers thus chosen the free and uncorrupted choice of those who have the right to take part in that choice.

I agree, Mr. President, with the dissenting opinion of Justice Field in that case. Justice Field dissented, and he well expressed my views. But it is not a question here what my views are or what are the views of any other Senator. The question is, What has the Supreme Court decided in the Yarbrough case and the Seibold case?

The Supreme Court has decided that under the Constitution itself there is a Federal right and that the Government has the right to pass laws to protect the Federal right.

Mr. CARTER. Mr. President——

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

Mr. RAYNER. I do.

Mr. CARTER. The Seibold case is, of course, the leading case covering the point at issue here. The Senator will admit unquestionably that the decision of the court was based upon the constitutionality of certain election laws passed under authority of section 4 of Article I of the Constitution, the identical section which this joint resolution proposes to strike from the Constitution in so far as Federal power is concerned. So I suggest to the Senator that if this amendment should obtain and the Constitution be amended so as to invest in the State the supreme authority, such laws as the Seibold case, construed in the light of the Constitution, could not be constitutionally enacted.

Mr. RAYNER. Mr. President, I wish this opinion had never been rendered. I believe in the dissenting opinion of Justice Field. But there it is, and upon this occasion I must prefer the opinion of the Supreme Court of the United States even to that of the Senator from Montana. Of course the Senator from Montana might be right and the Supreme Court might be wrong, but I am bound to accept the opinion of the Supreme Court of the United States. I deny that these cases—absolutely deny—that they rest entirely upon section 4 of Article I of the Constitution, which is the Sutherland amendment.

Mr. CARTER. Mr. President——

Mr. RAYNER. One moment. My judgment is that there is not a Senator on the Republican side of this Chamber who, if the Sutherland amendment is not adopted, would not argue that the Constitution of the United States, without the Sutherland amendment, protected the right to punish fraud, violence, and intimidation at the polls, and they would do so upon the strength of these cases. My opinion is merged in that of the Supreme Court. I am not giving my opinion. I have read the opinion of the court. The whole Republican side believes in the proposition that without the Sutherland amendment we could do it. I never heard a dissenting view from that in any debate or speech ever made on that subject in the Senate on the other side. We contended to the contrary until these cases overruled our judgment. We never believed that, with or without the Sutherland amendment, this was sound law, but there it is and Senators must face it.

Mr. CARTER. Mr. President——

The VICE PRESIDENT. Does the Senator from Maryland yield further to the Senator from Montana?

Mr. RAYNER. I will yield for an answer to this question: Suppose there should be no Sutherland amendment adopted and there was a law passed here to punish violence at the polls, would the Senator hold that we had the right to do it without the Sutherland amendment?

Mr. CARTER. If the States were invested by the Constitution with the sole and exclusive power to conduct the elections, the Federal Government would have naught to say regarding them.

Mr. RAYNER. Mr. President——

Mr. CARTER. I wish to answer the Senator.

Mr. RAYNER. But you are not answering me.

Mr. CARTER. The power and duty to pass laws regulating elections is based upon the part of the Federal Constitution which this joint resolution proposes to strike out.

Mr. RAYNER. The Senator is wrong. This is not the argument of a lawyer that the Senator presents.

I hope the Senator from Montana is not influenced by what his intimate political friend, ex-President Roosevelt, has said about this amendment. I hope the Senator is not voting for this amendment on the ground that the ex-President has invited him to do it. I want to read an extract from what Mr. Roosevelt said in a speech he made at Grand Rapids within the last few days, in which he advises all of his friends, among them the Senator from Montana, to vote for this amendment. He says:

> But the United States should under no circumstances surrender one particle of the control it now has as regards the election of Senators. To do so would be a mistake which might have grave and far-reaching consequences, and absolutely no argument worth heeding can be advanced in favor of such a change.

This is very complimentary to the speech of the Senator from Idaho yesterday.

Mr. CARTER. The views of the ex-President are virile and persuasive always, but I am satisfied that in this case, having made an address to the Senate along the same line some days prior to the Grand Rapids speech, I possibly contributed to his enlightenment on the subject and thus prepared the way for his opinion.

Mr. RAYNER. I hope the Senator will continue to contribute to his enlightenment on the Constitution.

Mr. President, with all the matchless genius of our ex-President, with all his profound knowledge of every subject in the created universe, with all his entire familiarity with every proposition and topic that have ever been advanced from the creation of the human race, if there is one thing on the face of the earth that the ex-President of the United States does not know anything about and needs the enlightenment of the Senator from Montana—either in theory or in practice—it is the Constitution of the United States. [Laughter.]

Mr. President, I now come to the speech of the Senator from Montana. I desire to say this about the speech, that you will have to read it over three or four times before you find out that there is not anything in it. I say this with great respect to the Senator, who is my warm personal friend and whose great ability I admit. The first time you read it it leaves an impression upon you that the Senator is dead in earnest. The second time that you read it you feel that he is a disciple of the great statesman and political philosopher who said that language was used to conceal thought. The third time that you read it the whole legal structure that he has raised dissolves like the fabric of a vision.

Mr. BEVERIDGE. Talleyrand said it.

Mr. RAYNER. I am perfectly familiar with this fact.

Mr. BEVERIDGE. Mr. President——

The VICE PRESIDENT. Will the Senator from Maryland yield to the Senator from Indiana?

Mr. RAYNER. Certainly.

Mr. BEVERIDGE. The Senator from Maryland said a great French philosopher. I merely said sotto voce it was Talleyrand, the diplomat.

Mr. RAYNER. He was somewhat of a political philosopher and statesman besides, and I apprehend the Senator from Indiana has read some of his political and philosophical observations.

Mr. BEVERIDGE. Not as many as the Senator has read. But, now that I am up, may I ask the Senator a question?

Mr. RAYNER. About Talleyrand?

Mr. BEVERIDGE. No; not about Talleyrand. We have passed that; that is water over the dam. But since there is a dispute, in which I am interested, between the Senator from Maryland and the Senator from Montana, I wish to ask the Senator this question: If the power over the elections which the Senator says is in the National Government according to the decision he has read, does not come from section 4, Article I, of the Constitution, from what does it come? Is it an inherent power or what is it? If it does not have its origin in section 4, Article I, what is the source of that power?

Mr. RAYNER. The Senator from Indiana knows perfectly well I am not in favor of inherent power.

Mr. BEVERIDGE. I am not asking what the Senator is in favor of; I am asking from what source this power comes.

Mr. RAYNER. I have covered this point, but I will answer you. I do not believe there is any inherent power in the Constitution of the United States, although the Senator from Indiana does believe that it is full of inherent powers. It arises from a constitutional right. In the language of the Supreme Court, the Constitution guarantees to the States the election of Federal Representatives, and it is in the performance of this obligation of guaranty that it has the right—and I am using the language of the Supreme Court—to pass laws in order to accomplish the Federal right that is vested in it. I can not state it any plainer. I want the Senator from Indiana to understand what I am coming to in a minute. Do not make the fatal mistake of supposing for one moment that the Federal Government is possessed of the right of suffrage.

The Government of the United States has no right of suffrage. Citizens of the United States derive their right of suffrage from the States and not from the Federal Government. But when the Constitution provides for the election of Federal Representatives, using the language in the Seibold case, the Constitution guarantees the exercise of that right and gives Congress the right to pass any enactment that may be necessary to protect it, and the same principle would apply to the popular election of Senators.

Mr. BEVERIDGE. Mr. President——

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator from Maryland yield to the Senator from Indiana?

Mr. RAYNER. Certainly.

Mr. BEVERIDGE. I ask the Senator a question, and possibly the answer to this very question may determine one vote. That is the reason why I am asking it. The Senator from Montana says that the source of this power, which the Senator from Maryland has described in the language of the Supreme Court, is section 4, Article I, of the Constitution. The Senator from Maryland says that that is not the source of the power. Therefore, I ask him what is the source of that power? I am merely asking so that I may know, because if the Senator is right, I do not see any consequence in the Sutherland amendment. I understand the Senator to say that this is a power not inherent, but a power implied from the guaranty of the Federal Constitution concerning the election of Representatives. Is that correct? Is that the source of the power?

Mr. RAYNER. It is not an inherent power.

Mr. BEVERIDGE. I say it is not an inherent power, but it is a power implied.

Mr. RAYNER. It is not an implied power. It is a right guaranteed in the Constitution, because the Constitution provides not by implication, but in express language that—

> The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature—

And our resolution proposes to provide the same method for Senators.

The right of suffrage is in the States, subject to the limitation that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the legislature.

The United States Government has nothing to do with the right of suffrage, and I propose, if I can, to answer the Senator from New York upon that point in a moment. But it has guaranteed the right to vote under the suffrages of the State, and guaranteed the right to vote in accordance with the laws of the State. It has the right to protect the right to vote.

Mr. BEVERIDGE rose.

Mr. RAYNER. Please do not make me repeat that again.

Mr. BEVERIDGE. I will not bother the Senator at all.

Mr. RAYNER. You are not bothering me. I never was less bothered in my life.

Mr. BEVERIDGE. I am very glad of it.

Mr. RAYNER. You do not bother me. I will be very glad to have the Senator ask me a question.

Mr. BEVERIDGE. No one could bother the Senator; but I want to ask this question, because the Senator evades it: What is the source of this power? I understand the Senator's position is that this power, which he says exists in the Government of the United States, comes from the language of the Constitution which he has just read. Is that the proposition?

Mr. RAYNER. It comes from what I have just read, as expressed by the court and construed and defined in the Seibold and the Yarbrough cases. I have said this over and over again.

Mr. BEVERIDGE. In the Seibold case. I am asking for the words of the Constitution from which it comes.

Mr. RAYNER. If the Senator will read these two cases he will find that I have simply used the language of the court and not my own. The Senator is familiar with them, I suppose.

Mr. BEVERIDGE. I have read them, but not, of course, with that careful attention the Senator has. But if the Senator objects to the question, "What is the source of this power?" I will not ask him any more.

Mr. RAYNER. I have read them very carefully, and if the Senator will read them he will find out clearly the source of the power. I am not originating the source of power. The Supreme Court is responsible for its own opinions. I do not share the responsibility except to acquiesce in it, as I am compelled to do; and I declare again that the Constitution is behind the elections and has the right to punish crime at Federal elections at the polls by State officials without the Sutherland amendment.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Utah?

Mr. RAYNER. Certainly.

Mr. SUTHERLAND. The Senator calls attention to section 2 of Article I of the Constitution. I agree with the Senator that that amounts to a guaranty of the right of the voter who has been given the right by State law to cast his vote. Under that provision the citizen who is deprived of his right to vote, a right given him by the State legislature, may maintain a suit in a Federal court. That is quite true. But the Senator will agree with me, I think, that it is quite as important to prevent people who have no right to vote from casting their votes as it is to allow people who have a right to vote to cast their votes.

Does the Senator find in the Constitution any provision, save section 4 of Article I, which will permit the Federal Government to surround the polls in the various States with such influences as will prevent people who have no right to vote from casting their votes, to prevent ballot-box stuffing, to prevent intimidation? Does the Senator find any provision in the Constitution that will enable the Federal Government to do those things, except section 4 of Article I?

Mr. RAYNER. The Senator from Utah, who is a very well informed lawyer, one of the very best in this body, must draw a distinction between appointing Federal officers to see that State laws are observed and appointing boards of registration and boards of certification in violation of the State laws. If the Senator asks me whether the Federal Congress would have the right to appoint a supervisor to see whether the State laws

have been properly executed, I point him to the cases that I have read. Not alone to section 2, because that only applies to Representatives, but to the other sections of the Constitution referred to by the Supreme Court in these cases. If the Senator asks me whether without his provision the Federal Congress could appoint boards of registration to register votes and boards of certification to certify the result contrary to the laws of the State, my opinion is that they have no right to do that either with his provision or without his provision in the resolution. That answers the important question of the Senator from Utah.

Now, Mr. President, let me proceed. The first proposition of the Senator from Montana is that it conflicts with the fifteenth amendment. He says:

It may well be taken for granted that an overwhelming majority of the voters and members of the legislature of a State might favor the election of United States Senators by popular vote and at the same time stand unalterably opposed to the permanent disfranchisement of the colored man in such States as might think proper to deny him a voice in the selection of United States Senators.

I ask any Senator here to arise in his seat and tell me what right we have to disfranchise the colored man. There is no right to disfranchise him. There is no conflict between the resolution as we reported it and the fifteenth amendment.

The Senator from Montana seems to forget what the terms of the fifteenth amendment are. How in the world is there a conflict between a resolution which gives the States the right to determine upon the manner of electing Senators and the fifteenth amendment of the Constitution of the United States? I know the Senator from Utah does not believe there is any conflict between them. One relates to the States, and the resolution relates to something entirely different. The language of the fifteenth amendment we all recall. Senators will not be influenced in their vote by any such suggestion as that.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude—

Is the language of the fifteenth amendment. I shall show in a moment that there is not a State with its electoral system that is violating this amendment of the Constitution or could possibly violate it if they wanted to violate it. Therefore, Mr. President, there is no conflict whatever between a resolution which gives the States by popular vote the right to determine the manner in which Senators shall be elected and the fifteenth amendment, which says that you can not deprive anyone of his right to vote by reason of race, color, or previous condition of servitude.

Mr. CARTER rose.

Mr. RAYNER. Pardon me a moment and then I will yield. I want to show the Senator from Montana how wrong he is upon almost every point and how one by one the roses fade.

Mr. CARTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Montana?

Mr. RAYNER. I will.

Mr. CARTER. I would like to enjoy the privilege of puncturing these balloons as they pass.

The PRESIDING OFFICER. Does the Senator from Maryland yield?

Mr. RAYNER. The Senator says he would like to puncture these balloons. The whole speech of the Senator is inflated and I am trying to puncture it as an entirety.

Mr. CARTER. I rather enjoy the Senator's balloons, but he permits them to escape into the air.

Mr. RAYNER. The proper way to do is to wait until I have concluded and then answer the arguments of the Supreme Court—in the airship with me.

Mr. CARTER. I would rather not take them in groups.

Mr. RAYNER. The Senator knows there is no one for whose opinion, outside of the Supreme Court, I have greater respect than I have for his. I therefore, valuing his opinion so highly, continue to read from the Senator's speech:

A State desiring to avoid accountability to the Senate under the fourteenth or fifteenth amendments would of course choose United States Senators at special elections to be held at such times and conducted in such manner as the State authorities might see fit to approve. The right of a person to a seat in the Senate could not be challenged on account of fraud, violence, or corruption at the polls, regardless of the extent to which citizens had been thereby denied equal protection of the laws or the right to vote.

Mr. President, that is not correct. The Senator would not announce a proposition of that sort if he were arguing this case before any intelligent tribunal in the United States, because the right to challenge the election is contained in the Constitution of the United States and is not in conflict with the joint resolution that we have reported.

Now, look at Article I for a minute. Section 5 of that article is:

Each House shall be the judge of the elections, returns, and qualifications of its own Members.

The House is the judge and the Senate is the judge of the election of its own Members, and there is nothing in the joint resolution that conflicts with that provision of the Constitution. Suppose that a Senator were to come here and present his credentials, who had been elected by fraud, intimidation, violence, or corruption, would not the Senate have a right to reject him? Is not that the proceeding which from time immemorial the House of Representatives has adopted? Is it not under this very section that one Representative after another from almost every southern Commonwealth was ejected by the House of Representatives because the House of Representatives under this section decided upon the election?

Mr. NELSON. Mr. President, will the Senator from Maryland yield to me for a moment?

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Minnesota?

Mr. RAYNER. I do.

Mr. NELSON. Mr. President, when a man comes here with credentials as a Member of this body and we pass upon the question whether he is qualified or has been honestly elected, assuming that we say he has not been honestly elected and is not entitled to his seat, does that fact afford any protection to the voters at the election?

Mr. RAYNER. Of course it affords protection to the voters at the election, especially if you couple with the power to punish fraud, corruption, violence, or intimidation at the polls. I want one thing understood in this discussion, and that is that all these election laws have been swept from the statute book since 1893. In my judgment, there are now no laws of Congress affecting Federal elections, and I hope they will never be reenacted, as the States are fully able to cope with this subject.

Mr. NELSON. Mr. President——

Mr. RAYNER. I must object now to interruption.

Mr. CARTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Montana?

Mr. RAYNER. In a moment.

Now, Mr. President, I come to the most important point of this controversy, and I want to cite a case to the Senate, which has not yet been cited, that is in absolute conflict with what the Senator from Montana has said. Now listen to the statement and then listen to the case.

Mr. CARTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Montana?

Mr. RAYNER. Not just now.

The PRESIDING OFFICER. The Senator from Maryland declines to yield, and he has the floor.

Mr. CARTER. At the outset of his remarks the Senator from Maryland invited interruptions, and I am sorry he has changed his mind.

Mr. RAYNER. But not every moment, may it please the Senate. The interruptions should be reasonable. I will yield in a moment.

The Senator from Montana [Mr. CARTER], in his speech, said:

The adoption of the amendment would give substantial though limited national sanction to the disfranchisement of the Negroes in the Southern States. In their disfranchisement we now passively acquiesce, but with this supine attitude some Senators are not content.

Mr. President, I want to read to the Senate the case of Williams *v.* Mississippi. I say to the Senate that the Supreme Court of the United States has decided conclusively that the electoral systems of the South are valid and constitutional, and can not be set aside. I will only read about 10 or 12 lines from that case, and it is a case that ought to have appeared in this debate long ago. In that case the Supreme Court cited the constitution of Mississippi, and said, that notwithstanding the constitution of Mississippi and the reasons the supreme court of Mississippi gave for the adoption of its constitution, that constitution still must stand as valid under the Federal Constitution.

What did the supreme court of Mississippi say in reference to the election laws of Mississippi? I invite the Senator's attention to this proposition. I want to read to the Senator what the Supreme Court of the United States said, but first I will read what the supreme court of Mississippi said:

Within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the field of expedients, to obstruct the exercise of suffrage by the Negro race.

And further the court said, speaking of the Negro race:

By reason of its previous condition of servitude and dependencies, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character, which clearly distinguished it as a race from the whites. A patient, docile people; but careless, landless, migratory within narrow limits, without forethought; and its criminal

members given to furtive offenses, rather than the robust crimes of the whites. Restrained by the Federal Constitution from discriminating against the Negro race, the convention discriminates against its characteristics, and the offenses to which its criminal members are prone.

That is the language of the supreme court of Mississippi. Now, what does the Supreme Court of the United States say?

But nothing tangible can be deduced from this. If weakness were to be taken advantage of, it was to be done "within the field of permissible action under the limitations imposed by the Federal Constitution," and the means of it were the alleged characteristics of the Negro race, not the administration of the law by officers of the State. Besides, the operation of the constitution and laws is not limited by their language or effects to one race. They reach weak and vicious white men as well as weak and vicious black men, and whatever is sinister in their intention, if anything, can be prevented by both races by the exertion of that duty which voluntarily pays taxes and refrains from crime.

Mr. President, this, in conflict with the statement made by the Senator from Montana, practically upholds every electoral system enacted, either by law or by constitution, in every Southern Commonwealth. Now I get to the next proposition, and I will hurry through.

This is my friend's criticism on our joint resolution:

Under the amendment recited in the committee joint resolution there is nothing to prevent a State from electing one person for 10 terms in the Senate or 10 persons for one term each at the same election.

Mr. President, if I did not know that my friend from Montana was a perfectly abstemious and temperate person, in reading these remarks—that we could elect 10 Senators at one time under our resolution, or one person for 10 terms—I would suppose that he was laboring under the delightful influence of some exhilarating beverage that had magnified the horizon of his thoughts and had illuminated with radiant and fantastic figures the field of his constitutional observations. [Laughter.] Under this joint resolution the Senator says we can elect one person for 10 terms or 10 persons for one term, all at the same election.

Then, when the Senator from Idaho [Mr. BORAH] was answering the Senator from Montana, pointing him to the clauses of the Constitution which I have quoted—the fifteenth amendment and to the qualification clause of the Constitution—and asked him to answer, the Senator said:

Mr. President, I will very shortly reach the aspect of the case presented by the Senator from Idaho.

But he has not reached it yet; the Senator has never reached it, and he never will.

Now, let me give the last point in the Senator's argument. I ask the Senator from Montana, with great respect, does he really believe this:

Would not a certificate of election, in due form, when properly certified by the legally authorized officers of the State, be conclusive on the Senate as to all questions save and except those touching the qualifications of the person named in the certificate to hold a seat in the Senate?

Does the Senator really believe that a certificate would be conclusive and that the Senate could not go behind the certificate?

Mr. CARTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Montana?

Mr. RAYNER. I do.

Mr. CARTER. Under the Constitution as it is, the Senate could go behind the returns; under the Constitution as the Senator from Maryland would have it, the Senate could not go behind the returns.

Mr. RAYNER. Well, I understand that is the statement of the Senator; but what reason on the face of the earth he gives for such an opinion I can not divine.

Mr. CARTER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield further to the Senator from Montana?

Mr. RAYNER. Yes.

Mr. CARTER. The Senator from Maryland is well aware of the fact that under the Constitution as it is the Senate does not inquire into the election of members of the legislature of a State; it does not attempt to ascertain whether members were elected by fraud, violence, or otherwise, but accepts the organized legislature as the mouthpiece of the sovereign power. We may inquire into the action of the members of the legislature in connection with the election of a Senator, but when the legislature has been duly organized we can not and do not go behind that organization to ascertain by any inquiry how the members were elected.

Mr. President, in the case here presented, if the sole and exclusive power to fix the time and prescribe the manner of conducting an election in a State is given over to the State, then we must give full faith and credit to the official action of the duly constituted authorities of the State who certify to the result of that election.

Mr. RAYNER. Mr. President, this will not do. We now inquire into the fact whether a Senator has been properly elected by the legislature of his State, and when you change an election from the legislature to the people you have the same right to inquire whether a Senator has been properly elected by the people of the State. The credentials are only prima facie. The Senator is in error.

Mr. CARTER. Ah, Mr. President——

Mr. RAYNER. We will be the same judges of the election of Senators by the people that we are now judges of the election of Senators by the legislatures. It requires no further answer than that. To tell me that if a man has been elected by fraud, by violence, by intimidation, or corruption we must, because of the mere fact that he has his credentials from the governor, admit him, and have not any right to inquire into the validity of his election, is a proposition in conflict with this provision of the Constitution and at variance with all the practice from time immemorial in the Senate and in the House of Representatives.

Mr. CARTER. Mr. President, the Senator's argument——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Montana?

Mr. RAYNER. Well, not just now, because the Senator can make his own speech in his own time. I would like to go on. It is not necessary for the Senator to make a speech every minute contemporaneously with mine, and I decline to yield.

Mr. CARTER. But, Mr. President——

The PRESIDING OFFICER. The Senator from Maryland declines to yield.

Mr. CARTER. I rise to a question of order, then.

The PRESIDING OFFICER. The Senator rises to a question of order. He will state his question of order.

Mr. CARTER. The Senator in the beginning courted interruptions and questions. At the present moment I am attempting on his invitation to reply to a question propounded, but since the reply makes the Senator wince I will resume my seat.

Mr. RAYNER. Mr. President, I will proceed, leaving the speech of the Senator from Montana, because he seems to be so highly displeased with his own speech and discomfited by it. I will proceed briefly to the argument of the junior Senator from New York [Mr. ROOT] before I conclude. I want to read the colloquy between the Senator from Georgia [Mr. BACON] and the Senator from New York, and I want to see whether I can not convince the Senator from New York that he is wrong in the proposition that he stated in that colloquy. There is no one at the American bar for whose opinion I have a higher respect than I have for that of the Senator from New York; there is no one for whose professional and private and public character I have a greater admiration. I know that in the heat of conflict he is as fair a foe as anyone could encounter, and I believe that if he states a proposition of law and makes what I consider to be a fatal mistake, when his attention is called to it he will retract the statement he has made upon further reflection and an examination of the authorities. Now, let me read just a short colloquy between the Senator from Georgia and the Senator from New York. The Senator from Georgia [Mr. BACON] said:

Mr. President, do I understand the Senator from New York to mean that if the States have now upon their statute books laws which regulate the suffrage in those States, such as the Senator speaks of as "the grandfather clause," though that is simply a term generic in its character which relates to a general class of legislation—does the Senator mean that, with the laws now upon the statute books of the several Southern States, if the proposed amendment of the Senator from Utah [Mr. SUTHERLAND] should be adopted and we should pass the joint resolution to amend the Constitution and it should be ratified by three-fourths of the States, it would then be within the power of Congress, if it conceived that these grandfather clauses as they are called—all the body of laws with reference to the regulations and limitations of the suffrage in the Southern States—if Congress should conceive that they were unconstitutional, does the Senator mean that, in his opinion, Congress would have the power, under the amendment of the Senator from Utah, to annul those provisions and to make Federal laws to control the election of Senators in such way as to insure the right to vote to all persons thought by Congress to be entitled to vote?

Mr. ROOT. Without the slightest doubt.

Mr. BACON. Well, Mr. President, it is well that we are given this notice of what the Senator does mean and what the Sutherland amendment means.

Mr. ROOT. I meant to put you on notice, and I mean to put the whole country on notice if my words are able to do so.

With great deference to the Senator from New York, I say that he is mistaken in the proposition of law, entirely mistaken. He is at variance with the decisions of the Supreme Court, and I will proceed within the space of a very few moments to attempt to demonstrate that he is wrong.

Mr. President, what is that proposition? Let us look at it a moment. Of course I know the Senator from New York is perfectly honest and sincere. I know that the Senator is opposed to the popular election of Senators by the people. He

has said that, and we know it. I do not believe for a moment that he wants the Sutherland amendment put into the joint resolution, so as to obtain votes on our side against it; I believe he is earnestly in favor of the amendment; but he has stated a proposition which, if it were true, would concentrate the whole Democratic vote against the joint resolution. If what the Senator from New York says is true, as earnestly as I am in favor of the election of Senators by the people and as consistently as I have contended for it for 25 years in the House of Representatives, in season and out of season, and in the Senate of the United States, I would never vote for a proposition of that kind with the Sutherland amendment in it. If by putting the Sutherland amendment into the joint resolution you can control the suffrages of the States and change the electoral systems of the South, then that joint resolution will have to pass without my vote. I propose to show that even if it be put into the joint resolution—without binding myself now as to whether I will vote for it or vote against it—it can not possibly have the effect that the learned Senator from New York gives to it.

Now, let me give you a few cases on that subject, and then I am going to conclude very quickly. I quote now from volume 9 of the Federal Statutes, Annotated, page 399:

> The Constitution does not define the privileges and immunities of citizens, and the right of suffrage is not one of them. This amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. No new voters were necessarily made by it.
>
> Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the constitutions and laws of the States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizen.
>
> * * * * * * *
>
> While the right of suffrage is not a necessary attribute of Federal citizenship, it is such an attribute as is exempt from discrimination in the exercise of that right on account of race and previous condition; and while the right to vote in the States comes from the States, the right of exemption from the prohibited discrimination comes from the United States.

The right of suffrage, my friends, is in the States. The right of suffrage is not embraced in the Constitution of the United States. Citizens derive their right to vote, subject to the fifteenth amendment, from the States; and Congress can not, except by a constitutional amendment, change the electoral systems of the South and take away their right to control the suffrage, because those systems, as announced in Williams *v.* Mississippi, are in obedience to the Constitution, and have been upheld by the Supreme Court of the United States.

Therefore, my friends upon the other side of the Chamber will not vote for this Sutherland amendment because, perchance, it may enable them to change the suffrage laws of the Southern States. Whatever your opinion may be upon those suffrage laws—and that is not a question that I propose to discuss now—whatever your opinion may be, because we differ upon those propositions, the Sutherland amendment will never give you the power to change the electoral systems of any Southern Commonwealth. You can not take away the suffrage of its citizens. You can prevent discrimination, but the State is the judge of the qualifications of its electors. A State has a perfect right to adopt a property qualification; a State has a perfect right to adopt an educational qualification; and if it applies to the Negro as well as it does to the white man then it is sanctioned by the Constitution of the United States and by the decisions that have been made in pursuance of it.

Just one more quotation, and then I will finish.

Mr. Guthrie, on the fourteenth amendment—I have a number of cases, but I will read just these two—says:

> It has been held that the fourteenth and fifteenth amendments do not of themselves confer the right of suffrage, and that the States are still at liberty to impose property or educational qualifications upon the exercise of that right.

Mr. President, that is settled beyond all question. I submit that the Senator from New York has made a mistake and that nothing we can do here, except through the process of a constitutional amendment, can deprive the States of the right of suffrage, and therefore there is nothing left in the Sutherland amendment except, perhaps, the right, which I, however, deny, to register the votes which must be registered in accordance with the laws of the State and to certify the result under the laws of the State.

You could not, under the Sutherland amendment, register the Negroes of the South in defiance of the laws of the States. Does any Senator here contend that under the Sutherland amendment we would have the right, irrespective of the laws passed by the States in reference to the qualifications, either of property or of education, to register the Negroes of the South? Does the Senator from New York believe that we would have the right to register them by virtue of the Sutherland amendment? Is it possible that under that amendment we can do anything that we could not do without the amendment? Is it possible, Mr. President, I ask the Senator from New York, that under that amendment we could in the slightest degree interfere with any of the electoral systems in any of the Southern States?

Mr. ROOT. Mr. President——

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from New York?

Mr. RAYNER. Yes.

Mr. ROOT. Does the Senator desire an answer now to the question, or would he prefer that I wait?

Mr. RAYNER. Whichever pleases the Senator from New York. I would rather have it now.

Mr. ROOT. I understand that the provision which authorizes the Congress to make or modify the regulations governing elections in respect of time and place and manner was not an empty form of words, but was included in the Constitution upon grave consideration and for a substantial purpose.

That provision in regard to the election of Members of the House of Representatives it is proposed to continue, and the provision in regard to the Senate it is proposed to destroy by transferring the election from the legislature to the people without also transferring the power of regulation. The purpose for which I suppose these provisions were included corresponds with the purpose that practical observation of elections indicates. The naked right to make laws regarding the exercise of the right of suffrage is practically useless unless there be the power to so arrange the time, place, and manner of the election that the laws can be made practically applicable. The only way ever found by man to compel a fair election is through arranging the time and place and manner of the election beforehand in such a way that the declarations of the law will not be brutum fulmen.

Now, sir, my understanding is that there are certain provisions of the Constitution, in respect of elections, conferring other power upon the Congress. There is the right to judge of the elections and qualifications of the Members of the two Houses, and there are the fourteenth and fifteenth amendments, which relate to the rights of suffrage.

My proposition is and has been from the beginning that the preservation of the constitutional authority of the Congress to arrange the regulations governing elections as to time and place and manner is a necessary condition precedent to the effective exercise of all the other powers.

The Senator from Georgia put a question to the junior Senator from New York the other day predicated upon the proposition that certain laws were found to be, in the opinion of Congress, in violation of the Constitution, and he asked me whether in my view the adoption of the Sutherland amendment would result in Congress having the power to compel a change in or an abandonment of those laws, and I answered him in the affirmative. Now the Senator from Maryland says that I was mistaken, because the laws are not in violation of the Constitution.

Mr. RAYNER. If the Senator from New York will allow me, the Senator from Georgia did not assume that the laws were unconstitutional.

Mr. ROOT. I beg the Senator's pardon. That was the postulate of the question of the Senator from Georgia. The Senator from Maryland will do me the credit to believe that I was not saying gravely to the Senate that the Sutherland amendment would give the Congress the power to reverse and set aside laws which were not in violation of the Constitution.

Mr. RAYNER. The Senator from Georgia said, if Congress should conceive that they were unconstitutional. The Senator from Georgia will not rise here and say that he based his inquiry upon the proposition that they were unconstitutional. He said if Congress conceived that they were unconstitutional, which is an entirely different proposition.

Mr. ROOT. I am not discussing the question whether those laws are or are not, in fact, constitutional. The Congress must proceed in accordance with what it does conceive.

Mr. BACON. Will the Senator permit me?

The PRESIDING OFFICER. Does the Senator from Maryland yield to the Senator from Georgia?

Mr. RAYNER. Certainly.

Mr. BACON. Without taking him from the floor at all. I have not the report of the colloquy before me. I can only state what was in my mind at the time. I sought to direct the attention of the Senator from New York to the contingency of there being a body of law regulating the suffrage upon the statute books of some of the Southern States which, in the opinion of those States, was constitutional, but which, in the opinion of Congress, was unconstitutional. I wished to present the ques-

tion, What would be the power of Congress in the case of that difference in opinion? I think I correctly state it.

Mr. RAYNER. Of course he could not have said that, because if these electoral systems, if the laws were unconstitutional, I submit to the Senator from New York, if they are unconstitutional, then the Supreme Court would set them aside, and they have said in Williams *v.* Mississippi that they are not unconstitutional.

The question I want to put to the Senator is this. Let us get down to the point. My State, for instance, passes a law, we will say, with a property qualification in it that no man who does not have $500 worth of property shall have the right to vote. Let us say we pass such a law—that no citizen of Maryland shall have the right to vote who does not own $500 worth of property. Say that the overwhelming majority of the Negroes in the State do not own $500 worth of property. If the Senator wants it, we will say that none of them own $500 worth of property. Would such a law be constitutional or unconstitutional? Could we, under the Sutherland amendment, pass a law depriving Maryland of the right to pass such a law? That is what I am concerned about.

Mr. ROOT. Certainly not; because I do not think the law would be unconstitutional. If the Congress conceived it to be unconstitutional, then it could. If they were right in conceiving it to be unfair——

Mr. RAYNER. But suppose they were wrong.

Mr. ROOT. Then they could not.

Mr. RAYNER. Is not the Supreme Court the arbiter?

Mr. ROOT. It is.

Mr. RAYNER. That is all. Then the Senator's statement, in answer to the Senator from Georgia, was a little hasty, I think.

Mr. ROOT. No; my statement was absolutely correct in answer to the Senator from Georgia.

Mr. RAYNER. But it was based upon the proposition, as the Senator says, that the law was unconstitutional.

Mr. ROOT. Certainly.

Mr. RAYNER. And the Senator from Georgia says he did not make that statement.

Mr. ROOT. Mr. President——

Mr. BACON. If the Senator from New York will pardon me. What I endeavored to say was this: Of course, there would have been no question if it had been based on the assumption that the law was unconstitutional. My question was based on the assumption that in the opinion of the States it was constitutional and in the opinion of Congress it was unconstitutional; and what, under the Sutherland amendment, I inquired of the Seator from New York, would, in his judgment, be the power of Congress in such a contingency, which I suppose the Senator understands.

Mr. ROOT. I understand it.

Mr. RAYNER. Mr. President, there is no doubt about the proposition that Congress can not change the right of suffrage in the States, Sutherland amendment or not.

Is there any Senator here now, let me ask, because I want to be fair about this—I am not arguing this as a partisan, I am arguing it as a lawyer—is there any lawyer in this body who will rise and say that by law we can take away from the States the right of suffrage?

Mr. ROOT. May I ask the Senator a question?

Mr. RAYNER. Certainly.

Mr. ROOT. Does the Senator mean his proposition to cover a case in which the franchise is established in the State by laws that are in contravention of the provisions of the Constitution?

Mr. RAYNER. Undoubtedly not. That is where the difficulty occurs between us. If the State laws are unconstitutional, the Supreme Court will set them aside. But in Williams *v.* Mississippi—I do not know whether the Senator was in the Senate when I quoted the decision—the Supreme Court held that the laws of Mississippi were constitutional, and that they did not operate as a discrimination under the fifteenth amendment. Let me read it for the benefit of the Senators who have just returned to the Chamber—from One hundred and seventieth United States. That is the case upon which we in Maryland have framed our franchise laws. This is the case we followed. Now, are we right in following a decision of the Supreme Court of the United States or are we wrong? That is the question. Here is what the convention in Mississippi did. What is the use of talking about the unconstitutionality of these electoral systems when the Supreme Court says this? What stronger language could you devise to bring before the Supreme Court the question whether the electoral systems of the South are valid or invalid; whether they are constitutional or unconstitutional?

Listen for a moment to the language of the supreme court of Mississippi and the language of the Supreme Court of the United States. The supreme court of Mississippi says:

> Within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the field of expedients to obstruct the exercise of suffrage by the Negro race.

That is not my language. That is the language of the supreme court of Mississippi, approved by the Supreme Court of the United States.

> By reason of its previous condition of servitude and dependencies this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character which clearly distinguished it as a race from the whites. A patient, docile people; but careless, landless, migratory within narrow limits, without forethought; and its criminal members given to furtive offenses, rather than the robust crimes of the whites. Restrained by the Federal Constitution from discriminating against the Negro race, the convention discriminates against its characteristics and the offenses to which its criminal members are prone.

The characteristics of the race will apply to the white race just as well as to the Negro race. Now, what does the Supreme Court say?

> But nothing tangible can be deduced from this. If weakness were to be taken advantage of, it was to be done "within—

Quoting the language of the supreme court of Mississippi—

> "within the field of permissible action under limitations imposed by the Federal Constitution," and the means of it were the alleged characteristics of the Negro race, not the administration of the law by officers of the State.

What is the use of our discussing this proposition here? Here is the Supreme Court of the United States that has affirmed the constitutionality of these electoral systems. This case has been brought to the attention of the Supreme Court over and over again, and they have declined to reverse it. We have now a case from Maryland that has gone to the Supreme Court, and I apprehend that they will again decline to reverse it, and that they will never touch an electoral system of a Southern State, because the Southern States do not disfranchise the Negro. They can not disfranchise the Negro as such. They can not discriminate against the Negro, and the laws that they pass, whether it be a property qualification or an educational qualification, apply to the characteristics of the white race just as well as to the Negro.

The sum and substance therefore of my argument is this:

First. The Sutherland amendment is not necessary to punish fraud, violence, or intimidation at the polls at Federal elections.

Second. Under the Sutherland amendment efforts might be made by a partisan Congress to appoint boards of registration and certification to supersede the boards of registration and certification appointed by the State. If these boards, however, acted in defiance of the laws of the State and registered voters who had no right to be registered under the laws of the State, then the law of Congress would be void, and you do not want to confer upon Congress the power to pass a law which would be declared to be unconstitutional by the courts. If these boards of registration and certification acted in accordance with the laws of the State, then there is no practical necessity for the Sutherland amendment, as the State regulations are sufficient. In other words, I admit that under the Sutherland amendment an attempt might be made to pass another bill similar to the force bill, but I deny the constitutionality of the force bill.

Third. No legislation can be enacted under the Sutherland amendment to deprive the States of their right of suffrage. Therefore the appeal to Republican Senators to vote for the Sutherland amendment in order to change the electoral systems of the Southern States should not prevail. The right of suffrage subject to the fourteenth and fifteenth amendments is in the States, and we can not take away the right of suffrage from the States except by a constitutional amendment that shall expressly so provide.

In conclusion, Mr. President, let me say one word and I have finished.

You do not want, Senators, if you could, to interfere with right of suffrage and the supremacy of the white race in the South. You do not want the people of nearly every southern Commonwealth placed under the yoke of ignorance and a representation in the Senate that would disgrace it. I am confident that you want the education and the culture and the refinement of its citizenship to honor and adorn this Hall as it does now. The South can not stand any interference with its election systems that have been pronounced to be constitutional and valid by the Supreme Court of the United States. You will not, I am sure, disturb her institutions or the autonomy of her governments. You will not attempt to give the Federal Government the right to interfere with the system that these States have adopted, and which is now in strict obedience to the Constitu-

tion, working for the best interests of the country. You dare not confer upon Congress the power to renew legislation which has now lain dormant and dead for years, and which there is no necessity to reenact. Senators, you will realize that it is for your own welfare, and for the welfare of the States you represent, and for the welfare of the Union that the South, in view of the overwhelming problem that confronts her, should maintain her institutions free from invasion. I am not actuated by partisan motives, I am looking to the common interest of our common country when I say to you to keep your hands off the pillars of her temple. It has been suggested here that the Southern States are violating the organic law of the land. With great respect such a proposition as I have shown is impossible and absurd. If you will permit them to work out their own destiny in exchange for that privilege, it would be safe to guarantee that they would never falter in their allegiance to the Constitution, and if the emergency should ever arrive, they would vie with every other section of the Union to defend it with all their hosts and all their honor, and see to it that against foes from within and without it shall forever remain inviolate in all of its parts, and that no sacrilegious hand shall ever blast or hew it down.

Mr. CARTER obtained the floor.

Mr. NELSON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

| | | | |
|---|---|---|---|
| Bacon | Crawford | Kean | Smith, Md. |
| Bankhead | Culberson | La Follette | Smith, Mich. |
| Beveridge | Cummins | Lorimer | Smith, S. C. |
| Borah | Curtis | McCumber | Smoot |
| Bourne | Davis | Martin | Stephenson |
| Brandegee | Depew | Nelson | Sutherland |
| Briggs | Dillingham | Oliver | Swanson |
| Bristow | du Pont | Page | Taliaferro |
| Brown | Fletcher | Paynter | Taylor |
| Bulkeley | Flint | Penrose | Thornton |
| Burnham | Frazier | Percy | Tillman |
| Burrows | Gallinger | Perkins | Warner |
| Burton | Gamble | Piles | Warren |
| Carter | Gore | Rayner | Watson |
| Chamberlain | Gronna | Richardson | Wetmore |
| Clapp | Guggenheim | Root | Young |
| Clark, Wyo. | Heyburn | Scott | |
| Clarke, Ark. | Johnston | Shively | |
| Crane | Jones | Simmons | |

The PRESIDING OFFICER. Seventy-three Senators have answered to their names. A quorum is present. The Senator from Montana will proceed.

Mr. CARTER. Mr. President, it is not my purpose to detain the Senate any considerable length of time on this joint resolution. I am impelled to again trespass on the patience of the Senate because of the confusion which I conceive has been created by the manner of the presentation of the opposition to the pending Sutherland amendment.

When this Government of ours was formed under the Constitution it was made to consist of three distinct departments, the executive and the legislative departments being elective and the judiciary appointive. It was not intended that the Government should ever become dependent for its continued existence on the will of any one of the States or any number of the States. Due regard was paid to the election of presidential electors by the provision authorizing the Congress to fix the date for the election of the electors and the hour at which electors would be required to meet to register their choice. The two Houses of Congress were to constitute the legislative authority under the Constitution, and it was clearly the intention of that instrument to remove these two Houses from the possibility of destruction to any extent by any State or any number of States.

Hence, it was provided in section 4 of Article I that while the States might make regulations as to the time, place, and manner of electing Members of the House of Representatives, and as to the time and manner of electing Senators, the power was reserved to the Congress to make on its own account entirely independent regulations governing the election of its Members or to alter or change the regulations made by the States at its will. It is evident that this was a wise precaution, because the continuance of each body or branch of the Congress is essential to the perpetuity of the Congress itself.

Now, it is proposed by the joint resolution to leave full power and authority in the Congress to prescribe the place, time, and manner of holding elections of Members of the House, but to pass to the States the sole and exclusive power to determine the place, the time, and the manner of electing Members of the Senate. The Congress will have full and plenary power as to the Members of the House and no power at all as to the election of Senators should this joint resolution ultimately become a part of the Constitution of the United States.

There are Senators who believe that the want of this power might in contingencies not now perceivable imperil the very life of the Congress itself. Heretofore the exercise of this power has operated to preserve the Congress to a certain extent. It has brought uniformity into elections. It has secured regularity in returns. It has, in short, contributed to the perpetuity of the legislative branch of the Government.

There is no demand among the people of the United States anywhere discernible to transfer this power from the Federal Government to the respective States to be exercised according to their sweet will. In none of the organs through which public sentiment finds expression can anyone point to a claim, or a suggestion of a claim, that the power had been abused, and therefore should be abdicated by the Federal Government and transferred to the care, keeping, and exercise of the respective States.

There came in here, in conjunction with a resolution to submit the question of electing Senators by a direct vote of the people, a proposal to also change the Constitution in another essential particular by transferring this power, which has always resided in the Congress, over to the respective States in so far as the election of Senators of the United States may be concerned. And now those who oppose that transfer of power, those who believe that the right to control the election of its Members is a necessary power in Congress or a legislative body of any sort, are charged with trying to interject the color question into this debate. It may be that the color question evolves from the situation, but, Mr. President, the primary question is, Shall we by our vote aid in making the Senate of the United States the only elective legislative body in the world incapable of having any voice whatever, directly or indirectly, in fixing the time, the place, or directing the manner in which the election of its Members shall proceed?

I assert now that there is not in Christendom an elective legislative body devoid of power to control and direct the election of its own members. That power attaches to every State legislature. It attaches even to the town councils of the country. It is a power necessary to guarantee the perpetuity of the body itself.

The color line, interjected by whom? Who called for this particular part of the joint resolution? Certainly not those who oppose its acceptance. This feature came unbidden, attached to the proposal to elect Senators by a direct vote of the people as a rider. It came from the Committee on the Judiciary, and now, forsooth, we are advised that because we think that this power should be preserved to the Congress we are interjecting the color question into this debate!

Mr. President, unquestionably this particular feature of the Constitution which it is proposed to strike out of the instrument, this particular power which it is here proposed to transfer to the exclusive control of the States, is now and has been the basis of all the effective legislation passed by the Federal Government for the protection of the ballot against fraud, violence, and corruption.

It has been the basis of legislation which has proven beneficial at the North as well as at the South.

But Senators say the power exists to prevent fraud and violence without this particular article of the Constitution or this section of the first article. I pray, if the power exists, why is it desirable to strike down this particular section? Why, if the power exists in the Federal Government, can you subserve any good or useful purpose by transferring a part of it to the States?

A Senator on yesterday afternoon claimed that the Yarbrough case had naught whatever to do in the mind of the court with legislation based on the constitutional provision being considered.

Mr. President, in 1870 Congress enacted a law to enforce the rights of electors in the respective States. That law was amended in 1871, and out of that law as amended a great volume of litigation and adjudication has proceeded. The first case was that cited by the Senator from Maryland [Mr. RAYNER] this morning. It was the case of ex parte Siebold coming from the State of Maryland. That case arose out of the construction and application of the statute of 1870, which was passed under and by virtue of authority reposed in Congress by section 4 of article 1, which the joint resolution would strike from the Constitution of the United States as far as the Senate is concerned. The very opening phrase of the opinion of the majority of the court in that case proceeds thus:

> There is no declaration that the regulation shall be either wholly by the State or wholly by the Congress. The court holds that this regulation may be in part the adoption of State law and in part the application of a national law to a Federal election.

In the Yarbrough case which followed—and I will not hold the Senate to read at great length—on page 661 of the opinion, the court proceeds to comment at length upon the doctrine laid down in the Seibold case, and affirms it as the fixed law of the land, fixed by the judgment of the Supreme Court of the United States.

Now, Mr. President, comes the Senator from Idaho [Mr. BORAH], supplemented by the Senator from Maryland [Mr. RAYNER], with this curious proposition. Ample power exists without this particular clause of the Constitution.

The Senator from Idaho averred that the clause was practically surplusage in the Constitution, and as surplusage it should be stricken out; that we can transfer the power to the State and still retain it. Paradoxical as that may appear, it is the position taken. If this clause of the Constitution contains no power and vests none in the Congress, then we will not transfer any power to the States.

Ah, Mr. President, it is known—and well known, too—that this power to regulate elections is the vital power in the Constitution, through which due and wholesome regard for the fifteenth amendment and the fourteenth amendment may be enforced.

But it is suggested that the Senate might in a given case, notwithstanding the passage of the joint resolution and its final adoption by the States, inquire into fraud, corruption, and violence at the polls. Let us inquire into that for a moment. Bear in mind that every decision which has been quoted in the course of this debate emanating from the Supreme Court of the United States is a construction of the Constitution as it is now.

I desire to direct attention to the construction as the Constitution would be if this joint resolution should finally become a part of the Constitution. We would be confronted with this state of affairs: A Senator is elected from a nameless State. He comes here with credentials in due form, certified by the secretary of state or other officer commissioned to certify. The returns, certified by him to have been regular, show that John Doe was duly elected a Senator of the United States to represent that State for a term beginning on a certain day. Undoubtedly full faith and credit would have to be yielded to this act of the duly constituted authority of the State. This certificate would be accepted for what it purported to certify. But, says the Senator, we could go back of that certificate and inquire whether fraud, violence, or corruption had obtained at the polls; whether a man had in truth and in fact been denied the right to vote on account of race, color, or previous condition of servitude.

Let us see. That we could do now. Undoubtedly we can do that as to Members of the House of Representatives. But, Mr. President, by a solemn act initiated in the two Houses of Congress and passed out to the States for their action, we here propose to change this fundamental law and transfer to the States, without any accountability to anyone, the sole and exclusive right to fix the time, determine the place, and prescribe the manner in which a Senator of the United States shall be elected.

Thus we divest the Federal Government of the power upon which the Supreme Court decisions have heretofore been based and transfer that power to the sole and exclusive jurisdiction and control of the States. Then how can you, after the Constitution has so vested exclusive power in the States, assume to exercise any supervision over the election through the National Government? That amendment would conclusively estop the Congress from raising any question as to how the election was conducted, the time fixed for it, or the place at which it was held. The right of supervision being destroyed, we would be driven to those vague and indefinite powers of the Constitution to which the Senator from Idaho and the Senator from Maryland refer as affording some protection to electors.

There is no serious contention about the principles of law involved in the matter before the Senate. We admit, to start with, that the fifteenth amendment did not confer the suffrage on any man; we admit that the States have the right under the Constitution to regulate the exercise of the right of the elective franchise and to prescribe the conditions under which persons may vote. A voter must have the qualifications prescribed for a member of the most numerous branch of the legislature. We may inquire whether voters, those qualified, were permitted to vote for Members of Congress, but we can not extend the franchise in the respective States. We can, however, invoke the power of the Constitution where a State has denied a citizen the right to vote because of race, color, or previous condition of servitude. We will assume that he is so denied the right. The Senator from Idaho contends that he has ample remedy. I contend that under the authorities he is relegated to an action at law to recover damages for the injury inflicted upon him, and, if this amendment is made to the Constitution, there will be no power in the Congress of the United States to redress the wrong by denying to the beneficiary of the wrong the privilege which he seeks of becoming an active Member of this body.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER (Mr. GALLINGER in the chair). Does the Senator from Montana yield to the Senator from Iowa?

Mr. CARTER. I do.

Mr. CUMMINS. Mr. President, if it will not embarrass the Senator from Montana, as he seems to be about passing to another phase of the case, I want to clearly understand whether it is his opinion that the act of 1870 as amended by the act of 1871 is founded upon section 4 of Article I, or whether it is also founded upon other parts of the Constitution.

Mr. CARTER. Mr. President, in so far as the acts referred to prescribe the manner and the machinery for conducting an election and preventing fraud, violence, or corruption, the legislation is founded wholly and exclusively on section 4 of Article I. Incorporated in a number of these acts were such provisions as that to which the Senator from Idaho referred yesterday, section 5520 of the Revised Statutes, relating to conspiracy between two or more persons to do or not to do certain things or to interfere with the rights of others or the Government's rights. That, I think, was embraced in the act of 1871, intended to enforce the rights of citizens under the fourteenth amendment. It does not appear in the Revised Statutes just as it was written in the original text of the act referred to, but the substance is there, the phraseology having been changed by the compilers.

Mr. CUMMINS. Then I gather from the answer just made by the Senator from Montana, that a part at least of the act of 1870 as amended in 1871 finds its constitutional authority in other parts of the Constitution than section 4 of Article I, and I should like to ask him, for I have a great desire to know precisely what his view is, if the following section—and I take it at random—is founded upon section 4. I refer to the first section of the Revised Statutes with respect to crimes against the elective franchise:

> SEC. 5506. Every person who, by any unlawful means, hinders, delays, prevents, or obstructs, or combines and confederates with others to hinder, delay, prevent, or obstruct, any citizen from doing any act required to be done to qualify him to vote, or from voting at any election in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be fined not less than $500, or be imprisoned not less than one month nor more than one year, or be punished by both such fine and imprisonment.

Where does the Senator from Montana find the constitutional authority to declare what I have just read as a crime against the United States?

Mr. CARTER. Mr. President, there are certain inherent powers in a Government not traceable to specific constitutional authority. For instance, no specific constitutional warrant can be pointed out for the passage of an act of Congress prescribing punishment for the crime of burglary; no specific authority can be pointed out in the Constitution for the passage of an act of Congress defining and punishing grand larceny on an Indian reservation. There are a thousand and one appropriate realms of legislative activity which grow out of and find their basis in the inherent powers of a sovereign Government. I do not recall the exact time of the passage of the section referred to by the Senator from Iowa.

Section 5520, referred to yesterday afternoon by the Senator from Idaho, was traced with some difficulty, because in the codification the compilers changed the phraseology. It required close reading to locate the original in the Statutes at Large.

Mr. CUMMINS. The compilers did a little more than that. They separated the administrative features of the act of 1870 from the penal features of the act, and put one under the head of "The elective franchise" and the other under the head of "Crimes against the elective franchise." But I agree that the act of 1870 contains some provisions which would not have been constitutional had it not been for section 4 of Article I, but a large part of it would have been constitutional even though section 4 never had been put into the Constitution. I had hoped, and I still hope before he has finished that the Senator from Montana will point out those parts of this regulatory act which, in his opinion, are founded upon section 4, and section 4 alone, and segregate those parts from the statute which rests upon broader foundations of the Constitution, so that we can intelligently view the necessity of this provision with regard to the election of Senators.

Mr. CARTER. Mr. President, without undertaking to return to the Statutes at Large to trace through the various provisions with the modifications thereof in the Revised Statutes, I can

answer the Senator, I think effectively, by saying that every part of the act of 1870 as amended by the act of 1871, which referred to the times, places, and manner of conducting an election and which prescribed penalties and punishment for interfering with officers of the United States in the discharge of their duties under the act found sole authority in section 4 of Article I, and I aver that, without that section of the Constitution, no authority would exist to appoint registration agents, to appoint election officers in a State, or to in any manner regulate the election, and particularly where by a solemn act, Congress and the States cooperating together, transfer power over the election to the States exclusively.

Mr. President, my contention is that the fifteenth amendment would not be repealed, its phraseology would not be modified, nor would the fourteenth amendment to the Constitution be in any way changed by the adoption of the amendment limiting congressional power as here proposed; but what I do contend is that the transfer of this power to regulate elections from the Federal Government to the States would remove the most potent agency under the control of Congress for the enforcement of the rights of citizens in the exercise of the franchise under the laws of the States. We are not left without authority upon this, as I said yesterday. In James *v.* Bowman, found in One hundred and ninetieth United States, page 127, it was finally determined by the Supreme Court that the prohibition of the fifteenth amendment applied not to private, but only to State action. Therefore the court held that an act of Congress was void which provided for the punishment of individuals who by threat, bribery, or otherwise should prevent or intimidate others from exercising the right of suffrage as guaranteed by the fifteenth amendment.

After reviewing the manner in which the prohibitions of the fifteenth amendment have been judicially construed, the court holds:

> These authorities show that a statute which purports to punish purely individual action can not be sustained as an appropriate exercise of the power conferred by the fifteenth amendment upon Congress to prevent action by the State through some one or more of its official representatives.

Therefore, if the fifteenth amendment can not be enforced as to private wrongs or if the redress of private wrong is without remedy and only the State can be held to accountability, we are driven back to the right of the Government under section 4 of Article I to enforce respect for those rights at the polls by proper laws and regulations and the designation of officers to execute them.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Idaho?

Mr. CARTER. Certainly I do.

Mr. BORAH. I stated to the Senator from Montana yesterday that I would refer to the Bowman case, but I did not have it upon my desk, and I was unable to do so. I should like, before he leaves it, to call the attention of the Senator to what I intended to call attention to in that case.

Mr. CARTER. I will be glad to have the Senator do so.

Mr. BORAH. I recognize the fact that the action under the fifteenth amendment and the fourteenth amendment must be action upon the part of the State, but in the closing part of this decision we find this language:

> We deem it unnecessary to add anything to the views expressed in these opinions. We are fully sensible of the great wrong which results from bribery at elections, and do not question the power of Congress to punish such offenses when committed in respect to the election of Federal officials. At the same time it is all important that a criminal statute should define clearly the offense which it purports to punish, and that when so defined it should be within the limits of the power of the legislative body enacting it. Congress has no power to punish bribery at all elections. The limits of its power are in respect to elections in which the Nation is directly interested, or in which some mandate of the national Constitution is disobeyed, and courts are not at liberty to take a criminal statute, broad and comprehensive in its terms, and in these terms beyond the power of Congress, and change it to fix some particular transaction which Congress might have legislated for if it had seen fit.

The reference to the power of Congress to punish offenses when committed in respect to the election of Federal officials, I take it, is regardless of whether he is a Member of Congress or an elector for President.

Mr. CARTER. Mr. President, as the only Federal officers elected are the electors for President and Members of Congress, I assume that it could only apply to them.

Mr. BORAH. As in one case the manner is prescribed by the State and as in the other the manner is prescribed by the legislature, the point which I wished to make was that that power exists outside of the proposition that the manner is prescribed by either one of these bodies.

Mr. CARTER. Mr. President, I think that the confusion in the application of the authorities arises from the consideration of the Constitution as it was when the opinions were delivered and as it is to-day, omitting to take into account the vital and essential point that the decision would in each case have been different if the constitutional provision had been different. Who believes that the Siebold case would have been decided as it was if the Constitution read as this proposed amendment contemplates it shall read—that the sole and exclusive power to regulate senatorial elections shall be vested in the States? The adjudication would have proceeded upon a different theory; the adjudication would have been based on a different constitutional provision, and therefore the argument that the court held this or held that under the Constitution as it is casts no light upon what the court would hold under the Constitution as it is proposed to make it.

Mr. CUMMINS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Iowa?

Mr. CARTER. I do.

Mr. CUMMINS. Mr. President, it seems to me that the argument of the distinguished Senator from Montana either proves too much or too little. I put to him this case: Suppose that in any community, either of the South or of the North, a band of conspirators should undertake to prevent by force a certain number of electors from casting their votes or from going to the polls at all; or, if not by force, then by intimidation; or, if not by intimidation, then by fraud, does the Senator from Montana desire the Senate to believe that Congress has no power to make such conduct an offense and crime against the United States? I am sure that he will not so assert; and, presuming that the answer will be in the negative, where does the power reside in the Constitution to declare such conduct a crime? It is certainly not in section 4 of Article I, because it would have no relation whatever to holding an election. I am putting the case in which private individuals prevent other private individuals from exercising their franchise—it may be at a distance of miles from the places or place appointed by law for casting the votes or holding the election.

Mr. CARTER. Mr. President, the Government of the United States as a sovereign power has the right to protect its citizens in their rights at home and abroad. That may be stated as a general proposition. The great difficulty, as is well known, arises in the employment of efficeint instrumentalities for the protection of men in their right to vote, and vote freely, at popular elections. If two or more persons conspire together, they can be held accountable of course under the conspiracy act for doing that which is unlawful in preventing a citizen by unlawful means from doing that which he has a right to do.

Mr. CUMMINS. It would be applicable to the individual as well.

Mr. CARTER. And the Supreme Court has held—and I think held correctly—that—

> The authorities show that a statute which purports to punish purely individual action can not be sustained as an appropriate exercise of the power conferred by the fifteenth amendment upon Congress to prevent action by the State through some one or more of its official representatives.

The individual denied that right is left to apply to a court for damages.

Now, Mr. President, let us illustrate. The Senator from Maryland has announced that the Supreme Court had approved or tolerated certain devices and contrivances in constitutions and laws to prevent the negro from voting. The negro is not named in one of them; there is no apparent pretense that he is denied the right to vote on account of race, color, or previous condition of servitude, because there is no reference to race, color, or previous condition of servitude in the constitution or the law of any State; but the inevitable and intended result is the disfranchisement of the black man.

How is it done? An educational test is applied. One man is expected to read a section of the Constitution of the United States. He may be an illiterate white man. He is coached the night before, and the election officer requests him to read the first line—"We, the people of the United States." That settles it as to the white man. Up comes a black man, and that black man is required to recite from memory the twelfth amendment. He is required to pass an examination on the Constitution that no lawyer in the Senate could pass; and, failing, he is denied the right to vote. Then comes the grandfather clause, which excludes him even if he passes the educational test.

Mr. BORAH. Mr. President.

The PRESIDING OFFICER. Does the Senator from Montana yield to the Senator from Idaho?

Mr. CARTER. Certainly.

Mr. BORAH. Does the Senator from Montana contend that there is no remedy for that except under section 4 of Article I?

Mr. CARTER. Mr. President, I answer that the power most efficient at the disposal of Congress is based on section 4, Article I, and that it is a cruel wrong to the Federal Government and the citizens who look to it for protection to strike down that constitutional provision.

Mr. BORAH. The Supreme Court has held in the case of Yick Woo, One hundred and eighteenth United States, that, although the law may be perfectly fair upon its face, yet, if it admits of unfair execution, it comes within the fourteenth amendment.

Mr. CARTER. Very well. Now, Mr. President, an election for Senator was held four years ago, we will say, in a State. The evidence is scattered; the United States had no witness there; under the proposed amendment it could have no officers there; it could exercise no supervision over the polling places or the manner of administering the State law. Under the proposed amendment Congress could not make any provision to have any representative of the Federal Government present to see that even the State law was fairly administered. Why deprive the Government of that privilege? Is citizenship and the right to exercise the voting privilege so cheap that we will voluntarily abdicate all right to protect it? If, as a matter of fact, this provision of the Constitution is merely surplusage, I may, I think, with propriety inquire why this vigorous attempt to strike it out of the Constitution? If this provision is so thoroughly innocuous, why this long-continued effort to get rid of it and transfer the sole power in these matters over to the State? These questions will not be answered.

Mr. President, this rider was attached to the resolution proposing to submit a constitutional amendment for the election of Senators by the people as a conveyance to get the main question before the Senate. It is being urged here as a means of getting the main resolution through the Senate. It is believed that without this rider, emasculating the power of the Federal Government to continue the life of this Senate, the resolution will not pass. From my point of view it is better far to endure those ills that proceed from legislative efforts—and futile ones often—to elect Senators than to open the way for the destruction of the Senate itself at some future time.

I concede that in the placid days through which we are passing there is no pressing need for a vigorous exercise of the power of Congress to control the elections of Senators or Members of the House of Representatives; but the centuries will bring curious conditions of which we now can have little conception. The last century brought a mighty crisis to this country; the present may have in store more difficulty than the century which has passed.

It was the intention of the framers of this Government that it should have the power of self-preservation. The moment the right to control the election of Members of either House of Congress passes from the Congress its life is thenceforward and forever to be subject to the whim of the respective States. It was this infirmity in the original Articles of Confederation that led to a Government which merited the just contempt of mankind. It could not meet its obligations; it was a beggar at the door of every State legislature; it could not discharge the functions of a sovereign Government, taking its place among the nations of the earth. Our forefathers knew of the infirmities of that system, and they intended that this Constitution should forever guard the new Government against them.

One of the most important and inestimable powers of the Constitution was the power given to the Congress to protect the election of its own Members against fraud, violence, and corruption. Under this authority the Congress may set aside the laws of any State relating to Federal elections; it may provide election officers of its own if need be. The courts will punish the officers of the State for violating the law of Congress in relation to an election, and the efficiency of the system may be regarded as thoroughly proven by the test of time.

Take this power away and the life of the Senate is left at the will of the States. Is it wise to make this needless and uncalled for departure? Again I ask, is it fair to the electors of the country or to the legislatures to hand them two propositions to pass upon at the same time—two propositions not correlated; one called for by widespread expression; the other never called for at all? In county conventions, in local papers, and in papers of general circulation, in State conventions and national conventions of all parties the election of Senators by a direct vote of the people has been thoroughly considered. It was one of the means presented in the constitutional convention for the selection of Senators. There can be no doubt of the fact that the public mind is prepared for the submission of that question; no doubt it will be debated intelligently and forcibly throughout the States. But how can it be decided fairly and squarely if the States of the Union must at the same time and by the same ballot in legislatures or at the polls pass not only on the question of electing Senators by the people, but likewise upon a question which imperils the life of the Federal Government itself, upon a proposal to deprive the Congress of the country of the right under any and all circumstances to see that the Members of the Congress are elected without fraud, violence, corruption, or threats of any kind?

But, Mr. President, it is claimed that we inject the color line, and since that color line was presented by the Senator from Idaho [Mr. BORAH] so fearlessly yesterday afternoon, I think it well to give it a moment now. He inquires, if the Sutherland amendment is voted upon favorably, if in other words we elect to leave the Constitution in that particular as it is, who will to-morrow introduce a bill providing for the enforcement of the rights of the blacks in the South? I answer that I believe no such bill will be introduced.

But I answer further and say that the temper of this hour may not continue forever. I would not deprive the future Congresses of the right to proceed to enact laws if the exigencies should justify or require their enactment. If, forsooth, because no one wishes to present a bill to-day, should we from that fact reach the conclusion that nobody should ever be permitted to present a bill of any kind or character for the relief of citizens who are deprived of the right to vote?

Mr. President, we are not now disposed to interfere with the perplexing political and social conditions confronting the people of the South. Nor are we disposed to say that these conditions shall crystallize into a confirmed habit, so that the men who were freed by the proclamation of emancipation shall be forever deprived of the right to vote or express a voice in matters relating to the conduct of their Government.

Mr. RAYNER. Will the Senator from Montana allow me? He interrupted me about sixteen times, and I just want to ask him one question.

Mr. CARTER. I am delighted to have the Senator interrupt me.

Mr. RAYNER. Suppose a State should decline, with the Sutherland amendment in, to send any Senator to the Senate of the United States; does the Senator from Montana think there is any way for us to force a State to elect a Senator?

Mr. CARTER. Under the Constitution as it is and as it will be as to the election of Senators by the people in case this constitutional amendment should become a part of the organic law there can be no doubt that the Congress can order an election in any State as to Members of the House of Representatives; and if a State fails to hold an election in any district or throughout the entire State for Members of the House of Representatives, the Congress of the United States may by law provide the time and place and the manner for conducting such elections in that State without asking its consent or without awaiting from the State any expression of either assent or dissent.

Mr. RAYNER. Mr. President——

The VICE PRESIDENT. Does the Senator from Montana yield further?

Mr. CARTER. I do.

Mr. RAYNER. In a great debate, one of the greatest debates that ever took place on this floor, between Webster and Calhoun, the proposition was conceded that with the Sutherland proposition in the Constitution as it now is there was no way whatever to compel a State to elect a Senator. Let me read just a few lines—the Senator interrupted me a number of times—what Mr. Webster said on the question:

I hear it often suggested—

He said—

that the States, by refusing to appoint Senators and electors, might bring this Government to an end. Perhaps this is true; but the same may be said of the State governments themselves. Suppose the legislature of a State, having the power to appoint the governor and the judges, should omit that duty, would not the State government remain unorganized? No doubt, all elective governments may be broken up by a general abandonment on the part of those intrusted with political powers, of their appropriate duties.

Moreover, as a matter of fact, as Webster went on to show, in a certain very important sense the Federal Constitution relies, for the maintenance of the Government which it establishes, upon the plighted faith not of the States, as States, but upon the several oaths of its individual citizens, in that all members of a State legislature are obliged, as a condition precedent to their taking their seats, to swear to support the Federal Constitution, and from the obligation of this oath no State power can discharge them. Thus, says Webster—

No member of a State legislature can refuse to proceed at the proper time to elect Senators to Congress, or to provide for the choice of electors of President and Vice President, any more than the Members of this body [Senate] can refuse, when the appointed day arrives, to meet the Members of the other House, to count the votes for those officers, and

to ascertain who are chosen. In both cases, the duty binds, and with equal strength, the conscience of the individual Member, and it is imposed on all by an oath in the very same words.

Mr. Willoughby, from whom I am reading, professor of political science at Johns Hopkins University, the author of a great many books full of interest, answers him by saying:

The correctness of the reasoning of Webster may be granted, and yet the fact remains that however great a moral obligation there may be upon the individual members of the several State governments to take such action as is necessary to equip the Federal Government with the officials necessary for its operation, there exists no legal means, by an issue of mandamus or otherwise, to compel such action when refused.

The Senator from Montana will recollect that right after the Constitutional Convention met a Senator elected from North Carolina—I forget his name; perhaps the North Carolina Senators, if present, would remember it—declined to come to Washington. He started out, and he said it was too cold. He proceeded about 25 miles from home and resigned his commission as Senator. Suppose the State should not elect any Senator; under the Sutherland amendment, can the State be compelled to elect Senators? I say not by any means.

Mr. CARTER. I am very much delighted with the interruption of the Senator, and the contribution he makes from Prof. Willoughby's excellent work, recently issued, meets with my hearty approval. Mr. Webster assumed that no human foresight could contemplate or deal with prospective chaos; that every presumption was that men oath bound would perform their duty; that if Commonwealths of this Nation refuse to perform their functions, we then have a condition beyond existing law or reasonable assumption to be dealt with.

But, Mr. President, the Senator reiterates—this is the part that delights me, because I want to make that part plain—that the Sutherland amendment is intended to put something in the Constitution when, in truth and fact, it is intended to strike something out of the joint resolution. Let us have no mistake about that. I conceive there can be none. The amendment proposed by the joint resolution provides for the election of Senators by the people, first. Second, it proposes as a separate and independent proposition, but so correlated and interwoven with the first as to be inseparable from it——

Mr. RAYNER. Mr. President——

Mr. CARTER. A proposal to change section 4 of Article I by transferring the power to control Senatorial elections from the Federal Government to the States. The Sutherland amendment proposes to leave the Constitution as it is in that particular.

Mr. RAYNER. I should like to have the Senator's opinion on that. Of course I do not agree with that. But does the Senator think that under the present law we could go behind the action of the legislature that elects a Senator? Does the Senator think we can do that?

Mr. CARTER. I think not.

Mr. RAYNER. Then, under the law, with the popular election of Senators, can not we go into a question of fraud or intimidation or violence at the polls when the election is by the people?

Mr. CARTER. I think we can under the Constitution as it is, for section 4 of Article I confers the power.

Mr. RAYNER. Very well. Is not that a change? What I want to ask the Senator is this: We can not get to the people now. If there were fraud, violence, intimidation, and corruption at the polls that elected the legislature, nevertheless if the legislature properly elected the Senator the Senator comes here, and you can not inquire into any fraud, crime, or corruption at the polls. I say without the Sutherland amendment, if there is an election by the people, you can inquire into fraud. Is not that a difference? Is not that a very broad difference, in the Senator's mind?

Mr. CARTER. The Senator presents the matter as he understands it. The Senator does not want to have any power in Congress to inquire into the election of a Senator at the polls. He wants the right to rest in the State, without any authority in Congress to challenge the right of the States to conduct the elections just as they please.

Mr. RAYNER. I believe firmly—the Senator will pardon me for interrupting him—as a legal proposition that if there is fraud or violence or intimidation or corruption at the polls, without any Sutherland amendment at all the Federal Congress is vested with full power to punish the crimes that have been committed at the ballot box. I have not the slightest doubt about that.

Mr. CARTER. Then the Sutherland amendment can do no harm, because it only proposes to leave the Constitution as it is in this respect.

Mr. RAYNER. The only harm it can do—and I do not agree with the proposition that it can do this—is that under this provision you might, perhaps, pass another force bill and man and equip the polls. That is another thing entirely. I want the Senator to understand my position. I say you can appoint supervisors and deputy marshals now, without the Sutherland amendment, to see that the State authorities faithfully carry out the law. That is my interpretation of the Siebold decision. That is, in the election for Members of the House held under the State authority you may appoint deputy marshals at the polls to see that order is kept and supervisors to see that the returns are properly made under the laws of the State.

That is an entirely different thing from appointing registration boards—I want to be understood on that—who are to register voters contrary to the law of the State and then certify the result to Congress. I just ask the Senator now to bring his mind down to that proposition, that those things are entirely separate.

If you analyze this case, if you put men at the polls to see that the State authorities do their duty under the decision in the Siebold case, that is one thing; and if you appoint registers who are to register voters in defiance of the laws of the State and to certify the result, it is an entirely different proposition.

Let me ask this question in this connection. Let us take the State of Georgia. Suppose you were to appoint registers to-day to register outside of her own laws all the negroes in the State of Georgia and to certify the result and bring that result to the Senate. Does the Senator from Montana think that we would have any right to do that where it practically destroys the suffrage of the State? If the Senator will enlighten us on that proposition, I will be obliged.

Mr. CARTER. There is no contention here that the Federal Government has the right to fix the conditions for the exercise of the suffrage in any State except in this, to wit, that no State shall deny a man the right to vote because of race, color, or previous condition of servitude. Subject to that limitation it rests with every State to prescribe the conditions under which men or women may vote.

The Federal election officers, if commissioned to register voters under Federal law, would be bound to confine the registration to the legal voters of the State. They would have no right to extend the franchise in violation of the laws of the State. But they would have the right to register every legal voter in the State, and the election officers appointed would have the right to see to it that every legal voter was permitted to have his vote cast and fairly counted, and also to see that no voter was deprived of his right on account of race, color, or previous condition of servitude.

Mr. RAYNER. Then, what does the Senator want the Sutherland amendment for? Is not that done now? What is the object of the Sutherland amendment? Every legal voter in the State that you speak of as having disfranchised the colored man has a right to register and to vote. Why do you want a Federal law to do what the States are doing? That is what I want to understand.

Mr. CARTER. There the Senator goes again. He says the Sutherland amendment is injecting something into the Constitution, when the purpose, and the sole purpose, of the Sutherland amendment is to strike out that portion of the joint resolution which seeks to change the Constitution in that particular. What we want is to submit an amendment to the people providing for the election of the Senators by direct vote. That is supplemented in the joint resolution before us by another proposition—let me repeat again—to deprive Congress of the power to have anything to say about the election of a Senator.

We do not desire to submit this last question at all. There is no call for it. It is the duty of this Senate, it is duty of the Congress, to preserve the power to protect and continue the life of the Congress.

Mr. RAYNER. Let us take my own State, for instance. Suppose we had a law, as I said this morning, that every citizen who owns $500 worth of property can vote; that every citizen who owns $500 worth of property can register and vote under State laws. What is your board of registration, under the Sutherland amendment, under a law of that sort? Is it to see whether they are properly registered under the laws of our State? If so, there is no necessity for it, because the State laws give them full opportunity to do that and give the citizen all the redress that is necessary. If the registration board, under the Sutherland amendment, is to do anything else, then it is in conflict with the authorities which have held that my State has the right to determine upon the suffrage of the citizens of my State. That is the point to which I want to call the Senator's attention.

Mr. CARTER. We are not providing for any register; we are not providing any election officers; we are not interfering with any election or registration in the State of Maryland. What we are contending for is that this Government shall not surrender to the States the right, in the last analysis, to pro-

tect the election of Members of Congress—of the Senate and House—from fraud, intimidation, and violence at the polls.

Mr. RAYNER. Let us get down practically to this: What does the Senator from Montana propose to do under the Sutherland amendment with the election systems in the South? Suppose the Sutherland amendment was in, what is the operation of it; what does the Senator propose to do now? If the voters are properly registered under the laws of the State, what do you propose to do under the Sutherland amendment?

Mr. CARTER. The Congress will, as time goes on, determine the appropriate action, if any, to be taken.

Mr. RAYNER. Oh, Mr. President, that is not an answer. That is a general answer which relates to the future. If we put the Sutherland amendment in now, what law does the Senator propose to pass to effectuate the intention of the Sutherland amendment? That is what I am after.

Mr. CARTER. The Sutherland amendment adds nothing to the Constitution. It leaves it as it is and has been from the foundation of the Government.

Mr. RAYNER. Oh, Mr. President, we understand all that. That is a controversy about words. I will change the question. We have talked about that so often I did not see any necessity for repeating it. If the Sutherland amendment—call it what you will—if the Sutherland proposition is left where it is, what law do you propose to pass in the Congress of the United States to carry it out? That is the practical question. You can not pass any law that takes away the suffrage of the citizens of the State. You can not pass any law that is in conflict with the registration law of the State. You can not appoint a registration board that will register a different class of citizens than those who are entitled to registration.

What is there you propose to do? What step do you propose to take? Suppose the people determine upon the popular election of Senators and the Sutherland amendment is left in and is ratified by the people, what law do you propose to pass? Give us the law, and then we will see whether you have a constitutional right to pass it.

Mr. CARTER. The proposal to amend the Constitution has led to so much debate that I believe Congress would expire before we could agree upon the terms of the law suggested, and while the sturdy representative from the State of Maryland remains in my presence I am sure I will not undertake the difficult task of passing any law on the subject before March 4.

Mr. RAYNER. Because you can not do it; because the Senator dare not do it. The Senator would not dare to do it, because whenever he wrote a law that law would be in conflict with the law of the State in which the law was intended to operate. The Senator can not answer the question.

I am speaking now to Republican Senators. I do not want this joint resolution saddled and burdened with this amendment if we can help it, because I am in favor of the election of Senators by the people, and the Senator from Montana is opposed, bitterly opposed, to the election of Senators by the people. Now, tell the Senate—that is a fair question—what good the Sutherland amendment would do. What law could you pass under the Sutherland amendment? Why put the Sutherland amendment into our proposition?

Mr. CARTER. I desire the Senator from Maryland to make a correction before he departs from this side of the Chamber.

Mr. RAYNER. All right; I will make any correction you want, in your speech or mine.

Mr. CARTER. The Senator made the statement that the Senator from Montana is bitterly opposed to the election of Senators by the people.

Mr. RAYNER. I will take back the word "bitterly" and say "cheerfully."

Mr. CARTER. The Senator from Maryland is not warranted in making any such statement, and in making it he is descending to a grade of politics in the Chamber that I regret to see employed here.

Mr. RAYNER. If I have made a mistake, there is no one on this floor who would sooner retract it. If the Senator is in favor of the election of Senators by the people, I have made a most terrible blunder, because we have all thought he was against it. I retract it, and will be glad to have his vote in favor of the popular election of Senators.

Mr. CARTER. The Senator from Maryland is not, I believe, very much mistaken about this matter. I stated very clearly on the day this debate was opened——

Mr. RAYNER. I did not hear that.

Mr. CARTER. That, under instructions from the Legislature of the State of Montana, the State that I have the honor in part to represent, I would vote for the submission to the people of the proposed amendment to the Constitution providing for the election of Senators by the people. I would do that out of respect for the Legislature of the State, reserving unto myself the right, if I so elect, to oppose that amendment before the people. That right I do reserve.

Mr. RAYNER. I did not hear the Senator's statement.

Mr. CARTER. There is no equivocation about that.

Mr. RAYNER. I did not hear that statement. Let me ask the Senator, Suppose the Legislature of Montana had not given the Senator any instructions; how would he vote then?

Mr. CARTER. My present view is that, in the absence of any expression by the Legislature of Montana on the subject, I would oppose the joint resolution.

Mr. RAYNER. That is what I thought.

Mr. CARTER. Yes, sir; there is no question or quibble about it.

Mr. RAYNER. Then I am right in my proposition, because the Senator from Maryland did not know that the Senator from Montana had been instructed, and if there had been no instruction, then the Senator at heart is against the election of Senators by the people.

Mr. CARTER. I want to make another statement to the Senate, that I regard the manner of electing Senators as in no wise or to no considerable degree involving any vital principle of our Government. I would not, however, under the instruction of 40 legislatures, vote to submit an amendment to deprive the Congress of the United States of the right to protect its own life.

Now, Mr. President, I think I have made myself clear to the Senator from Maryland. While I intended to speak only 10 minutes on this subject, I have consumed more time than I expected to occupy, and I will surrender the floor.

Mr. HEYBURN. Mr. President, the discussion of this question has proceeded largely along the lines that the presumption is in favor of changing the Constitution, and that anyone opposing a proposition of that kind must make good. I shall consider the joint resolution from the opposite standpoint. When anyone proposes to change the Constitution of the United States the burden is upon him to give not only a presumptive reason but an absolutely convincing reason, in the absence of which there will be nothing left to consider. That is the position, for the presentation of which I shall ask the indulgence of the Senate for awhile this afternoon. I would not feel called upon, were this a proposition to legislate relative to any question, regardless of its importance, to delay a final determination of it; I would not feel justified, were it a proposition to amend or repeal an existing law that did not affect the vitality of the Nation, to prolong the discussion; but I realize that Congress to-day, and perhaps the whole people to-morrow, are engaged in a struggle for the preservation of the life of this Nation. A little disease, a little wound, in a part of the Constitution may be only the harbinger of its destruction, as in everything else human.

Mr. President, no one has discussed the question as to why the Constitution should be amended. Senators have not dwelt upon it. I propound the question, What evil has come upon the country that will be cured by this amendment? What danger threatens the people, individually, or in their organized Government, that demands a change in the Constitution? I have not heard any Senator dwell upon that phase of the question. Have not the Senates of the past been up to the standard that these reformers dream of for the future? Have not the individual Senators in the past been of equal ability or of as high a standard as you dream of getting in the future? A vote in support of this resolution is a vote in condemnation of the character and the efficiency of the Senates and the Senators of the past and the present.

What do you hope to gain, then, by adopting a different method? Do you expect to raise the standard of the individual Senator? Do you expect to raise the average standard of the body as a whole by changing the manner of its selection? That might be a very good reason if that is your reason. Would the Senator from Indiana [Mr. BEVERIDGE] condemn the wisdom or the integrity of the legislature that sent him to this body 12 years ago, or the legislature that reelected him six years ago? Does he think that by changing the policy of the Government in this regard he would get a higher grade of men in the legislature, men of more intelligence and more integrity?

Does not that appeal to the patriotism and the pride of a Senator? Is there any Senator in this body who is willing to stand up and admit that his legislature was inefficient and lacking in patriotism or ability that sent him to this body? I would not suggest that there is a Member of this body who would even suggest that the legislature that sent another Senator here was lacking in intelligence and integrity, and then claim that the people of the legislature who sent him here was par excellence in these respects.

I have been much entertained by the proceedings that have taken place in some of the legislatures of the States, where they have followed in the footsteps of Uriah Heep in their humility, and said: "Oh, we are not at all fit to perform this duty; you must elevate the standard of the legislature which will, of course, leave us at home and allow them to select Senators."

Mr. President, I am loath to bring into the consideration of this case a matter which is partially personal, but inasmuch as there has been introduced into this debate a resolution of the legislature of the State of Idaho demanding that its Senators shall vote for this constitutional amendment, I propose to put myself before this body in the same relation that I placed myself before that body. A man who is afraid of his legislature, whose vote is affected at all by what his legislature may do, is not fit to be here. He is not here as a Senator for the State where he happens to live; he is here as a Senator of the United States, and every other State is interested in his character and his ability to perform his duties as a Senator. I replied to the resolution that is on the desk. I replied to the legislature, through the secretary of state, and inasmuch as it expresses my views in the particular, I will treat it as though I had prepared this much of a speech to deliver on this occasion.

I said to the Hon. W. L. Gifford, secretary of state, Boise, Idaho, under date of January 26, 1911:

MY DEAR MR. SECRETARY: I am in receipt of a copy, certified under the seal of the State, of senate joint memorial No. 1, introduced by Mr. Freehafer, addressed to the Senators and Representatives of the United States in Congress assembled, relative to a resolution now pending in the Senate of the United States proposing to submit to the several States of the Union an amendment to the Constitution of the United States providing that Members of the United States Senate shall be elected by the direct vote of the people of their respective States instead of by the legislature, as now provided, and resolving that the memorialist earnestly recommends the passage of said resolution, and represents that the State of Idaho desires the submission of such an amendment to the various States for ratification at an early date, and that the secretary of the State of Idaho is instructed to forward the memorial to the Senate and House of Representatives of the United States, and copies of the same to the Senators and Representative in Congress from Idaho.

The petition of the Legislature of the State of Idaho will receive my due consideration, but not my support. In my capacity as a Senator of the United States I speak for all of the States in the Union collectively. The manner of the election of Senators is not the only consideration. In speaking to the Republican convention, prior to their indorsement of my election to the United States Senate and on every other appropriate occasion, I have stated that I was not in favor of a change in the manner of electing Senators of the United States. I have not seen one reason to change my views in regard to that question. I have not lost confidence in the integrity or ability of the citizens of the State or of the Nation, nor have I lost confidence in the wisdom of their selection of members of the legislature. The Legislature of Idaho has given no cause in the past to suspect their integrity or ability to perform their duties. I am not willing to indorse any action that would directly or indirectly indicate that they were not entitled to the confidence of the people. I can not conceive that the legislature intended, in adopting this resolution, to confess their inability to honestly perform a constitutional duty in electing United States Senators, or that they intended to suggest that future legislatures would not be as honest or as competent.

In my judgment it is not true that the people of Idaho desire any change in the Constitution of the United States upon a fair and intelligent consideration of the question. It is so easy for some men, when they think they want a thing, to support their effort to obtain it by asserting that everybody else wants it.

The present resolution pending before the United States Senate in this regard provides for the repeal of that portion of section 4 of Article I of the Constitution which gives Congress the power to make necessary laws and regulations concerning the manner and time of electing Senators. This was inserted in the resolution providing for the election of Senators by direct vote in order to get the votes of those States where they desired and have been attempting to disfranchise a part of the people in violation of the Constitution. They chafe under the restraint of the Constitution, which prevents them from violating the law of the land, the law of justice, and the law of right. They are willing to support the proposition to amend section 3, so as to elect Senators by direct vote of the people in consideration of the repeal of one of the most important provisions in the Constitution, to wit, section 4 of Article I. It is an unholy combine, having in view the disfranchisement of the negro, or any other portion of the people, against whom certain States have been for 50 years waging franchise warfare.

When these questions are discussed with and among the people, they will very soon show by their votes that they are not in favor of the resolution to which the memorial of the Legislature of Idaho is directed.

Mr. President, I intended to sum up in that letter my objections to this proposed amendment to the Constitution. That was my intention. I intended to be as candid, as fair, and to express myself as fully to the Legislature of Idaho as I would find it necessary to express myself in this body. But while I believe that the whole argument is stated in that letter to the Legislature of Idaho, some things have been said and proposed here that I feel justified, if not called upon, to discuss.

In the first place, the States and this Congress have lost sight of section 5, which provides the manner of amending the Constitution of the United States. The resolution is not in conformity with it. The speeches that have been made do not recognize it, nor have they taken it into consideration for a single minute.

Sight is lost of the fact that two methods, and two only, are prescribed by the Constitution in section 5 by which the Constitution may be amended. Congress may submit to the legislatures of the States proposed amendments, which if ratified by three-fourths of the States become a part of the Constitution.

Now, we are not proceeding under that. We are not proceeding under that provision of the Constitution because the States have not asked us to submit the question, nor does the Constitution authorize them to request Congress to submit it. There is no mention in the Constitution with reference to the States requesting Congress to submit amendments to the Constitution. There is no reference to it.

The second method provided by the Constitution in the same section 5 is one that comes to us rather than flows from us. When the States act they do not act on an amendment. They do not propose an amendment to the Constitution. They ask, and their only power is to ask, that a constitutional convention shall be called. The States are not authorized by the Constitution to ask Congress or to petition Congress to submit amendments to the Constitution.

So these resolutions and memorials have come up here without authority and without recognition in the Constitution. There is no law, there is no precedent under which the States may ask Congress to submit the question to the people or to the legislature. I desire to impress this upon the minds of Senators. The only provision that provides for the action by the States is that which authorizes them, when a certain number of them agree, to call a constitutional convention, not a constitutional convention with limited powers. Section 5 does not contemplate that any constitutional convention shall assemble with a limitation on it to deal with a particular question. When the constitutional convention meets it is the people, and it is the same people who made the original Constitution, and no limitation in the original Constitution controls the people when they meet again to consider the Constitution.

I have heard Senators say here, in discussing this matter, that the small States were safe against any change in the basis of representation. When the people of the United States meet in a constitutional convention there is no power to limit their action. They are greater than the Constitution, and they can repeal the provision that limits the right of amendment. They can repeal every section of it, because they are the peers of the people who made it.

That is the thing that the States have been clamoring for—a convention. I have every resolution here in my desk, and so have other Senators. With the exception of less than seven, every one calls for what? That the Senate shall submit amendments? No; but that the Congress shall provide for the calling of a constitutional convention.

Now, you ought to bear that in mind. Do we want in this age that 90,000,000 people should undertake in a constitutional convention to make a new organic law? I do not believe that any nation on the earth exceeding, say, 5,000,000 people could make a constitution to-day, with all of the sectional interests, with all of the individual and class interests. In this country, just as soon as a constitutional convention was assembled they would be seeking to open every door to access and to carry out or make possible the carrying out of the fallacies, the fads, and the fancies of the imagination of the people who talk about the Government and the Constitution of the United States as glibly as though they knew something about it.

Mr. President, I think it is time that we had commenced at the beginning of the consideration of this question and know what we are called to pass upon. I have heard Senator after Senator state on this floor that the legislatures had demanded that Congress should submit these amendments. I defy any Senator to name seven States whose legislatures have asked that Congress do anything of the kind. I find only four among those I have in my desk. I find that some of them have asked that a constitutional convention be called to consider this question. They have no power to limit the request. The only power that they are given is by section 5, and it does not authorize them to call for a constitutional convention of limited powers, but to call for a constitutional convention of the people of the country.

Mr. President, we are not acting in pursuance of that part of the Constitution authorizing or prescribing the manner of amending the Constitution.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield to his colleague?

Mr. HEYBURN. Yes.

Mr. BORAH. As I understood the Senator, he said that only seven States had passed resolutions.

Mr. HEYBURN. For what? It depends on what the resolution is.

Mr. BORAH. I have not concluded my remark. Did he state that only seven States have passed a resolution outside of those which have called for a national convention?

Mr. HEYBURN. That is all that is on record.

Mr. BORAH. Will the Senator permit me to read some of them?

Mr. HEYBURN. Yes; if the resolutions are made available. I have copies of the resolutions here. I have gone over them carefully and I have had the officers of the Senate to check up to know whether I had them all.

Mr. BORAH. I do not know anything about what resolutions the Senator has. I apprehend that he has them all; but I do know, as a historical fact, that the resolutions which have been passed by the States are far in excess of seven.

Mr. HEYBURN. What resolutions?

Mr. BORAH. The resolutions asking the Senate to support an amendment to the Constitution.

Mr. HEYBURN. I suppose they are sitting up at nights doing it now. I notice that the Idaho Legislature seemed to linger one day for the purpose of doing it. How long since have they been adopted? Not long enough to reach the files of the Senate.

Mr. BORAH. That might be true, but they have been adopted by the legislatures. The reason why I rose was because my colleague said he thought no such resolutions had been passed. There have been resolutions passed by States far in excess of seven asking this body to submit this amendment. The number of States that have asked for it is somewhere in the twenties.

Mr. HEYBURN. Well, I have them here.

Mr. BORAH. I have a record of them here.

Mr. HEYBURN. Alabama asked Congress to submit an amendment; that is, August 10, 1909. Arkansas and California are not of record in the files of this body.

Mr. BORAH. Although both of them have passed resolutions.

Mr. HEYBURN. Within a few days?

Mr. BORAH. No; not within a few days.

Mr. HEYBURN. How recently?

Mr. BORAH. California first in 1893.

Mr. HEYBURN. That was for a constitutional convention.

Mr. BORAH. Oh, no; and California again in 1900 and in 1901, and then in 1903 California passed the resolution which the Senator refers to. In addition to that California had also passed the other resolution of 1873.

Mr. HEYBURN. But she repealed them when she passed her last one, which is what I have already stated in effect, that what she wanted was a constitutional convention.

Mr. BORAH. That was the sober second thought?

Mr. HEYBURN. Colorado, April 1, 1901, asked for a constitutional convention. Connecticut, Delaware, Florida, and Georgia, according to the files of this body, have not expressed themselves. Idaho, on February 14, 1901, asked for a constitutional convention. That is not this resolution. I know that within a few days, as I said, they sat up at night to pass one—after they had my letter, I think.

Mr. BORAH. But Idaho had passed the other resolution three separate times prior to that.

Mr. HEYBURN. But she repealed them by her last expression. I have it here. Illinois, May 10, 1907, asked for a constitutional convention. Indiana is not on record.

Mr. JONES. Mr. President——

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

Mr. HEYBURN. Certainly.

Mr. JONES. I wish to suggest that possibly Idaho and California got tired knocking at the door of the Senate and concluded that they would take their own method.

Mr. HEYBURN. They will become more weary, so far as I am concerned. Iowa asked for a constitutional convention March 24, 1904. I am speaking now from the official files of the United States Senate. Kansas asked for a constitutional convention. Kentucky is not on record. Louisiana asked for a constitutional convention with general powers, without any limitation, to pass upon this and other questions.

Mr. BORAH. Kentucky passed her resolution in 1892 and asked for the submission of the amendment, and again passed a resolution asking for a constitutional convention in 1902.

Mr. BEVERIDGE. They want it either way.

Mr. HEYBURN. No; there is something definite about lawmaking. Governmental functions that are not definite are not to be counted upon. Maine and Maryland are not on record. I shall not spend much time on this. I did not intend to do more than make the general statement, having the data right before me. Michigan asked for a constitutional convention. Minnesota asked for one. Mississippi is not on record. Missouri asked for a constitutional convention. Montana asked for a constitutional convention. I think the Senator from Montana may consider himself released because they did not ask for that which this resolution proposes; they asked for a constitutional convention.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield to his colleague?

Mr. HEYBURN. Yes.

Mr. BORAH. Montana asked for a submission of the amendment in 1893 and again in 1897 and again in 1899.

Mr. HEYBURN. Well, the last expression is February 21, 1907, when they asked for a constitutional convention. That is the last from Montana. Nebraska does not ask that Congress submit this amendment, but asks for a constitutional convention. New Hampshire is not on record. New Jersey, May 28, 1907, asked that a constitutional convention should be called. New York, North Carolina, North Dakota, and Ohio are not on record in the files of the United States Senate.

Mr. OVERMAN. I will state that I think the Legislature of North Carolina has twice passed a resolution asking that the question be submitted to the people for a constitutional amendment.

Mr. HEYBURN. They unfortunately seem not to have reached the Senate.

Mr. CLARK of Wyoming. Will the Senator from Idaho allow me to ask a question of the Senator from North Carolina?

Mr. HEYBURN. Certainly.

Mr. CLARK of Wyoming. Has the Legislature of North Carolina at any time asked Congress to submit for consideration an amendment to the Constitution proposing to amend section 4 of Article I?

Mr. OVERMAN. Oh, no; I do not mean to say that. She asked for a submission of the amendment.

Mr. CLARK of Wyoming. Pertaining to section 4 of Article I?

Mr. OVERMAN. I mean that the Legislature of North Carolina instructed the Senators and requested the Members of Congress from that State to vote for a resolution submitting a constitutional amendment.

Mr. CLARK of Wyoming. But the constitutional amendment I am speaking of, the constitutional amendment sought to be submitted here, to wit, the amendment of section 4 of Article I?

Mr. OVERMAN. There is nothing said in it about section 4 of Article I.

Mr. HEYBURN. Mr. President, I come now to Oklahoma. They have not asked that Congress shall submit any question to the legislatures of the States. They have asked that a constitutional convention be called. They did that on January 29, 1908. The same is true of Oregon. Oregon has made no demand that we submit this question at all. She has asked that a constitutional convention be called. That was done on January 29, 1909. Pennsylvania and Rhode Island——

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield to his colleague?

Mr. HEYBURN. Yes.

Mr. BORAH. When my colleague says that Oregon has made no such demand, I presume he means that her latest demand is for a constitutional convention, because Oregon had passed the other resolution twice previous to the last resolution.

Mr. HEYBURN. They were probably becoming gradually civilized. [Laughter.] This list is quite recent. Pennsylvania and Rhode Island still seem to be "standpatters." They have made no record. South Carolina seems to have made no record. South Dakota, on February 8, 1909, asked for a constitutional convention, but has never asked for a submission, so far as the records of the Senate show. My colleague seems to have a little book that looks like Goodrich's Geography there before him [laughter], and he may have some ancient history in it. That was old Peter Parley, that I was familiar with a long time ago.

Tennessee only requests that the constitutional convention be called. Texas, Utah, Vermont, Virginia, the State of Washington, West Virginia, Wisconsin, and Wyoming have no record, so far as the files of the Senate show their desire in this matter.

Mr. BORAH. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield to his colleague?

Mr. HEYBURN. Yes; I yield.

Mr. BORAH. According to Goodrich's Geography, Wyoming has twice passed this resolution.

Mr. HEYBURN. How lately?

Mr. BORAH. And South Dakota four times.

Mr. CLARK of Wyoming. Mr. President——

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

Mr. HEYBURN. I do.

Mr. CLARK of Wyoming. I doubt exceedingly the accuracy of the geography from which the Senator from Idaho reads.

Mr. HEYBURN. We used to doubt it when I studied it. [Laughter.]

Mr. CLARK of Wyoming. Wyoming has passed a resolution, twice, I think, asking Congress to submit an amendment to the Constitution providing for the election of Senators by direct vote; but it never has asked the Congress of the United States, within my knowledge, to submit to the legislatures the proposition that the Congress of the United States should pass an amendment to the Constitution whereby it should divorce the General Government from the right to have something to say in regard to these elections. I make that statement so that there may be no mistake on this question.

Mr. BORAH. Mr. President, I was discussing the matter as to the difference between a resolution providing for a constitutional convention and asking Congress to submit the question.

Mr. CLARK of Wyoming. In that attitude the Senator is entirely right, only I do not want his absolute statement to go unchallenged that this resolution had been asked for by the legislature of Wyoming.

Mr. BORAH. I am very glad to be corrected in that respect, but I did not intend it in that way, and I did not think the Senate would so interpret it in view of the discussion which was proceeding.

Mr. HEYBURN. Mr. President, I will pass from that presentation to another one that has struck me as being unusual. The whole gist of this proposition is to discredit the legislature as being an unfit body to select United States Senators. I will waive for the moment the question of the quality of the Senators that they are likely to elect or not to elect. But, singular to say, this resolution is to be submitted to this very discredited body, the legislature of the State. It is not to be submitted to the people. According to the procedure under consideration this amendment would be submitted to the legislatures, and the people—the dear people—would abide the will and action of the legislatures.

Mr. President, I have been busily engaged here for some months, and I perhaps have not had an opportunity to be advised as to the deterioration of the legislatures, but the Constitution of the United States was submitted to the States as a unit and not to popular vote. We were able to get pretty good results back in those days by recognizing the States and submitting the great charter to their legislatures, but now it seems that the conditions have changed in the imagination of some. The selected and picked men from the State who comprise the legislature are no longer to be trusted. It is proposed to substitute for them the ward heeler, precinct politics, and all that goes with them as a more reliable and trustworthy medium between the people and their Government. That does not appeal to me.

It is said that the legislatures are long in electing, in performing their duties. The legislatures that are now in a tie-up are going along with general legislation. They meet once a day at 12 o'clock in joint session, cast a ballot, and return to their respective duties. When the volume of laws enacted at this session of such legislatures shall have been published it will be found to be as comprehensive and it will be found to display as much evidence of good judgment as the work of other legislatures. I am quite confident that the general public is of the opinion that when they hear of a legislative tie-up on the United States senatorship the legislature is doing nothing except trying to elect a United States Senator, and they think if they could transfer that high function in government to the ward politics down along the river they would get a better result, or, at least, a quicker one.

Mr. President, the question that we must all settle is, Shall we have better results under the proposed change? For the moment I will leave out the proposition of the amendment offered by the Senator from Utah [Mr. SUTHERLAND], because the same spirit is moving the entire proposition. It is a spirit of change; it is a spirit that is most often evinced by those who have recently entered a new country. They have brought old traditions and different conditions with them, and they are uncomfortable; they are not accustomed to the style of house or furniture or living or food or scenery, and the first impulse is to try to gather around them the conditions from which they have fled. They are generally ready to propose an amendment to the Constitution of the United States about the time they declare their intention to become citizens of the United States. [Laughter.]

I have no doubt at all—and I speak in no spirit of disrespect to any State—that if you should go over into that Italian colony in a certain part of New Jersey where those people are largely in control, you can get a strong support and a majority for any amendment to the Constitution that will weaken the hands of the Government. A government that rests as lightly as a feather upon the well-trained American citizen is as lead upon those people. They are actuated by sentiments we do not recognize to demand a change in the law.

I can not conceive of a man proposing to change the Constitution of the United States except under the stress of war or its results or great combinations that could not have been foreseen by the framers of the Constitution. There never has been an hour or a moment in my life when I wanted to change the Constitution of the United States as it affects the balance of the three coordinate branches of the Government, and yet, Mr. President, we find resolutions thrown in here as glibly as if it were something unimportant and which could be corrected tomorrow if we found we were mistaken.

Mr. President, just contemplate for a moment a contest over the election of a Senator of the United States which was dependent upon investigation of charges of bribery and corruption in the precincts and wards and townships all over the United States or all over a State, as it might be. Suppose, for instance, a great city that cast half the votes of a State in some instances should nominate one of its citizens for Senator and agree that they wanted the Senator from that city, what share or participation would the country, that constituted the great volume of the State, have in that act?

As it is now, the legislature is made up of citizens from all over the State apportioned. They come together once in two or four years, as it may happen, with the knowledge that they are going to be required to elect a Senator. Nine times out of 10—I will put it nearly 99 times out of 100—they perform that duty within the first two or three days of the session.

Mr. GALLINGER. After they commence to vote.

Mr. HEYBURN. Yes; after they commence to vote. I have the official figures as to that. There have been during the lifetime of this Government 1,180 men elected to the United States Senate; and that does not include, in many instances, the reelection of some of the Senators. That you can find in the Senate Manual. The number of contested-election cases in the Senate during all these years is 161. You will find that in the official files of this body. The number of Senators denied a seat in the Senate is seven; seven out of 1,180. Where in the world, or in the history of the world, have the people shown such accuracy and judgment in the estimation of men and of their qualifications as is shown by that record?

Now, I will give you a little more detail in regard to those Senators. There were 161 contestants. Deduct from those the number of persons—38—whose cases were considered by reason of alleged acts not affecting the legality of their election, such as alleged acts and disabilities incident to the Civil War; deduct also the number of persons exceeding one in cases where the claims of two or more contestants related to the same seat and election, of whom there were 22, that makes 60 to deduct from 161. The result is that the number of elections, the legality of which was considered by the Committee on Privileges and Elections, from 1789 to 1903, was 101 cases.

Of these 101 cases, 16 contestants were denied seats on technical grounds—that is, on grounds other than alleged corruption, bribery, and so forth. Of these 101 cases, 15 were upon the ground of alleged bribery or corruption in connection with their elections. Fifteen men in all these years have stood at the bar of this great tribunal charged with corruption and bribery, not always on the part of the contestants, but on the part of others. What a record! Does it not stand as a bright light in the history of this country that in all those years only that small number of men should have sought to enter this body without legal right? Does that present a case demanding a change in the Constitution of the United States and the uprooting of a system that was the result of the wisdom of our ancestors in those days when they were free from the passion of conflict, when they stood at the threshold with the desire and the hope only of framing a Government that should bring together as the representatives of the people the best men from out the body of the people? There was no political juggling in that action.

We have heard much in regard to what took place in the way of conversations in the great Constitutional Convention relative to these matters. The thing that counts is what they did. It reminds me of a certain class of attorneys, who spend their time reading dissenting opinions of the courts and contending that they should have been the rule of law. Here we have the ultimate wisdom of the makers of our Constitution, and we have, in addition to that, the hundreds and hundreds of millions

of American citizens who have lived under that Constitution and given it their support and recognized it as being sufficient for all the wants of the people.

It is said the people demand this constitutional amendment. As I stated in my letter to the legislature, some men are prone to get their heads together with themselves and declare that "we, the people, want this or that." I am not a poll taker; but they tell me that the people are clamoring for it. I have been receiving in every mail letters from the State that sent me here bidding me godspeed and urging me to stand just where I stand in regard to this matter, and those letters are from men who count; they are from men who count for their citizenship, for their loyalty, and for their intelligence.

I do not intend to volunteer advice to Senators, but I would suggest that perhaps it would be well not to attach too much importance to the action of a legislative body upon this question, that, like a round robin, is going all over the country to-day. I have some of them here on printed forms on this question. Somebody is sending them out and demanding that I vote in a certain way; that I vote for this resolution, and a number of them do not know how to spell my name, and some of them do not even know how to spell their own names. [Laughter.] Yet they are demanding that I shall support this resolution. I adopted the policy of a carefully arranged letter as an answer that I have sent to most of them, in which I have acknowledged the receipt of their communications, which are nearly all printed except the signature and the date, and stated that I recognize the fact that they are among those capable of forming a judgment and whose judgment I should have the benefit of, and I have asked them to submit to me at length their ideas and the reasons for their conclusions.

I have not yet had any answers to those letters. [Laughter.] I did it in a just spirit of resentment against an unholy attempt to influence a man by fright in the performance of his duty. That is all there is in it. The effort has behind it the desire to scare one into the belief that, if he does not comply with this ignorant demand, he perhaps will some day lose a vote. Well, I do not want such votes. That kind of men never sent me here.

Mr. President, there is this to be said about these resolutions from the several States calling for a convention or asking that Congress shall call a convention: There is an element in this country that chafes against the laws, against the restraint of the law that prevents them from despoiling their neighbor, against the restraint of the law which makes them respect its mandates and the property and the lives of others. There are such men, and they want a constitutional convention so that they can get into the Constitution the recognition of these radical demands that shall give one man in court one right and deprive another man of that right; that shall authorize the court to afford relief to one man and deny it to another; that shall recognize voluntary organizations that present a fair face and have a black heart. If those men could get a constitutional convention and they should send their delegates to it, as they would, what kind of a result do you suppose would come out of it?

If anything ever came out of it—I doubt if they would ever reach a conclusion, but if they did—you would have crystallized in the organic law of the land every vicious piece of proposed legislation that we have had to fight down all these years to maintain our civilization. That is what you would have. All the old bitterness of the race question would have to be thrashed out in such a convention. I speak with perfect candor to my friends on the other side. I have no spirit of bitterness in my heart against any people nor against any man, though I may have my views in regard to policies proposed and existing; but suppose the constitutional convention of the United States was in session, can you imagine the strife and controversy growing out of sectional differences that would arise and that would have to be settled? It is a serious question.

There never will be a time when it will be a safe thing for the American people to open the doors of a constitutional convention. Ninety millions of people are incapable of making a constitution and agreeing upon it. Mark that. It is easy enough in the formative period of a nation for those who have not to provide themselves with that which they need; but we have a Government now representing a variety of ideas and of people, and all of those questions would have to be settled in a convention. Is there a Senator in this body who would vote for the calling of a constitutional convention? I am in earnest in asking that question. I should like to know what Senator would be willing to open the doors of a convention for the purpose and with the power of making an entirely new Constitution, for you can not limit the action of the American people if they should thus come together for the purpose of making the charter for their Government. The restriction that insures equal representation in this body would be wiped out, as would every other provision. That restriction only applies to the present power of changing it by Congress. You can not say that the people shall not make any charter upon which they agree.

Mr. RAYNER. Mr. President, I should like to ask the Senator——

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

Mr. HEYBURN. Certainly.

Mr. RAYNER. I should like to ask the Senator whether those remarks apply to the constitutional convention of Idaho, of which I understand he was a very prominent member, and, I believe, chairman of the judiciary committee.

Mr. HEYBURN. I fail to catch just the spirit of the Senator's remarks.

Mr. RAYNER. I say, do the remarks of the Senator apply to the constitutional convention that was held in the Senator's State?

Mr. HEYBURN. Which particular remark?

Mr. RAYNER. The Senator's remarks in reference to the constitutional conventions.

Mr. HEYBURN. Well, I would not like to see the State of Idaho undertake to make a new constitution. They are too prone to amend it now. Nearly every man that goes to the legislature has some idea that he would like to change the constitution, and I do not recall whether any session has ever passed by without such an attempt being made. The greatest element in any law is that of stability. It is the stability of law that distinguishes us from the people of tribal relations who are bound together only until they agree to disagree.

Mr. CUMMINS. Mr. President——

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

Mr. HEYBURN. Yes.

Mr. CUMMINS. I wish the Senator from Idaho would propound again the question that he put a moment ago about Senators voting for a constitutional convention. I am not sure that I understood it, but, as I gathered it, he asked whether any Senator here would be willing to vote for a constitutional convention.

Mr. HEYBURN. Yes; with unlimited power. Of course it would have unlimited power—that will be admitted. I will ask that question over again. I should like to find that no Senator would favor such a proposition.

Mr. CUMMINS. Does the Senator from Idaho say that he would not under any circumstances vote for a constitutional convention?

Mr. HEYBURN. Under no circumstances, real or imaginary or possible, would I vote for a constitutional convention to be called, in which the people of the United States would start in upon the work of making a constitution.

Mr. CUMMINS. Then, Mr. President, I must observe that there might be circumstances under which the Senator from Idaho in refusing to vote for such a convention would not regard the oath under which he is a Member of this body.

Mr. HEYBURN. I should be glad to be reminded of it.

Mr. CUMMINS. I will remind him of it. Whenever two-thirds of the legislatures of the States ask Congress to call a constitutional convention, it is the positive, mandatory duty of Congress to call such a convention; and the Senator from Idaho, if he were a Member of the Senate at that time and should refuse to do so, would disregard the oath he has taken to sustain the Constitution of the United States.

Mr. HEYBURN. With all due personal regard for the Senator from Iowa, that is rather a far-fetched proposition. It is not to be presumed that every man will be deemed a traitor who does not vote for the calling of the convention. If that were true, then the Constitution would have provided that every Senator should vote for it. It evidently contemplated that all of them would not vote for it, because there is one-fourth of it that is immune under the text; and I belong to that one-fourth. I am excused from voting by the terms of the Constitution.

Mr. CUMMINS. On the contrary, the Senator from Idaho is mistaken in regard to that. There is no part of the Senate immune from that duty, and if the Senator will permit me to read the section, I am sure he will immediately agree with me.

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution.

Mr. HEYBURN. That is no part of it.

Mr. CUMMINS. I agree that the Senator is immune from that part of the Constitution, no matter what the circumstances might be—

Or on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments.

That is all there is in the Constitution in regard to the duty of Congress.

Mr. HEYBURN. How many votes are represented by the word "shall?" Has it to be unanimous?

Mr. CUMMINS. Every vote in Congress, in both the House of Representatives and the Senate, if the Members of both bodies do their duty under the Constitution.

Mr. HEYBURN. I have often heard that statement, that a man who differed with you did not do his duty; but, Mr. President, I think the Senator would not seriously contend that we would not have a vote on it, and if we are to vote on it, of course it implies that somebody is at liberty to vote against.

Mr. BACON. I want to suggest that possibly the section of the Constitution to which the Senator from Iowa has alluded does not mean exactly what the Senator recognizes as the meaning and the test of what the Senator from Idaho said.

As I understood the Senator from Idaho, the Senator said that under no circumstances would be vote to call a convention with power to change the Constitution; that is, to make a new Constitution. I understand the section the Senator from Iowa read to be this, that the convention thus called shall have the power simply to propose amendments——

Mr. HEYBURN. That is right.

Mr. BACON. And those amendments would have to be adopted by three-fourths of the States in the same way that an amendment proposed by Congress has to be adopted——

Mr. CUMMINS. Precisely.

Mr. HEYBURN. Which is a very different thing from a convention being called with unlimited power to make a new Constitution.

Mr. CUMMINS. A convention called would have unlimited power to propose amendments.

Mr. BACON. Yes; but I did not understand the Senator from Idaho to mean that. He spoke of unlimited power, and I understood the Senator from Idaho to refer to a convention which should be called, which would have the power, without limitation, to make a new Constitution.

Mr. HEYBURN. I so stated.

Mr. BACON. Yes.

Mr. CUMMINS. Of course, the Senator from Georgia knows well, as does the Senator from Idaho, that there is no power on the part of any Senator to vote at any time for a constitutional convention unless compelled to do it by the application of two-thirds of the States. The vote would be absolutely nugatory; it would have no validity; and no Senator could vote for a proposition to call a constitutional convention unless that power had been invoked by two-thirds of the legislatures of the Union. I understood the Senator from Idaho to say that under no circumstances would he vote for a constitutional convention having unlimited power——

Mr. HEYBURN. Yes; but——

Mr. CUMMINS. To propose amendments to the Constitution.

Mr. HEYBURN. The unlimited power to propose amendments to the Constitution.

Mr. CUMMINS. Precisely. I thought I did not misunderstand the Senator from Idaho.

Mr. HEYBURN. The Senator did not misunderstand me.

Mr. CUMMINS. While I am on my feet I want to refer the Senator from Idaho, if he will permit me, to a little history in connection with the applications made by the States for a constitutional convention. I am quite familiar with it, and I have no doubt the Senator from Idaho is familiar with it. For years and years the legislatures of various States—very many States, I think 30, in all—have been asking Congress to submit an amendment to the Constitution providing for the election of Senators by direct vote. The Senate of the United States has resolutely refused it.

Mr. HEYBURN. I want to ask the Senator a question.

Mr. CUMMINS. Just a moment, and then I will finish.

Mr. HEYBURN. I may forget it.

Mr. CUMMINS. That would not be an unalloyed misfortune. But these States, despairing of securing any action on the part of the Senate of the United States for the submission of such an amendment, have resorted to the only way that remains to them for proposing such an amendment, namely, by the application of such number of the States as will compel a constitutional convention.

Mr. HEYBURN. The States have no authority, nor are they warranted in lobbying with Congress on a question of this kind. These demands the Senator speaks of are mere impertinences on the part of individual members of the legislature; that is all. The Constitution tells the States how they may amend the Constitution, and there has not at any time been enough States—that is, a constitutional number of States—to demand it. They are like a lot of people I have seen in this world who were in the minority and insisted they should have their way notwithstanding that.

Now, less than two-thirds of the States, I believe, constitute a minority under the Constitution, because it requires two-thirds of the States to make a request, and Congress has no right to act upon the demand of less than two-thirds of the States, and there has never been a time when two-thirds of the States asked for the submission of this question of a constitutional convention. There never has been a time when Congress could legally act under that provision of the Constitution which says that they shall submit it upon the request of the legislatures of the States. There is not a line in the Constitution of the United States that authorizes the legislatures of the States to demand at the hands of this higher body that they shall act in a given way upon a question which can not originate with the States and about which they have nothing to do. That is about as plain as I can make it.

That is the situation to-day. We are being held up here with a demand that we shall comply with a demand that never was made. We are being held up here with a demand that we shall do something for which there is no warrant of law. I admit that Congress may of its own volition submit proposed amendments to the legislatures of the States—to that unholy combination of men selected to represent the citizenship of the States—and if the legislatures of three-fourths of the States adopt it, it becomes a part of the Constitution.

But if we were to comply with the request of the 17 States whose petitions are on file here, that a constitutional convention should be called, then it would not be submitted to the legislatures of the States, but it would be submitted to the people. Why do they not do it? They are clamoring that this question shall be submitted to the people. There is a constitutional method by which it may be submitted to the people and get around the legislature. Why do they not do it? It is because the constitutional majority of the people of the country do not want it. That is why. The Constitution, Article V, speaks of the method by which constitutional conventions are called. There they go outside of the legislature, and the legislature does not participate in it at all. The people do it by convention, or in such manner as they may prescribe. Yet we hear all this clamor about what the people want and the people have not indicated that they want it in a constitutional manner, and no Senator is under any obligation in this body to support this resolution because his legislature has voluntarily gone outside of and beyond the performance of its duties in undertaking to meddle and interfere with the duties of Congress. Then, what are they proposing?

Mr. NELSON. Mr. President——

The PRESIDING OFFICER (Mr. CURTIS in the chair). Does the Senator from Idaho yield to the Senator from Minnesota?

Mr. HEYBURN. Yes.

Mr. NELSON. The Senator is conducting a very able discussion, and I should be very glad to have his views on the repeal or emasculation of section 4 of Article I.

Mr. HEYBURN. I will give that in a few minutes, and it will not take long.

Mr. President, while I am drawing the comparison as to the tribunals to which this question should be submitted, let me compare for a moment the legislatures of the various States with the proposed substitute. One represents organized government and the other represents unorganized government. The election booths down along wharves and rivers and in the heated centers of the big cities represent organized government, and yet every vote that is cast there is as potent in determining a United States Senator under this resolution as is the vote of a man who has won a place in the confidence of the people of a great State—won a place because of his honor and his honesty and his intelligence and his judgment, and yet you would substitute the action of an irresponsible voter who can vote and in five minutes be lost forever. Compare them. Mr. President, the consequences are something fearful to contemplate. Out of all the States that have been called upon during the last month to select Senators of the United States, I think but four have postponed that duty to this hour, and those States will at the end of the session show as good a record for legislation as the States which elected their Senators on the first day that they might elect under the Constitution. One might suppose from what we hear and read that the legislatures were hotbeds of corruption pending and during the time they were engaged in selecting a Senator.

The Idaho Legislature sent my colleague here—they elected him the first day and hour that it was possible to elect a Senator under the law. They were competent——

Mr. BORAH. Is the Senator referring to me?

Mr. HEYBURN. Yes; I say the legislature that elected my colleague did not lose an hour or a minute doing it, nor did they sacrifice public interest in doing it.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to his colleague?

Mr. HEYBURN. Yes.

Mr. BORAH. I appreciate the suggestion of the Senator, but the legislature which elected me elected under direct instructions of a popular vote, which I felt the necessity of getting in order that I might be sure to get the other.

Mr. HEYBURN. My colleague needed no such instructions. The legislature would have elected him as promptly without them.

I told the convention that placed me in nomination for United States Senator that they did not have any right to do it, and that I did not recognize their right to do it; that it was a function to be performed by the legislature when they met; that their first duty was to elect a Republican legislature and let me take my chances. They elected me at the earliest hour an election could be made.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to his colleague?

Mr. HEYBURN. Yes.

Mr. BORAH. My colleague, however, advised the convention of that fact after it had passed the resolution nominating him. [Laughter.]

Mr. HEYBURN. I can not express my admiration of that statement, and I think when the Senator has thought over it he probably will wish he had not made it, because I had spoken to the convention before, and I had spoken to every convention in that State for a pretty long lifetime along those lines. I am sorry to have brought in the consideration of the question the necessity that forced my colleague to make the statement as though my views had not been known or stated before.

Mr. BORAH. I think my colleague misinterpreted my object in making that remark; and if so, I will withdraw it. I did not intend it in the manner in which he interprets it.

Mr. HEYBURN. It is all right; there is no harm done. My colleague is not capable of doing a mean thing. We all make mistakes.

Mr. President, let us get away from that side of it. I want the Senate to know that at least there the question of electing a United States Senator was not one of delay, nor was it the excuse for corruption, nor did it promote any corruption or discreditable condition. That is true 99 times out of 100. I see before me Senators who have spent more than a quarter of a century in this body, and no man ever dared to breathe a word of suspicion against the integrity of the body that sent them, and no man ever claimed that any other method would have sent abler, better, or purer men to this body.

Are you going to discredit the character of Senators by undertaking a change in the manner of selecting them in order that you may get better Senators, who will more ably and accurately represent the views of the people? Is that the purpose? That implies a confession that ought to humiliate any man. No; you are going to do it because some person not here sought the position and failed because the people did not want him. Discontent in politics never comes from the majority; it comes from the minority. Sometimes a portion of the majority are led to believe that there is something wrong, and they are led to conceive the necessity of a change and to agree with it. But they awaken by and by and they realize that they have been made the convenient instrument of somebody else's ambition or somebody else's revenge. Does not the standard of the United States Senate measure in this age to that of any other age? Have we degenerated?

Senators have been clamoring for a vote. I was rather impressed with the suggestion that was made yesterday. I will have to deal with it rather gently. Senators had spoken with eloquence and fluency, and doubtless thought that they had exhausted the subject and nothing more could be said, and as they brought down the arm in its oratorical flight, they said, "Now, let us vote, and vote quick, before anybody can think."

Mr. President, this is not the place for that kind of deliberation. We have heard from those who wanted the change, while they have avoided the question as to why they wanted it. They have rather dwelt upon the glories in which they would dwell after they had it. I want to consider the conditions before, when a change is proposed. I want to consider existing conditions. There is no necessity to cast an eye into the future until you have determined by the exercise of the very best wisdom you can control that you are going there.

I have seen men who would sit amid the disorder of their own neglected homes and farms and look out in envy over the lands of those who were more frugal and better husbandmen, while the weeds grew up and smothered them in their homes and their neighbor prospered. Let us look to the present in this matter. Under what are we suffering, because unless there is a reason for the change no thinking man will want it, unless it is for political gain or to satisfy the vain dreams of ambition or to be the apostle of some great change—noted for it; stand out in history as the man who brought about a change in the Constitution of the United States that wrecked it. Yes; some men do build themselves monuments because of the wrong they do, and to some men monuments are builded because of the good they do.

I feel more strongly upon this question than upon any question that I have ever participated in since the days of my responsibility as a citizen of the United States.

I have participated in great struggles in civil life where great interests were involved; I have participated in the proceedings of this body for eight years, where were involved only transient things or things that might be corrected should they prove to be mistakes; and I have been content, reasonably so, with the result; content with verdicts against me, judgments of the courts against me, votes in this body against measures that I deemed of great importance; but I always had the consolation of knowing that there was a to-morrow and that when wrong was shown to have been done right would come to the rescue. But when you make this change in the Constitution of the United States—and there are only a few men here who ever participated in changing the Constitution—when you make it and wake up some morning and find that it has failed of the purpose you had in mind, remember that you have no cable that binds you to the shore.

The Senator wants to know about the Sutherland amendment. It is the lesser question in one sense and the greater in another. The Sutherland amendment merely says, "Hands off." It does not propose to change the existing provisions of the Constitution. It is a protest against this raid upon the Constitution; that is all. I have heard it discussed here frequently as though it was a proposition of some new legislation. It is not. As I said in the letter which I read at the beginning of my remarks, it is a proposition merely that we do not change the Constitution.

Every presumption is in favor of the Sutherland amendment. I want to know from that side of the Chamber, if this proposed change is as harmless as you picture it, why do you want it?

Mr. BACON. I desire to say to the Senator from Idaho that I do not so regard it—as harmless.

Mr. HEYBURN. I exempt the Senator from Georgia from that suggestion; but other Senators have to-day, and on other days, said, if not in words in the effect of words, that it would be a condition controlling them in casting their vote upon this joint resolution.

Mr. BACON. I will say to the Senator very frankly that I expect it to control me. I do not give that as a final statement; that is my present expectation; and while I do not desire to enter into a discussion of it now, I will make one suggestion to the Senator, with his permission, as to the feature in which it will be a great change, not by way of general description of it but by way of illustration.

The Senator is familiar with what we know as the election laws which were repealed in 1893. I know that, because there is no Senator in this Chamber more familiar with the statute law of the United States than the Senator from Idaho, he having been for several years laboriously and industriously engaged in a revision of those laws. The Senator, I have no doubt, is also familiar with the bill which passed the House of Representatives in 1890 and came to this body and was favorably reported and occupied the attention of this body for possibly two months—I do not know exactly how long—and was at last defeated by a very narrow margin, known as the force bill, which was of a kindred character with the election laws and intended as an amendment of them and as an extension of them.

The single point to which I desire to call the attention of the Senator without now going into the details, although I may do so a little later, is that those laws were applicable only to the election of Representatives and could not be applicable under the present law to the election of Senators; and if this law is changed, so as to make it an election by the people, with the Sutherland amendment, leaving the present words, if you please, applicable to changed and new conditions, the changes will be most vital and far-reaching, and, unless I change my mind very

much, sufficient in their character in that respect to prevent my voting for the joint resolution if that is put upon it.

Mr. HEYBURN. Mr. President, I gave considerable attention to the authorities that have been discussed to-day affecting the fourteenth and fifteenth amendments to the Constitution. I had thought that I would enter into the consideration of the effect of those amendments to the Constitution to some extent, but I am impressed, whether I have impressed anyone else or not, with the fact that there are greater questions involved that are sufficient to control to my judgment, and, I trust, that of some others in determining this question. I have, therefore, devoted my time to a discussion of the practical side of the measure rather than the technical side. I am familiar with every decision that has been rendered affecting these amendments. I had occasion at other periods of my life to deal with them in a responsible way; but I do not believe it is necessary, in order to discuss and arrive at an intelligent conclusion, to go into the technical distinctions drawn by the courts in regard to the rights of the people in the particular cases considered under these amendments.

I would merely direct the attention of the Senate to the fact that in the fourteenth amendment Congress is given power to extend its hand down as far as the legislature of the State. That opens up rather a large question, one that I think it is not necessary to consider here. Some one has asked the question this afternoon, "What lies beyond that time when a State shall refuse to be a State?" Well, Territory lies beyond that. The Government of the United States, under the terms of the Constitution, may organize new States where no States exist, and a State does not exist that is not represented, or that refuses to be represented, in the Congress of the United States. The Congress of the United States made the States with the exception of the original colonies, and the original colonies by contract submitted to the dominion of the power which they themselves created. They created a power under a contract to submit to it as the governing power over them all. If any State thinks it can secede from the Union by a failure to perform the duties of statehood, let it try it, and it will have a Territorial governor placed over it.

Mr. RAYNER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Maryland?

Mr. HEYBURN. Yes.

Mr. RAYNER. Does the Senator contend that if a State does not send Senators here we can organize it into a Territory?

Mr. HEYBURN. Certainly. If a State is no longer a State it is public domain, a part of the territory of the United States. Anything else is to contend for the right of secession from the Union. Is there a man living to-day who will contend for that?

Mr. RAYNER. But does the Senator contend as a legal proposition that if a State should fail to send Senators here we could organize it into a Territory?

Mr. HEYBURN. Certainly; the Government has had to do it before.

Mr. RAYNER. For a failure to send Senators here?

Mr. HEYBURN. The United States has had to provide for the organization of governments in States where the States refused to organize and maintain a government that was a part of the United States, and they can do it again, and again, if necessary. Why in this case force up a controversy of that kind? We know that the Government can do it, and we know that it has done it. Now, I will not invade that field further than to say that there is no terror in the threat that some State may not send Members of Congress or Senators into the Congress of the United States.

Mr. BACON. I should like to ask the Senator who has ever made such a threat. Does not the Senator know that the condition of a State refusing to send Senators or Representatives to Congress is not one that can possibly exist?

Mr. HEYBURN. Not one; that is impossible.

Mr. BACON. I mean to say there is no possibility——

Mr. HEYBURN. No; not a particle.

Mr. BACON. That such a condition of affairs should arise.

Mr. HEYBURN. Not the slightest. It is discussing an academic question.

Mr. BACON. Then why discuss it?

Mr. HEYBURN. It has been brought into the consideration of this question to-day, and I felt like saying just a few words about it. There are no terrors in it at all for me.

Mr. RAYNER. It was brought in because Mr. Webster declared, in perhaps the greatest debate that ever took place on this floor, that there is no way to coerce a State to do it. That is the reason why it was brought in.

Mr. HEYBURN. Mr. President, I have a high regard for Mr. Webster, but if the generations of to-day are not as competent or more so to determine this question than was that man, great in his day, then the world has not advanced; that is all. We are not bound by any such precedent. There are many men on this floor whose learning and ability would confound the statesmen of that age. Things have happened in this country since that time. We have had to learn sharp lessons under pressure, and we have learned them, and we have proven ourselves capable of maintaining, aye, of defending and saving them, and those who in that day opposed us are to-day with us. As the Senator from Georgia [Mr. BACON] says, there is no possible room for even conjecture as to a State going out of existence. So we pass that by.

The Sutherland amendment, I repeat to the senior Senator from Minnesota, meets with my approval because it simply says that we will not lose that much of the Constitution anyhow if some accident does happen to us in regard to another part of it. Of course, I shall support the Sutherland amendment, just as I would reach out and grab the last of an escaping treasure. If I knew that there rested in the hearts of the Members of this body the same sentiment that will actuate me in casting my vote on the Sutherland amendment I would yield the floor now, or I never would have taken it this afternoon. But I want to know it. I would stay here and fret the ears of the Senate for some time to come if I thought that such labor was demanded as a price for preserving the Constitution of the United States.

I would do more than that, but that I would do. All I want to know is that there are enough patriotic men to save in this hour that portion of the Constitution, and then in the hours that will follow between this and adjournment I propose to fight as I would fight on a field of battle for what is left of that provision of the Constitution. Senators may have due warning of my temper in this matter. I am assured that there is enough strength in this body to adopt the Sutherland amendment. In faith of that I am going to conclude my remarks with the promise that if it is not adopted there will not be much progress in what is left of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment proposed by the Senator from Utah [Mr. SUTHERLAND].

Mr. GALLINGER. The yeas and nays have been ordered.

Mr. BACON. Mr. President, I desire now to call for the yeas and nays rather than to have the question discussed as to whether a call for the yeas and nays some two or three weeks ago is now to be entertained.

The PRESIDING OFFICER. What is the Senator's question?

Mr. BACON. I call for the yeas and nays.

The PRESIDING OFFICER. The Chair is informed that the yeas and nays have already been ordered upon the amendment.

Mr. BACON. I call for the yeas and nays upon it.

The PRESIDING OFFICER. The Senator from Georgia demands the yeas and nays on the amendment of the Senator from Utah.

The yeas and nays were ordered.

Mr. BORAH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Secretary will call the roll.

Mr. NELSON. Mr. President, it was my purpose to make a few remarks upon the proposition before the Senate. It is now late. There are other Senators who want to speak on it. I do not expect to take a great deal of time. I suggest to the Senator from Idaho that the joint resolution go over until to-morrow.

Mr. KEAN. Let it go over until Monday.

Mr. NELSON. I have no purpose to delay it.

Mr. BORAH. I am just as anxious to make headway as possible. At the same time, of course, I am anxious to accommodate the Senator from Minnesota and all other Senators. If I can have an agreement that we will vote upon amendments to the joint resolution and upon the joint resolution upon a certain day I should be glad to accommodate Senators. But if we can not have an agreement, there is only one way by which we can make progress, and that is to stay here and talk, and vote as we get a chance.

Mr. SUTHERLAND. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Utah?

Mr. BORAH. I do.

Mr. SUTHERLAND. Let me suggest to the Senator from Idaho that he modify his request for unanimous consent and ask unanimous consent that we may vote upon the pending amendment on Monday.

Mr. GALLINGER. At a given hour.

Mr. OVERMAN. There are to be memorial exercises on Monday.

Mr. LODGE. Mr. President——

The PRESIDING OFFICER. The Senator from Idaho has the floor. Does he yield to the Senator from Massachusetts?

Mr. BORAH. I yield to the Senator from Massachusetts.

Mr. LODGE. I ask, in furtherance of the suggestion of the Senator from Utah, why can we not agree to vote on the amendment to-morrow at 2 o'clock? The special order does not begin until half past 2. We shall have two hours and a half. We might as well get something done, if possible, in that time.

Mr. BACON. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Georgia?

Mr. BORAH. I do.

Mr. BACON. I simply want to make a suggestion. I have no disposition to delay the vote upon the amendment. I would dislike to agree to a specific hour, because in that case we may find that the vote is pressed at a time when possibly a Senator would like to make some rejoinder to what has been said, or would desire an opportunity to say something. I am perfectly willing to agree that on Monday the vote shall be taken. It will be impossible to agree for it to-morrow because of the special order which has been assigned for that day.

Mr. MARTIN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Virginia?

Mr. NELSON. Will the Senator from Idaho yield to me for a minute?

Mr. BORAH. I yield to the Senator from Minnesota.

Mr. NELSON. I suggest that we agree, by unanimous consent, to take up the joint resolution immediately after the morning business to-morrow and go on with its consideration until the time for the special order.

Mr. BEVERIDGE. There are to be eulogies to-morrow.

Mr. GALLINGER. Not until 2.30.

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

Mr. BORAH. I yield to the Senator from West Virginia.

Mr. SCOTT. I hope it will be the pleasure of the Senate to set a time to-morrow to vote because of the pension bill that is here and that must be taken up. I want to have that bill considered at the very earliest possible moment. It looks to me as though this delay was for the purpose of trying to defeat that bill.

Mr. BORAH. Mr. President——

Mr. SCOTT. I should like to vote now.

Mr. MARTIN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Idaho yield to the Senator from Virginia?

Mr. BORAH. I do.

Mr. MARTIN. I simply want to call attention to the fact that 2.30 on Monday has been assigned and that memorial exercises will then be in order. In fixing a time for the disposition of this measure I call attention to that fact so that there may be no conflict.

Mr. NELSON. Will the Senator from Idaho allow me to make a suggestion, and that is to ask unanimous consent for a vote at 2 o'clock on Monday, or any hour on Monday, on the Sutherland amendment?

Mr. BORAH. No; Mr. President, I do not want to agree to that, but I will ask for unanimous consent to take up this matter on Wednesday and vote upon all amendments and upon the joint resolution before the conclusion of the legislative day.

Mr. NELSON. On what day?

Mr. BORAH. On Wednesday.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Idaho?

Mr. BACON. What is the request?

Mr. BEVERIDGE. To vote on Wednesday.

Mr. NELSON. Of next week.

The PRESIDING OFFICER. Will the Senator from Idaho please state his request again?

Mr. BORAH. I ask unanimous consent that the joint resolution now before the Senate may be taken up next Wednesday, immediately after the conclusion of the routine morning business, and that all amendments thereto and the joint resolution itself may be voted on before the adjournment on that day.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Idaho?

Mr. HEYBURN. I object.

The PRESIDING OFFICER. Objection is made.

Mr. SCOTT. Before it is agreed to, I ask whether this measure will come up as the unfinished business every day to haunt those of us who are trying to get up other business.

Mr. BORAH. If I can have a time agreed on to vote there will be no necessity of its standing in the way of any other measure.

The PRESIDING OFFICER. Objection has been made to the request of the Senator from Idaho.

Mr. GALLINGER. The regular order.

The PRESIDING OFFICER. The regular order is calling the roll to ascertain whether there is a quorum present. The Secretary will call the roll.

The Secretary proceeded to call the roll, and called the name of Mr. ALDRICH.

Mr. HEYBURN. Mr. President——

Mr. BEVERIDGE. Regular order!

Mr. HEYBURN. There has been no response, and I was recognized by the Chair.

Mr. LODGE. This whole debate has been proceeding out of order, after the point of no quorum had been made.

Mr. BEVERIDGE. The roll call must proceed.

Mr. LODGE. Nothing else is in order.

Mr. HEYBURN. Then this is a call for a quorum?

Mr. LODGE. Certainly.

The PRESIDING OFFICER. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

| | | | |
|---|---|---|---|
| Bacon | Cullom | Jones | Richardson |
| Beveridge | Cummins | Kean | Scott |
| Borah | Curtis | La Follette | Shively |
| Bourne | Depew | Lodge | Simmons |
| Brandegee | Dick | Lorimer | Smith, Md. |
| Briggs | Dillingham | McCumber | Smith, Mich. |
| Bristow | Dixon | Martin | Smith, S. C. |
| Brown | du Pont | Nelson | Smoot |
| Bulkeley | Fletcher | Newlands | Stephenson |
| Burnham | Flint | Nixon | Stone |
| Burton | Foster | Overman | Sutherland |
| Carter | Frye | Owen | Swanson |
| Chamberlain | Gallinger | Page | Taylor |
| Clapp | Gamble | Paynter | Thornton |
| Clark, Wyo. | Gore | Penrose | Tillman |
| Clarke, Ark. | Gronna | Percy | Warner |
| Crane | Guggenheim | Perkins | Warren |
| Crawford | Heyburn | Piles | Watson |
| Culberson | Johnston | Rayner | Wetmore |

The PRESIDING OFFICER. Seventy-six Senators have responded to their names. A quorum is present.

Mr. GALLINGER. I move that the Senate adjourn.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. The question is not debatable.

Mr. BORAH. I am not going to debate it; I understand the rules of the Senate. I ask for the yeas and nays upon that motion.

The yeas and nays were ordered; and, being taken, resulted—yeas 37, nays 44, as follows:

YEAS—37.

| | | | |
|---|---|---|---|
| Bacon | Curtis | Kean | Stephenson |
| Brandegee | Depew | Lodge | Sutherland |
| Briggs | Dick | Lorimer | Talliaferro |
| Bulkeley | Dillingham | McCumber | Warner |
| Burnham | du Pont | Nelson | Warren |
| Burton | Flint | Oliver | Wetmore |
| Carter | Frye | Page | Young |
| Clark, Wyo. | Gallinger | Penrose | |
| Crane | Guggenheim | Richardson | |
| Cullom | Heyburn | Smoot | |

NAYS—44.

| | | | |
|---|---|---|---|
| Bailey | Cummins | Martin | Shively |
| Beveridge | Davis | Newlands | Simmons |
| Borah | Dixon | Nixon | Smith, Md. |
| Bourne | Fletcher | Overman | Smith, Mich. |
| Bristow | Frazier | Owen | Smith, S. C. |
| Brown | Gamble | Paynter | Stone |
| Chamberlain | Gore | Percy | Swanson |
| Clapp | Gronna | Perkins | Taylor |
| Clarke, Ark. | Johnston | Piles | Thornton |
| Crawford | Jones | Rayner | Tillman |
| Culberson | La Follette | Scott | Watson |

NOT VOTING—10.

| | | | |
|---|---|---|---|
| Aldrich | Burkett | Hale | Terrell |
| Bankhead | Burrows | Money | |
| Bradley | Foster | Root | |

So the Senate refused to adjourn.

The PRESIDING OFFICER. The question is upon the amendment proposed by the Senator from Utah [Mr. SUTHERLAND] to the joint resolution.

Mr. NELSON. Mr. President, I had hoped that the Senator in charge of this joint resolution would extend to me the usual courtesy which has been extended to other Senators and would have allowed the joint resolution to go over until to-morrow morning, instead of forcing me to speak now. Of course, if the

Senator insists upon my going on, I shall have to submit a few remarks this evening, but I have been here all day ready to proceed without being able to get an opportunity to do so, and I prefer to go on in the morning.

Mr. BORAH. Mr. President——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Idaho?

Mr. NELSON. Certainly.

Mr. BORAH. Mr. President, the Senator from Idaho feels that he has extended every courtesy that is possible in view of the evident disposition on the part of those in opposition that there shall be no vote at all upon the joint resolution. I should be very glad, indeed, to accommodate the Senator from Minnesota [Mr. NELSON], if I could have any assurance that there is any disposition to permit us to take a vote upon this measure. I am forced to conclude, however, that there is only one way to get a vote, and that is to pursue the course which we have been compelled to pursue.

We are now within two weeks of the close of the session, and I do not think this measure ought to stand in the way of other important business. There are a number of measures here which ought to have the consideration of the Senate, and I feel that it is my duty, being in charge of the joint resolution, to get it out of the way just as rapidly as possible. At the same time, I can not place the measure in a position where there is liable to be no vote upon it at all. I think if the Senator from Minnesota will reflect for a moment he will see that I am not in a position, in view of the situation here, to extend any other courtesy than I have done, much as I should like to do so.

Mr. NELSON. I suggest that the Senator might extend the courtesy, if it is agreed to take up the measure to-morrow and go on with it immediately after the routine morning business.

Mr. GALLINGER. Mr. President——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from New Hampshire?

Mr. NELSON. I do.

Mr. GALLINGER. Mr. President, in view of the observations made by the Senator in charge of the joint resolution, I wish to say that I trust he did not apply his remarks to me. I made a motion to adjourn because I felt that we had sat here long enough to-day, and I did not think we would come to an agreement this evening. I am in favor of taking a vote on the joint resolution soon, the sooner the better, and I had hoped we would have taken it an hour ago, when there was a disposition on the part of many Senators to do so. I want the Senator to understand that I did not use any obstructive tactics, and I am not going to do so.

Mr. BORAH. Mr. President, my observations were not personal at all and were not intended for the Senator from New Hampshire; but I have asked for unanimous consent as far in advance as next Wednesday to dispose of this matter, and the fact that that has been denied is convincing proof to anyone that there is a disposition to prevent any vote at all.

Mr. NELSON. Mr. President, it is not my purpose——

Mr. BEVERIDGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Indiana?

Mr. NELSON. I do.

Mr. BEVERIDGE. For what it may be worth, I make the suggestion that when the Senate adjourns to-day it be to meet at 11 o'clock to-morrow morning. I suppose that we may not be able to hold the session much longer than an hour now, and the adoption of my suggestion would give more time to-morrow. I do not make a motion, but merely a suggestion, and I make it for what it may be worth.

Mr. CULBERSON and others. Regular order!

Mr. NELSON. Mr. President, it is not my purpose to enter into any extended argument upon this measure. I intend for a few moments, briefly, to call the attention of the Senate to the importance of what is known as the Sutherland amendment; but before I go into that question——

Mr. LODGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Massachusetts?

Mr. NELSON. I do, temporarily.

Mr. LODGE. Mr. President, it is very unusual at this late hour of the day, when a Senator asks, as the Senator from Minnesota [Mr. NELSON] has asked, that a measure be allowed to go over until morning, to compel him to take the floor and speak. I have been anxious for the Senate to take a vote on this measure at any time. I have another measure which I want to bring before the Senate. I do not believe there is any desire to unduly delay the joint resolution under consideration; but it is very unusual, indeed, to refuse a request such as the Senator from Minnesota has made, and such methods can lead to no promotion of the progress of this measure.

I move that the Senate proceed to the consideration of executive business.

Mr. BEVERIDGE. I hope the Senator will withhold that.

Mr. BORAH. Mr. President——

Mr. LODGE. It is the only motion that is open to me, and I make it.

Mr. BORAH. On that motion I ask for the yeas and nays.

The yeas and nays were ordered and taken.

Mr. DILLINGHAM (after having voted in the affirmative). I inquire whether the senior Senator from South Carolina [Mr. TILLMAN] has voted.

The PRESIDING OFFICER. The Chair is informed that he has not voted.

Mr. DILLINGHAM. The Senator from South Carolina asked me to observe our pair on this question, and therefore I withdraw my vote.

The result was announced—yeas 46, nays 34, as follows:

YEAS—46.

| | | | |
|---|---|---|---|
| Bacon | Dick | Nelson | Simmons |
| Brandegee | du Pont | Nixon | Smoot |
| Briggs | Flint | Oliver | Stephenson |
| Bulkeley | Frye | Overman | Sutherland |
| Burnham | Gallinger | Page | Tallaferro |
| Burton | Guggenheim | Paynter | Thornton |
| Carter | Heyburn | Penrose | Warner |
| Clark, Wyo. | Johnston | Perkins | Warren |
| Crane | Kean | Piles | Wetmore |
| Cullom | Lodge | Richardson | Young |
| Curtis | Lorimer | Root | |
| Depew | McCumber | Scott | |

NAYS—34.

| | | | |
|---|---|---|---|
| Bankhead | Crawford | Gronna | Smith, Md. |
| Beveridge | Culberson | Jones | Smith, Mich. |
| Borah | Cummins | La Follette | Smith, S. C. |
| Bourne | Davis | Martin | Stone |
| Bristow | Dixon | Newlands | Swanson |
| Brown | Fletcher | Owen | Taylor |
| Chamberlain | Frazier | Percy | Watson |
| Clapp | Gamble | Rayner | |
| Clarke, Ark. | Gore | Shively | |

NOT VOTING—11.

| | | | |
|---|---|---|---|
| Aldrich | Burkett | Foster | Terrell |
| Bailey | Burrows | Hale | Tillman |
| Bradley | Dillingham | Money | |

So the motion was agreed to; and the Senate proceeded to the consideration of executive business. After seven minutes spent in executive session the doors were reopened, and (at 5 o'clock and 50 minutes p. m.) the Senate adjourned until to-morrow, Saturday, February 18, 1911, at 12 o'clock meridian.

## NOMINATIONS.

*Executive nominations received by the Senate February 17, 1911.*

COLLECTOR OF CUSTOMS.

Floyd Hughes, of Virginia, to be collector of customs for the district of Norfolk and Portsmouth, in the State of Virginia. (Reappointment.)

SURVEYOR OF CUSTOMS.

Cadet Taylor, of Nebraska, to be surveyor of customs for the port of Omaha, in the State of Nebraska, in place of Benjamin H. Barrows, deceased.

UNITED STATES ATTORNEY.

Byron S. Ambler, of Ohio, to be United States attorney, district of Porto Rico, vice Jose R. F. Savage, whose term has expired.

SECRETARY OF PORTO RICO.

M. Drew Carrel, of Illinois, to be secretary of Porto Rico. (Reappointment.)

PROMOTIONS IN THE NAVY.

Commander George R. Salisbury to be a captain in the Navy from the 14th day of November, 1910, vice Capt. Thomas B. Howard, promoted.

Commander Frank W. Kellogg to be a captain in the Navy from the 14th day of January, 1911, vice Capt. Walter C. Cowles, promoted.

Lieut. Commander Warren J. Terhune to be a commander in the Navy from the 7th day of January, 1911, vice Commander Robert F. Lopez, promoted.

Lieut. Commander William K. Harrison to be a commander in the Navy from the 14th day of January, 1911, vice Commander Frank W. Kellogg, promoted.

Lieut. (Junior Grade) Nelson H. Goss to be a lieutenant in the Navy from the 1st day of July, 1910, vice Lieut. Fletcher L. Sheffield, promoted.

Lieut. (Junior Grade) Wilhelm L. Friedell to be a lieutenant in the Navy from the 14th day of October, 1910, vice Lieut. George T. Pettengill, promoted.

Lieut. (Junior Grade) Gordon W. Haines to be a lieutenant in the Navy from the 20th day of November, 1910, vice Lieut. Arthur G. Caffee, deceased.

Boatswain John Davis to be a chief boatswain in the Navy from the 16th day of May, 1910, upon the completion of six years' service as a boatswain.

Boatswain William Jaenicke to be a chief boatswain in the Navy from the 30th day of July, 1910, upon the completion of service as a boatswain of six years plus one year during suspension from promotion after failure at examination.

## POSTMASTERS.

### CALIFORNIA.

Pierce J. Elliott to be postmaster at Sausalito, Cal., in place of Pierce J. Elliott. Incumbent's commission expired January 23, 1911.

Matthew W. Grace to be postmaster at Lindsay, Cal., in place of Matthew W. Grace. Incumbent's commission expired January 18, 1911.

J. N. Hollis to be postmaster at Gridley, Cal., in place of Renaldo E. Taylor. Incumbent's commission expired February 12, 1911.

### COLORADO.

Hockley T. Hamill to be postmaster at Georgetown, Colo., in place of Hockley T. Hamill. Incumbent's commission expired January 30, 1911.

### IDAHO.

Jake Horn to be postmaster at Caldwell, Idaho, in place of Sophia Davis, resigned.

### ILLINOIS.

George M. Bell to be postmaster at Sherrard, Ill. Office became presidential July 1, 1910.

Robert J. Hemphill to be postmaster at Ridgway, Ill. Office became presidential January 1, 1911.

Grant S. Remsburg to be postmaster at Ohio, Ill. Office became presidential October 1, 1910.

Jeter C. Utterback to be postmaster at Salem, Ill., in place of Jeter C. Utterback. Incumbent's commission expires February 28, 1911.

### IOWA.

George T. Clevidence to be postmaster at Humboldt, Iowa, in place of Joseph W. Foster. Incumbent's commission expired January 10, 1911.

William H. McClure to be postmaster at Fontanelle, Iowa, in place of William H. McClure. Incumbent's commission expired January 31, 1911.

### KANSAS.

O. F. Falls to be postmaster at Valley Falls, Kans., in place of Frank C. Scott, resigned.

E. D. George to be postmaster at Mankato, Kans., in place of Joseph H. Woollen. Incumbent's commission expired January 10, 1911.

Cliff W. Weeks to be postmaster at Osborne, Kans., in place of James M. Morgan, resigned.

### MAINE.

Harry R. Hichborn to be postmaster at Stockton Springs, Me., in place of Harry R. Hichborn. Incumbent's commission expired December 6, 1910.

Varney A. Putnam to be postmaster at Danforth, Me., in place of Varney A. Putnam. Incumbent's commission expires February 20, 1911.

### MASSACHUSETTS.

John Huxtable to be postmaster at Wareham, Mass., in place of John Huxtable. Incumbent's commission expired January 7, 1911.

Joseph A. Legare to be postmaster at Lowell, Mass., in place of Albert G. Thompson, deceased.

### MICHIGAN.

J. Burt Kiely to be postmaster at Roscommon, Mich., in place of William F. Johnston, resigned.

Flora MacLachlan to be postmaster at Grand Marais, Mich., in place of Flora MacLachlan. Incumbent's commission expires February 28, 1911.

George W. Minchin to be postmaster at Evart, Mich., in place of George W. Minchin. Incumbent's commission expired January 10, 1911.

### MINNESOTA.

Alton Crosby to be postmaster at Willmar, Minn., in place of Alton Crosby. Incumbent's commission expired December 20, 1910.

John L. Grady to be postmaster at Cass Lake, Minn., in place of John L. Grady. Incumbent's commission expired January 23, 1911.

Mark Swedberg to be postmaster at Luverne, Minn., in place of Mark Swedberg. Incumbent's commission expires March 2, 1911.

Edward A. Wasserzieher to be postmaster at Deer Wood, Minn. Office became presidential July 1, 1910.

### MISSISSIPPI.

Robert Burns to be postmaster at Brandon, Miss., in place of Robert Burns. Incumbent's commission expires March 2, 1911.

### MISSOURI.

Willis E. Flanders to be postmaster at Paris, Mo., in place of Willis E. Flanders. Incumbent's commission expired June 7, 1910.

Ivan S. Goodwin to be postmaster at Gilman City, Mo. Office became presidential January 1, 1911.

William L. H. Silliman to be postmaster at Clarksville, Mo., in place of William L. H. Silliman. Incumbent's commission expired February 13, 1911.

### NEBRASKA.

William L. Bennett to be postmaster at Bladen, Nebr. Office became presidential January 1, 1911.

Herbert G. Miller to be postmaster at Holbrook, Nebr. Office became presidential January 1, 1911.

Noble Sanford to be postmaster at Axtell, Nebr. Office became presidential January 1, 1911.

### NEW JERSEY.

Edward E. Haines to be postmaster at South Amboy, N. J., in place of Frank E. De Graw. Incumbent's commission expires March 2, 1911.

Charles B. Hunter to be postmaster at Bergenfield, N. J. Office became presidential January 1, 1911.

### NEW MEXICO.

Thomas Branigan to be postmaster at Las Cruces, N. Mex., in place of Thomas Branigan. Incumbent's commission expired February 11, 1911.

Robert E. Wherritt to be postmaster at Clayton, N. Mex., in place of Robert E. Wherritt. Incumbent's commission expired February 11, 1911.

### NEW YORK.

Emil A. Peterson to be postmaster at Falconer, N. Y., in place of Emil A. Peterson. Incumbent's commission expired February 2, 1911.

Simon D. Replogle to be postmaster at Roslyn, N. Y., in place of Simon D. Replogle. Incumbent's commission expires February 28, 1911.

James A. Snell to be postmaster at Fonda, N. Y., in place of James A. Snell. Incumbent's commission expired January 16, 1911.

Frank Stowell to be postmaster at Mayville, N. Y., in place of Frank Stowell. Incumbent's commission expires February 28, 1911.

James A. Wilson to be postmaster at Sacket Harbor, N. Y., in place of James A. Wilson. Incumbent's commission expired February 12, 1911.

### NORTH DAKOTA.

Niels G. Mosgaard to be postmaster at Scranton, N. Dak. Office became presidential October 1, 1910.

Horatio C. Plumley to be postmaster at Fargo, N. Dak., in place of Horatio C. Plumley. Incumbent's commission expires March 2, 1911.

### OHIO.

Henry H. Coppock to be postmaster at Pleasant Hill, Ohio, in place of George W. Whitmer. Incumbent's commission expired February 2, 1911.

Don C. Corbett to be postmaster at Payne, Ohio, in place of Don C. Corbett. Incumbent's commission expired January 29, 1911.

Charles R. Crum to be postmaster at Forest, Ohio, in place of Charles R. Crum. Incumbent's commission expired February 2, 1911.

Edward J. Lewis to be postmaster at Girard, Ohio, in place of Edward J. Lewis. Incumbent's commission expired February 7, 1911.

### OKLAHOMA.

Cassius M. Cade, jr., to be postmaster at Shawnee, Okla., in place of William S. Cade. Incumbent's commission expires March 2, 1911.

PENNSYLVANIA.

Thomas H. Bailey to be postmaster at Mansfield, Pa., in place of Thomas H. Bailey. Incumbent's commission expired February 13, 1911.

Florencio Bartow to be postmaster at Marcus Hook, Pa. Office became presidential January 1, 1911.

Theodore Lindermuth to be postmaster at East Mauch Chunk, Pa., in place of David P. Hughes. Incumbent's commission expired February 13, 1911.

William F. McDowell to be postmaster at Mercersburg, Pa., in place of William F. McDowell. Incumbent's commission expired February 4, 1911.

Earnest C. Pearce to be postmaster at Avonmore, Pa., in place of James A. Pearce, resigned.

Byron E. Staples to be postmaster at Jersey Shore, Pa., in place of Warren B. Masters. Incumbent's commission expires February 20, 1911.

TENNESSEE.

James F. Collins to be postmaster at Spring City, Tenn. Office became presidential October 1, 1907.

TEXAS.

Edward Blanchard to be postmaster at San Angelo, Tex., in place of Edward Blanchard. Incumbent's commission expires February 21, 1911.

Lucy Breen to be postmaster at Mineola, Tex., in place of Lucy Breen. Incumbent's commission expired February 13, 1911.

Josephine Chesley to be postmaster at Bellville, Tex., in place of Josephine Chesley. Incumbent's commission expired February 13, 1911.

Harry Harris to be postmaster at Gatesville, Tex., in place of Harry Harris. Incumbent's commission expires February 21, 1911.

J. Allen Myers to be postmaster at Bryan, Tex., in place of J. Allen Myers. Incumbent's commission expired February 7, 1911.

William Myers to be postmaster at Seguin, Tex., in place of William Myers. Incumbent's commission expired February 13, 1911.

William D. Rathjen to be postmaster at Canadian, Tex., in place of William D. Rathjen. Incumbent's commission expired February 13, 1911.

James A. Smith to be postmaster at El Paso, Tex., in place of James A. Smith. Incumbent's commission expires February 21, 1911.

UTAH.

James Don to be postmaster at Park City, Utah, in place of Peter Martin, deceased.

WISCONSIN.

C. L. Chistianson to be postmaster at Bloomer, Wis., in place of L. L. Thayer, resigned.

Alfred B. Kildow to be postmaster at Brodhead, Wis., in place of Alfred B. Kildow. Incumbent's commission expires February 28, 1911.

Leonard H. Kimball to be postmaster at Neenah, Wis., in place of Leonard H. Kimball. Incumbent's commission expires February 28, 1911.

## CONFIRMATIONS.

*Executive nominations confirmed by the Senate February 17, 1911.*

RECEIVER OF PUBLIC MONEYS.

Harold Hurd to be receiver of public moneys at Roswell, N. Mex.

REGISTER OF LAND OFFICE.

Lee Fairbanks to be register of the land office at Del Norte, Colo.

REAPPOINTMENT IN THE ARMY.

QUARTERMASTER'S DEPARTMENT.

Brig. Gen. James B. Aleshire, Quartermaster General, to be Quartermaster General, with the rank of brigadier general, for the period of four years, beginning July 1, 1911, with rank from July 1, 1907. His present appointment will expire by limitation June 30, 1911.

PROMOTIONS IN THE ARMY.

JUDGE ADVOCATE GENERAL'S DEPARTMENT.

Lieut. Col. John A. Hull, judge advocate, to be judge advocate, with the rank of colonel, from February 15, 1911, vice Col. Enoch H. Crowder, who accepted an appointment as judge advocate general, with the rank of brigadier general, on that date.

Maj. John Biddle Porter, judge advocate, to be judge advocate, with the rank of lieutenant colonel, from February 15, 1911, vice Lieut. Col. John A. Hull, promoted.

PORTO RICO REGIMENT OF INFANTRY.

First Lieut. Samuel S. Bryant to be captain.

Second Lieut. Louis S. Emmanuelli to be first lieutenant.

APPOINTMENTS IN THE ARMY.

JUDGE ADVOCATE GENERAL'S DEPARTMENT.

First Lieut. Edward A. Kreger, Twenty-eighth Infantry, to be judge advocate with the rank of major from February 15, 1911, vice Maj. John Biddle Porter promoted.

INFANTRY ARM.

*To be second lieutenants with rank from February 11, 1911.*

Frederick Rodman Palmer, of Wisconsin.
Stanley Willis Wood, of Missouri.
Alexander Wilson, of Missouri.
Xavier Francis Blauvelt, of the District of Columbia.
Frank Dorwin Lackland, of the District of Columbia.
Mason Wilbur Gray, jr., of Michigan.
Joseph Andrews, of Oklahoma.
Albert Samuel Peake, of California.
Floyd D. Carlock, of Ohio.
Cushman Hartwell, of Pennsylvania.
Arthur Boettcher, at large.
Elisha Francis Riggs, of the District of Columbia.
Horace Thurber Aplington, of New York.
Henry Burnet Post, of New York.
Fred Livingood Walker, of Ohio.
Alvan Cullom Gillem, jr., at large.
Rapp Brush, of Illinois.
James Edward O'Phelan, of Minnesota.
John O'Keefe Taussig, of Missouri.
Bert Milton Atkinson, of Georgia.
Edward George McCormick, of New York.

POSTMASTERS.

ARKANSAS.

Ruby Jones, Dermott.

CALIFORNIA.

Clyde F. Baldwin, Whittier.
Sheridan G. Berger, Ontario.
Oliver H. Duvall, Claremont.
George F. Hirsch, Longbeach.
Frank B. Mackinder, St. Helena.
Ada Mayes, El Monte.
James Mitchell, Dos Palos.
Samuel S. Wood, Rialto.

COLORADO.

Harry A. Cobbett, Cedaredge.
Judson E. Sipprelle, Grand Valley.

CONNECTICUT.

Jessie S. Rose, Manchester.

FLORIDA.

Noah Barefoot, Graceville.
Mary B. Bishop, Eustis.
Frank L. Collins, Winterhaven.
George E. Koons, Palmetto.

GEORGIA.

Wilie Mishoe, Soperton.

ILLINOIS.

Charles L. Blandin, Blandinsville.
Henry K. Brockway, Barrington.
Ira M. White, Walnut.

INDIANA.

Charles T. O'Haver, Lyons.
William C. Porter, Red Key.

IOWA.

William N. Oursler, Odebolt.

KENTUCKY.

Washington A. Huggins, Cave City.

LOUISIANA.

M. G. Neuhauser, Slidell.

MARYLAND.

Clarence H. Oldfield, Ellicott City.
Fred W. Wilson, Upper Marlboro.

MINNESOTA.

Frank Hagberg, Winthrop.
John Lohn, Fosston.
Thomas M. Paine, Glencoe.
Caroline E. Smith, Morton.
W. J. Stock, Coleraine.
Edward Wilson, Kasson.
Edward Yanish, St. Paul.

OKLAHOMA.

Harry Jennings, Claremore.
Joseph M. De Lozier, Sapulpa.
Joseph V. Martin, Lone Wolf.
Calvin S. Ward, Roosevelt.

PENNSYLVANIA.

Newton S. Brittain, jr., East Stroudsburg.
Fred G. Brown, Knoxville.
Henry M. Brownback, Norristown.
Harry B. Heywood, Conshohocken.
Oscar D. Schaeffer, Nazareth.
George F. P. Wanger, Pottstown.

UTAH.

Thomas Braby, Mount Pleasant.

WEST VIRGINIA.

Luther S. Montgomery, Montgomery.
Isaac I. Riley, Spencer.
William F. Squires, Parsons.

WISCONSIN.

Alexander Archie, Waterloo.
John W. Bell, Chetek.
A. B. Chandler, Beaver Dam.
Robert Downend, Osceola.
Herbert A. Pease, Cumberland.
George A. Packard, Bayfield.
Mildred Smith, Withee.
John H. Snyder, jr., Elkhorn.
David B. Worthington, Beloit.

## WITHDRAWALS.

*Executive nominations withdrawn February 17, 1911.*

Renaldo E. Taylor to be postmaster at Gridley, Cal.
Joseph H. Woollen to be postmaster at Mankato, Kans.

## HOUSE OF REPRESENTATIVES.

FRIDAY, *February 17, 1911.*

The House met at 10 o'clock a. m.

Prayer by the Chaplain, Rev. Henry N. Couden, D. D.

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

### WATER FOR IRRIGATION.

Mr. REEDER. Mr. Speaker, I desire to call up the conference report on the bill (S. 6953) authorizing contracts for the disposition of waters of projects under the reclamation act, and for other purposes, and I ask unanimous consent that the statement be read in lieu of the report.

The SPEAKER. The gentleman from Kansas calls up a conference report and asks unanimous consent that the statement be read in lieu of the report. Is there objection?

Mr. UNDERWOOD. What is the conference report?

The SPEAKER. The Clerk will report the title.

The Clerk read the title of the bill (S. 6953) authorizing contracts for the disposition of waters of projects under the reclamation act, and for other purposes.

Mr. UNDERWOOD. I will ask the gentleman from Kansas what is involved in this.

Mr. REEDER. It is to authorize contracts with outside parties, either private persons or corporations, so that they, by paying their proportionate per cent of the money required for building reservoirs and ditches, can carry the water that belongs to their land through those ditches.

Mr. UNDERWOOD. In the differences between the House and Senate is there any charge on the Treasury or any disposition of the public lands?

Mr. REEDER. There is not.

Mr. TAYLOR of Colorado. Mr. Speaker, I ask the gentleman——

Mr. REEDER. I will ask the gentleman to listen to the statement first.

The SPEAKER. The matter is not yet before the House. Is there objection to reading the statement instead of the report?

There was no objection.

The Clerk read the statement of the House conferees, as follows:

STATEMENT.

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to Senate bill 6953, authorizing contracts for the disposition of waters of projects under the reclamation act, and for other purposes, submit the following written statement in explanation of the effect of the action agreed upon by the conference committee and submitted in the accompanying report, as to each of the amendments of the House, viz:

On amendments Nos. 1, 2, 3, 4, 5, and 6: Provide for carrying and impounding water, as proposed by the House, instead of disposing of water, as proposed by the Senate.

On amendments Nos. 7 and 8: Make verbal correction in the text of the bill.

On amendment No. 9: Provides that the use of reservoirs as well as the construction of reservoirs may be contracted for, as proposed by the House.

On amendments Nos. 10, 11, 12, and 13: Make verbal corrections in the text of the bill.

On amendment No. 14: Gives to the bill the title proposed by the House.

W. A. REEDER,
RALPH D. COLE,
W. R. SMITH,
*Managers on the part of the House.*

Mr. MANN. Mr. Speaker, I think we ought to have an explanation of this report.

Mr. REEDER. As it passed the Senate this bill provided for the disposition of water. The House committee held that Congress does not have the right to provide for the disposition of water; that water is appurtenant to the land, and that whoever by a proper course secures the water for his land makes the water appurtenant to that land. Therefore we changed the bill so as to provide for impounding and carrying the water, rather than for disposing of it. The Senate conferees agreed with us on every proposition. There were some changes made, however, in the phraseology and punctuation, and those are all the changes that were made in the bill as it was amended by the House.

Mr. MANN. What were the differences between the House and the Senate?

Mr. REEDER. The Senate proposed to dispose of the water. The House simply provided that when a person had secured the water for his land by the ordinary process to impound and carry the water, and that we do not have the power to dispose of the water.

Mr. MANN. This is water in a reclamation project, is it not?

Mr. REEDER. No; it is excess water in a reclamation project.

Mr. MANN. Well, it is water in a reclamation project.

Mr. REEDER. No; it is not; because if it were in a reclamation project it would be necessary for that project; but it is water that is in a stream where, after all the water necessary is used in the reclamation project, a surplus remains. In many cases there is only one good place to impound the water, and by making the dam higher and permitting these people to pay for the extra expense and making the ditch a little larger they can carry water that does not belong to the project to land that the water does belong to.

Mr. MANN. This proposes to have the Government and private parties enter into a partnership, does it not?

Mr. REEDER. Yes, sir.

Mr. MANN. And under that the Government pays part of the expense of the dam and private parties pay the rest?

Mr. REEDER. Yes; that is partly what it is intended for; but the dam is to remain entirely under Government control.

Mr. MANN. We can all imagine how well the Government is likely to have its interests protected.

Mr. REEDER. The bill provides that no water can be carried or disposed of until sufficient water is provided or reserved for the whole of the irrigation project. After that, if there is surplus water and no good place to store it, then by paying the expense necessary to make the reservoir large enough to store it and to make the ditches large enough to carry it, the outside parties can carry their water through the ditches to their own ditches.

Mr. MANN. I remember the bill as it passed the Senate, and I remember the bill as it passed the House. Just what changes have been made by the conferees in the bill as it passed the House?

Mr. REEDER. Not any.

Mr. MANN. I have read enough to see that there have been some changes.