By Mr. LOUD: Petition of citizens of Averill, Mich., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. MAGUIRE of Nebraska: Petition of the Kearney County Farmers' Mutual Fire Insurance Co., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of Nebraska Woman's Suffrage Association, for certain amendment to proposed constitutional amendment; to the Committee on Election of President, Vice President, and Representatives in Congress.

By Mr. MANN: Petition of F. L. Gregson and others of Chicago, Ill., in favor of providing for building of one battleship in the Government navy yards; to the Committee on Naval Affairs.

By Mr. MONDELL: Petition signed by citizens of Laramie County, Wyo., urging the enactment of a parcel-post law; to the Committee on the Post Office and Post Roads.

By Mr. MORGAN: Petitions of citizens of the State of Oklahoma, for parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. NEEDHAM: Petitions of churches of Salinas and Stockton, Cal., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, memorial of California Club, relative to right of franchise; to the Committee on the Judiciary.

By Mr. PAGE: Petition of a church organization in the State of North Carolina, in favor of passage of the Webb bill, relative to shipment of liquor; to the Committee on the Judiciary.

By Mr. POWERS: Petition of citizens of eleventh congressional district of Kentucky, for parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of eleventh congressional district of Kentucky, for an American Indian memorial and museum building in the city of Washington, D. C.; to the Committee on Public Buildings and Grounds.

By Mr. PRAY: Petition of residents of Lonepine, Niarada, East Helena, Springdale, and Stevensville, Mont., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of Dillon, Mont., against parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petitions of residents of Culbertson, Glasgow, and Poplar, Mont., favoring amendment to the homestead law allowing three years' residence and extension of time for cultivation according to financial condition of homesteaders; to the Committee on the Public Lands.

By Mr. REILLY: Memorial of citizens of Naugatuck, Conn., for rejection of arbitration treaty with Great Britain, etc.; to the Committee on Foreign Affairs.

By Mr. SLOAN: Petition of citizens of Hordville, Nebr., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of Fairbury, Nebr., against parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. SMITH of Texas: Petitions of churches of Snyder, Tex., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. STEPHENS of California: Petition of Vernon Avenue Congregational Church, of Los Angeles, Cal., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. SULZER: Petition of W. G. Bates, of New York City, for passage of the militia pay bill; to the Committee on Military Affairs.

Also, petition of Polish National Alliance, opposing further restrictions in immigration laws; to the Committee on Immigration and Naturalization.

By Mr. TOWNER: Petition of John M. Hays and other citizens of Creston, Iowa, favoring the passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of citizens of Kent and Gravity, Iowa, against parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. WATKINS: Petition of citizens of Arcadia, La., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. WILDER: Memorial of citizens of Leominster, Mass., protesting against proposed peace celebration between the United States and Great Britain; to the Committee on Foreign Affairs.

By Mr. WILLIS: Petition of the Rev. A. M. Smith and 70 other citizens of Van Buren, Ohio, asking for enactment of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

SENATE.

WEDNESDAY, *March 6, 1912.*

(Continuation of legislative day of Tuesday, March 5, 1912.)

The Senate met as in executive session after the expiration of the recess, at 1 o'clock and 30 minutes p. m., Wednesday, March 6, 1912.

Mr. LODGE. Mr. President, I make the point that there is no quorum present.

The VICE PRESIDENT. The Secretary will call the roll.

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

Bacon	Cummins	McCumber	Richardson
Borah	Curtis	McLean	Root
Bourne	Dillingham	Martin, Va.	Shively
Brandegee	Fletcher	Martine, N. J.	Smith, Ga.
Briggs	Gallinger	Myers	Smith, Mich.
Bristow	Gardner	Nelson	Smith, S. C.
Brown	Gronna	O'Gorman	Stephenson
Burnham	Guggenheim	Oliver	Sutherland
Burton	Hitchcock	Overman	Swanson
Chamberlain	Johnson, Me.	Page	Thornton
Clapp	Jones	Penrose	Tillman
Clark, Wyo.	Lea	Percy	Warren
Clarke, Ark.	Lippitt	Perkins	Wetmore
Crawford	Lodge	Pomerene	Works
Cullom	Lorimer	Rayner	

Mr. LEA. I desire to state that my colleague [Mr. TAYLOR] is necessarily absent from the city.

The VICE PRESIDENT. Fifty-nine Senators have answered to the roll call. A quorum of the Senate is present.

GENERAL ARBITRATION TREATIES.

The Senate resumed the consideration of the treaties of arbitration between Great Britain and France and the United States.

Mr. BACON. Mr. President, it had been my purpose to confine myself in this discussion exclusively to a consideration of the question as to what amendments should be adopted if these treaties are to be put in a shape where they can command the support of those of us who think that in their present shape they are extremely objectionable and obnoxious to the provisions of our Federal Constitution. The wide range, however, of the discussion yesterday afternoon will make it necessary that I should go somewhat more largely into the subject than I otherwise would have done.

We have before us, Mr. President, two treaties in identical terms, although I believe the particular treaty under consideration is that proposed to be made with Great Britain. Naturally, sometimes, I presume, we will refer to them in discussion in the plural and sometimes in the singular, but if so, the reason will be understood.

There are, Mr. President, in fact, very few provisions in these treaties which are at all new. There has been a very active propaganda in the interest of the ratification of the treaties which has naturally by reason of its activity and urgency excited very widespread interest. Yet it is a fact which I think can be very clearly demonstrated that with the exception of the objectionable third clause to the third article there is little or nothing in these treaties which is not already found in existing arbitration treaties. If there is a difference in words between the existing treaties and the proposed treaties, it is true that in the application of the provisions of these treaties by the friends and advocates of the treaties to questions which may arise, there is practically little or no difference between the provisions found therein and the provisions already found in The Hague convention and in the 25 general arbitration treaties which we now have with other nations, 45 nations having been parties to The Hague convention, which is a treaty between these 45 nations making provision for the permanent court of arbitration for the settlement of international differences.

For instance, Mr. President, in the general treaties which are now in force and which were negotiated in 1908 there are found these words:

> *Provided, nevertheless,* That they do not affect the vital interests, the independence, or the honor of the two contracting States.

Those words are left out of the proposed treaties, those now pending before us, and yet when pressed by those of us who think that such matters should not be arbitrated except in cases where the Senate voluntarily consents thereto, the advocates of the treaties say that such questions would not be arbitrated under the proposed treaties. So that with this construction and application by the advocates of the proposed treaties there is in this particular no practical difference between the existing arbitration treaties we now have with 25 nations and the treaties now before us for consideration.

I simply present that by way of illustration. The illustrations could be extended, and they all of them are demonstrable

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of the fact that in practical application, at least so far as contended for by the friends of these treaties, all the material provisions, speaking generally of course, are in the main provisions which are drawn from existing treaties and from The Hague convention. There is no question that the language of these proposed treaties greatly enlarges the scope of the existing arbitration treaties, in that they embrace questions of national honor, vital interests, and independence of the Nation; but when we point out the danger of permitting outside parties to decide when we should be compelled to arbitrate such questions, they reply that the proposed treaties would not permit such questions to be referred to this outside commission.

The objectionable third clause to the third article of the proposed treaties is one which in terms provides that where there is a difference between this country and either of the other countries, parties to the treaty, as to whether or not a claim or a difference is arbitrable under the terms of the treaty, that that question shall be referred to an outside commission, and that that outside commission shall determine the matter, and, as those of us who object to this provision contend, shall determine it finally for the Senate. Whether the Senate should finally obey it or not, such, in our opinion, is the legal effect of the provision.

Before proceeding with the discussion I wish to call attention to some of the provisions of this proposed treaty which seems to have escaped the attention of Senators who have discussed the matter before the Senate.

It is a mistake, Mr. President, to contend that the matters to be submitted to the decision of this outside commission are only matters which are specified in article 1 of the proposed treaty. Article 1, the language of which has been emphasized as being that which is to limit and control the jurisdiction of arbitration and the jurisdiction of this joint commission for investigation, is in these words:

All differences hereafter arising between the high contracting parties, which it has not been possible to adjust by diplomacy, relating to international matters in which the high contracting parties are concerned by virtue of a claim of right made by one against the other under treaty or otherwise, and which are justiciable in their nature, etc.

But article 2 very largely increases the scope of the investigation. Article 2, which provides for the joint high commission, has this language in it:

The high contracting parties further agree to institute, as occasion arises and as hereinafter provided, a joint high commission of inquiry, to which, upon the request of either party, shall be referred for impartial and conscientious investigation any controversy between the parties within the scope of article 1, before such controversy has been submitted to arbitration, and also any other controversy hereafter arising between them even if they are not agreed that it falls within the scope of article 1.

That language is as broad and as comprehensive as language can possibly be framed to express an idea. It not only enlarges the scope of investigation of this outside investigation, but it enlarges it without limitation.

Another most important thing to be borne in mind in the discussion is that this joint high commission is not limited to a commission composed of nationals, as the term is used in diplomatic intercourse—that is, citizens or subjects of the one and the other of these countries—but there is a provision under which the President of the United States and the representative of the other government could form that commission in any way and of any persons whom they saw fit to agree upon. It is not provided in any manner that there shall be any representation by any citizen or officer of the United States upon that commission in case the executive branches of the two governments should see fit to constitute it otherwise. The language is this:

Whenever a question or matter of difference is referred to the joint high commission of inquiry, as herein provided, each of the high contracting parties shall designate three of its nationals to act as members of the commission of inquiry for the purposes of such reference; or the commission may be otherwise constituted in any particular case by the terms of reference, the membership of the commission and the terms of reference to be determined in each case by an exchange of notes.

That is without any limitation whatever. It can be done, as it is frequently done in cases of international arbitration, by the appointment of some crowned head of Europe. That is one of the most usual methods adopted in constituting boards of arbitration or boards having offices to perform in connection with arbitration. So that those two things are to be kept clearly in mind when we are discussing the question whether this treaty, in the first place, in the provision which I have specially in mind is constitutional, and, second, whether, if constitutional, it is safe for us to adopt it.

The field of arbitration is unlimited. The scope of subjects which may be subjected to arbitration are without any limitation whatever, subject only to such limitation as this outside commission may decide. The board of inquiry may be constituted of any foreigners that the executive heads of the two governments may see fit to select for that purpose, thus in such case organizing a board constituted of foreigners to determine what the Senate of the United States shall do under the bidding of this foreign board.

Another thing that I will simply mention in passing, that there is not any provision in the treaties as now framed under which the representatives of this Government, in case the board should be constituted of three nationals of each government, are to be confirmed by the Senate. That is simply a proposition to be attended to hereafter. It is not in the treaty as sent to us. Of course, in case the outside commission is composed of foreigners, there can be no provision for the confirmation of its members by the Senate.

Mr. President, from my view of the nature of this third clause of article 3 it would be impossible for me to vote for these treaties unless this clause were entirely eliminated, or unless—which is not the better plan, although it may be an efficacious plan—unless in the resolution of ratification this clause is entirely and utterly nullified. It will not do to qualify or to endeavor to lessen its force. For me nothing will be sufficient except an utter elimination of the third clause or an utter nullification and destruction of it in another way.

The third clause of article 3—I will read it, as we shall frequently have occasion to refer to it—after providing for the joint commission of inquiry, is in this language:

It is further agreed, however, that in cases in which the parties disagree as to whether or not a difference is subject to arbitration under article 1 of this treaty, that question shall be submitted to the joint high commission of inquiry; and if all or all but one of the members of the commission agree and report that such difference is within the scope of article 1, it shall be referred to arbitration in accordance with the provisions of this treaty.

My objection to that clause, Mr. President, is twofold: First, that it is absolutely unconstitutional and beyond the power of the Senate to agree to; and, second, that if it were not unconstitutional it would be unsafe for us to commit ourselves to any such obligation.

I will remark in passing that the friends of the treaties themselves differ as to whether or not this clause is binding upon the Senate. Some of them contend that it is not binding upon the Senate, and that the Senate would be as free to act after the adoption of these treaties in the consideration of any proposed treaty which had been reported upon favorably by this commission as it would be if the President should send a treaty to us without its ever having gone to a commission. There are others who, I think, very conclusively contend that the only proper construction of this clause is that the finding of this board of inquiry is to be obligatory upon the Senate when an issue of this kind is referred to it, and that the Senate could not disregard it without a violation of the terms of the treaty. My honored friend, who sits in front of me, the Senator from Maryland [Mr. RAYNER], I think, has presented a very conclusive argument upon that subject. Although he favors the treaties, he thinks that is the proper construction of them. Before I get through I am going to read a paragraph from his argument upon that subject, which will probably, in some degree, take away the necessity of my discussing it as fully as I otherwise would. The Senator from Illinois [Mr. CULLOM] and the Senator from New York [Mr. ROOT] in their joint report, while they do not discuss it in the same way as does the Senator from Maryland, and do not state it as explicitly, come to a conclusion in reference to these treaties which can, of course, have no possible consistency except in the recognition of the fact, as they evidently intend it shall be recognized, that the proper construction of this third clause is the same as that for which the Senator from Maryland contends, to wit, that the finding of this outside commission is binding on the Senate.

Mr. President, in order to simplify the argument, it is possibly better to discuss the subject from the standpoint of those Senators and from the standpoint of the construction which not only I myself put upon it, but which, I understand, those who agree with me in regard to the objectionableness of this clause also put upon it; in other words, to discuss it from the standpoint of the binding obligation of the third clause of the third article of these treaties.

Before I finish I intend to discuss the question as to what is the true construction of this objectionable clause, and it seems to me that from the language of the clause itself and from the comparison of that language with the corresponding article in The Hague treaty, from which it is taken and to which an addition has been made, there can be no legitimate deduction other than that arrived at by the Senator from Maryland, the Senator from Illinois, and the Senator from New York, that it is a binding obligation on the Senate as expressed in the treaty.

Mr. President, from the standpoint that it is a binding obligation, and intended to be a binding obligation upon the Senate, to delegate to this outside commission the power to decide the

question whether or not a particular difference is one which is justiciable under the treaty and is one which the Senate will be compelled under the treaty to submit to arbitration, I have no hesitation in the world in the conclusion that it is utterly and absolutely unconstitutional.

The language of the Constitution in regard to the making of treaties, referring to the President, is very brief. It is as follows:

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.

That language is also without limitation as to the duty of the Senate. It does not say that the President shall have the power to make a treaty, provided two-thirds of the Senators present advise and consent as to a part of the treaty, but necessarily the requirement is that they advise and consent to every part of the treaty, certainly every essential part of the treaty. It is a simple question whether or not the preliminary, the main, question as to whether arbitration shall be entered upon for the settlement of a certain international difference is or is not an important part of a treaty. I assert without fear of successful contradiction that in the large majority of instances of international difference where arbitration is proposed the controlling question is whether the United States will or will not submit to arbitration the settlement of such international difference. It is not only the controlling question, but in the large majority of instances of international differences and in almost every one that can be conceived of it is, where arbitration is proposed, the important and essential question.

It is a comparatively slight and small matter to formulate the terms of a treaty after it has been determined to make such treaty. Anybody with good business capacity can do so.

After it had been determined upon to make a treaty of arbitration, any committee of the Senate could retire and in a little while formulate satisfactorily the terms of a treaty, but the question as to whether or not a certain international difference shall be submitted to arbitration or whether it is a matter which shall not be submitted to arbitration is a question which requires the thought and the study and the most careful consideration of the entire Senate, and one which the Constitution of the United States provides shall not even be determined by a majority of the Senate, but that two-thirds of the Senators present must concur before so important a conclusion shall be reached and it be made the supreme law of the land. To say that that question shall be determined by this outside commission and not by the Senate and against the wish of the Senate is to violate the command of the Constitution that two-thirds of the Senate shall determine it.

Mr. President, I am going to run hastily through some of these questions which could be presented for arbitration under these treaties. The Senator from Massachusetts [Mr. LODGE], in his able and comprehensive speech on this subject, enumerated a number of them for the purpose of calling attention to the fact that there were questions that we would not submit to arbitration. I am going hastily to run over those mentioned by him, and possibly some others. I shall mention them not only for the purpose of presenting to Senators the fact that they cover questions that we would not be willing to submit to arbitration, but also to present to Senators this question: When it is proposed to arbitrate these questions, is the question whether or not we will submit them to arbitration the main and controlling question which the Senate would have to consider? That question is the one which these treaties provide shall be determined by somebody else and not by the Senate, and even over the objection of the Senate.

Of course, Mr. President, if the President and the Senate, representing the Government of the United States and the sovereign power in this particular, shall make these treaties with Great Britain and France, it must make similar treaties with any other nation that demands that it may have the opportunity to be made a party to such an agreement with the United States. China, Japan, or any other country can not be refused, and therefore the list of questions which may arise is not confined to the list of questions which may arise between this country and Great Britain or this country and France, but we have to consider questions which are likely to arise between this country and any other country, and we have to consider what would be our attitude if such questions were presented.

Take some of the questions which the Senator from Massachusetts enumerated; for instance, the question of immigration, one of the most important questions with which this country has to deal, a question absolutely vital to some sections of the country, especially to the States of the Pacific coast.

The citizens of those States could not exist in the absence of the restriction of Asiatic immigration; they would soon cease to be the possessors of that soil, and that would soon be a section in which no white man could live, except as the few live who go over to China and Japan for the purpose of prosecuting certain industries. If, Mr. President—which is not unlikely at all, for we know the difficulties we have had in connection with the immigration question so far as our western coast is concerned—if China or Japan should be a party to a treaty like this, and should then demand of us that the question of immigration, and the general admission of their people be submitted to arbitration because of a difference between us in regard to it, and that question was presented to the Senate in a proposed treaty with China or Japan, would not the question whether we would submit it to arbitration be the main question for our consideration? If it would be the main question and an essential question, then in such a proposed treaty could the Senate, under the Constitution, leave it to an outside commission to determine for the Senate and against its will that that question should be submitted to arbitration?

I am not going to omit, Mr. President, and shall attend to it before I finish, a consideration of the issue which has been raised by some of the reports submitted by the minority of the Foreign Relations Committee, and also by Senators on the floor, the question of the extent to which the authority proposed to be given to the outside commission is a delegation of power as compared to the statutes conferring powers upon the Interstate Commerce Commission to make reasonable regulations, and upon collectors of customs to execute the tariff law, and so forth and so on; so that Senators, as I go along, will not consider that I am evading that part of the question. I may have to take that up a little later than I find it convenient to do now in this particular part of the argument. Would or would not that be the main question, Shall we submit the matter of the control of immigration to arbitration; and if the main question, under the constitutional limitation, coupled as it is with an obligation and a command, can we say that another power, another body than the Senate of the United States, can take our place and speak for the Senate on that grave question, and determine for two-thirds of the Senate whether that main and essential part of the proposed treaty shall be advised and consented to by the Senate?

I am not talking, Mr. President, as to whether or not these things are likely to happen. That is not the question for us to consider. It is a question to consider if we are considering the matter simply from the standpoint of policy and expediency, but from a legal standpoint the question is a question of power; it is a question of duty; it is a question of obligation; it is a question of adhering to and obeying the solemn mandate of the Constitution.

Mr. President, while I am on this subject I would say that that is not confined to the Pacific coast. We have a great problem in the East as to immigration. We have but recently taken the position that we have a right to be heard by another government as to the right under an existing treaty of our citizens to go into that country, and without stopping to elaborate it, it is a very easy matter to anticipate that the time will come when a similar demand may be made upon us by a foreign nation. When such demand is refused by us, and a demand for arbitration shall be made, when a treaty providing for such arbitration is presented, it will be the main question for us to determine, in view of the horde which comes annually upon us, and which our people now are trying so strenuously to resist and to regulate and to control, whether or not we consider that a question to be arbitrated. The main question in any such proposed arbitration would be whether we would arbitrate it or whether we would not arbitrate it, whether we would submit to the judgment of another party to say whether we should, against our will, arbitrate it. If we permitted an outside commission to determine that main question, we would be delegating to that outside commission the duty and the power to practically determine whether the Senate should advise and consent to the most important part of a proposed treaty. Is argument necessary to show that such delegation would be unconstitutional?

I omitted to speak, while I was discussing matters which interested the Pacific coast, of the question of schools in the States and who shall enter them. It is a question which certainly is within the range of probability—not possibility, but probability—to come up under the demand that it shall be settled between this country and other countries. We have had an instance of it within the past four years. We have had within the past four years a demand of the Japanese people that their young people shall be admitted to the white schools of California, and they claimed that they had that right under an existing treaty.

Mr. President, there is a question which would come up for arbitration, a question likely to come up for arbitration, a question which has heretofore been raised and which was settled without arbitration or rupture only by the most delicate diplomatic management, and one which in the absence of that diplomatic management would have led, possibly not to war, but to an interruption of the friendly relations between this country and Japan, a question which naturally Japan would have desired to settle by arbitration. And in such case the question is this: If Japan had come and demanded arbitration, and we were considering the question whether or not we would consent to arbitration in that case, would or would not the question whether we should arbitrate that question or whether we would settle it for ourselves without arbitration be the main question that the Senate would be called upon to pass upon? Could the question whether we would consent to arbitrate that question have been constitutionally delegated to an outside commission, clothed with power to determine for the Senate that it should consent to such arbitration even though the Senate was unwilling to arbitrate it and insisted that it was not a matter to be properly arbitrated? And yet if it be true that this provision in the third clause of the third article is one which would be obligatory upon the Senate, it is necessarily true that that question when referred to a board of inquiry is one which would have been settled by the board of inquiry in case the Senate was unwilling to do it, and in which we would have been compelled to go into an arbitration on that subject or else to have violated the treaty.

Now, Mr. President, another one, which is likely to occur. Senators scout the idea that the Monroe doctrine can ever be brought up as a matter of arbitration—the question of our right to plant ourselves upon it and demand that other nations shall respect it. I do not suppose that any nation is ever going to send its envoy to this country to insist that this question shall be arbitrated as an abstract or moot question, but occasions may arise when it will be a question in an arbitration that is not an abstract one.

Soon after I came into the Senate I witnessed a very remarkable scene in this Chamber when President Cleveland sent his message to the Senate in regard to the Venezuela matter. That was a case where Great Britain claimed a right to territory in Venezuela and was proceeding to enforce her claim. The United States had no property in the welfare of Venezuela. They had no alliance with Venezuela. The United States Government was not the suzerain of Venezuela. Except so far as it fell within the influence of the Monroe doctrine, the United States Government had nothing more to do with Venezuela than it had to do with England, and yet under the claim of a right to assert the Monroe doctrine, President Cleveland notified Great Britain that the United States would not consent that Great Britain should take this territory from Venezuela.

That, Mr. President, was a very peremptory assertion on the part of the President, and I am bound to say that I think it was only the moderation and conservatism of Lord Salisbury, who was then the Premier of Great Britain, which prevented a rupture between these two Governments. It was arranged in a way that it was practically arbitrated without challenging our right to assert the Monroe doctrine.

But suppose this proposed treaty had been in force then and Great Britain, with no spirit of concession and a determination to assert her title to that territory, had said to the Government of the United States, "We demand arbitration of that question. We demand arbitration of the question whether you have the right to interfere by reason of the Monroe doctrine which you invoke." Would not that have brought the question of the right of the United States Government to assert the Monroe doctrine directly within the province and jurisdiction of any court of arbitration that might have been secured for that purpose? And if we, Mr. President, had had presented to us at that day the question, with a demand on the part of Great Britain that that particular question which interfered with the assertion of her title should be arbitrated, to wit, the right of the United States Government to interpose on the ground of the assertion of the Monroe doctrine—if that had been the case, and there had been presented to the Senate the question, "Will you consent to arbitrate the right to assert the Monroe doctrine?" the main question would have been not what the terms of the arbitration should be, but the main question would have been, "Will the United States, after a hundred years of the assertion of this doctrine, submit that the right to assert it shall be arbitrated and determined by any court of arbitration?" If the main question in the proposition for arbitration which might have then been submitted, could the Senate constitutionally have submitted the determination of that main question to an outside commission?

Mr. President, I need not go further, except for the purpose of illustration. If this treaty had been in force, and we had determined that we would not submit to arbitration our right to assert the Monroe doctrine, we would, in making that decision, have declined to make a treaty for such arbitration. What next?

England would have then demanded that a court of inquiry should be arranged for, should be constituted to determine whether the Senate had decided that main question of arbitration or no arbitration properly. In such circumstances, if we parted with our power to decide that question and permitted that court of inquiry to decide it for us, whether we would arbitrate our right to assert the Monroe doctrine, we would be abdicating our power which the Constitution devolves upon us to determine, with other questions, that most important of all questions in the political policy of this Government.

I will not amplify that, but it has been insisted with so much earnestness that the question of the Monroe doctrine can not be brought into arbitration under these proposed treaties now being considered that I thought it well to make that illustration, not of a supposititious case, but of an actual historic occurrence of which we have already had the experience and in which we might have been brought, if these treaties had then been in existence, and if the demand had been made by Great Britain for a decision by this outside commission, to a direct consideration of the question whether or not in the assertion of the title of Great Britain to a part of Venezuela the United States had the right by reason of the assertion of the Monroe doctrine to undertake to interfere.

If it had been determined that the United States did not have the right to assert the Monroe doctrine for the purpose of preventing Great Britain from taking part of the territory of Venezuela, we would either have had to submit to that or go to war or submit to a permanent rupture of the friendly relations between ourselves and Great Britain.

In passing, I will say that did time permit I would say something more about the school question on the Pacific coast for the purpose of illustrating the course which this arbitration might take in such a case, having reference in mind to the attitude of the then President of the United States with respect to that question, in which it was his opinion that Japan did have the right to insist that Japanese youths had the right under our treaty with Japan to enter the white schools of California.

Now, Mr. President, I come to another question that is somewhat practical in its nature—as to the power of another Government to make a demand upon this Government on account of the claim of any of its citizens or subjects that they held bonds of one of the States of the United States which had matured and the payment of which was refused.

The Senator from Mississippi [Mr. WILLIAMS], who urged that question with earnestness yesterday or made objection to the proposition, was not certain when I called attention to the fact that the proposed treaty does not limit questions which may be submitted to arbitration or submitted to the joint court of inquiry to those which are enumerated in the first article, but in the second article that scope is enlarged and is made to apply to all matters of difference. The joint high commission does not make any award at any time. The joint commission of inquiry has the power expressly conferred upon it not only to inquire concerning the matters enumerated in the first article, but also any other controversy hereafter arising between them, even if they are not agreed that it falls within the scope of article 1.

I want to come first to the question whether any demand can be made upon the United States on account of the indebtedness of a State—if the terms of the treaty are sufficiently broad to embrace all matters of difference between the United States and the countries with which we have treaties. It is true such indebtedness is not the debt of the United States, but it is also true that under our dual system of government it is the debt of one of our sovereignties, which sovereignty can not enter into direct relations with a foreign power and with which sovereignty no foreign sovereignty can enter into diplomatic relations by negotiations or otherwise. Can it be contended for a moment that when the Federal Government was formed, and the right of a State to enter into negotiations or diplomatic relations with a foreign State was prohibited and denied to it, when the entire power as to everything which relates to that State and a foreign Government, so far as negotiations were concerned or adjustments were concerned, either to be proposed or concluded, was delegated to the Federal Government, when the barrier has been erected around a State so that no foreign power can reach it, when we have even put in the Constitution in the eleventh amendment that no foreign citizen shall sue a State—can it be contended that the effect of that was forever

to relieve a State from all obligations to foreign countries by reason of what might be done or undertaken to be done by a State, or to forever bar a foreign State from any possibility of having redress for anything that may happen to it or its citizens or subjects through a State of the United States?

Mr. President, that is a proposition which it seems to me impossible for anyone to conceive of as correct. The United States Government is clothed by the States with all power to deal as to any matter that concerns a State with a foreign Government, and the State is prohibited from dealing with any foreign Government except through the Federal Government. Not only so, but every foreign Government is barred from attempting to deal with a State, or attempting to seek redress from a State, on account of any obligation of any character whatsoever. The Federal Government has been clothed by the State, I repeat, with the jurisdiction or authority to represent it in all matters which concern it and a foreign Government; and yet if the contention is correct, that the United States can not be called to account for the action of a State, that arrangement would be one in which a State would be forever protected in any act which might concern a foreign nation or the subjects or citizens of a foreign nation. It would be forever and for all time panoplied and fortified, so that it might commit any act of injustice or deny any obligation and there would be no redress. Mr. President, it is an utter impossibility that such can be the case.

Now, it is another matter as to what would be the effect of an arbitration between the United States and a foreign Government in which it should be found that the State ought to pay the bonds. The Senator from Mississippi asked, How would the Federal Government enforce it? Mr. President, if the award of arbitrators were never enforced, if there were never an effort to enforce it, under the circumstances of the creation of these discredited bonds the subject is a matter, as was said by the Senator from Massachusetts [Mr. LODGE], that concerns ourselves alone. It is a sealed book, which is forever shut up and closed. It is a political matter growing out of a time of great political disturbance—almost anarchy. The fundamental proposition upon which the Southern States base their refusal to pay these bonds is that they are not their bonds; that they did not make the bonds; that there were others in high places who had usurped authority for which they were in no manner responsible; and that they were not liable for their acts except in so far as they had received the benefit of those bonds.

As I have had occasion to say before, Mr. President, there are not simply safes and vaults full of these bonds; there are absolutely cords of them, which could be piled up like corded wood, to pay which would bankrupt the Southern States. It is a question that is ended. It is a question which has been ended not only to the satisfaction of the Southern people, but it has been ended to the satisfaction of the Northern people; and the evidence of it is that the credit of the Southern States is to-day practically as good as the credit of the Northern States upon the exchanges of the great metropolis of the North. I will ask my colleague what the bonds of the State of Georgia sell at. I have forgotten.

Mr. SMITH of Georgia. About par, the 3 per cent and 4 per cent bonds. It depends on the length of time they run.

Mr. BACON. Above par?

Mr. SMITH of Georgia. The 3 per cent bonds sell at par.

Mr. BACON. My colleague, who has recently occupied the executive chair of my State, tells me that upon the exchange of New York a 3 per cent bond of the State of Georgia will sell at par, some variation being found according to the length of time it has to run.

But, I repeat, this question has been settled, not only to the satisfaction of the southern people, but it has been settled to the satisfaction of the Nation at large. It is regarded as a closed incident, and it matters not whether the result of such an arbitration should ever exact one dollar of payment from either one of those States; it is a matter we do not wish that any outside party should ever have the right to say to the Senate of the United States, you must arbitrate that. I have no fear; I would be willing that any southern Senator should sit silent and let the question come up before Senators from the North as to whether or not they would agree that the question of the liability of the States on those reconstruction bonds should be submitted to arbitration, and I am sure they would say no. When that question was submitted to them the most important question would be, Will you submit it to arbitration? not the terms of arbitration. Mr. President, that is distinctly a justiciable question. The Supreme Court of the United States has determined that the question of the liability of one of these State's government bonds is a justiciable question. If submitted to us we would say no. Submitted to a board of inquiry, they would say yes.

Mr. WILLIAMS. If the Senator will pardon me, I do not think we would say the question was not justiciable. We would say it was a question not of difference between the United States Government and the people. Of course, the question is justiciable.

Mr. BACON. I have endeavored to go over that question with the Senator from Mississippi. He and I differ on that point. The Senator from Mississippi thinks that there can be no difference between a foreign country and the United States as to the claim of a citizen or subject of that foreign country against one of the United States. I hold that the Federal Government represents necessarily the State in such controversy and that it is a matter of difference between the Federal Government and the foreign Government. It may not be a debt of the Federal Government and is not a debt of the Federal Government, but when a demand is made upon the Federal Government to arbitrate that question the Federal Government could not reply, "It is the debt of a State and not the debt of the Federal Government," because the Federal Government represents the State in all the relations between that State and a foreign Government.

Mr. WILLIAMS. Will the Senator from Georgia pardon one more interruption?

Mr. BACON. Certainly.

Mr. WILLIAMS. The Senator from Georgia said the United States could not make that reply. I answer the United States has replied that way, and a joint mixed commission decided that the claim of the United States was correct.

Mr. BACON. I am going to come to that. I have the original article of agreement between the Government of the United States, and that was put upon a technicality, which I will come to a little later. I have the book right here and I shall try not to omit it.

Mr. President, that is not a dead question. I do not know this matter personally of which I am now to speak; I can not assert it personally; but I do assert it as a fact of which I am as confident as I am of anything else that I have not personal knowledge of that there is now in the State Department, or has been in the recent past, one or more demands or suggestions upon the part of foreign governments upon the Federal Government to take up this question of the bonds of the Southern States which were not paid. If I am wrong about that, I invite contradiction of it, not only here but elsewhere. I charge it, at the same time stating that I do not say it from personal knowledge, but I do it from confidence in the correctness of the statement, that there are to-day in the State Department, or have been recently, in Washington, the demands, actual or tentative, of foreign governments upon the Federal Government on account of the alleged indebtedness of these States on those repudiated bonds.

I have here a little clipping which has been handed to me by a brother Senator, which he cut out of a St. Louis paper, and which I will read. It is brief. It is not an old matter by any means. I have not the date, but it is very recent:

MISSISSIPPI STATE BONDS ISSUED TO PLANTERS' AND UNION BANKS.

The Corporation of Foreign Bondholders of London and Messrs. H. B. Hollins & Co., of New York, have consented to act as readjustment managers for the benefit of the holders of the above-described securities, who may deposit their bonds under the terms of an agreement provided for that purpose.

Copies of the documents will be furnished on application and temporary certificates will be issued in exchange for deposited securities. In the interest of the bondholders it is important that deposits be made within the next 30 days, and the readjustment managers do not undertake to adopt any action in reference to the above securities until they are empowered by a majority.

THE CORPORATION OF FOREIGN BONDHOLDERS, LONDON,
H. B. HOLLINS & CO., NEW YORK,
Readjustment Managers, London-New York.

EDWARD L. ANDREWS, *Counsel.*

Mr. President, those of us who have for some years past been engaged in the consideration of questions growing out of the condition of the Central American States and their indebtedness recognize these names signed to this advertisement. That is not a fictitious advertisement. They are people who deal in all these classes of discredited securities, and the very same men have come up here, or at least their names are found in these books, giving information concerning discredited bonds of various countries. I do not know that they have ever appeared before us, but they have been concerned in all these questions about the readjustment of the debts of the Central American States. It is not a myth; it is an active organization, and here they are advertising in the papers of the United States for these southern bonds for the purpose of making demands and claims. Can anyone doubt, if this treaty were ratified with this power given to this outside commission to determine what subjects shall be arbitrated, that there would be a speedy movement to

arbitrate the question of the liability of these States to pay these hundreds of millions of fraudulent bonds.

I care not, Mr. President, whether it is possible to figure out in what way the State will ever be made to pay these bonds or not. I say this is a matter that we do not wish to open. We do not wish to be put in a position where, when the Senate says, as I know it would say, that it will not submit that question to arbitration, we can be compelled to say that it shall go to an outside commission, and that we shall have to abide by what that commission may say in regard to the question whether the question of the liability of my State or of another State shall or shall not be submitted to arbitration.

Mr. President, my friend the Senator from Arkansas [Mr. CLARKE] reminds me of a matter which possibly I might have overlooked but for his having done so, as I have certainly passed that part of the argument. He reminds me of the fact that foreign Governments have made demands upon the Federal Government not simply for the payment of contract obligations, but for the payment of damages on account of injuries inflicted upon its citizens. The Senator from Mississippi knows that fact. It occurred in a case from Louisiana and also in a case from Colorado, and possibly another; I am not sure. I was asking some Senator to-day whether any demand had ever been made on this Government on account of the slaughter of Chinese on the Pacific coast. As stated by the Senator from Arkansas, the Government of the United States did actually pay damages in the case of the demand on account of what occurred in Louisiana, and the Government of the United States did so in recognition of the fact that while it was not the act of the United States Government, while it was not an act on account of which the United States could as a Government be made responsible in money, it was the act of one who alone could be represented in negotiations between it and another Government by the authority of the United States. It was very generous on the part of the United States. It paid it, and has not exacted any repayment from the State. I presume if it had requested payment from the State the State would have paid it. The amount was not very large, and even if it be large, and in its power, the State would have recognized the fact that the Federal Government in that negotiation had represented it and had done the best for it it could. It would recognize the fact that if it were not a part of the Federal Government a demand would have been made upon Louisiana and not upon the Federal Government, and if an independent State it would have had to respond to that demand or stand the consequences, whatever they might be, even to the point of a rupture of friendly relations, and possibly war.

I have here a copy of the Platt amendment, a compliance with which we imposed on Cuba. I will remark that I possibly am consuming more time than I should in the details of this discussion, but I want to bring to the attention of the Senate as strongly as I can, in a practical way, the consideration and decision of the question whether the determination as to whether an arbitration shall or shall not be entered upon is an important part of the duty of assenting to a treaty providing for an arbitration. If it is, then we can not ourselves escape the responsibility of such assent and delegate it to some one else. To do so is to violate the command of the Constitution that before a treaty can be made the Senate by a two-thirds vote of those present must advise and consent to it.

I have here, Mr. President, the Platt amendment and also the declaration of war of the United States against Spain, in which there is incorporated the famous Teller resolution. At that time it was not known what was going to be the effect of a declaration of war against Spain. There was the gravest apprehension in Congress, and to my personal knowledge, from his own utterances made to me by the President of the United States that the act of the Congress in declaring war against Spain would be construed by the European Governments as a purpose to aggrandize the United States, to take a means to acquire the territory of Cuba for the benefit and advantage of the United States and for their enrichment. It was an important matter to disabuse the minds of European Governments of that suggestion. It was important to stand before the world with a solemn assertion that we entered upon that war not for aggrandizement nor for the enrichment of this country, but for the purpose of a great accomplishment, of terminating an intolerable condition in Cuba, and in the securing to that country of the peace and good order which would make it possible for this country to have it live by the side of us in such a way as would not be detrimental to the interests and the welfare of the United States.

For the purpose of setting ourselves in a position beyond criticism in that regard, when we broke the peace of world, in that most solemn of all solemn moments that can come to the Congress of the United States, we incorporated this resolution, known as the Teller amendment, in the declaration of war. I should have mentioned that this matter in regard to Cuba was brought up yesterday by the Senator from Michigan [Mr. SMITH], and I am simply pursuing it a little further. After the other resolutions, the fourth is this:

> That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.

Now, Mr. President, we entered upon that war not knowing what would be its cost in blood and treasure; we entered upon that not knowing but that it would embroil us in war with all Europe; we entered upon it because of the great necessity that we should do so to terminate a condition at our doors which could not be longer tolerated; and yet, after the conclusion of that war, although we had made that pledge in its declaration, it was realized that we could not stand by that declaration. It was realized that we could not safely turn over that island to the unrestricted control of the people of Cuba, and that in order to insure that there should be in the future the continued condition of affairs for the accomplishment of which we had gone to war it was necessary to violate that pledge. While we did not violate it in spirit, so far as concerns practical autonomy for Cuba and so far as it relates to any effort to aggrandize ourselves was concerned, or to enrich the people and Government of the United States, so far from leaving that island to the control of its own people we did, in what is known as the Platt amendment, lay down the most stringent restrictions upon freedom of action by their Government. They are too long for me to read, but I may possibly, with the permission of the Senate, insert at least a part of them. In that Platt amendment there are eight requirements and restrictions made by the United States upon the Cuban people and their Government. I will read the first one, at least, because that is one which illustrates the fact that a serious question may be raised between Cuba and the United States, or it may be raised between a foreign Government interested in Cuba and the United States, on account of its inconsistency with the pledge in the Teller amendment. The first paragraph of the Platt amendment is this:

> That the Government of Cuba shall never enter into any treaty or other compact with any foreign power or powers which will impair or tend to impair the independence of Cuba, nor in any manner authorize or permit any foreign power or powers to obtain, by colonization or for military or naval purposes or otherwise, lodgment in or control over any portion of said island.

Mr. President, there can be no question of the fact that that requirement, as well as the others that follow it, is in absolute violation of the pledge which the Government of the United States made when it declared war against Spain.

Mr. SMITH of Michigan. Mr. President——

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

Mr. BACON. I will; but I had not finished the statement I intended to make in that regard. If the Senator will suspend for just a few moments, I will yield to him with pleasure a little later.

The application I want to make of that, Mr. President, is this: Cuba is an independent country in all respects, except so far as we exercise an authority which may be termed a suzerainty. She has her minister here; we have our minister there; she has ministers in all the courts of Europe, and the courts of Europe have their ministers in Cuba. So that, so far as autonomy goes, she is an independent country. It is an easy matter for Cuba to say that this restriction is in denial of the obligation which we imposed upon ourselves when we declared war against Spain, and to demand that she have the right to enter into treaties, such as are prohibited in the Platt amendment, or, what might be more practical, to sell to a foreign government a naval station on the island of Cuba. She might demand arbitration of that. She could demand it if she had a treaty with us. If that question came here after we had spent millions of dollars for the purpose of bringing about the present conditions in Cuba and for insuring the future—if that question came here and we were to refuse to arbitrate the question with her, she could, under the terms of such a treaty as that now before us, demand that it be referred to the outside commission to say whether we should yield to her demand and make an agreement of arbitration against our will. In thus permitting the outside commission to dictate to us under such circumstance that we should against our will agree to arbitrate with Cuba our right to enforce the Platt amendment, we would have abdicated the power and the duty and the obligation which the Constitution imposes upon us, that we shall advise and consent to a treaty in every part. The main question would have been, Will we arbitrate our right to control Cuba as to her permission to make a sale of a naval station

to Great Britain or to France or to Germany or to Austria or to any other Government? The power to determine whether we would arbitrate that question we could not constitutionally delegate to an outside commission.

Mr. President, there is another class of cases that I think ought to appeal to Senators more strongly than the class I have already enumerated.

Mr. SMITH of Michigan. Mr. President——

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

Mr. BACON. I beg the Senator's pardon. I now yield to him with pleasure.

Mr. SMITH of Michigan. Mr. President, before the Senator from Georgia leaves the Cuban illustration, I desire to emphasize and put the question to the Senator from Georgia whether the close proximity of the Bahama Islands, in which England is directly interested, to Cuba and Cuba's condition were such as to jeopardize in any way the health or the prosperity of the Bahama Islands because of Cuba's inability to contract obligations beyond the limitations fixed by the United States—is not a question in which England would be directly interested? And, under the general power of clause 3 of article 3 of the treaty we are considering, could she not instantly put that question up to an international tribunal, to determine whether or not her interests were vital, without any consent whatever from us?

Mr. BACON. I think the suggestion of the Senator from Michigan is entirely apt and furnishes another strong illustration of the principle for which I am contending.

I was about to say, Mr. President, that there is another class of questions which can be the subject of a demand for arbitration, which, it seems to me, would appeal still more strongly to Senators, especially to the two distinguished Senators who now sit in front of me and who are the advocates of this clause of the treaty—the Senator from Mississippi [Mr. WILLIAMS] and the Senator from Maryland [Mr. RAYNER]. I mention them because I have heard the same thing from each one of them as to the limitation of the power of the Government in making treaties, in which I fully agree with them both. The importance of the presentation I am about to make is emphasized by the fact that it is a question, Mr. President, upon which all lawyers are not agreed, as to how far the power of the Federal Government extends in the making of treaties under the Constitution of the United States.

For instance, in a work upon the treaty-making power of the United States, written by Mr. Charles Henry Butler, of New York, is found the following statement of his opinion and conclusions as to the extent of the power of the United States in making treaties, which is in direct conflict with the views entertained by myself and the Senator from Maryland and the Senator from Mississippi:

> First. That the treaty-making power of the United States, as vested in the central Government, is derived not only from the powers expressly conferred by the Constitution, but that it is also possessed by that Government as an attribute of sovereignty, and that it extends to every subject which can be the basis of negotiation and contract between any of the sovereign powers of the world, or in regard to which the several States of the Union themselves could have negotiated and contracted if the Constitution had not expressly prohibited the States from exercising the treaty-making power in any manner whatever and vested that power exclusively in and expressly delegated it to the Federal Government.
>
> Second. That the power to legislate in regard to all matters affected by treaty stipulations and relations is coextensive with the treaty-making power, and that acts of Congress enforcing such stipulations which, in the absence of treaty stipulations, would be unconstitutional as infringing upon the powers reserved to the States, are constitutional, and can be enforced, even though they may conflict with State laws or provisions of State constitutions.
>
> Third. That all provisions in State statutes or constitutions which in any way conflict with any treaty stipulations, whether they have been made prior or subsequent thereto, must give way to the provisions of the treaty, or act of Congress based on and enforcing the same, even if such provisions relate to matters wholly within State jurisdiction.

To these opinions and these conclusions the Senator from Maryland and the Senator from Mississippi do not assent. From the standpoint of the Senator from Maryland or from the standpoint of the Senator from Mississippi and from my standpoint—and I think from the only correct standpoint—the Federal Government has no right to make a treaty except in pursuance of the Constitution of the United States. From my standpoint and from the standpoint of each of these honorable Senators, the Federal Government has no right to make a treaty which shall control the police powers of a State. The Supreme Court of the United States has determined solemnly that the police jurisdiction of a State is something which belongs to that State; that it does not acquire it from the Constitution of the United States; that it does not in any manner get it from the United States; but that it is a power which each State had before it entered into the covenant of the Constitution, and a power which it never surrendered, and therefore a power which belongs to it by the most sacred of all titles.

But, Mr. President, suppose a question should arise between this Government and a foreign Government, and a difference grew out of it which should involve the right of the Federal Government to control police powers in the interest of the foreign Government; suppose, as in the case of the schools in California, under a treaty already existing a foreign government—the Government of Japan in that instance invoked the existing treaty, and said that under that treaty guaranteeing to its citizens certain rights in this country, they had the right to enter into the public schools of California our reply would be this: That can not be so, because the treaty can not be construed to apply to that which is beyond the constitutional powers of the United States; being beyond the constitutional power of the United States, the United States never had that in contemplation and could not if it would give that right to Japan by treaty. There is in consequence no such obligation on the part of the United States to enforce under that treaty the right of Japanese youths to go into the white schools of California. Suppose that question comes here and the President of the United States believes who sends it here, as the then President of the United States did believe, that under the treaty with Japan the question of the right of a Japanese youth to go into a school in California was involved and included. Suppose the President of the United States sends a proposed treaty for the purpose of arbitrating that question and the Senate of the United States refuses to arbitrate it, declines to arbitrate it. It goes, under the terms of such a treaty as that now pending, to the court of inquiry. There is nothing in the proposed treaties which limits the question of difference to the executives. It also embraces differences in which the Senate may be a party. The treaty with Japan providing for arbitration comes to the Senate and the Senate says: "No; we do not consider that a justiciable question; we do not consider that under the Constitution of the United States there can be any such interpretation of that treaty as will justify an arbitration of the right of Japanese youths to enter the California schools."

The other Government says, "That being so, we demand that that question go to the joint high commission of inquiry," and the joint high commission, agreeing with the view expressed by Mr. Butler, which I have quoted, determines that it is within the power of the Federal Government to make a treaty which shall admit Japanese students into the white schools of California, and that the Senate should agree to arbitrate the question, and it comes back here. Now, the case of the Senator from Mississippi and the case of the Senator from Maryland are somewhat different, because the Senator from Mississippi says that we are not bound by that conclusion of the commission, while the Senator from Maryland says that we are. It comes back here, under the opinion of the Senator from Maryland, with a conclusive obligatory finding on the part of this outside commission. Has the Senator from Maryland, or any other Senator who thinks that way, the right to say that he will yield his judgment as to a constitutional power of the Federal Government in the making of a treaty affecting the schools of a State because the joint high commission decides that the Federal Government has that power? No, Mr. President; the Senator from Maryland would not do so; but, according to the logic of his case, he would have it to do or break the obligation of the treaty to abide by the judgment of this outside commission.

The Senator from Mississippi does not go so far as the Senator from Maryland in that particular. The Senator from Maryland says that it would be of binding obligation; and I am going to read his language here from this report, which is a very strong statement of the question and expresses my views exactly. The Senator from Mississippi says, however, that there would not be a legal obligation, but a moral obligation.

Mr. President, I want to ask one question: If there is a moral obligation, upon what must that moral obligation rest? If there is a moral obligation, it must rest upon the fact that there is an agreement on the part of the United States that the Senate shall and will be bound by the finding of the outside commission as provided in the treaty; because, if there is no such agreement, there is no moral obligation, and if there is such an agreement in the treaty, it is not a moral obligation but a legal obligation. Is there any escape from that proposition? But if we assume that it is a moral obligation, can a man undertake a moral obligation to do that which is unconstitutional, knowing in advance that his agreement may call on him to do that which he believes to be unconstitutional? If it is a moral obligation, it is one that he is not at liberty to disregard. If he has invested that high commission with the power to find a conclusion which will devolve upon him a moral obligation to obey it, how

can he say, "I will obey it when I think it is proper, and I will disregard it when I do not think it is proper"? If it is a moral obligation, Mr. President, it is to carry out the command of that commission. And, as there is no way to enforce obedience to the obligation, a moral obligation is as binding as a legal obligation.

But, Mr. President, I feel that I have delayed too long on these illustrations of the practical working of these proposed treaties, and I am going to hurry on, because I wish to present some other matters in connection with this question. In passing, I will say this: The Senators admit that, so far as the subjects excepted in what we know as the Root treaties of 1908 are concerned, namely, honor, vital interests, and independence, while those exceptions are eliminated from this treaty they are subjects which no Senate would consent to arbitrate. Therefore, Mr. President, the fact that they are not excepted in the pending treaties does not in any manner change their effect and application from the treaties that now exist. I will simply pass it with this question: If any question affecting the honor or the vital interests or the independence of this country should be presented to the Senate and a demand should be made upon the Senate for arbitration, would not the main question be, Shall we or shall we not arbitrate it? Being the main question, there is no possibility that we can escape the conclusion that it is a part of the obligation imposed upon the Senate to advise and consent to the making of the treaty. So grave a question can not be constitutionally determined by embracing them in a treaty at the dictation of an outside commission.

Mr. President, passing from that, those who are I think somewhat shocked at the conclusion with which they are confronted when it is contended in their presence that to carry out the third clause of the third article as an obligatory clause would put the Senate of the United States in a condition which it could not possibly consent to occupy, take refuge in the construction that the third clause of the third article does not impose any obligation. I want right in that particular to call attention to a very remarkable fact, that of all the Senators who advocate these treaties in their present form, no two of them agree in the construction of that third clause, or, at least, no two of them agree in the construction and also in the application of it. Perhaps I ought to make an exception in the case of the Senator from Illinois [Mr. CULLOM] and the Senator from New York [Mr. ROOT], because they did join in the same report, and therefore they do agree. I want to say, however, in regard to that, that while the Senator from New York, who I understand and am informed wrote that report, and the Senator from Illinois agree in the report, they differ very widely in the application of the third clause of article 3 from other Senators who have expressed their approval of this clause in the treaty. The Senator from New York, after what might be called a very moderate defense of the treaty, proceeds to point out its fatal defects. The Senator from New York smiles when I say "moderate." We know that the Senator from New York does not generally make moderate arguments, especially on law questions. If I had made this argument, I would probably speak of it in some other language than as a "moderate argument," but I suppose that is the least depreciating designation that I can give to it when made by the Senator from New York, and, knowing the fertility of resource of the Senator from New York, I am compelled to say that I do not think he would have made so moderate an argument but for the delicacy of the position in which he is placed, which requires him to show consideration for his successor in the high office of Secretary of State.

On page 9 of this pamphlet, Senate Document No. 98, is found the report of the Senator from New York and the Senator from Illinois. After having made this argument, which I am still content to call "an argument," sustaining this treaty in its present form—I will say it is not only a moderate argument, but a very short argument, being less than a page—it goes on to say this:

> The real objection to the clause which commits to the proposed joint commission questions whether particular controversies are arbitrable is not that the commission will determine whether the particular case comes within a known line, but that the commission, under the general language of the first article, may draw the line to suit themselves instead of observing a line drawn by the treaty-making power. If we thought this could not be avoided without amending the treaty, we would vote for the amendment to strike out the last clause of article 3, for it is clearly the duty of the treaty-making power, including the Senate as well as the President, to draw that line, and that duty can not be delegated to a commission.

And then it goes on to suggest a clause which shall be attached to the treaty, and that clause, suggested in this report, is this:

> Such a clause may well be, in substance, as follows:
> The Senate advises and consents to the ratification of the said treaty with the understanding, to be made a part of such ratification, that the treaty does not authorize the submission to arbitration of any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, or other purely governmental policy.

There is no possible contention on the part of the Senators from New York and Illinois, who join in this report, that there is any language in this treaty with reference to those subjects—"the traditional attitude of the United States concerning American questions or other purely governmental policy"—but the Senators recognize the fact that in leaving open such a question it is fatally defective and should be cured by a resolution of ratification which would except those particular subjects. We might say that there are a great many other subjects which might be excepted. Why limit it to them?

Mr. President, I am not going to stop at showing the difference in the case of the Senators from New York and Illinois, but as to others the fact of the business is that every Senator who favors these treaties stands on a different side in regard to the treaties, if not directly in opposition on the legal question, directly upon the question of how far that clause will extend in its application to any treaty which may be invoked hereafter.

In the case of the Senator from Ohio [Mr. BURTON] there is distinctly the argument on his part that the third clause does not impose upon the Senate any obligation, and that when the award of that commission came back to the Senate we would stand in exactly the same position as if the matter had been submitted to us directly by the President without going to a commission. That is the contention of the Senator from Ohio.

The Senator from North Dakota [Mr. MCCUMBER] makes practically the same argument, but he goes further than the Senator from Ohio. The Senator from North Dakota says that the effect of that part of the treaty—the third clause—is not to control the Senate; that it has no effect upon the Senate, but it is compulsory in its effect upon the President. That is the position of the Senator from North Dakota, that all of this contention, all of this propaganda, all of this agitation among the people are to compel the President to submit a matter to the Senate.

The Senator from North Dakota in his speech said, in response to an inquiry made by me, that under this proposed treaty nothing could be submitted to arbitration that could not be submitted under the existing treaties. Therefore not only is the scope of the treaties not enlarged, but the entire effect of it, while not enlarging the scope of the treaties, is to lay a compulsion upon the President of the United States. The Senator said:

> It compels the President to take the initiatory steps so that it may be considered by the treaty-making power. That is all I claim it means and nothing more.

In this construction the Senator from North Dakota is in line with all the other Senators who favor this objectionable third clause of the third article to the extent that neither one of them agrees with any of the others as to the proper construction and application of the clause.

And then further on the Senator from North Dakota, in his speech favoring the treaties, says:

> That it leaves for the Senate exactly the same powers and authority that the Senate would exercise if the President, of his own motion and without the act of the joint commission, had submitted the case to arbitration.

The Senator from Maryland [Mr. RAYNER], on the contrary, in a very forceful expression of it in his report, which he sustained in his argument before the Senate, uses this language. After quoting what had been said by the Senator from Ohio in regard to the proper construction of the third clause of the third article, he says this:

> I regret sincerely that, after the most patient reflection upon the subject, I can not possibly reach this conclusion—

That is, that it left the Senate with the same power as it was before the outside commission made its decision—

> The lawyers of the committee and eminent lawyers outside of the committee who have examined the treaty are at odds and at variance upon the proper construction of article 1 and article 3. I might ask what is the use of referring it to a joint high commission for a decision if its decision is not binding and can be repudiated by the Senate. It is all very well to say that it is practically impossible that the Senate would ever have occasion to refuse its approval of the arbitration of a question which the commission of inquiry had reported to be within the scope of article 1. The Senate, however, has the power to refuse its approval and it has the unlimited power so to do, as Senator BURTON admits, according to his interpretation of the treaty, and to my mind the prime object and intention of the treaty was not to confer this power upon the Senate but to make the decision of the commission decisive and final.

Mr. President, I agree with the Senator from Maryland in this construction. I do not see how it is possible for anyone to come to any other conclusion in regard to that matter. And yet it is true that in reaching that conclusion without any qualification, the Senator again presents the case of differing in part at least from the other Senators who favor this third clause.

No two of them entirely agree. The Senator from Maryland in a speech in the Senate spoke of this treaty——

Mr. RAYNER. Mr. President——

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

Mr. BACON. Certainly.

Mr. RAYNER. Does not the Senator think it was the intention of the parties who drew this treaty to make the decision binding?

Mr. BACON. I do most absolutely and without any possible qualification.

Mr. RAYNER. So do I.

Mr. BACON. It does not mean anything if it does not mean that. It has no place here if it does not mean that. Let me read you the corresponding clause in The Hague convention from which all this provision is taken, except that particular part which is added and embodied in this third clause. This treaty, I say, has in it less that is original than any paper that ever came to the Senate of the United States. It is taken bodily from The Hague convention and from what are known as the Root treaties. I say "taken bodily"; there is a difference of phraseology between these treaties and the Root treaties; there is a difference in terms; but according to Senators themselves those terms, when put into practical operation, will mean nothing more than the present treaties mean; for these Senators say that questions of national honor, vital interests, governmental policies, and so forth, are not justiciable, and would not, therefore, be arbitrable under the proposed treaties. If such questions are not justiciable then the enlargement of the scope of arbitration in these proposed treaties, in omitting the exceptions of honor, vital interests, and the independence of the country as now found in the Root treaties, is meaningless, and there is practically nothing new in them excepting this provision for this outside commission, perhaps of foreigners, to determine for the Senate when it shall or shall not arbitrate questions affecting the most important interests of the Government and people of the United States.

I could go through these treaties and take them up clause by clause, and I could refer to The Hague convention and the Root treaties, 25 in number, and all of which are now in force, and I could find in either The Hague convention or the Root treaties substantially the same provisions, with some slight variations, that are found in this treaty. Even the one which the Senator from Mississippi [Mr. WILLIAMS] dwelt upon with so much earnestness yesterday, as to allowing cooling time, is found in The Hague convention, and found in a more direct and practical provision than it is here. It does not say anything else except that when a demand is made for reference of a question to this outside commission a party may wait a given period before it agrees to the reference. I will read the exact words so as not to misrepresent it:

Provided, however, That such reference may be postponed until the expiration of one year.

There is nothing about any negotiations between the parties for arbitration in the meantime. That same principle is found in The Hague convention with a further provision for the selection of outside powers, who shall in the meantime try to adjust the matter between the different parties. It makes it a superior provision really to that which is found in this treaty.

Mr. President, I was about to say that the Senator from Maryland [Mr. RAYNER] was not enamored with this treaty, except as to the purpose to be accomplished, and the purpose to be accomplished is already accomplished in a much better way by treaties that now exist and by The Hague Convention. I recollect the picturesque language which the Senator from Maryland used when he was discussing these treaties before the Senate. I turned to the RECORD for the purpose of finding it, and I was disappointed in not finding the language used when the Senator discussed it in the Senate. The Senator read his speech, but at the same time he ornamented it with interjected extemporaneous remarks, and those remarks I refer to were extemporaneous comments and criticisms which do not appear in the RECORD. Only the written speech was, I presume, printed. But even what was written is strong enough. He says:

With profound respect and admiration for our great Secretary of State, who occupies a foremost place upon the field of law and of diplomacy, I am not fascinated with the phraseology of this instrument.

The Senator used some very much more picturesque language than that when he addressed the Senate, but I want to say that that even is a sufficiently severe criticism of it, because, if you take out of this treaty the third clause of the third article and then eliminate from it everything which it has gotten either from The Hague treaty or the Root treaties, there is, under the construction put upon it by its friends, nothing but phraseology in it, and that does not meet with the approval of the Senator from Maryland.

The Senator from California [Mr. WORKS], when he was discussing these treaties the ratification of which he favors in their present form and without amendment, used language which, read from the report of his speech, is found in the RECORD:

But, Mr. President, I can not but confess my disappointment that these proposed treaties, if ratified, will be so ineffectual as a means of meeting this sentiment. Very few of the thousands of people who are calling upon Senators to support the treaties really know their contents, and but few of those who know their contents understand their meaning and effect. They are so uncertain in their terms and so inadequate in expression that even on this floor the official representatives of our Government differ widely as to their scope, meaning, and effect.

Sir, I appeal to the experience of Senators—was there ever a treaty or other official document in the Senate so cuffed and buffeted by its friends, or by conflicting constructions so discredited by its advocates!

Yet, Mr. President, with no two Senators who advocate this treaty agreeing as to the meaning of the language and as to the extent of its application and as to the construction of it and with their condemnation of it as a literary production, we are asked to ratify it in its present form. And this is the demand in such circumstances for the ratification of a treaty which is to be invoked by foreign nations for the final settlement of the gravest and most important questions of difference which they may have with the United States.

Mr. RAYNER. Mr. President, will the Senator from Georgia yield?

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

Mr. BACON. With pleasure.

Mr. RAYNER. I think I can safely say that the Senator from New York agrees with me in my construction of the treaty—that the decision is morally binding, not legally binding.

Mr. BACON. The Senator did not say "morally." The Senator said "legally."

Mr. RAYNER. If there is any such word in the RECORD, I never said it. I do not suppose the Senator will do me the injustice of saying that anything can be legally binding on the Senate. Nothing can be legally binding unless you can enforce the right. I have said over and over again that it is binding; that it is a moral obligation, but that it is not legally binding, and that there is no way of legally enforcing it.

Mr. BACON. Mr. President——

Mr. RAYNER. Just give me a moment.

Mr. BACON. Certainly.

Mr. RAYNER. The Senator from New York will say whether I am wrong or not, but I think he and I agree entirely on the construction of this part of the treaty—that it is morally binding on the Senate.

Mr. BACON. In the same way the Senator would say that the Constitution of the United States is not legally binding on the Senate because its provisions can not be enforced on Senators.

Mr. BAILEY. I doubt that in some cases.

Mr. RAYNER. The Constitution of the United States can always be enforced. The courts will always enforce the Constitution of the United States, but no man would stand up and say that there is anything legally binding on the Senate. Wherever there is a legal right there is a legal remedy. I never contended for a moment, nor did the Senator from New York, that there is a legal way to enforce this against the Senate. I go on and say that the Senate need not obey the mandate, just as the Senator from Ohio says, although the Senator from Ohio and I differ on the construction of the treaty. The Senator from Georgia is right about that.

Mr. BACON. There is not a single command laid by the Constitution of the United States on the Senator from Maryland as a Senator that can be enforced by a court.

Mr. RAYNER. I should like to know some of the obligations that the Constitution lays upon me as a Senator. I am here under the sanction of an oath.

Mr. BACON. Of course.

Mr. RAYNER. I should like to know what obligation the Constitution of the United States lays upon me as a Senator. It lays it upon Congress; it does not lay it upon me individually; and if it lays upon the Congress of the United States the mandate that we shall not pass unconstitutional laws, and if we pass an unconstitutional law the Supreme Court would set it aside unless ex-President Roosevelt recalls it. [Laughter.]

Mr. BACON. Mr. President, the last proviso is a very important one. The contention of the Senator is that it does not impose a legal obligation on the Senate because it can not be enforced, but that it is a moral obligation. Everything that is a law is a legal obligation, whether it is accompanied by a penalty or not for its nonobservance. But the language of the Senator himself, which I have already read and which I will read again, is the best answer to the Senator's present position.

Here is what the Senator said in his carefully written report, as a minority of the Foreign Relations Committee, not an address in which there might have been the accidental use of unguarded words, but in his written report the Senator said—I shall now read. The Senator was commenting upon the position taken by the Senator from Ohio [Mr. BURTON] that the report of the outside commission was not binding on the Senate, and he then used this language, which I read from the report of the Senator from Maryland.

Now, listen. This is on the question whether it is a legal or a moral obligation:

I regret sincerely that, after the most patient reflection upon the subject, I can not possibly reach this conclusion. The lawyers of the committee and eminent lawyers outside of the committee who have examined the treaty are at odds and at variance upon the proper construction of article 1 and article 3. I might ask what is the use of referring it to a joint high commission for a decision if its decision is not binding and can be repudiated by the Senate. It is all very well to say that it is practically impossible that the Senate would ever have occasion to refuse its approval of the arbitration of a question which the commission of inquiry had reported to be within the scope of article 1. The Senate, however, has the power to refuse its approval and it has the unlimited power so to do, as Senator BURTON admits, according to his interpretation of the treaty, and to my mind the prime object and intention of the treaty was not to confer this power upon the Senate, but to make the decision of the commission decisive and final.

If that is not the recognition of a legal effect of the conferring of this power upon the joint commission, I am not able to understand language, and I confess that the Senator from Maryland has expressed it very much more forcibly than I could express it myself.

Mr. RAYNER. The Senator from Georgia will not find in that speech or in the minority report anything like the word legal. I would not stand up before the Senate nor would any other lawyer in this body stand before the Senate and say legally binding. I do not take back one single word on that. That is my position now. It is that if one of the parties to the controversy has a right to set aside the award of the umpire, then you might as well strike this last clause of article 3 from the treaty. I think it is perfectly absurd to bring in that clause and then give one of the parties to the controversy the right to override the judgment of the umpire. I have never changed my opinion about that.

Mr. BAILEY. I have changed my vote.

Mr. RAYNER. I do not know how the Senator is going to vote. He has never stated.

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

Mr. BACON. With pleasure.

Mr. BAILEY. I really did not think it was material how I was going to vote, because I know very little about these international questions, and I generally follow the Democratic membership of that committee. I want to say, however, I was anxious to vote for this treaty, but if the finding of this joint high commission is to be binding upon my conscience, I intend to vote against it, and the Senator from Maryland has convinced me that I ought to do it.

Mr. RAYNER. From the Senator's standpoint I think he is right, but I am willing to abide by the finding. I do not know that there will be many votes with me in the Senate on that question. If there will not be any, I will stand alone on it. I am willing to vote that the decision of the commission shall be binding. I am willing to so vote, because I do not believe for a moment that any of these questions that have been so forcibly argued to-day will come within the jurisdiction of the commission. I have said that, and what is the use of going over the whole question again?

Mr. BAILEY. If the Senator from Georgia will just permit me, if we could invoke the Constitution against a Senator, I would hale the Senator from Maryland into court on that very proposition, and I would ask an injunction to restrain him from such conduct.

Mr. RAYNER. Why does not the Senator from Texas answer some other proposition?

Mr. BAILEY. Because I do not understand the question.

Mr. RAYNER. But the Senator understands every question. There is no legal question the Senator does not understand. If the Senator could have answered it, he would have answered it long before. It is not from any want of understanding. I will guarantee that any legal question which comes up in the Senate is fully understood by the Senator from Texas.

Mr. BAILEY. I am not affecting modesty; that is not my habit; sometimes, probably, it would become me better if I did, but I am perfectly sincere when I say that I have not looked into a book upon international law since I left the law school where I studied Vattel on the Law of Nations. I never was very much interested in a science that had no final tribunal to decide it, and I never took much interest in a judgment that had to be collected across the bow of a battleship.

Mr. BACON. As suggested by my colleague, the finding or decision of the joint commission, if it is obligatory, is just as much a legal obligation as the finding of a board of arbitration would be. To say there is no power except the cannon and sword of the other party to enforce the judgment of an international award of arbitration does not relieve it of the fact that it is a legal obligation on the nation which is a party to it when found by that board of arbitration.

There is no dispute about the proposition that if the finding of an international board of arbitration is a legal obligation when the award comes in, it is a legal obligation upon the Nation because we have agreed to abide by the award; and when the finding or decision from the joint commission comes in and we have agreed to abide by the decision of that commission and to act in accordance with its findings, it is also a legal obligation. There is no escape from the proposition.

The Senator from Maryland says that no lawyer would think the other way. I am sorry to be put out of the pale.

Mr. BAILEY. Will the Senator permit me?

Mr. BACON. Certainly.

Mr. BAILEY. I was rather inclined to look at that provision as analogous to the report of a referee to a court, where it would bind the court unless upon examination the court thought the referee was mistaken; and I had supposed the Senate would have the same right to reject the report of a joint high commission that a court would have to reject the report of its referee.

Mr. WILLIAMS. And also, if the Senator from Georgia will pardon me, if the Senate found the commission had gone clear beyond the scope of the authority conferred upon the commission itself in the treaty.

Mr. BACON. The difference between the case of a referee and this commission is that the referee does not have any final judgment. He makes always a finding subject to the approval of the court.

Let me read to the Senate some things which will show what this clause means there in article 3. Article 3 is taken substantially from a clause in The Hague convention. I will have to read two articles from The Hague convention together, although one is numbered 9 and the other 35. They relate to the same subjects and the same international commission of inquiry. In The Hague convention there is found this language:

ARTICLE 9.

In disputes of an international nature involving neither honor nor vital interests, and arising from a difference of opinion on points of fact, the contracting powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, as far as circumstances allow, institute an international commission of inquiry, to facilitate a solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

Then it says:

ARTICLE 35.

The report of the commission is limited to a statement of facts, and has in no way the character of an award. It leaves to the parties entire freedom as to the effect to be given to the statement.

When the framers of this treaty came to frame this particular article 3, which we recognize is taken from that part of The Hague treaty, they left out certain words and put in others, and there would have been no other purpose in doing so but to change the meaning of those words in the convention. In The Hague convention it is left to the decision of the parties—that is, to the nations interested—after this board or commission has made its recommendation. But now let me read article 3, which Senators will recognize from its resemblance is taken from The Hague convention:

ARTICLE 3.

The joint high commission of inquiry, instituted in each case as provided for in article 2—

I will not read article 2; it follows specifically the provisions in The Hague convention—

is authorized to examine into and report upon the particular questions or matters referred to it, for the purpose of facilitating the solution of disputes by elucidating the facts, and to define the issues presented by such questions, and also to include in its report such recommendations and conclusions as may be appropriate.

The reports of the commission shall not be regarded as decisions of the questions or matters so submitted either on the facts or on the law and shall in no way have the character of an arbitral award.

Now, that far it is an exact copy, almost, except in variation of language, of that Hague treaty provision. But it did not stop there. It goes on, and here comes the objectionable clause:

It is further agreed, however—

What does "however" mean there but "nevertheless"?

It is further agreed, however, that in cases in which the parties disagree as to whether or not a difference is subject to arbitration under article 1 of this treaty, that question shall be submitted to the joint high commission of inquiry; and if all or all but one of the members of the commission agree and report that such difference is within the scope of article 1, it shall be referred to arbitration in accordance with the provisions of this treaty.

Except to give this outside commission a power that it would not have under the terms of The Hague convention, there could have been no possible purpose in adding that clause and in changing the provisions of The Hague convention. If there was no purpose to give it any other power, the treaty before us would have stopped before it reached that third clause. It would not have said "nevertheless" or "however," which is the same thing. Although the decision of the commission shall not have the effect of an award, still if there is a difference between the parties it shall be referred to the commission, and if they decide it a certain way, then that decision shall be final and the case shall go to arbitration. I see no possible escape from that.

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

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

Mr. BACON. Yes; with pleasure.

Mr. McLEAN. What is the fundamental objection to the use of language in the resolution of ratification which a Senator of ordinary intelligence, like myself, may understand? It seems to me that this treaty comes from its very first test from the Committee on Foreign Relations with three, and perhaps four, separate and distinct interpretations. I may agree with the Senator from Massachusetts [Mr. LODGE]; others agree with the Senator from Georgia [Mr. BACON]; and others agree with the Senator from New York [Mr. ROOT]. We may all be wrong; we can not very well all be right. What sort of a specific are we sending out to the world as a preventive of international troubles, when our own experts, our own chemists, can not tell us whether the prescription is composed of guncotton or asbestos?

Mr. BACON. Mr. President, I want to get through just as soon as I can, because I have been on the floor longer than I expected and longer than I would have been but for the interruptions, which, of course, I welcome and am glad to have. I will endeavor to call attention briefly to an amendment which I think ought to be made. I want to call attention to one or two other matters before I close.

One very particular contention has been made and that is that even if the decision of the commission is final and is to decide whether a question is or is not justiciable and must be given to arbitration by the Senate, that nevertheless would not be a delegation of the power of the Senate. In support of that we are cited to the legislation in the Interstate Commerce Commission act, by which a rule is laid down and certain parties are empowered to determine when that rule calls for certain action, such as seeing that railroad rates are reasonable, and so forth.

I want to reply to that. There are several replies to it. In the first place, Mr. President, the rule with reference to legislation can not properly be applied to a rule with reference to the Senate so far as they are exercising the treaty-making power. The Senate is in the performance of a peculiar function. It is not the performance of a function in which simply the majority of the Senate is authorized to act, but it requires two-thirds. I could pursue that argument further, but I will not on account of the lack of time. There is a great difference between the making of a treaty and the making of a statute law, which I am sure Senators will recognize without my consuming too much time in its elaboration or discussion. The cases such as the interstate-commerce law are not analogous to the proposed delegation of power proposed here. In the first place, in every case of that kind where Congress passes a law and prescribes a rule and then appoints a person who is to determine when the law shall go into effect, because that is what it amounts to practically, it prescribes some one who is an officer of the Government. It is an impossibility to conceive of a case where the Government would pass a law and prescribe a rule by which it should determine whether the law should go into effect and authorize a private citizen or a foreigner or anyone else who was not an officer of the Government to put that law into operation. That of itself is sufficient and fatal to the suggestion to my mind. But that is not all.

What do we do when we take the case of the Interstate Commerce Commission? What do we do when we say the Interstate Commerce Commission shall make regulations which are reasonable and just, and prescribing other tests? We prescribe a rule as to what others shall do. We prescribe a rule and appoint others to do it who are under our control. We prescribe a rule that we can at any time withdraw. We prescribe a rule which we can oversee and change. We prescribe a rule which we can at any time nullify. In other words, we are prescribing a rule which must be obeyed by the party to whom the authority is given.

What do we do in this case? We are prescribing a rule by which a commission shall say to us what we shall do. We are not prescribing a rule by which outside parties shall carry out a law under our direction, but we prescribe a rule and give the outside commission the authority to say to us what we shall do. Is that a similar case? By no means. It is as if in the performing the constitutional function of legislation we should create an outside legislative commission, composed in part or possibly in whole of foreigners, with power to finally determine for Congress whether any proposed legislation is reasonable and just, with a provision that when this commission decided that any proposed legislation is reasonable and just, then Congress should enact it as law, even though Congress did not approve it. That would not only be manifestly unconstitutional, but utterly absurd.

That is not all, Mr. President. If Senators would pursue their argument to its legitimate conclusion they would have to say that Congress could simply pass a law appointing a commission which should make all laws which are necessary and reasonable and just for the Government of the United States, and thereupon for Congress to adjourn. If that rule is a legitimate rule, if we can say in the exercise of the high power of making treaties that other parties shall without limitation determine when we shall make a treaty, we have an equal right in legislation to appoint a commission and say that that commission shall determine what laws shall be made, provided they are reasonable and just.

The Constitution says that an act of Congress shall be the supreme law of the land. It says again that a treaty shall also be the supreme law of the land. One is as high and authoritative as the other, and the constitutional requirements as to how the one shall be enacted is no more explicit and imperative in the case of passing law by Congress than it is in the case of making treaties by the President and the Senate.

They have a commission of that kind in Mexico. They have a legislative commission that, in the time of a vacation of the Congress, absolutely passes laws and they are decreed by the President as the legislative laws of the country. In the passage of such a law as the interstate-commerce law it is a question not indefinite and unlimited in its powers. The power is not an unlimited one in its application. Such a law is only passed where it is necessary, where in the nature of things the end can be accomplished in no other way. It is only justified under those circumstances, and it is limited strictly to that.

Now, for an illustration. It is impossible for Congress to prescribe all the rules which shall regulate railroads. It is impossible for Congress to prescribe the rules which shall insure rates which shall be reasonable and just and which shall maintain competition. It is practically impossible. Congress is compelled to adopt such measures and such agencies as will enable it to accomplish that very necessary purpose and design.

Therefore, it is that a commission, such as the Interstate Commerce Commission, is appointed, and it is limited in its powers and duties to those things which in the nature of things it is impossible for Congress itself to do. It is impossible for Congress to make in detail these regulations, and it therefore prescribes a rule for the regulations and appoints a commission to carry it out.

If it be true that in the making of a treaty we can prescribe a rule by which an outside commission will determine when a treaty shall be made, then also when we come to give our advice and consent to the appointment of an officer of the United States, we could with equal right appoint an outside commission which shall have power when the President of the United States sends to the Senate the nomination of a person for an office, to say that the nominee shall be confirmed because he is a fit and proper person for the office, and to make that decision by the commission binding upon the Senate.

There is no stronger obligation upon the Senate to exercise every particle of the function of advising and consenting in the confirmation of an officer nominated for office than there is in the function of the Senate in advising and consenting as to every part of a treaty whether it shall or shall not be assented to.

Mr. President, I could elaborate that and give further illustrations, but I have gone so far that I feel I must upon this presentation leave these things for the consideration of Senators in the suggestions which will come to them without further elaborations from me.

But I want to read an authority on the subject of the reason on which such legislation as the interstate-commerce law is based and justified.

I am not basing that upon my individual opinion. That question has been before the Supreme Court. I ask the attention of Senators to the rule of the Supreme Court on that subject. It lays down the rule and gives the reason. It is not an unlimited power on the part of Congress to prescribe a rule and have

somebody else make the law. It is limited to cases of necessity. It is limited to cases where there is no other practical way to accomplish a result that it is important and necessary to accomplish in that particular.

I read from the case of Buttfield *v.* Stranahan, One hundred and ninety-second United States Reports, a report which was given to me by the Senator from Arkansas [Mr. CLARKE]. I take some gratification in the fact that I had suggested to him that on general principles that was necessarily the rule, and he said to me that there had been a decision of the Supreme Court to that effect, and he sent for a copy of the volume containing it, and here it is. In discussing this question of the delegation of power, what is a delegation and what is not a delegation of legislative power, the court says:

We may say of the legislation in this case, as was said of the legislation considered in Field *v.* Clark, that it does not, in any real sense, invest administrative officials with the power of legislation. Congress legislated on the subject as far as was reasonably practicable, and from *the necessities of the* case was compelled to leave to executive officials the duty of bringing about the result pointed out by a statute.

That is the only ground upon which it can be rested. Does anybody contend for a moment that there is any possible inability on the part of the Senate to itself deal with the question whether or not they will, in an important case, submit a matter to arbitration or whether a demand for arbitration falls within a treaty already made? None whatever.

Now, Mr. President, one word as to these amendments. I had promised the Senator from Connecticut that I would say what I thought was a proper amendment in this case. To my mind the proper thing to do is to strike out clause 3 of article 3. Do that, and I presume the Senate will be almost unanimous in the adoption of these treaties.

I want to say that in giving my vote for this with that stricken out, which I will do, I would do it not because I think these treaties are essential or that they are important or that they advance the cause of peace or the opportunity for arbitration. We have now The Hague convention, which has been entered into by 45 governments of the earth. We have in that Hague convention the most elaborate provisions for arbitration. This proposed treaty, so far as its practical operation is concerned, depends almost entirely upon The Hague convention, just as the Root treaties did.

I hold in my hand here 25 treaties made by the Senator from New York [Mr. ROOT] when he was Secretary of State, in which there is a solemn covenant on the part of the United States with each one of these 25 nations—all the leading nations of the world, excepting Germany, and many of the minor nations. In all of these arbitration treaties there is a pledge to refer to arbitration all international differences, such as we are at all likely ever to submit to arbitration, and that we will use the National Court of Arbitration at The Hague for the purposes of such international arbitration.

Mr. President, I am going to read one of those treaties. They are all alike and in the same language. I think they are far superior to the treaty that is before us. I am going to read it just to show you the conciseness and clearness and sufficiency of those treaties. I think it is greatly to the honor of the Senator from New York that when he was Secretary of State he negotiated more treaties of general arbitration than all the other treaties of general arbitration put together since the foundation of the Government. They are all in identical language, and there are 25 of them. Now, without the preliminary part, I will read the article:

ARTICLE 1. Differences which may arise of a legal nature or relating to the interpretation of treaties existing between the two contracting parties and which it may not have been possible to settle by diplomacy, shall be referred to the Permanent Court of Arbitration established at The Hague by the convention of the 29th of July, 1899, provided, nevertheless, that they do not affect the vital interests, the independence, or the honor of the two contracting States, and do not concern the interests of third parties.

Then article 2:

ART. 2. In each individual case the high contracting parties, before appealing to the Permanent Court of Arbitration, shall conclude a special agreement defining clearly the matter in dispute, the scope of the powers of the arbitrators, and the periods to be fixed for the formation of the arbitral tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States, by and with the advice and consent of the Senate thereof, and on the part of Sweden by the King in such forms and conditions as he may find requisite or appropriate.

ART. 3. The present convention shall be ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof; and by His Majesty the King of Sweden. The ratifications shall be exchanged at Washington as soon as possible, and the convention shall take effect on the date of the exchange of its ratifications.

ART. 4. The present convention is concluded for a period of five years, dating from the day of the exchange of its ratifications.

Done in duplicate at the city of Washington, in the English and French languages, this 2d day of May, 1908.

ELIHU ROOT.
W. A. F. EKENGREN.

The same treaty was made with Great Britain and with France, and, as I said, with 25 nations.

Mr. President, we have had all over this country the agitation for the ratification of these treaties and an insistence upon it. There has been a great going up and down the land of orators, some of them paid for the purpose, and others, I have no doubt, going from patriotic motives. They have practically claimed that in case these treaties were not adopted there could be no arbitration of any differences between this Government and any other government, whereas we have now, as I say, these 25 treaties and this Hague convention, the latter signed not only by 25 but by 45 nations of the earth.

Returning to the questions of amendments, my opinion is that the amendment which we ought to adopt is to strike out clause 3. If clause 3 is not stricken out, then we ought to adopt in the ratifying resolution a provision which shall put beyond the shadow of a doubt the fact that clause 3 does not put it within the power of this outside commission to dictate to this Senate when it shall arbitrate a question, but that that high function, imposed upon this Senate by the Constitution of the United States, shall be performed by the Senate under the constitutional oath of each Senator.

I do not think that the amendment offered by the Senator from Massachusetts [Mr. LODGE] is sufficient, for the reason that the amendment of the Senator from Massachusetts simply affirms that which Senators favoring this third clause now say the treaty means, and there will be practically the same uncertainty as to the proper construction of this clause. I desire in case the amendment reported by the Committee on Foreign Relations striking out clause 3 of article 3 is not adopted to offer as an amendment to the resolution of ratification proposed by the Senator from Massachusetts, the language which I shall presently read. If the Senate refuses to strike out the third clause, which I very much hope it will not refuse to do, because that is the only proper and consistent thing to do——

Mr. OVERMAN. Is not that recommended by the committee?

Mr. BACON. It is recommended by the Committee on Foreign Relations to strike out the third clause for the reasons which I have endeavored to state. If the third clause is not stricken out, then I desire that we shall adopt a resolution of ratification which shall nullify that clause absolutely and beyond the possibility of construction. Therefore I shall propose what I shall now read as an amendment to the resolution of ratification of the Senator from Massachusetts.

What we ought to do is to strike out the third clause. It is not to the credit, I think, of the Senate of the United States to leave a clause in the treaty and then in the ratification resolution simply correct that error by nullifying it. The plain course is to do as we did in the Hay-Durand treaty. When there came in a proposition that the President of the United States should have the right to make agreements of arbitration without any intervention of the Senate, the Senate simply did not in an amendment nullify that provision in the ratifying clause, but by an amendment it struck out the word "agreement" and put in "treaty," so as to make the body of the treaty express what it ought to say.

The amendment which I shall offer to the resolution of ratification offered by the Senator from Massachusetts is as follows:

Resolved further, That the Senate advises and consents to the ratification of the said treaty, with the understanding, to be made a part of such ratification, that the treaty does not authorize the submission to arbitration of any question which affects the admission of aliens into the United States, or the admission of aliens to the educational institutions of the several States, or the territorial integrity of the several States or of the United States, or concerning the question of the alleged indebtedness or moneyed obligation of any State of the United States, or any question which depends upon or involves the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe doctrine, or other purely governmental policy.

Mr. President, many Senators, if not all of them, in discussing this question have earnestly pressed the importance of arbitration, have inveighed against war, and have eulogized everything looking to peace as though that were the question here. We are, all of us, in favor of peace; I think I am as much so as any other man here; I believe that every other Senator as well as myself who demands that our constitutional guaranties and our constitutional obligations shall be maintained and performed is in favor of peace.

Mr. President, there is no man so much in favor of peace as the man who has had a practical experience of the horrors of war. I recollect some years ago when the question was before the Senate as to the prosecution of the war in the Philippines, that when I was trying to bring about a condition which would insure peace in those islands and which would stop the desolation and the ruin and the death I said this, which I now repeat, that I wished it were possible that all men, especially

all men who could exercise any influence upon the question of peace or of war, could see one battle field on the day after the battle. We read about battles and we think only of the heroism, the glory, the strife, and the victory. But, Mr. President, when the battle is over and a man passes across the field and sees the dead and the dying, the human agony and misery! O sir, the horror, the woe, the pity of it! If all men could see one battle field, not while blood is high and the struggle fierce, but after the noise is gone, when the strife is over, when the roar of guns has ceased and the shouts of the hosts have died away, when there is only the sad picture of the men who are dead on the field and the sadder picture of the men who are torn and mangled and bleeding, that would do more than all the arbitrations that could be put upon paper to stop war.

Mr. President, I have looked upon such a scene, and I am in favor of peace; I am opposed to war; I am in favor of arbitration to prevent war, which I abhor; but because I am in favor of that is no reason why I should stand here and be willing that the institutions of this country shall be imperiled or that the fundamental law of this land shall be violated.

In so far as I have any power to decide as a lawyer, in my judgment to accept these treaties with this third clause in them would be a violation of our constitutional obligations as Senators. Of course, I recognize that a Senator who thinks otherwise does not violate his obligation; but to my mind it is a violation of the Constitution; it is destructive of the great scheme that the States devised when in the formation of the Union each State gave up the power which it then had to make treaties with foreign nations and to control all of its relations with other governments. When they gave up that great power they were not willing that the power should be exercised by the Congress of the United States, because by reason of unequal power in the House of Representatives, some States would in such case have greater power and influence in the making of treaties than would other States; they were not willing that it should be exercised by the President alone, but required the advice and consent of the Senate, where the States are equal in representation; they were not willing, even when the power was committed to the Senate, that a majority of the Senate should determine what treaty should be entered into which would affect the interests of any one of these States, but they said that even if a majority of Senators be in favor of it, before you can make a treaty which shall affect the State of New York, or the State of Massachusetts, or the State of Georgia, before you can make a treaty which will affect either one of the States, not simply a majority of the Senate, not simply a majority of the representatives of the States in the Senate, but two-thirds of the Senate must concur in agreeing to such a treaty. Mr. President, it is a travesty—worse than a travesty—to talk about such a great scheme being set aside and that great power taken away from the Senate and committed to an outside commission, which shall in some cases be composed of citizens of the United States in part, but which in other cases may be composed of parties who are entirely foreign to our land and inimical to our institutions.

Mr. SMITH of Michigan. Mr. President, I am more anxious that a vote shall be taken, if possible, to-night than I am to discuss further the treaties now pending. At various times during the debate I have felt a strong inclination to relieve my mind somewhat regarding their wisdom and effectiveness of purpose. I reecho the statement of the Senator from Georgia [Mr. BACON], of the Senator from Massachusetts [Mr. LODGE], and of other Senators who have spoken, when I say I am as much in favor of peace as any other Senator or any other citizen of the Republic; but I am forced to believe, after a careful examination of these treaties, that there is more trouble for our country, more vexation, more annoyance, and more misunderstanding in them than there is good to come out of them.

The State Department's foreign policy has been a matter of evolution. When Mr. Cleveland was President Mr. Olney submitted to the Senate a treaty with Lord Pauncefote for England that described the differences that were to be settled by arbitration, but they carefuly reserved all territorial questions from the operation of that treaty, and even when that treaty came before the Senate, so masterful a mind, so conscientious a statesman, and so trained and thorough a diplomat as the then distinguished Senator from Massachusetts, Mr. Hoar, thought the reservations were not sufficient to protect the United States from European influence, and, with marvelous sagacity, suggested that the treaty ought to be amended, and he offered an amendment:

> That no difference shall be submitted under this treaty which in the judgment of either power materially affects its honor, the integrity of its territory, or its foreign or domestic policy.

What happened to that amendment to a general treaty of arbitration brought here through the instrumentality of Mr. Olney and the ambassador from Great Britain? It received 54 votes in this Chamber, and only 13 were recorded against it. Many of the ablest men then in the Senate voted for that limitation. That was the sense of this body, the wise and deliberate judgment of the Senate.

Later, when the distinguished Senator from New York [Mr. ROOT], as Secretary of State, entered into an agreement for this Government with Great Britain having for its purpose a similar achievement to the one sought to be attained by Mr. Olney, he was guided by the wise admonition of this body and took out of the questions that might be submitted to arbitration questions of "vital interests, the independence, or the honor of the two contracting States," and the interests of third parties.

That was a carefully drawn treaty, but the treaty we are now considering goes far beyond anything ever attempted in this Chamber before. It might well be denominated as the dragnet achievement of modern diplomacy. It looks like a studied effort to eliminate the Senate altogether, and in that they have been singularly in harmony with the suggestion made by a distinguished English diplomat, who had something to do with the perfection and formation of the treaty we are now considering, who seems to regard the Senate as meddlesome, although we are the only voice the States have in foreign affairs.

There will not be a controversy in the future that concerns the welfare of the State I represent in this body, especially its relations to Canada, that may not be determined by this joint high commission without my advice or consent—not one. The waterway treaty, about which we had something of a struggle in this Chamber a few years ago, and which was finally amended, through my insistence, to the satisfaction of my State, may again be overhauled by this international joint high commission.

The fisheries treaty with Canada, which some of us delayed and defeated because of its unfairness to our States, may again be the subject of inquiry by this international joint high tribunal; in fact, I am not altogether sure but that the diversion of water from Lake Michigan to the Chicago Drainage Canal may not be the subject of inquiry by this joint high commission, over which we shall have no control. Canada is exercised considerably over that proposition at this moment, and England has very cautiously and wisely reserved to Canada something of a veto on the questions that will be submitted to arbitration under this treaty affecting her welfare, while the representatives of the States and our rights as Senators are to be turned over to strangers, unfamiliar with our institutions and without knowledge of our geographical relationship to the English possessions in this hemisphere.

Mr. President, we have no European possessions calling for our solicitude; we are not going across the sea to assert or maintain our rights; our rights are here on this continent, in this hemisphere; but England has rights here. She has an empire here larger than our own. Is it possible that as the years go by and she attains greater strength, the controversies, territorial and political in character, which will arise between us shall always be the subject of international inquisition before a tribunal constituted of strangers? I hope not. Such an alien supervision would breed distrust and nourish rancor.

I make the bold statement that if we ratify these treaties in the form in which they came to the Senate, there is not a single Senator on this floor who can tell what he has agreed to arbitrate with Great Britain or France—not one. Questions of immigration are left open; the Monroe doctrine is left open, so far as any word from England has been spoken; and it vitally concerns possessions of Great Britain in this hemisphere, for her right to protect herself here is an inherent and natural right of her sovereignty, and the Monroe doctrine will not always serve her purpose. There is not a single question of vital interest to us or of national honor that may not be passed upon by this tribunal on the petition of King George alone. Will Great Britain ever set up a claim against the United States which this country could not under any circumstances entertain, and then demand under this treaty that we leave the issue to third parties? I should like some advocate of these treaties to answer. Is England ever going to ask the Government of the United States to arbitrate a question in the future which the Senate would be unwilling to arbitrate? If not, what is the necessity of this treaty? And if so, should we tie our hands in advance and abandon our functions; no longer retaining either the initiative or the relationship to the treaty-making power which the Constitution imposes upon us?

Mr. President, the hour is late, and I know that Senators are tired and weary, but I want to call their attention to the fact

that the treaty we are now considering establishes the means whereby all controversies shall be settled by arbitration; and "all controversies" include every disagreement between the two countries. The means have been determined, we have given our consent, and we are powerless to withdraw. If we withdraw from any agreement or refuse to give it effect, we violate the treaty, because by its terms we have pledged ourselves to every detail therein prescribed. It is not so with The Hague convention. The Hague convention limited the powers of the commission and defined its limitations. A commission appointed to make inquiry under The Hague convention did not even have the power to change its place of sitting; while this treaty, if it is ratified, gives to this mixed tribunal, the joint high commission, the power not only to move the Senate and the Executive, but the entire Government of the United States, on the mere petition of a King of England, a power that never could be exercised by that monarchy through the influences of her bayonets or her battleships.

I have never seen a more reckless attempt to disregard the constitutional power of the Senate than is proposed in this treaty, and there is a purpose in it. We have annoyed English diplomats before and will probably do it again if occasion arises. There is a plain purpose to subvert the powers of the Senate where the States only are represented to the madness of anglomania. In the near future there will be 50,000,000 people in Canada. We are her neighbors; the State of Michigan lies right along the Canadian border; the controversies of England in this hemisphere will be over the rights of that Dominion. Is it possible that the State I represent and the States represented by other Senators on the border will be in better position to obtain exact justice when we pass the settlement of our controversies over to strangers who know nothing about our relations to one another?

The fisheries treaty made by David Starr Jordan, of California, is not a good example of his solicitude, I hope. He allowed Canada to exempt from the operation of the treaty the Georgian Bay, an arm of Lake Huron, while he put under the operation of the international convention Saginaw Bay, another arm of Lake Huron, greatly to the detriment of the fishermen of my State. If we had not made the fight in this Chamber, our fishermen would have fallen unjustly under the jurisdiction of aliens, while their rivals in the Georgian Bay were continued under the immediate control of their brothers in Canada.

Several Senators have said that we will have a voice in the selection of commissioners. We were not accorded this honor when this treaty came from the State Department. There was no suggestion in it that the Senate should even have the right of confirmation, as I recollect.

Mr. BACON. Mr. President——

The PRESIDING OFFICER (Mr. POMERENE in the chair). Does the Senator from Michigan yield to the Senator from Georgia?

Mr. SMITH of Michigan. Certainly.

Mr. BACON. Mr. President, if the Senator will permit me, I will make a suggestion there. Even in case we incorporate into this treaty, either by amendment or by reciting in the clause of ratification a provision for the confirmation by the Senate of the Americans who would be on that commission, that would not reach the case where the commission is organized in some other way, as this treaty says it may be, even to the extent of having foreigners, who could not be confirmed by the Senate, appointed on it.

Mr. SMITH of Michigan. The Senator is entirely right. We would have nothing to say about the commission. If the executives of both countries desired to agree upon the King of Belgium to make a finding, they could do so. We have no power over it at all.

Mr. GALLINGER. It is not probable that that ever would be done.

Mr. SMITH of Michigan. It is entirely within the range of the possibilities. Great American questions have often been submitted by agreement to European sovereigns; not by wholesale, however, as this treaty provides, but only by specific agreement.

Mr. LODGE. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Massachusetts?

Mr. SMITH of Michigan. Certainly.

Mr. LODGE. Reference to a single arbitrator is one of the commonest forms of settling controversies. The question in connection with the Strait of Juan de Fuca, up in the Northwest, was referred to the Emperor of Germany under the Alabama treaty, and the award was in our favor. The question of the slaves carried off after the War of 1812 was referred to the Emperor of Russia, and the award was in our favor. The question of the northwestern boundary was referred to the King of the Netherlands, and we held that he had simply expressed an opinion but had not decided the case, and his report was protested. I mention these three cases that happen to occur to my mind to show that nothing is commoner than to agree on the head of some other nation—a president or a king, as the case may be—and refer such questions to him as a disinterested umpire.

Mr. SMITH of Michigan. Now, let me ask the Senator——

Mr. BACON. The Senator will pardon me for a minute. The very latest arbitration we have had was with Chile, which——

Mr. LODGE. Certainly; which was referred to the King of England, and he decided it.

Mr. SMITH of Michigan. Now, let me ask the Senator from Massachusetts, before he takes his seat, if it is not entirely possible under this treaty for the executives of two countries to constitute a sovereign of a foreign State as a joint high commissioner?

Mr. LODGE. The language is as broad as possible. The high commission of inquiry may be made up in any way that the Governments of the two countries please.

Mr. ROOT. May I ask a question?

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

Mr. SMITH of Michigan. Certainly.

Mr. ROOT. I should like to ask the Senator from Michigan his idea as to the duty of the Senate in case the joint high commission is made up of one foreign sovereign and all but one of the commission decide that the question is arbitrable.

Mr. SMITH of Michigan. The Senate has already bound itself; it has agreed on the method for selecting the joint commission. We have nothing more to say about the means. The means by which arbitration is attained are specified in the engagement. We have agreed upon them and have put that question away from us, and we have no right to say how the commission shall be constituted.

Mr. BACON. I suggest to the Senator from New York that if there is a single commissioner and he should find a certain way it would be a unanimous decision.

Mr. SMITH of Michigan. That is the language of the treaty.

Mr. ROOT. Is it not clear that the provisions regarding the determination by all, or all but one, of the members of the commission are applicable only to the case of a commission made up in the normal way, which is described in article 2 of the treaty, and that the last clause of article 3, therefore, is applicable only to a commission made up in that way?

Mr. LODGE. Will the Senator read the clause about the creation of the commission—the original clause which authorizes it?

Mr. ROOT. The original clause.

Mr. BACON. It will be found at the top of the page.

Mr. ROOT. It reads:

> The high contracting parties further agree to institute as occasion arises and as hereinafter provided a joint high commission of inquiry.

That is article 2. The second paragraph of article 2 is as follows:

> Whenever a question or matter of difference is referred to the joint high commission of inquiry, as herein provided, each of the high contracting parties shall designate three of its nationals to act as members of the commission of inquiry for the purposes of such reference; or the commission may be otherwise constituted in any particular case by the terms of reference.

Mr. LODGE. That is absolutely unlimited.

Mr. ROOT. My view is that the final clause of article 3 applies only to a commission made up in the way described in article 2, and that no conclusion by any commission otherwise constituted under the concluding clause of article 3 would have any binding force or effect whatever.

Mr. SMITH of Michigan. To illustrate the clearness of the situation confronting us in this matter it is only necessary to say that the distinguished Senator from New York, whose judgment and opinion everybody values, and the distinguished Senator from Massachusetts, whose judgment and opinion are equally valuable, disagree about it. Now, if these great Senators disagree about it, is it not likely that countries which are already out of accord may also fail to take the American view of the manner of appointing commissioners?

Mr. LODGE. Will the Senator from Michigan allow me?

Mr. SMITH of Michigan. Certainly.

Mr. LODGE. I do not think any disagreement is possible about the first provision, that the commission may be made up in any way that the high contracting parties deem best. I think the intention of the third clause of article 3 is as pointed out by the Senator from New York, but I do not see that it binds the high contracting parties in the least.

Mr. SMITH of Michigan. To say the least, we have provided the means for settling these disputes. Now, having provided the means, we have nothing further to say about it. We have abdicated; we have given up our power.

As a part of the means of settling the difference we have agreed that the question shall be submitted to the joint high commission, and the word "means" is emphasized in this treaty both in the preamble and in the message of the President twice. So we would have nothing whatever to say about the composition of this commission.

It is said that we will still have the power to confirm the American commission, and if they are not of our way of thinking they will not be confirmed. This would not be good faith, and in honor we should scorn such an unfair advantage if peace and respect for one another are to be maintained. The way to avoid misunderstandings is to cut this third clause out of the treaty now, because it will be the most fruitful source of disagreement in the future.

There is no question at all about what it means. It is an invitation to Great Britain to hunt up every controversy that has been denied a standing at our State Department and press it now, when a hearing can not be denied, and before a mixed tribunal.

The favored-nation clause of our treaties of commerce and amity may be made the subject of international inquiry under this arrangement. We gave a preferential to Cuba on her sugar, and since we did it under the ban of the Brussels convention I do not believe there has been a ton of sugar shipped into any country that is a party to the Brussels convention. If that concession is harmful to England or France either may invoke a joint high commission under this treaty to inquire into it. Is there any Senator on this floor who can deny that?

Article 1 says "all differences." As I said a little while ago to the Senator from Georgia, if England, through her Bahama Islands, is unfavorably affected because of a condition of affairs existing in Cuba, she may invoke instantly, under this treaty, a joint high commission to sit upon the case, and we are not to be consulted about it. We have already agreed to it as a means of peace. She may invoke a joint high commission instantly to inquire into the Government of Cuba and its relations to the Caribbean Sea. Her inquiry into the Government of Cuba may lead her to believe that our policy there affects her own possessions unfairly, and a controversy that is now beyond her reach may become acute in this hemisphere as a result of our action to-day.

Although we have spent hundreds of millions of dollars to give Cuba her freedom, and our soldiers have fought her battles, and our country has guaranteed her independence, yet if this is to be the means of settling all future differences between England and France and the United States, our claims may well become the subject of international inquiry by the initiative of either power.

We have agreed that as a means of protecting the two countries from misunderstandings this method of arbitration shall be engaged in. I do not think there is a controversy affecting any State or on the border with Canada, or a controversy affecting the United States and Canada, or the question of our proposed levy of tolls on the Isthmian Canal, or any question of immigration that affects England or any of her possessions in this hemisphere that is beyond the reach of this joint high commission, which is to be superimposed upon our Government by our consent, to determine for the Senate and for the country what questions are to be arbitrable and what questions are not.

There never has been such an engagement between the United States of America and any other power in our history, and there ought not to be one now. It will not lead to peace. It will lead to misunderstanding and reprisals and possibly war. The treaty does not say specifically what shall be submitted, but says "all differences" shall be submitted. That is a dragnet of tremendous proportions, and extends from pole to pole and ocean to ocean, and will involve our diplomacy in difficulty from the start.

So, Mr. President, I can not see any good reason why we should create this new intermediate court to decide for the Senate and the Executive what is arbitrable and what is not arbitrable between England and the United States. When England's Monarch signed the treaty he consulted his own sweet will, and with a glittering coronet upon his brow exercised his sovereign authority. But under our form of Government the President of the United States must consult the Senate, and the controversy is here.

Are we going to abdicate and give up our power to determine what is arbitrable or justiciable between England and our own country or are we going to maintain our historic authority to pass upon each question of difference as it arises intelligently and patriotically? So far as I am concerned, I will never vote to give up the power conferred upon us by the States of the Union. It is the only voice the States have directly in such matters. Any Senator who can smear his conscience with a peace motive for thus giving away a solemn constitutional right has my profound sympathy.

Mr. President, I had intended to go more thoroughly into our foreign policy. I had intended to take up the history of the treaties, now the supreme law of the land, and show the care with which they were entered into. The conduct of the Senate has been most praiseworthy in every one, amending here and there and construing by resolution as they thought wise. They have shown a solicitude for the magnitude of the interests involved that, I fear, is not fully appreciated by the country. But the very illuminating speech of the Senator from Massachusetts [Mr. LODGE] left every other member of the committee with less responsibility than he otherwise would have felt, while the thorough and candid and able discussion by the Senator from Georgia [Mr. BACON] to-day has made my duty a very easy one.

I am unwilling to fetter the Senate or the Executive by conferring any such power as we are asked to bestow upon this new tribunal; and I would consider myself unworthy to stand in this place or to hold a commission from my State if I consented to the enactment of such a law as this. Every question that should be arbitrated can be arbitrated under the Root-Bryce treaty and under The Hague convention now. Why we should circumscribe further the constitutional power of the Senate I am at a loss to understand.

Mr. CUMMINS. Mr. President——

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

Mr. SMITH of Michigan. Certainly.

Mr. CUMMINS. I desire to ask the Senator a question, and it is purely for information. I have not been in the Senate for the last three days, and therefore have not had the opportunity of hearing the discussion of the Senator from Massachusetts, and I have heard only a part of the discussion of the Senator from Georgia.

I agree entirely with the interpretation which the Senator from Georgia [Mr. BACON], and before him the Senator from Maryland [Mr. RAYNER], put upon the third paragraph of article 3. With respect to its constitutionality I express no opinion at this moment. But what I want to learn from the Senator from Michigan, who is the first member of the committee I have had an opportunity to inquire of, is this: The Senator from Michigan thinks it is very unwise that the Senate shall surrender the right to say whether a given controversy or difference is or is not justiciable. I understand both the Senator from Michigan and the Senator from Georgia to believe that it is not only unwise, but unconstitutional as well.

In the first article of the treaty we agree in advance and before the controversies have arisen to submit to arbitration every difference of a justiciable character. Now, I want to ask the Senator from Michigan this question: Suppose that in the time to come a controversy should arise between the United States and Great Britain that was plainly justiciable; the Senator from Michigan would say to his conscience it was justiciable, and that it was not included in any of the exceptions that are intended to be engrafted upon the treaty. Would the Senator from Michigan feel at liberty to decline to submit the controversy to arbitration if he believed, at that time and under all the circumstances surrounding, that the difference was one which ought not to be arbitrated?

Mr. SMITH of Michigan. If I thought that the question ought not to be arbitrated I would dismiss the question of its justiciability without a moment's consideration.

Mr. CUMMINS. Then, if that be true, if I correctly apprehend the answer of the Senator from Michigan—and I thought I understood his position through the whole course of his argument—his argument is against any treaty which agrees to submit to arbitration controversies that have yet to arise.

Mr. SMITH of Michigan. No; controversies that are of vital interest or concern our national honor or our own welfare.

Mr. CUMMINS. Precisely. But I have said—and the Senator from Michigan must bear that in mind—that the assumed controversy that I have before me is one that is justiciable; and there are many that are justiciable and which do not concern our own honor or our integrity or our independence. Now, suppose that such a controversy were to arise. The Senator from Michigan, when he votes for this treaty with the third paragraph of the third article stricken out, has agreed that the Government will submit such a difference of opinion or controversy to arbitration, and the Senator would not in honor be allowed to determine for himself at that time whether or not

the controversy was one which should be arbitrated; I mean under the circumstances surrounding us at that time.

The Senate will have agreed, if it ratifies this treaty, that it will submit to arbitration every justiciable controversy, if it be not included within these exceptions. Now, if that be true, has not the Senate surrendered, in making the treaty itself—I care not in what form it is phrased—its right to determine at the time and under the circumstances which then prevail whether arbitration should take place or not; and if it is unconstitutional and impolitic to surrender this power under the third paragraph of the third article, is it not equally unconstitutional and impolitic to surrender the latter power which I have mentioned, and which, of course, leads inevitably to the conclusion that we ought not to enter into any treaty agreeing to arbitrate questions that have not yet arisen?

Mr. SMITH of Michigan. I want to give the Senator from Iowa an illustration of what I meant by my answer. Under the Webster-Ashburton treaty the boundary line between Canada and the United States has been fixed and acquiesced in for over 70 years. Under this treaty our denial of a claim for a division of water or of territory might be a justiciable claim. Now, have I done my duty to my State by passing that controversy up to an international tribunal to determine whether or not the subject of the claim should be arbitrated or not?

Mr. WILLIAMS. Mr. President——

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Mississippi?

Mr. SMITH of Michigan. With pleasure.

Mr. WILLIAMS. Does the Senator from Michigan contend that the only limitation in this treaty is justiciableness? Is there not also in the same clause a further limitation that it must be a question hereafter arising and that it must be an international one? Does not the Senator think he is using as an illustration a question that has been settled too long——

Mr. SMITH of Michigan. No.

Mr. WILLIAMS. To hereafter give rise to differences?

Mr. SMITH of Michigan. It is a live question to-day. The boundary between Canada and the United States is to-day being re-marked under the direction of Congress.

Mr. WILLIAMS. I understand that.

Mr. SMITH of Michigan. The question is as live to-day as it ever was.

Mr. WILLIAMS. I understand that.

Mr. SMITH of Michigan. And so long as that treaty lasts, whether it has lasted for 50 years or is to last for 50 years more, every controversy growing out of it would be the subject of international arbitration under this agreement.

Mr. WILLIAMS. Any controversy growing out of it that did not involve matters decided by the treaty itself.

Mr. SMITH of Michigan. No.

Mr. WILLIAMS. Of course, matters of detail, as to where the surveyor's line is to run may arise——

Mr. SMITH of Michigan. The Senator from Mississippi is mistaken. This treaty does not confine us to differences that may hereafter arise out of treaties to be hereafter made.

Mr. WILLIAMS. Oh, no; but to questions that may hereafter arise.

Mr. SMITH of Michigan. But which may grow out of treaties now existing, and it gives an invitation to Great Britain to revive questions which may be passed upon by this international tribunal that have been dead for 50 years.

Mr. WILLIAMS. I think not.

Mr. SMITH of Michigan. I think it does.

Mr. WILLIAMS. The Senator has just said on questions that would hereafter arise. If the question would hereafter arise, then that is an answer to the proposition that it has been dead for 50 years.

Mr. SMITH of Michigan. The Senator knows better than that. The Senator knows that the construction of the treaty now existing between Great Britain and the United Sates may be reviewed to-morrow after we pass this treaty, and if it is reviewed to-morrow and one party to the treaty finds that they are out of accord with the other upon any question involved, it may be taken before the joint high commission which we have created as a means of avoiding disputes.

Mr. WILLIAMS. I understand that; provided it be a question newly arising under the treaty.

Mr. SMITH of Michigan. That is what I said.

Mr. LODGE and Mr. CUMMINS addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Michigan yield, and to whom?

Mr. SMITH of Michigan. I yield to the Senator from Massachusetts, who has been on his feet for several minutes.

Mr. LODGE. I rose only in connection with what the Senator from Mississippi said. A question may arise under an old treaty that has been acquiesced in for half a century.

Mr. WILLIAMS. There is no dispute on that point.

Mr. LODGE. A question might arise under the Webster-Ashburton treaty or under the treaty of 1844, which settled the northwestern boundary, or under any treaty, no matter how long it existed. Only a short time ago we went into arbitration with Great Britain on the Alaskan boundary question under a treaty of 1824, which had been acquiesced in for more than half a century. The claims were comparatively modern on the Canadian side. We had to take it to London and settle it, and it was settled by a tribunal there. The fact that a treaty is an old treaty and has been long acquiesced in does not prevent questions being raised if people want to raise them, as Canada raised a question on the Alaskan boundary.

Mr. WILLIAMS. I hope neither the Senator from Massachusetts nor the Senator from Michigan thought me stupid enough when I said questions hereafter to arise to think that I meant new questions could not possibly arise.

Mr. SMITH of Michigan. No; but an old question may arise again and be a subject of controversy.

Mr. WILLIAMS. If that particular old question has arisen and has been settled, then my contention is that it can not rearise under this treaty. That is the contention exactly.

Mr. SMITH of Michigan. The Senator from Mississippi would not contend that apparent acquiescence upon the part of either party to a controverted question that had arisen years ago under a treaty would bar either party from a hearing before this tribunal.

Mr. WILLIAMS. Apparent acquiescence, no; but real——

Mr. SMITH of Michigan. There is no court of final resort.

Mr. WILLIAMS. I understand that. Back of all this treaty and of any possible treaty lies the startling fact that there is no international court of final resort and that each nation is its own court of appeals. That is the unfortunate part of the situation. But that has nothing to do with the discussion of the question of the justice and ethics of it.

Mr. SMITH of Michigan. No; but the Senator from Mississippi must admit that there is no final adjudication of such controversy in international law; either party to the engagement may revive it at will, and our course to-day accentuates this right.

Mr. WILLIAMS. Does the Senator mean by that that any nation has that power? That is true.

Mr. SMITH of Michigan. That is all I contend for.

Mr. WILLIAMS. Any nation has the power to agree expressly to one thing this year and the next year to violate its express agreement. I am not talking about power.

Mr. SMITH of Michigan. I do not think, then, there is any misunderstanding, because what I said in the first place was that this was a drag-net proposition, and nothing escapes it.

Mr. CUMMINS. Mr. President——

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

Mr. SMITH of Michigan. I yield to the Senator.

Mr. CUMMINS. I call the Senator from Michigan to the point from which he departed a few moments ago.

Mr. SMITH of Michigan. I did not quite finish my illustration with the Senator from Mississippi.

Mr. WILLIAMS. I will take the blame.

Mr. CUMMINS. The Senator from Michigan was illustrating a case which he thought would answer the inquiry I put to him, but I wanted long ago to call his attention to the fact that the joint high commission could by no possibility have anything to do with the case which has been so thoroughly exploited in the last few moments.

Mr. SMITH of Michigan. You mean the territorial question?

Mr. CUMMINS. Certainly not; because if we have a treaty with Great Britain fixing the boundaries that lie between her territory and ours and all that remains to do is to put upon the ground the monuments which shall mark the boundary, undoubtedly that is a justiciable question. There could be no question about it in anybody's mind. I mean under this treaty as now drawn, without amendment. Therefore there could be no award of the joint high commission respecting the justiciableness of that difference of opinion. You could submit that difference to arbitration, as such differences have been submitted. But such controversies would not be submitted to the joint high commission in order to determine whether they were of a character that ought to be arbitrated or not.

Mr. SMITH of Michigan. In the illustration I gave I had in mind the fact that Canada has never wholly acquiesced in the territorial boundaries between that Dominion and the State of Michigan, and they are unmarked.

Mr. ROOT. Mr. President——

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

Mr. SMITH of Michigan. I do.

Mr. ROOT. May I ask the Senator from Michigan if he has any doubt that the very question which he is putting by way of illustration would have to be arbitrated now under the existing treaty of arbitration?

Mr. SMITH of Michigan. Have you any doubt about it?

Mr. ROOT. I have none.

Mr. SMITH of Michigan. Now, let me answer that. There is no doubt whatever that if we carried out in good faith our present engagements and England asked for arbitration upon that question, we would have to consider it and possibly submit it, but we would decide in this Chamber whether to submit it or not. However, if this treaty passes, this Chamber has absolved itself from deciding such a question, and the question will be decided by a joint high commission constituted of three nationals from each country or otherwise, as they may see fit.

Mr. CUMMINS. Mr. President——

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

Mr. SMITH of Michigan. I do.

Mr. CUMMINS. We are getting near the vital issue, as it seems to me. The Senator from Michigan has just said that if it were proposed to arbitrate that question we would be at liberty to vote for its arbitration or to vote against its arbitration.

Mr. SMITH of Michigan. I said "we," referring to the Government, which would probably arbitrate it; but, acting for myself and in my capacity as a Senator, I would be privileged to hold that the present boundary was sufficient.

Mr. CUMMINS. This treaty compels the Senator from Michigan in honor to submit such a question to arbitration. The treaties that we already have, as suggested by the Senator from New York, would compel the Senator from Michigan in honor to submit the controversy to arbitration.

Mr. SMITH of Michigan. I do not think I am driven quite that far.

Mr. CUMMINS. Then you are not driven that far?

Mr. SMITH of Michigan. Did the Senator from New York refer to The Hague convention?

Mr. ROOT. I was referring to the existing treaty between the United States and Great Britain.

Mr. SMITH of Michigan. That is, the treaty of 1908.

Mr. ROOT. Yes; which we have ratified in accordance with the advice and consent of the Senate, in which the United States solemnly agrees that every such question shall be submitted to arbitration.

Mr. SMITH of Michigan. But the form——

Mr. ROOT. It imposes upon the Senate the obligation in good faith and honor to confirm in some form the special agreement for submission to arbitration.

Mr. SMITH of Michigan. I think the treaty of 1908 goes a good way toward the settlement of any differences between these two countries, and I publicly commend the skill of the Senator from New York in bringing to us a treaty so wholesome and valuable to the Government. But it is a vastly different thing to say that arbitration has been provided for by this treaty and asking us to conform to the judgment of an international tribunal composed entirely of strangers, possibly. It is a vastly different thing.

Mr. ROOT. That is another story.

Mr. SMITH of Michigan. Yes; it is another story. It is the next step and the only alternative if we ratify this treaty; and not only the Senate, but the President of the United States, will have no power whatever to refuse to submit to arbitration any proposition which this joint high commission which we are to superimpose upon ourselves may determine to be arbitrable.

Mr. ROOT. May I call the Senator's attention to the fact——

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

Mr. SMITH of Michigan. Yes.

Mr. ROOT. I am dealing with this illustration: The Senator is finding fault with the pending treaty because it would compel the arbitration of a question relating to the boundary laid down under the Webster-Ashburton treaty of 1842. I am calling attention to the fact that his criticism upon the pending treaty is not a just one, because every such question would have to be arbitrated now under the existing treaty, and the pending treaty would not in any way whatever increase the necessity or the obligation of arbitrating just such a question.

Mr. SMITH of Michigan. Mr. President, let me say to the Senator from New York that the treaty of 1908 does not move the President of the United States against his will and does not move the Senate of the United States against its will, but this joint high commission moves both of them against their will when once fully committed to its terms.

Mr. ROOT. The treaty of 1908 moves the President of the United States and the Senate of the United States, whatever be their wills, if there be faith and honor in the President and the Senate of the United States.

Mr. SMITH of Michigan. Oh, no. We may both move leisurely or even not at all, as is frequently done; the arbitral question has not yet been finally determined by both parties, possibly.

Mr. ROOT. Because we have solemnly bound ourselves to submit to arbitration in the treaty of 1908 the very question that the Senator from Michigan has described in his illustration.

Mr. SMITH of Michigan. The Senator from New York is usually right, but he knows that there is still a function for the Senate to perform, and that if my voice here has any potency at all, and that controversy comes, I have my day in court and my State may be heard. But pass this treaty with the third clause of article 3 in it and we are rendered impotent and powerless, and the voice of every other Senator, even the hand and the voice of the President of the United States, is powerless to prevent arbitration, because he has elected to eliminate himself and the Senate from that controversy which determines the justiciable character of an issue that is sought to be settled by England. We have a constitutional office to perform here. The Senate in the past has seen fit to delay and to amend important treaties, as was its duty. But now, for the first time in our history, we seek to fetter in advance the hands of the Executive, who hereafter will be compelled to move at the instance of a foreign power in the direction of final arbitration, and you will manacle Senators of the United States, denying them the right to approach the subject of arbitration in the constitutional way.

Good faith, the Senator from New York suggests. Yet I have heard many Senators in this body say that if a controversy arises between the United States and England which we do not consider it our duty to submit to arbitration we still have the power of appointing commissioners to nullify what? Honor? And our plighted faith? He who relies upon a fixed commission to save us from disaster has not a very high standard of public morality or national honor. It is like submitting a case to a jury—if you can get your friends on it and know in advance what their verdict is to be. National honor would admonish us to pause at the threshold of this undertaking before we engage to do something that may be very detrimental to our country and the States we represent. Exalt national honor, but do not fix a commission afterwards to meet an exigency. National honor, yes; but do not use the high office of President, who has intentionally and completely absolved himself from responsibility, to further nullification in order that we may escape the penalty of our folly. I am not sure that the attempt to minimize our power is not an impertinence.

Mr. BAILEY. Who has done that?

Mr. SMITH of Michigan. The distinguished Senator from Texas, whom I greatly admire, a few moments ago took himself out of the field of diplomacy by saying what all of us knew was not exactly true, that he did not know anything about it. He is not quite ignorant on this point.

Mr. BAILEY. I was talking about international law; but I know a little about individual morals, and if anybody has been proposing to pack the court I want to vote against them.

Mr. SMITH of Michigan. Mr. President, if the Senator from Texas had been present in the Chamber during the debates upon these treaties he would have heard said more than once that we were not subscribing to anything in blank, because the power to name commissioners still rested in the Executive, who had parted with the power to withhold the arbitration.

Mr. BAILEY. Will the Senator from Michigan permit me?

The PRESIDING OFFICER. Does the Senator from Michigan yield to the Senator from Texas?

Mr. SMITH of Michigan. I yield to the Senator.

Mr. BAILEY. I would not vote for this treaty at all. I do not need to profess to be a man of peace. I am a little inclined to think bloodletting sometimes is good for nations. I think nations will quit going to war when individuals quit resenting insults. But still I should like to reduce war to a minimum, and I desire to vote for any reasonable measure that will do that.

However, I would not vote for this, which pledges us in advance to submit justiciable questions to arbitration, without reserving to myself the right to decide at last what was justiciable. I would decide that according to my best judgment. If I had bound myself in advance, as the Senator from Iowa [Mr. CUMMINS] very pertinently suggested, to submit a justiciable question, and I was brought face to face with it, however indisposed I might be to submit it, I would still keep my pledge and submit it. All I want to do is to reserve to the Senate the right

to say whether or not the question falls within the rule which we have adopted.

Mr. SMITH of Michigan. I should like the attention of the Senator from Texas a moment. The unblushing truth is that if this treaty is passed you have agreed in advance as to who shall determine the justiciable character of the controversy.

Mr. BAILEY. As I understand it, that is true without the motion of the Senator from Georgia and without the resolution of ratification as proposed by the Senator from Massachusetts. Now, without one or the other of those I should unquestionably vote against it, although I do not profess to know much about it.

Mr. SMITH of Michigan. The resolution of ratification of the Senator from Massachusetts does not give us the right to determine the justiciable character of the controversy.

Mr. BAILEY. That is what it was intended to do.

Mr. SMITH of Michigan. I know it was; but the Senator from Massachusetts in his speech the other day, which still rings in this Chamber because of its patriotism and its vigor and its illuminating character, said that the best way to do it to avoid any controversy was to strike clause 3 of article 3 out.

Mr. BAILEY. Yes; but then he said, as I understood him, if that was not done the resolution of ratification left the matter open to no doubt.

Mr. SMITH of Michigan. If that is not done.

Mr. LODGE. If the Senator will allow me——

Mr. SMITH of Michigan. Certainly.

Mr. LODGE. I said then what I have thought from the beginning, that the simplest thing to do is to strike out clause 3, but that might cause very grave difficulties and imperil the final success of the treaties, and that I certainly should not, by my personal preference as to the method of arbitration, stand in the way if I could attain the same result by the resolution. My belief is that my resolution retains the power of the Senate wholly unimpaired, and that if any treaty is sent to us from an international high commission of inquiry, assuming the adoption of my resolution, we have an absolute right to reject that treaty on any ground that we think proper without the violation in the slightest degree of honor or good faith or moral obligation.

Mr. SMITH of Michigan. Mr. President, we would have the same right without the resolution of the Senator from Massachusetts.

Mr. BAILEY. No; we would have the power, but not the right.

Mr. SMITH of Michigan. We would not have a contemporaneous construction of the engagement we have entered into, but the constitutional power would remain without asserting it, if we have it at all.

Mr. BAILEY. If the Senator from Michigan will permit the interruption, I read the speech delivered by the Secretary of State in the city of Cincinnati. It seemed to take this view, which satisfied my mind, and I brought it into the Senate Chamber and asked to have it printed as a public document, so as to make it a part of the printed history of this transaction. While, I repeat, I do not know much about these things, I understand such plain statements as that, and I thought it deserved to be recorded as the judgment of the Secretary of State, who negotiated the treaty.

Mr. SMITH of Michigan. But what is the opinion of the other party to the treaty? The agreement has been made.

Mr. BAILEY. I could say some things about that, but not being a diplomat I do not know whether it is wise to say them or not, and I shall forbear.

Mr. LODGE. But the Senate resolution which I offered of ratification, if adopted, becomes a part of the treaty. That has been decided absolutely, of course, as every one knows, in the Supreme Court in the case of Doe *v.* Braden, in 16 Howard. It becomes a part of the treaty, and if accepted by the other side it is just as binding as any other portion of the treaty.

Mr. SMITH of Michigan. The substance of the Senator's resolution——

Mr. CUMMINS. May I ask the Senator from Massachusetts a question?

Mr. LODGE. Certainly; but the Senator from Michigan is entitled to the floor.

Mr. SMITH of Michigan. I yield for that purpose.

Mr. CUMMINS. Does the Senator from Massachusetts intend by his resolution that when the special agreement comes before the Senate in any given case a Senator may in honor vote precisely as though no arbitration treaty had been entered into?

Mr. LODGE. Not at all; but he may vote precisely as he would vote if no submission to the high commission of inquiry had been agreed to.

Mr. CUMMINS. That is to say, if he believes it to be a justiciable question, then he must vote for arbitration. If he believes it not to be a justiciable question, then he is at liberty to vote against arbitration, even though the joint high commission has found it to be a justiciable matter.

Mr. LODGE. I think we reserve to the Senate the right to decide and to the President the right to decide, after the action of the commission, whether in their opinion the question is justiciable under the first article. That is all I care for. If we reserve that power, we are absolutely safe, in my judgment.

Mr. CUMMINS. May I ask another question of the Senator from Massachusetts? He has described or expressed that liberty of action on the part of the Senate in the following way: That a special agreement in each case shall be made by the President, by and with the advice and consent of the Senate, means the concurrence of the Senate in the full exercise of its constitutional power.

Now, what are the constitutional powers?

Mr. LODGE. Its constitutional power is to advise and consent, to amend or reject, on any ground it pleases, or on no ground.

Mr. CUMMINS. My only suggestion is, and I believe it to be a sound one, that this language obliterates article 1 of the treaty as effectually as it does paragraph 3 of article 3.

Mr. LODGE. I think not. I think it leaves to the Senate the power to decide and pass upon the justiciability of any question; that is, whether it comes within article 1 or not.

If those provisions about the high commission of inquiry were not in the treaty at all, if those were simply left out, and we had followed the example of the treaties made by the Senator from New York [Mr. ROOT] when Secretary of State, and then a treaty had been submitted by the President, we would have had the right to say whether we would ratify it or not, but there has been interjected this high commission of inquiry. My resolution does not aim at the first article of the treaty; it aims at the high commission of inquiry.

Mr. WILLIAMS. It aims to kill it just as much as if you struck it out, does it not?

Mr. LODGE. It aims to prevent our making promises that we will not carry out.

Mr. CUMMINS. May I ask the Senator a question? Why should there be a joint high commission of inquiry upon that point if its finding is to have no effect?

Mr. LODGE. You might as well ask why it is in The Hague convention. The joint high commission of inquiry is in The Hague convention.

The VICE PRESIDENT. The Senator from Michigan is entitled to the floor. Does he yield further?

Mr. SMITH of Michigan. I do.

Mr. CUMMINS. It is given no such power as this in The Hague convention.

Mr. LODGE. No; that is a new feature. The Hague convention thought, and thought wisely, that the high commission of inquiry would be of great value, and they provided specifically it should have no power to make an award. Yet they thought it would be valuable, and I think so, too. It would give the cooling-off time the Senator spoke of yesterday. It would give a year before it could meet. It would then have an opportunity to investigate and report. I object, and I object alone, to the third clause of article 3, which binds us to do what in certain cases we would not do. I will never in the Senate make any promise to another nation in a treaty which I am not prepared to carry out to the letter. The obligation is a moral obligation, and we should agree to nothing that we will not carry out absolutely to the letter.

Mr. SMITH of Georgia. May I ask a question?

Mr. CUMMINS. One more question.

The VICE PRESIDENT. Does the Senator from Michigan yield, and to whom?

Mr. SMITH of Michigan. I yield to the Senator from Iowa.

Mr. CUMMINS. I am appealing for information.

Mr. SMITH of Michigan. The Senator from Iowa was interrogating the Senator from Massachusetts. I am perfectly willing he shall do it in my time. It is very interesting.

Mr. CUMMINS. One more question, and then I will wait until some other time. If what the Senator from Massachusetts has just stated is sound—and it seems to me eminently sound—why should we not make the paragraph mean precisely what we intend it to mean, or else strike it out entirely? Why should we attempt to interpret it in the vague way found in the proposed resolution of ratification?

Mr. SMITH of Michigan. I should like to hear the Senator from Massachusetts answer that, as the question is directed to him.

Mr. LODGE. Mr. President, if the clause is stricken out, in my opinion it imperils the treaties; I think they may fail entirely. I should be very sorry to see them fail entirely. I think if we succeed in carrying out the same purpose without amending the body of the treaties we shall be able to sustain them, and they will be ratified by all parties to them.

Mr. WILLIAMS and Mr. SMITH of Georgia addressed the Chair.

The VICE PRESIDENT. The Senator from Michigan has the floor. To whom does the Senator now yield?

Mr. SMITH of Georgia. I want to ask a question of the Senator from Massachusetts.

The VICE PRESIDENT. To whom does the Senator from Michigan yield?

Mr. SMITH of Michigan. I yield to the Senator from Mississippi [Mr. WILLIAMS], who did not quite catch the warning of the Chair. The Senator from Mississippi addressed an inquiry to the Senator from Massachusetts, and I did not quite catch it myself.

The VICE PRESIDENT. Which—question or the warning? [Laughter.]

Mr. SMITH of Michigan. I caught the warning.

Mr. WILLIAMS. I know I did not catch it, and I wanted to ask the Senator from Massachusetts this question: If striking out clause 3 of article 3 might result in the defeat of the treaty, and if, as I rather suspect—and I leave the suspicion to be solved by the Senator from Massachusetts—his amendment does nullify, annihilate, and kill clause 3 of article 3, then why not do it directly rather than indirectly? In other words, does the Senator from Massachusetts believe that the acute intellects in the service of foreign governments as diplomats are so simple and foolish as not to know a direct and an indirect destruction of a clause one from another?

Mr. LODGE. Mr. President, it is to be remembered that the negotiators of the treaty give to that clause the interpretation embodied in my resolution. The treaty has two other stages to pass after its ratification here.

Mr. WILLIAMS. Does your resolution kill or not kill clause 3 of article 3?

Mr. LODGE. In my judgment it preserves to the Senate all of its constitutional powers.

Mr. WILLIAMS. In your judgment does it not kill clause 3 of article 3?

Mr. LODGE. Well, that question, Mr. President——

Mr. WILLIAMS. I will not push it.

Mr. LODGE. I am perfectly willing to answer it.

Mr. RAYNER. I would suggest that it does not kill it; it only wounds it.

Mr. LODGE. What it does is this: It deprives the action of the international commission of any finality or binding force upon the Senate or on the President of the United States.

Mr. GALLINGER. Mr. President——

Mr. LODGE. Let me finish.

Mr. President, what I was about to say was, if the treaty is ratified here, it then goes back to the Executive and he can submit it to the power with whom it was made, or he can decline to do so, and it ends there, as did the treaties of 1904. If he sends it to the other power, then it is for that power to ratify it. So that there are two further stages. I am very sure that if we ratify the treaties, with my resolution, they will become the supreme law of the land. I can speak with no assurance as to the effect which would be produced by striking out clause 3 of article 3.

Mr. GALLINGER. Mr. President——

The VICE PRESIDENT. Does the Senator from Michigan yield to the Senator from New Hampshire?

Mr. SMITH of Michigan. I think I detect in the demeanor of the Senator from New Hampshire a disposition to ask for a recess.

Mr. GALLINGER. The Senator from Michigan is correct. I think it is time we took one.

Mr. SMITH of Michigan. I yield to the Senator for that purpose.

Mr. LODGE. Of course I yield to the Senator to do anything he wants to do, but I should like to say——

Mr. GALLINGER. I was about appealing to the Senator from Massachusetts. I have no disposition to take this matter out of the Senator's hands.

Mr. LODGE. I understood that.

Mr. GALLINGER. I was going to remark that it is manifest that this discussion, interesting as it is, can not be completed to-day, and I think it is time—we have been here five hours, more or less—that we should take a recess and meet at some convenient time to-morrow to take up the controversy.

Mr. LODGE. Mr. President——

The VICE PRESIDENT. The Senator from Michigan still has the floor. He has simply yielded it temporarily.

Mr. SMITH of Michigan. Mr. President, I think I will for the first time take a little liberty with the parliamentary proceedings of the Senate and ask for a recess myself. [Laughter.]

Mr. GALLINGER. It is immaterial to me, Mr. President, who asks for it. I appeal to the Senator from Massachusetts.

Mr. SMITH of Michigan. I move that the Senate take a recess until half past 1 o'clock to-morrow.

Mr. CURTIS (to Mr. SMITH of Michigan). Make it 12 o'clock.

Mr. LODGE. Mr. President——

The VICE PRESIDENT. The Senator from Michigan moves that the Senate now take a recess until 1.30 o'clock to-morrow afternoon.

Mr. LODGE. I hope the Senator will allow me to make that motion.

Mr. SMITH of Michigan. I withhold the motion.

The VICE PRESIDENT. Does the Senator from Massachusetts desire to make the motion?

Mr. LODGE. I have been supposed to be in charge of the treaties, and I wanted——

Mr. SMITH of Michigan. I certainly do not want to usurp that honor and distinction. I am content to come along just a little behind the Senator from Massachusetts, who ranks me on the committee, and I therefore cheerfully give him the right to make the motion.

Mr. LODGE. No; it is not a question of making the motion; it is as to the question of the time. I do not care who makes the motion if he gets the time right.

Mr. SMITH of Michigan. What time would the Senator prefer? I wanted to say a word or two about that before the motion was made.

The VICE PRESIDENT. The Senator from Michigan withdraws the motion temporarily.

Mr. LODGE. Mr. President, under this unanimous-consent agreement—and I am entirely opposed to the form of unanimous-consent agreement which provides for a vote on a certain legislative day—we could go on taking recesses in this way indefinitely, but the effect of it is that we can not even adjourn without violating the unanimous-consent agreement, and we shut out all Senate business of every kind to the great inconvenience of Senators. There are some Senators who are obliged to leave this week; some of them may have to leave to-morrow; some of them who have come here especially to vote upon the treaties are called away by illness, and I do not think that this debate ought to be protracted beyond another day. I think we ought to make some arrangement, if possible, to-day to secure a vote to-morrow. If the Senator from Michigan will change his motion to 11 o'clock to-morrow I shall be very glad to agree to it.

Mr. WILLIAMS. Oh, no.

Mr. SMITH of Michigan. Mr. President, I think that 12 o'clock——

Mr. LODGE. If we can have an agreement to vote at some definite time to-morrow——

Mr. WILLIAMS. Let us meet at 12 o'clock and vote at 4 o'clock.

Mr. LODGE. If I can have an agreement that the vote shall be taken upon the amendments to the treaty, on the resolutions, and on all amendments pending or to be offered not later than 4 o'clock to-morrow, I shall cheerfully agree to any hour of meeting that the Senate desires.

Mr. MARTIN of Virginia. Mr. President, I desire to make an inquiry.

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

Mr. SMITH of Michigan. I was just going to suggest that this has been done so many times since I have been a Member of this body that I hesitate to concur in the judgment of the Senator from Massachusetts.

Mr. MARTIN of Virginia. I want to make a suggestion, if the Senator from Michigan will yield to me for a minute.

Mr. SMITH of Michigan. Just one minute. If we are to fix an hour to-morrow, say, 4 o'clock or 5 o'clock, when we shall vote upon the treaties, there will hardly be a quorum here all day until the time to vote. I have been very hopeful that the discussion, apart from anything that I have tried to contribute toward it, might be illuminating and helpful, and I know that to-morrow would be spent very profitably if Senators could attend the sessions until this matter is disposed of.

Mr. MARTIN of Virginia. Mr. President——

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

Mr. SMITH of Michigan. I do.

Mr. MARTIN of Virginia. My suggestion is that we vote to-night.

Mr. LODGE. Well, I should, of course, very much prefer that.

Mr. MARTIN of Virginia. I do not think there are many Senators who desire to debate the treaty further, and I think, with a little more patience, we can reach a conclusion to-night, when we certainly have a fairly full Senate. If we renew the debate in the morning it will perhaps run to as late an hour then as we have now arrived at.

Mr. LODGE. It certainly will.

Mr. MARTIN of Virginia. My own judgment is that the Senate had better remain in session and dispose of the treaty to-night.

Mr. LODGE. I should prefer that course.

Mr. SMITH of Michigan. The Senator from New York [Mr. *Root*] and several other Senators have indicated an intention to take part in this debate. I have not consumed very much time myself, and would have been through in a very short time to-day had it not been for the interruptions, but I do not believe we can get a vote to-night.

Mr. GALLINGER. It is evident we can not.

Mr. LODGE. I do not see really——

The VICE PRESIDENT. The Senator from Michigan still has the floor.

Mr. ROOT. Mr. President——

The VICE PRESIDENT. To whom does the Senator from Michigan yield?

Mr. SMITH of Michigan. I yield to the Senator from New York.

Mr. LODGE. I will wait until I get the floor in my own right.

Mr. ROOT. I do not wish to delay the taking of a vote upon the treaties. There are a few things, however, which I think ought to be said before the vote is taken, and which I have not yet heard said. Unless some other Senator says them I want to say them. There are several Senators who, I understand, have their names down on a list as entitled to recognition. I am willing to condense what I have to say within a very narrow compass, but I do not wish the vote taken until I shall have had that opportunity.

Mr. SMITH of Michigan. Well, Mr. President——

Mr. LODGE. Mr. President——

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

Mr. LODGE. No; I do not ask that. I will wait until the Senator takes his seat.

Mr. SMITH of Michigan. I was going to move that the Senate take a recess until 12 o'clock to-morrow.

The VICE PRESIDENT. The Senator from Michigan moves that the Senate take a recess until 12 o'clock to-morrow.

Mr. LODGE. Mr. President——

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

Mr. SMITH of Michigan. Certainly.

Mr. LODGE. I will wait until I can get the floor.

The VICE PRESIDENT. The Senator from Michigan moves that the Senate take a recess until 12 o'clock to-morrow.

Mr. LODGE. I move to amend that motion by making it 11 o'clock.

The VICE PRESIDENT. The Senator from Massachusetts moves to amend the motion by making the hour of meeting 11 o'clock to-morrow.

Mr. WILLIAMS. Oh, no.

Mr. LODGE. Wait a moment. I wanted to get the floor.

Mr. SMITH of Michigan. Mr. President——

Mr. LODGE. I believe I have the floor, Mr. President, having moved an amendment to the motion.

Mr. SMITH of Michigan. I believe I will concur in the amendment and accept it. Do I get the floor now. [Laughter.]

Mr. LODGE. I think not.

Mr. SMITH of Michigan. I could not yield the floor to anyone more entitled to it than the Senator from Massachusetts, and I do so cheerfully.

Mr. LODGE. I thank the Senator from Michigan. I only wanted to get an opportunity to say to the Senate that there are a number of Senators who have informed me, some within the last few minutes, that they are obliged to leave here on Friday; and I think it is only justice to Senators who have been waiting here to vote, and some who have come here for that purpose, to make an agreement that the matter shall be disposed of to-morrow.

Mr. BACON. I suggest to the Senator that we agree that a vote be taken to-morrow before adjournment or before a recess.

Mr. LODGE. "Before adjournment"—that is just where we are now.

Mr. BACON. Before a recess.

Mr. LODGE. "Before a recess"—that is no better. You can make it, if you choose, the calendar day of to-morrow, and stay here until midnight; but I see no possible reason for that. I do not see why we should be met with objection to agreeing to take a vote at a certain time, in the hope that we will thereby keep Senators in their seats. If the debate is not of merit enough to keep them in their seats, you can not keep them there by failing to fix a time for a vote.

Mr. PENROSE. Mr. President, I am one of those who complained to the Senator from Massachusetts regarding the way in which these proceedings are being conducted. The Senate adjourned yesterday at an early hour and wasted a whole day, no one being ready to proceed. Such procedure certainly is not fair to Members of the Senate who have made engagements, with the reasonable expectation that they would be able to leave town toward the end of the week, and, so far as I am concerned, I will be deprived of the opportunity to vote upon these treaties by reason of the necessity of going away to-morrow. If the proceedings continue to be conducted in this interminable manner, doubtless there will be many on the following day in the same position as I am now. Certainly, those of us who have engagements have some rights and are entitled to have this proceeding expedited and not have the Senate adjourn, as it did yesterday, and waste a whole day because no Senator was ready to speak, and certainly no one was willing to hear anyone, should he be willing to speak.

Mr. BACON. Mr. President, I think it proper to say to the Senator——

Mr. PENROSE. I was not in the Senate and do not know the circumstances.

Mr. BACON. I was going to say to the Senator that had he been here——

Mr. PENROSE. I was not.

Mr. BACON. He would not make that remark, because we had three very elaborate and illuminating speeches on the question, one by the Senator from Nebraska [Mr. BROWN], one by the Senator from Idaho [Mr. HEYBURN], and one by the Senator from Mississippi [Mr. WILLIAMS].

Mr. WILLIAMS. And the Senate adjourned about 4 o'clock, because nobody was ready to go on.

Mr. PENROSE. It would seem to me, under a unanimous-consent agreement of this kind, as if the spirit of it was that the proceedings should be pushed to a conclusion, and what we ought to do to-night is to stay here until we vote on the treaties.

Mr. CUMMINS. I rise to a point of order, Mr. President.

The VICE PRESIDENT. The Senator from Iowa rises to a point of order, which he will state.

Mr. CUMMINS. Is the motion now before the Senate debatable?

The VICE PRESIDENT. It is not a debatable question.

Mr. CUMMINS. Then I call for the regular order.

The VICE PRESIDENT. The regular order is demanded, which precludes further debate. Debate can only be had by unanimous consent.

Mr. LODGE. If debate is going to be stopped, I hope the Senate will vote the motion down.

Mr. GRONNA. Mr. President——

The VICE PRESIDENT. The motion is not debatable, and the regular order has been demanded.

Mr. GRONNA. I ask unanimous consent to make a statement.

The VICE PRESIDENT. Is there objection?

Mr. WILLIAMS. Objection to what?

The VICE PRESIDENT. To the Senator from North Dakota making a statement. The Chair hears no objection.

Mr. GRONNA. Mr. President, I wish to say that I am obliged to leave the city this evening at 6.45 o'clock, and I had hoped that a vote could be taken upon the treaties before that time. I am in favor of the resolution of ratification offered by the Senator from Massachusetts, but unless the vote is had to-day I will not have an opportunity to vote for it. I should like to ask the Senator from Massachusetts if it is not possible to so arrange matters that the vote can be had to-night?

Mr. GALLINGER. Regular order!

The VICE PRESIDENT. The question is on agreeing to the motion of the Senator from Michigan as modified by the Senator from Massachusetts, that the Senate take a recess until 11 o'clock to-morrow morning.

The motion was rejected.

Mr. SMITH of Michigan. Mr. President——

The VICE PRESIDENT. The Senator from Michigan.

Mr. SHIVELY. I rise to a point of order, Mr. President.

Mr. GRONNA. Mr. President——

The VICE PRESIDENT. The Senator from Indiana rises to a point of order, which he will state.

Mr. SHIVELY. Mr. President, I understand that the vote just taken was on an amendment of the Senator from Massachusetts [Mr. LODGE] to the motion of the Senator from Michigan [Mr. SMITH].

The VICE PRESIDENT. The amendment was accepted by the Senator from Michigan, and the vote was on the motion as modified.

Mr. SMITH of Michigan. The Senator from North Dakota has in a personal matter addressed the Senator from Massachusetts, and I think he is entitled to a reply.

Mr. LODGE. In the confusion I did not hear the question.

Mr. GRONNA. Mr. President, I directed an inquiry to the Senator from Massachusetts, if it would not be possible to have this matter go on so that we could have a vote this evening?

Mr. LODGE. Why not have it go on?

Mr. GRONNA. Yes.

Mr. LODGE. I would be only too glad to have it go on. I should like to get a vote; and I am perfectly ready to stay here until we get it.

Mr. PENROSE. Regular order!

The VICE PRESIDENT. The Senator from Michigan has the floor.

Mr. SMITH of Michigan. Mr. President, I have been interrupted so often during my discussion, and I am afraid that I have omitted a number of things I had intended to say, and Senators have been very patient and attentive and I willingly yield the floor to others better qualified than myself to discuss the merits of this controversy. I yield to the distinguished Senator from New York [Mr. ROOT].

Mr. ROOT obtained the floor.

Mr. CLAPP. Mr. President, will the Senator from New York yield to me for a moment?

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

Mr. ROOT. I do.

Mr. CLAPP. As we have voted down the motion to take a recess, I think we ought at this time to have a sort of understanding that we will stay here and complete this matter to-night, and if it is in order I would make the motion that we proceed with and complete the discussion and vote before adjournment to-day.

The VICE PRESIDENT. That is the order of business under the unanimous-consent agreement.

Mr. LODGE and Mr. BACON addressed the Chair.

The VICE PRESIDENT. To whom does the Senator from New York yield?

Mr. ROOT. I yield to the Senator from Massachusetts.

Mr. LODGE. The Senator from New York desires to address the Senate. It is now 10 minutes to 6 o'clock, and I understand there are two or three other Senators who wish to speak. I do not desire to put anyone to inconvenience, but I think at the end of two days my request to fix a time is not an unreasonable one. So I again ask unanimous consent that the vote on the treaties, the resolutions, and all amendments pending or to be offered, shall be taken not later than 5 o'clock to-morrow.

The VICE PRESIDENT. The calendar day of March 7?

Mr. LODGE. The calendar day of March 7.

The VICE PRESIDENT. Is there objection to the request of the Senator from Massachusetts?

Mr. WILLIAMS. Mr. President, I would suggest to the Senator from Massachusetts that he say not later than 4 o'clock.

Mr. LODGE. I heretofore suggested not later than 4 o'clock, and there was objection, so I pushed it up until 5 o'clock, although 4 o'clock would suit me.

Mr. PENROSE (to Mr. LODGE). Make it 2 o'clock.

Mr. WILLIAMS. My idea was that we might begin to vote at 4 o'clock and get away at some reasonable time.

Mr. LODGE. I am certainly willing to make it 4 o'clock, but that was objected to.

Mr. WILLIAMS. Suppose the Senator renews his request fixing the hour at 15 minutes after 4. That will answer the purpose.

Mr. LODGE. Then, Mr. President, I will ask unanimous consent that the vote be taken at 4 o'clock to-morrow.

The VICE PRESIDENT. The Senator from Massachusetts modifies his request so as to fix the time for the vote at 4 o'clock to-morrow, the request otherwise to be the same as stated by him. Is there objection?

Mr. PENROSE. Mr. President, I ask the Senator from Massachusetts whether we can not get a unanimous-consent agreement to vote at 2 o'clock?

Mr. GALLINGER. Objection was made to 4 o'clock just now.

Mr. PENROSE. I did not understand that. I did not hear it.

The VICE PRESIDENT. Is there objection to the request of the Senator from Massachusetts?

Mr. SMITH of Georgia. I object.

Mr. LODGE. Then I make the request that the vote be had at 5 o'clock to-morrow, Mr. President.

The VICE PRESIDENT. Is there objection to the request that the debate be closed at 5 o'clock to-morrow and a vote taken at that time?

Mr. SMITH of Georgia. I object. I think, Mr. President, we ought to go on to-morrow until we finish the question, but I am opposed to fixing a specific time for the vote.

Mr. WILLIAMS. Then let us stay in session to-night.

Mr. LODGE. Then, Mr. President, we have no choice except to stay in session now.

Mr. ROOT. Mr. President——

The VICE PRESIDENT. The Senator from New York is entitled to the floor and is awaiting the pleasure of the Senate.

Mr. BACON. Mr. President, one moment. I think if the Senator from Massachusetts will suggest that we meet at 11 o'clock to-morrow and vote not later than half past 5 an agreement can be reached.

Mr. LODGE. Very well. Mr. President, I understand if the suggestion is made to meet at 11 o'clock and vote not later than half past 5, we can get an agreement.

Mr. WILLIAMS. Mr. President, I think we have made every effort to reach an agreement.

Mr. LODGE (to Mr. WILLIAMS). Do not object to that.

Mr. WILLIAMS. I shall object to it. Since gentlemen have made their beds they can lie in them.

Mr. ROOT. Mr. President, I think it my duty to express in a manner which I hope the Senator from Georgia [Mr. BACON] will regard as both moderate and brief my advocacy of the adoption of the resolution last offered by the Senator from Massachusetts [Mr. LODGE], under which the pending treaties with Great Britain and France will be ratified with a construction to be made a part of the instrument of ratification. Before stating the reasons for my agreement to that resolution, I wish to spread upon the record of the Senate a portion of the document which was presented by the Senator from Texas [Mr. BAILEY] on the 8th of February, being Senate Document No. 298, Sixty-second Congress, second session. This document contains the address of the Secretary of State, Mr. Knox, before the American Society of Judicial Settlement of International Disputes at Cincinnati on the 8th of November, 1911. That speech was a public expression by the negotiator of the treaty on behalf of the United States.

Mr. WILLIAMS. Mr. President——

The VICE PRESIDENT. Does the Senator from New York yield to the Senator from Mississippi?

Mr. ROOT. I do.

Mr. WILLIAMS. My interruption is not for the purpose of asking a question, but I understand that the Senator from New York would rather not go on to-night, and I now understand that if the Senator from Massachusetts will make a request to take a recess until 12 o'clock to-morrow, and to vote not later than 4 o'clock to-morrow afternoon, it will be acceded to.

Mr. MARTIN of Virginia. Four thirty p. m. to-morrow.

Mr. LODGE. Mr. President, I made the request that the Senate take a recess until 12 o'clock noon to-morrow, and that a vote be taken not later than half past 4.

The VICE PRESIDENT. The vote to be taken otherwise as provided in the existing unanimous-consent agreement?

Mr. LODGE. Yes.

Mr. HITCHCOCK. Mr. President, I should like to inquire what assurance a Senator would have that he would be permitted to make even a short address under the terms of such an agreement?

Mr. LODGE. He has all day between 12 o'clock and half past 4.

Mr. HITCHCOCK. That is rather a limited time, and it is quite possible for one Senator to occupy that whole period.

Mr. LODGE. I do not know of anybody on this side who is going to speak, except the Senator from New York [Mr. ROOT]. Of course, I do not know how much time the Senator from Nebraska desires to occupy.

Mr. HITCHCOCK. I should not desire over 20 minutes, and possibly not that much.

Mr. LODGE. There can be no doubt that the Senator will have 20 minutes, and a great deal more, if he desires.

Mr. HITCHCOCK. I am sure there are a number of Senators on this side of the Chamber who desire to speak, and I think

the only objection to the request for unanimous consent is due to that fact.

Mr. LODGE. I appeal to the Senator not to object. I am speaking not so much for myself as for other Senators who are being put to the utmost inconvenience by this delay.

The VICE PRESIDENT. Is there objection to the request of the Senator from Massachusetts? [A pause.] The Chair hears no objection, and the order is entered.

Thereupon (at 6 o'clock p. m.) the Senate, as in open executive session, took a recess until to-morrow, Thursday, March 7, 1912, at 12 o'clock m.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *March 6, 1912.*

The House met at 12 o'clock m.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

Almighty Father, prepare us in Thine own way for the duties before us, for whether in the body or out of the body we face the unknown; the present alone is ours; we know not what the next moment, the next hour, the next week has in store. But Thou hast never failed us, even though we have proved recreant to the trust reposed in us. Help us, therefore, with renewed faith and confidence to do the things next to us, and do them in the spirit, leaving the results to Thee who doeth all things well. And Thine be the praise, through Jesus Christ our Lord. Amen.

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

EXTENSION OF REMARKS.

Mr. AKIN of New York. Mr. Speaker, I ask unanimous consent that the gentleman from North Dakota [Mr. HANNA] and myself be allowed to extend our remarks in the RECORD.

The SPEAKER. The gentleman from New York [Mr. AKIN] asks unanimous consent that the gentleman from North Dakota [Mr. HANNA] and himself be allowed to extend their remarks in the RECORD. Is there objection?

Mr. MANN. Mr. Speaker, reserving the right to object, I would like to ask the gentleman upon what subject.

The SPEAKER. Upon what subject does the gentleman from New York desire to extend his remarks?

Mr. AKIN of New York. On the subject on which I spoke on February 29.

The SPEAKER. What was the subject?

Mr. AKIN of New York. It was in regard to post-office matters.

The SPEAKER. The gentleman from New York states that he desires to extend his remarks on the subject on which he spoke on February 29. Is there objection?

Mr. HUMPHREY of Washington. Mr. Speaker, reserving the right to object, I would like to ask the gentleman a question. Is that the same matter about which the gentleman from Massachusetts [Mr. GREENE] had some little controversy?

Mr. AKIN of New York. I can answer the gentleman by saying I do not think any individual Member has the right to censor my speech. I have never censored anybody.

Mr. HUMPHREY of Washington. Mr. Speaker, I wanted to ask the gentleman whether that is a question upon which he and the gentleman from Massachusetts [Mr. GREENE] had their controversy?

Mr. AKIN of New York. The objectionable part is all in.

Mr. OLMSTED. I think the objection of the gentleman from Massachusetts [Mr. GREENE] was to something that the gentleman from New York [Mr. AKIN] had already said. The gentleman from Massachusetts wanted him to eliminate the matter.

Mr. HUMPHREY of Washington. I do not think I will have any objection, but I want to ask the gentleman one further question. Is it the gentleman's intention to refer by name to the gentleman from New York [Mr. FAIRCHILD].

Mr. AKIN of New York. I am under the impression that from now on I will see it does not appear in the extension of my remarks, if that is what you want to do.

Mr. HUMPHREY of Washington. With that understanding, I will have no objection.

The SPEAKER. Is there objection to the request of the gentleman from New York [Mr. AKIN]? [After a pause.] The Chair hears none.

COMMITTEE ON ELECTIONS NO. 3.

Mr. GOLDFOGLE. Mr. Speaker, I ask unanimous consent for the immediate consideration and adoption of the resolution which I send to the Clerk's desk.

The Clerk read as follows:

House resolution 440.

Resolved, That the Committee on Elections No. 3 have leave to sit during the sessions of the House.

The SPEAKER. Is there objection to the present consideration of the resolution? [After a pause.] The Chair hears none. The question is on agreeing to the resolution.

The question was taken, and the resolution was agreed to.

MANEUVER CAMP NEAR TULLAHOMA, TENN.

The SPEAKER. This is Calendar Wednesday, and the unfinished business was House joint resolution 118, called up by the gentleman from Virginia [Mr. HAY], of which the Clerk will report the title.

The Clerk read as follows:

Joint resolution (H. J. Res. 118) authorizing the Secretary of War to accept the title to approximately 5,000 acres of land in the vicinity of Tullahoma, in the State of Tennessee, which certain citizens have offered to donate to the United States for the purpose of establishing a maneuver camp and for the maneuvering of troops, establishing and maintaining camps of instruction, for rifle and Artillery ranges, and for mobilization and assembling of troops from the group of States composed of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, and South Carolina.

Mr. HAY. Mr. Speaker, I would like to inquire whether anybody desires any time on this resolution or not?

Mr. MANN. I think we will want a little time.

Mr. HAY. How much?

Mr. MANN. I do not know exactly.

Mr. HAY. Half an hour on a side?

Mr. MANN. I think that would be enough, probably.

Mr. HAY. Mr. Speaker, I ask unanimous consent that there may be one-half hour on a side on this resolution, at which time the resolution may be read under the five-minute rule, and that one half of the time be controlled by the gentleman from Illinois [Mr. MANN] and the other half by myself.

The SPEAKER. The gentleman from Virginia asks that general debate on House joint resolution No. 118 be limited to one hour, one-half of the time to be controlled by himself and one-half by the gentleman from Illinois [Mr. MANN], and that after that the resolution be read for consideration under the five-minute rule. Is there objection? [After a pause.] The Chair hears none.

Mr. HAY. I yield 15 minutes to the gentleman from Tennessee [Mr. HOUSTON].

Mr. HOUSTON. Mr. Speaker, this joint resolution that has been read before the House is for the purpose of establishing a maneuver camp for the maneuvering of troops, establishing and maintaining camps of instruction for rifle and Artillery ranges, and for the mobilization and assembling of troops from the group of States composed of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, and South Carolina.

During the last session of Congress there was a resolution pending before this House proposing to cede or donate to the United States Government 5,000 acres of land situated near Tullahoma, Tenn., the land which is now proposed to be donated to the Federal Government. The passage of that resolution was recommended by the then Secretary of War. There was a resolution agreed upon by the friends of that resolution, and also a resolution introduced for the purpose of investigating Chickamauga, with reference to establishing a rifle range and maneuvering grounds there, which passed Congress. As a result of this a board of engineers, composed of Army officers, was appointed for the purposes of examining the two places and reporting as to the advisability and practicability and fitness of those places, or either one of them, for the purposes enumerated.

That board of Army officers made a report, and reported that the site at Tullahoma was admirably adapted for a rifle range and camps of instruction, and advised the acceptance of the proposed tract of 5,000 acres for the purpose of establishing a small-arms rifle range of sufficient size to accommodate the national rifle competition. They therefore reported that for the purpose of establishing and maintaining camps of instruction and for the purpose of securing a site for a mobilization camp in time of war. They reported that the tract was not large enough for the maneuvering grounds, but recited the fact in that report that there was a large amount of land adjacent to it that could be bought very cheaply and, whether it was bought or not, it could be used with very little damage to those owning and occupying the land, and at small cost to the Government.

Now, the object of this resolution is to donate 5,000 acres of land for the purpose of establishing a maneuvering ground, camp of instruction, rifle range, and so forth. I want to state frankly to the Members of this House that there is nothing involved in this proposition except the donation of 5,000 acres of land to the Federal Government for the purpose of establishing this rifle range, and so forth. Furthermore, to be candid and

frank, I will say that if the Government accepts this land the people of Tennessee, my constituents, and those residing near this location, would be very glad to see money invested by the Government for the improvement of this tract of land for the purposes named. Whether or not that is done, we believe we can realize a great benefit from this rifle range if the land is accepted by the Government by the use of the funds in control of the State. We have on hand now about $15,000, I believe it is, and under section 1661 of the Revised Statutes we are authorized to use this money for the purpose of improving this ground as a rifle range for target practice, and so forth.

Now, we expect the State of Tennessee to use this money upon the improvement of this land if the Government accepts this cession and donation of land. That will make a rifle range and camp for the assembling of troops and target practice that will be quite sufficient for a beginning, that will afford a very fine opportunity for the drilling and practicing of the militia of Tennessee and of the group of States that are named in this resolution.

The report of this board of engineers sets forth the fact, in very convincing terms, that this land is admirably adapted for these purposes. So far as the location is concerned, there is not a healthier location in the Union. It is on the Highland rim of the Cumberland Mountains, or Cumberland Plateau, and the land is of such a character and of such value that more of it can be procured at a reasonable price. If there is no occasion or disposition on the part of the Government to buy more land so that it can be used for a maneuvering ground, still there is 25,000 or 50,000 or 100,000 acres between this rim and the base of the Cumberland Mountains that could be used for the practice of large guns. No better could be found in the whole Union.

Mr. HELM. Mr. Speaker, will the gentleman yield?

The SPEAKER. Does the gentleman from Tennessee yield to the gentleman from Kentucky?

Mr. HOUSTON. With pleasure.

Mr. HELM. What railroad transportation facilities have you?

Mr. HOUSTON. Well, this land lies alongside the Nashville & Chattanooga Railroad. At Tullahoma there is a branch of that road coming into this railroad from Sparta, Tenn.

Mr. HELM. The same system of railroads?

Mr. HOUSTON. The same system of railroads; and this railroad, the Nashville & Chattanooga Railroad, is being double tracked from Nashville to Chattanooga, and it is one of the best equipped roads in the Union.

Mr. HELM. A single line of railroad.

Mr. HOUSTON. A single line of railroad, but will be a double-track road. So far as the transportation facilities are concerned, they will be admirable. The connections with all the group of States mentioned in this resolution are excellent. At Chattanooga, 75 miles away, there are various connecting roads. At Nashville, about 75 miles the other way, the connection is made with two or more systems of roads connecting especially with the States mentioned in the resolution. With these connections at Chattanooga and at Nashville, and that road being double tracked, it makes ample railroad facilities for the transportation of soldiers.

Mr. HELM. May I ask the gentleman further what is the ultimate aim of the parties in interest in donating this 5,000 acres of land?

Mr. HOUSTON. The aim is a patriotic one. It is desired to furnish to the Government the best site for a rifle range and a maneuver ground that can be found in the States mentioned in the resolution.

Mr. HELM. The gentleman from Tennessee, of course, is aware of the fact that the Government has on foot a proposition to spend $13,000,000 in the Appalachian Forest Reserve?

Mr. HOUSTON. I understand that legislation of that sort has been proposed.

Mr. HELM. Is this within the zone of the Appalachian Forest Reserve?

Mr. HOUSTON. I suppose the Appalachian Reserve is something like 150 miles away, and that would be as close as the Appalachian Forest Reserve would come to it.

Mr. HELM. I should like to ask the gentleman one further question. What troops are quartered anywhere within 100 miles of this?

Mr. HOUSTON. I am not able to give the gentleman that information. But the object of this resolution is to establish a place where troops can be encamped and mobilized for the States named, and the fact that they have none very near is one of the strongest arguments that we offer why we should have this one established.

Mr. HELM. What I am trying to get at is how far troops will have to come in order to reach this place. Where will the troops come from who will go there to drill?

Mr. HOUSTON. It depends on the particular place in the United States from which they are sent. I am not able to inform the gentleman on that.

Mr. HELM. What mobile Army post is near to this?

Mr. HOUSTON. I suppose the post at Fort Oglethorpe, in the State of Georgia, would be the nearest.

Mr. SIMS. If the gentleman will allow me, the proposed Appalachian Park will not go west of Knoxville, 150 or 200 miles away.

Mr. HOUSTON. I believe that is correct.

Mr. SIMS. In other words, it is much nearer to Oglethorpe than this.

Mr. STEPHENS of Texas. Can the gentleman inform me how far this ground is from Oglethorpe?

Mr. HOUSTON. I suppose between 85 and 90 miles.

Mr. STEPHENS of Texas. How much ground is open for these same purposes at Oglethorpe?

Mr. HOUSTON. I am not able to answer the gentleman, but I have the report of the Army engineers here which says that that is not suitable ground for this purpose. They were appointed to examine that ground there, and also at Tullahoma, and they report that the situation at Oglethorpe is not desirable for this purpose, and that the situation at Tullahoma is most desirable.

Mr. STEPHENS of Texas. It is in the same State, is it not?

Mr. HOUSTON. No, sir; Oglethorpe is in Georgia and this is in Tennessee.

Mr. STEPHENS of Texas. It is the same kind of country and the same kind of soil?

Mr. HOUSTON. Altogether a different kind of country. This is a plateau, a level piece of land on the first bench of the mountain, on what we call the rim of the Cumberlands. It is not composed of hills and valleys and hollows; it is mostly level.

Mr. SLAYDEN. The gentleman says they reported adversely on Oglethorpe?

Mr. HOUSTON. Yes; at Chickamauga.

Mr. SLAYDEN. That is the same thing.

Mr. HOUSTON. It is about 12 miles distant in the State of Georgia. They reported that the location at Chickamauga practically was not suited to the establishment of a rifle range and maneuvering ground, and advised against its establishment.

Mr. STEPHENS of Texas. Is this land to be donated by some parties to the United States Government for the purpose of a rifle range?

Mr. HOUSTON. It is to be donated to the Government for the purpose of establishing the range. The State will cooperate with the Government under the law as it now exists, section 1661 of the Revised Statutes, which provides that it may do that, and that the State may use its own funds in connection with the Federal Government.

Mr. STEPHENS of Texas. Has the State a rifle range at this point?

Mr. HOUSTON. It has no rifle range at this point, nor at any other.

Mr. STEPHENS of Texas. Has the State purchased this land?

Mr. HOUSTON. No; it belongs to different individuals. The people who own it propose to give it. The Board of Trade of Tullahoma have options on a number of farms, and they propose to buy them and donate it to the Government if the Government will accept it.

Mr. SLAYDEN. Has the Army Board of Engineers reported on it as entirely suitable for a rifle range?

Mr. HOUSTON. I will read to the gentleman what is said about it.

Mr. SLAYDEN. Will there be any expenditure required to make it suitable?

Mr. HOUSTON. The land will have to be cleared up and prepared for the location of camps, and so forth.

Mr. SLAYDEN. Have they natural butts in the shape of hills or mountains to stop projectiles so that they will not kill a man in the next county?

Mr. HOUSTON. They have the most admirable butts that can be found in the country; they have the Cumberland Mountain range 700 or 800 feet high to shoot their bullets against.

Mr. HELM. Will the gentleman yield?

Mr. HOUSTON. Certainly.

Mr. HELM. Will the gentleman from Tennessee yield time for me to ask the gentleman from Texas a question?

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

Mr. HAY. I will yield the gentleman two minutes more.

Mr. HOUSTON. I want to emphasize the fact that it is recommended by the Secretary of War, by a former Secretary of War, and a Board of Engineers composed of Army officers.

Mr. AUSTIN. Is this the unanimous report of the committee?

Mr. HOUSTON. It is; and the Secretary of War recommends the acceptance of this land. And the Secretary of War in submitting that report of the Army officers to the President says:

> To carry out the policy of bringing together into camps of instruction regular troops and Organized Militia, it is of the utmost importance to the Government to own suitable sites for such camps.

The report goes on to set out the fact that it is admirably adapted for this purpose. You will find that this is the most suitable place for the gathering together of troops, the most healthful and best watered place that could be found in all the country. This section of country is a health resort; people go there from all sections to find health and strength.

I want to say that I have an amendment that I want to offer to the bill when it is read under the five-minute rule.

Mr. MANN. Mr. Speaker, this is a bill to establish a maneuver camp at Tullahoma, Tenn. The last bill that we acted upon on Calendar Wednesday was to establish a brigade camp or post in Tennessee——

Mr. BYRNS of Tennessee. In Georgia.

Mr. MANN. I beg the gentleman's pardon, it was a bill introduced by the gentleman from Tennessee [Mr. MOON] that we passed, providing for a brigade post in his district; a part of it is in Georgia and a part of it is in Tennessee.

Mr. HAY. It was in Chickamauga Park.

Mr. MANN. I know what the situation is. I do not wonder that gentlemen are somewhat restive under the proposition, and yet they ought not to be; it only shows the exceeding great activity of the Members from Tennessee.

On one day they put through a bill for a brigade post in their locality, the only bill of the kind that has been passed through the House in years, and on the next day they propose to put through a bill to establish a maneuver camp, the only bill of the kind that has been or will be reported, probably, or passed. They have been exceedingly active. Gentlemen ought not to think it a reflection upon them when they are grabbing off so much for their State. On last Wednesday we passed a proposition to direct the War Department to report upon the advisability of establishing a maneuver camp near Anniston, Ala., to cover precisely the same States that it is proposed to cover by this maneuver camp. It was the same proposition. No one expects that there will be a maneuver camp at both places. Gentlemen from Tennessee reported a proposition to have the War Department report upon Anniston, while at the same time they were slipping the knife into the proposition by getting a report to really establish a maneuver camp in Tennessee. All the discussion the other day was idle waste of time if this resolution is to be passed, as I assume it is. Both resolutions were reported unanimously from the great Committee on Military Affairs. It is impossible to put both into final execution.

I do not know where the maneuver camp ought to be or whether there ought to be one at all, but it seems to me that it is a part of wise legislation when you have ordered a report upon one proposition to wait until you get the report before you determine upon something that entirely eradicates any need of the report. If this camp be established, there is no occasion for the maneuver camp at Anniston, because both are to serve the National Guard of the same States.

I now yield to the gentleman from Tennessee [Mr. BYRNS] to explain in a moment why this is done, and in my time.

Mr. BYRNS of Tennessee. Mr. Chairman, I can say to the gentleman that, as a matter of fact, the acceptance of this land, donated as it is by the citizens of Tullahoma and the vicinity, will not interfere with Congress accepting any lands, if it chooses to do so, in Alabama, because this resolution imposes no obligation upon this Congress or any future Congress to enlarge these lands or to spend any money upon them unless future investigations shall determine the necessity and the wisdom of making such improvements.

Mr. MANN. Oh, of course we are not required to do anything with the land, but why do we accept it? We accept it for a purpose. Does the gentleman mean to say that there is no intention to carry out the purpose?

Mr. BYRNS of Tennessee. The gentleman from Illinois has been kind enough to yield me time in which to make an explanation. I will say to the gentleman in brief, that Gen. Maloney, the adjutant general of the State of Tennessee, stated in the hearings held by the Committee on Military Affairs that there is no permanent place in Tennessee where the militia can be maneuvered and given proper practice. It is absolutely necessary to carry the militia to Chickamauga Park in order to have a field large enough for maneuvering purposes, and he proposes, under section 1661, to apply about $12,000 or $15,000 of money now in his hands toward putting this land in proper shape for maneuvers and target practice. It will not only be subject to the use of the Federal troops, but, with the consent of the War Department, will be for the use of the State militia as well as the militia of the other States in the southeastern division.

Mr. MANN. Mr. Speaker, if the purpose of the gentlemen is to establish a maneuver camp for the benefit of the National Guard of Tennessee, the land ought to be donated to the State of Tennessee and not to the General Government. But the purpose is indicated by the resolution itself. It is to establish a maneuver camp for the maneuvering of troops, and so forth, from the group of States composed of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, and South Carolina; that is, a maneuver camp for the National Guard of all these States. Would anyone here propose—and that is what I yielded to have answered—to establish a maneuver camp at this point for the National Guard of all these States, and then turn around next week and establish a maneuver camp at Anniston for the benefit of the troops of the same State?

Mr. PEPPER. Mr. Speaker, will the gentleman yield?

Mr. MANN. Yes.

Mr. PEPPER. Mr. Speaker, I heard the statement of the adjutant general before the Committee on Military Affairs. I fully agree with the statement of the gentleman from Illinois [Mr. MANN], that the only purpose of this resolution is that at some time possibly the United States Government may expend some money on this proposition and develop it. Yet at the same time, as I understand the situation, the business men of Tullahoma and others interested have secured options upon this land. It is desired to have it as a maneuver ground, and we asked the question of the adjutant general, Why not donate this to the State, just as the gentleman from Illinois has now asked the question? He said:

> If the National Government will not accept it, of course we will donate it to the State, but we prefer to have the National Government own it for the avowed purpose that possibly at some time they will use it as a national training camp.

But at the same time it does not seem to me to impose any obligation on the National Government to so use it if they do not want to do so.

Mr. MANN. Does the gentleman mean to contend that Congress would play a confidence game on these people and pass a resolution accepting their gift for the purpose of establishing a maneuver camp and for the maneuvering of troops, and so forth, from a group of States composed of all of those States with no intention of carrying that into effect? That would be a plain confidence game, and I am sure that no gentleman in this House would be a party to a confidence game of that sort.

Mr. HELM and Mr. BYRNS of Tennessee rose.

The SPEAKER. To whom does the gentleman yield, if to anybody?

Mr. MANN. I yield to the gentleman from Kentucky.

Mr. HELM. Can the gentleman from Illinois tell the House how many troops, if any, are stationed in Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, North and South Carolina?

Mr. MANN. I am unable to give the gentleman the information asked for. Some member of the Committee on Military Affairs can give it, probably in very short language, and I yield for that purpose for half a minute.

Mr. HELM. Mr. Speaker, I would like to ask the chairman of the Committee on Military Affairs if it is not a fact that in this group of States there are only two States in the group that have a mobile Army post, one in Kentucky—and that has been abandoned—and in Georgia they have two or more, and have ample ground on which to conduct the maneuvers?

Mr. SLAYDEN. Mr. Chairman, in the absence of the chairman of the Committee on Military Affairs I will say that I do not recall any other station for the mobile Army. The question of the gentleman, I suppose, did not go to the Coast Artillery?

Mr. HELM. Yes; it simply applies to Kentucky, and there is no coast in Kentucky or Tennessee.

Mr. SLAYDEN. But there is in North Carolina, Georgia, Florida, Alabama, and Louisiana, and this is intended to apply only to the mobile Army, of course.

Mr. HELM. As a matter of fact——

Mr. SLAYDEN. I know of no other, except Fort Thomas, Ky.

Mr. HELM. And that has been abandoned.

Mr. SLAYDEN. And Fort McPherson and Fort Oglethorpe, Ga.

Mr. HELM. Will the gentleman yield to me enough time to ask the gentleman from Texas another question?

Mr. MANN. It depends upon how long it takes to answer it. I yielded for a half a minute, and they have taken two minutes.

Mr. HELM. I would like for the gentleman from Texas to inform the House what it costs to equip one of these rifle ranges or maneuvering grounds?

Mr. SLAYDEN. I regret to say I can not inform the gentleman, because it depends upon the topography of the ground. You may have to erect artificial butts where you are out on a plain, or you may have to cut into the side of a mountain.

Mr. HELM. Can the gentleman suggest any rifle range where an adequate equipment has been installed and state what has been the cost of it?

Mr. SLAYDEN. I am sorry to say I can not. The only one I have personal knowledge of is in Texas, and there it cost nothing, because they had a mountain side against which to shoot.

Mr. HELM. I thought they had a target arrangement.

Mr. SLAYDEN. Where?

Mr. HELM. On these rifle ranges.

Mr. SLAYDEN. They do have them.

Mr. HELM. Do not they cost anything?

Mr. SLAYDEN. Oh, certainly; but they are not very expensive.

Mr. PEPPER. It is claimed that the cost of an adequate rifle range would be $30,000. I will say The Adjutant General, as has already been stated, gave it as the special intention to spend $15,000 of that money from the State's portion on the rifle range.

And now I want to say further to the gentleman from Illinois that, as I understand this proposition, it does not involve any great amount of expenditure except for the rifle range. They are not going to put up any buildings there. It is just for the summer camp of the National Guard and the Regular Army when they meet in joint maneuvers.

Mr. MANN. The gentleman entirely misunderstands what I say if he thinks I am attempting to determine where the maneuver camp should be. But here is a committee which one week asks the department to report information in regard to a maneuver camp at Anniston, Ala., and the next week proposes to pass a resolution locating that maneuver camp at some other point. What is the logic of that? What is the purpose of calling on the department for the information? I was not in favor of the resolution calling on the department for information, but I was overruled by the consensus of opinion in the House, and we have asked the department for it. Why should we not wait until we obtain the information in order to see whether we should locate the maneuver camp at Tullahoma or at Anniston?

Mr. McKELLAR. May I interrupt the gentleman?

Mr. MANN. Certainly.

Mr. McKELLAR. The report was before the committee that unless this matter was accepted at this time the party who had some options on the land could not give them. If the Government has them, and should afterwards determine that the Anniston site is a better site, it could accept the Anniston site and establish a maneuver camp there. There is no inconsistency about it. It just has the choice of two places, where otherwise it would have the choice of one.

Mr. MANN. I would say that it was an inconsistency to accept a maneuver site at one place unless it was intended to utilize the camp for that purpose. Do I understand the gentleman to say that we have the moral right to accept every donation made at their expense, with no intention to carry out what they have a right to expect? I would not be a party to such a transaction, public or private, under any circumstances.

Mr. HOUSTON. Will the gentleman yield for a statement?

Mr. MANN. If it is not too long.

Mr. HOUSTON. Well, it will be short. I wish to say this, that there is not at this time any antagonism between the effort to establish a rifle range and camp at Tullahoma and establishing the same at Anniston, Ala.

Mr. MANN. I have observed that the gentleman from Tennessee [Mr. HOUSTON] supported the Anniston proposition, and that the gentleman from Alabama [Mr. BLACKMON] is not opposed to this proposition. What does that mean? It means that they want to establish two maneuver camps—one at Tullahoma and one at Anniston—for the same purpose. That is what I am opposed to.

Mr. HOUSTON. Will the gentleman yield to me for a moment?

Mr. MANN. Certainly.

Mr. HOUSTON. I want to say that I supported the proposition to have the board of engineers examine the location at Anniston, Ala., because I thought it was honest and fair and just that I should do so. We came before this House at the last session of Congress asking that this same thing be done for Tullahoma, Tenn., and that we might have a report. The report was made. Now, then, I can not say in good faith and candor that the people of Anniston, Ala., shall not have the same opportunity to have an investigation in order to see what the conditions are there.

Mr. MANN. You ought to wait. You are trying to preclude the people of Alabama from getting a maneuver camp by having your own accepted at this time.

Mr. HOUSTON. Not at all—not at this time. I am trying to make all the headway possible. There is no reason why this would preclude Anniston, Ala. If the Government accepts this 5,000 acres of land, and it sees proper then to accept 5,000 more from Anniston, Ala., it has the discretion to improve and extend the one most desirable. If Tullahoma can not beat it on its merits, then we ought not to have it; but if it can, we ought to have it.

Mr. MANN. If the Government accepts a donation of land at the expense of private individuals, and then does not use the land for the purpose for which it is donated, I repeat again it is a confidence game on the part of the Government to which no gentleman ought to be a party. I take it if this land is accepted it is the express intention of Congress to provide at this place maneuver ground for these States. Now, if the gentlemen are so anxious, I will withhold the balance of my time and let them explain.

Mr. SLAYDEN. Mr. Chairman, I yield three minutes to the gentleman from Alabama [Mr. BLACKMON].

Mr. BLACKMON. Mr. Chairman, I have only a few words to say with reference to this proposition at Tullahoma, Tenn. I am not engaging, and I would not engage, in a confidence game, but I think this, that the proposition from Tullahoma, Tenn., is a remarkably liberal one, and at this time it is more liberal than I expect to offer at Anniston, Ala., unless the Government proposes to do something for me.

Now, with reference to Tullahoma, Tenn., they propose to donate 5,000 acres of land. They ask the Government to accept it. I am not going to offer 5,000 acres of land at Anniston, Ala., unless the Government will agree, in accepting it, to give me something in return for it. That is the position I take on this question.

Mr. MURDOCK. Mr. Speaker, will the gentleman yield?

The SPEAKER. Does the gentleman from Alabama yield to the gentleman from Kansas?

Mr. BLACKMON. I do.

Mr. MURDOCK. Why does any set of men propose to give 5,000 acres of land to the Government? What benefit do they get out of it?

Mr. BLACKMON. The question answers itself.

Mr. MURDOCK. I do not think it does.

Mr. BLACKMON. If they give this land they hope to get something in return for it, just as other people do in giving a bonus for an industry that will bring money into the community.

Mr. MURDOCK. Do they expect something else to follow this grant?

Mr. BLACKMON. I do not say that. Alabama is not following Tennessee.

Mr. MANN. You have skinned them. [Laughter.]

Mr. BLACKMON. No. If this proposition is submitted to the War Department, I believe that the War Department as it is now constituted will be absolutely fair in this matter. I do not believe that Tennessee, Illinois, or any other State in the Union can cause the War Department to put up a job on the people. I do not believe they will do it, and for myself I am willing to take my chances on the report, if we ever get it. I believe that the advantages at Anniston are far superior to those at Tullahoma, Tenn., but I am willing for the War Department to determine that question for itself.

Mr. MARTIN of South Dakota. Mr. Speaker, will the gentleman yield?

The SPEAKER. Does the gentleman from Alabama yield to the gentleman from South Dakota?

Mr. BLACKMON. I can not. I have not the time.

Mr. MARTIN of South Dakota. Just for a question?

Mr. BLACKMON. It seems I must do so, but I have only a very few minutes.

Mr. SLAYDEN. Mr. Speaker, I yield one minute more to the gentleman from Alabama [Mr. BLACKMON] to enable him to answer the question of the gentleman from South Dakota.

The SPEAKER. The gentleman from Alabama [Mr. BLACKMON] has one more minute.

Mr. MARTIN of South Dakota. The question I wanted to ask the gentleman was this: Does the gentleman anticipate that both of these maneuvering camps will be established?

Mr. BLACKMON. I should say not.

Mr. MARTIN of South Dakota. If the Government has accepted the one in Tennessee is there very much likelihood that it will also take the one from Alabama?

Mr. BLACKMON. I am looking at this from this standpoint: I do not consider that the Government gets anything by this bill. I do not agree that you can cede land in a State by an act of Congress or resolution of this kind. The State of Tennessee, when the report comes in favoring Anniston, will say, "We will never cede this 5,000 acres to the Government," which must be done, of course, if the Government acquires title.

Mr. MARTIN of Colorado. And unless the State cedes it to the Government this bill will not be effective?

Mr. BLACKMON. No. No private party can cede jurisdiction over land to the Government. It must be done by an act of the legislature of the State.

Mr. MARTIN of South Dakota. If the Government does not get this land it will be because the State of Tennessee will keep it back, because this resolution directs the Secretary of War to acquire this land.

Mr. BLACKMON. It directs the Secretary of War to take steps to acquire title to it.

The SPEAKER. The time of the gentleman has expired.

Mr. SLAYDEN. Mr. Speaker, I would like to ask the gentleman from Illinois [Mr. MANN] to use some of his time.

Mr. MANN. Mr. Speaker, I yield one minute to the gentleman from Tennessee [Mr. HOUSTON].

Mr. HOUSTON. Mr. Speaker, I thank the gentleman from Illinois for his courtesy.

I do not understand just how the gentleman means to employ the term "confidence game." I do not know just what he means by that statement. But I want to state that in my remarks at the outset I stated that I would be perfectly frank and candid, and would say that if this land were ceded to the Government, and the Government accepted the donation, we would expect and we would hope that the Government might be induced to make further investments, and the report shows it can buy more land at a reasonable price. That is not a confidence game. If our showing of facts does not make it appear to the Government that it is a proper place at which to establish this rifle range, then the proposition ought to fall. There is nothing in that which is not fair and candid and frank.

Mr. MANN. Mr. Speaker, I yield three minutes to the gentleman from Tennessee [Mr. AUSTIN].

Mr. AUSTIN. Mr. Speaker, this resolution comes here practically with the indorsement of a Republican Congress, the Sixty-first, which first passed upon it. It comes with the unanimous indorsement of the Military Committee of a Republican House. Then it is here now with the indorsement of and a unanimous report from the Military Committee of a Democratic House. It has the approval of a commission of Army officers who have been upon the ground and have studied not only the local situation but the needs and requirements of the service. It has the approval of two Secretaries of War, one a Democrat, Hon. Jacob M. Dickinson, of Tennessee, and the present Secretary, who made a very excellent speech last night in the home town of the gentleman [Mr. MANN] who is opposing this proposition. [Applause.]

Something has been said in this connection about Tennessee. Tennessee is the banner volunteer State when it comes to furnish soldiers for the defense of the Union, and the town that I represent on the floor of this House stood next to New York City in the number of recruits during the Spanish-American War. The smallest county in the district that I represent, having 2,200 voters in it, furnished over 500 private soldiers to the Spanish-American War. So, basing this proposition from that standpoint, Tennessee has a superior claim, which I hope will be recognized by both sides of the House.

I made it a rule in this House, Mr. Speaker, to follow the report of a committee where it is a unanimous report. I stand by my colleagues on this side of the House when they come here a unit for any proposition, no matter what section of the country it benefits. If we are to have intelligent legislation, we must depend on our committees, and have confidence in their honor and their interest in the public service of the country.

A rifle range is needed not only from the standpoint of the report of a commission of Army officers for the Regular Army, but it is needed for the State militia of the National Guard of the Southern States. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. MANN. I yield five minutes to the gentleman from South Dakota [Mr. MARTIN].

Mr. MARTIN of South Dakota. Mr. Speaker, it is very interesting indeed to observe the plan of economy that is being worked out in regard to the handling of our standing Army by the Democratic Committee on Military Affairs of this House. We were told early in the session that our present system of handling our standing Army was extravagant, and in consonance with that sort of a suggestion one of the first things done by this committee, backed up by the Democratic majority, was to announce to the country by a bill, which has passed the House, that it was reducing the Cavalry arm of the service one-third, from 15 regiments down to 10. Immediately following this legislation, notwithstanding they are proposing to eliminate 5 of the 15 Cavalry regiments, and notwithstanding we have splendid Cavalry posts, constructed within the past 10 years, to house nicely the entire 15 regiments, they put through a bill increasing the capacity of the Cavalry post at Fort Oglethorpe, Ga., from 1 regiment to 3 regiments, or a brigade post, meaning the expenditure of all the way from $2,000,000 to $4,000,000.

What happens next? A bill passes the House authorizing the Secretary of War to investigate and report upon the feasibility of taking over a maneuver camp down in Alabama. That has been passed. Now we are invited to consider the acceptance of 5,000 acres of land to establish a maneuver camp in the State of Tennessee. What is it going to cost the Government if it accepts this land and proceeds in good faith to establish that maneuver camp? No one knows. The chairman of the Committee on Military Affairs is conspicuously absent from this room as these questions are being propounded.

Mr. PEPPER. Will the gentleman yield?

Mr. MARTIN of South Dakota. I am sorry to say I have not time to yield. The gentleman from Texas [Mr. SLAYDEN], with long service on the Military Committee, frankly confesses that he does not know what it would cost. We are embarking under Democratic leadership upon unknown expenditures running into the millions after a declaration of economy to be adopted by the Committee on Military Affairs.

We have heard a great deal said about political posts, and it has been intimated that some of the present posts were not established by the Secretary of War or the Army Board, but by acts of Congress for political purposes. Are not every one of these recent enterprises started for purposes purely political? Of what need is there for two maneuver posts or grounds, one in Alabama and one in Tennessee, for the same series of States, unless it is for political maneuvers? It has no necessity in the proper handling of the standing Army or the State militia. If this is the type of economy projected into the management of military affairs by legislation of Congress directing these things to be done, we will need some imagination to anticipate where will be the end and to what extravagance of expenditure we are to be led by the Democratic leadership of the Committee on Military Affairs.

Mr. SLAYDEN. Mr. Speaker, how much time has this side remaining?

The SPEAKER pro tempore (Mr. KITCHIN). Nine minutes.

Mr. SLAYDEN. I will ask the Chair to let me know when I have used two minutes. Mr. Speaker, I want to say in reply to the gentleman from South Dakota [Mr. MARTIN] that while there was no minority report filed, the Committee on Military Affairs was not unanimous in its opinion as to the wisdom of these projects, but, as frequently happens, a small minority refrained from filing views that run counter to that of an overwhelming majority of the committee.

The gentleman insinuated that the committee is undertaking legislation along sectional lines, that it proposes construction in the South that it would not consent to in the North. I want to remind him that the proposed schemes of economy that he complains of are the inventions of the major general who is Chief of Staff, Gen. Leonard Wood, and Secretary Stimson, both of whom I believe are admittedly Republicans in politics, if Gen. Wood has any politics whatever.

Mr. HELM. Will the gentleman yield?

Mr. SLAYDEN. I can not, I have so short a time. The gentleman from South Dakota asked a question as to the probable cost of the enlargement of quarters and barracks at Fort Oglethorpe for two additional regiments of Cavalry. He knows that it is impossible to tell that until the types of buildings have been agreed upon. But I want to say that we have reduced by specific mandate of law the cost of such buildings to be erected hereafter. That has been done in this House by legislation proposed by the committee that he criticizes now in an unfriendly spirit. Mr. Speaker, I yield the balance of my time to the gentleman from Tennessee [Mr. BYRNS].

Mr. BYRNS of Tennessee. Mr. Speaker, my colleague from Tennessee, Judge HOUSTON, in whose district this land lies, has explained to the House the purpose of this resolution. The gentleman from Illinois [Mr. MANN] it seems to me has misconceived the purpose of this resolution. He seems to find some ground of criticism in the fact that this bill follows a bill passed

last Wednesday providing for a brigade post at Chickamauga. My friend has fallen into the error of stating that that brigade post is to be located in the State of Tennessee. That post is to be located in Chickamauga Park, in the State of Georgia, just across the line from Chattanooga, Tenn.

Now, I want to say to the House that there is nothing behind this proposition. It carries with it no obligation on the part of Congress to spend any money upon the site at Tullahoma unless in the judgment of Congress it is the part of wisdom to do so.

Mr. MICHAEL E. DRISCOLL. Will the gentleman yield?

Mr. BYRNS of Tennessee. Yes.

Mr. MICHAEL E. DRISCOLL. How many acres will be required for maneuver grounds altogether?

Mr. BYRNS of Tennessee. That will depend upon the kind of maneuver grounds to be provided.

Mr. MICHAEL E. DRISCOLL. Will it take 20,000 or 30,000 acres?

My BYRNS of Tennessee. I was about to state that if the maneuver grounds are required for Artillery purposes the War Department requires from 25,000 to 40,000 acres of land.

Mr. MICHAEL E. DRISCOLL. Why would it not be wise before you permit it to be bought by the Government, to know how much the Government is going to pay for the balance?

Mr. BYRNS of Tennessee. This is not a proposition to buy 5,000 acres of land; it is proposed to donate 5,000 acres to the Government.

Mr. MICHAEL E. DRISCOLL. Beware of the Greeks bearing gifts. Why would it not be wise to wait before the Government is committed to the acceptance of this 5,000 acres to know whether the State of Tennessee will cede the sovereignty over 25,000 or 30,000 acres, and know how much the Government will have to pay for it?

Mr. BYRNS of Tennessee. The report of the board of Army officers shows that this land can be purchased very cheap, at about $10 or $12.50 an acre, if the United States Government should desire in the future to buy more land.

Mr. MICHAEL E. DRISCOLL. What is it worth? Is it worth over a dollar an acre? It may not be worthy anything except for a maneuver camp, and practically nothing for farming purposes.

Mr. BYRNS of Tennessee. The report of the Board of Army Engineers shows that the land is reasonably worth $10 or $12.50 per acre, and that it can be bought for that sum.

Mr. MICHAEL E. DRISCOLL. I was against the resolution last week, because I thought there ought to be a committee of Army officers sent out to select the best place, the cheapest place, the most available place in that cluster of States, and that that should be taken, and that we should not be committed to several of them at the same time.

Mr. BYRNS of Tennessee. That is exactly the course that has been followed in this instance. A resolution was passed in the Sixty-first Congress authorizing a board of Army officers to go down to Tennessee and Georgia and investigate this and other sites.

I was about to say that the War Department is now urging every State to select a permanent site for mobilization purposes and for camp instruction. The adjutant general of the State of Tennessee appeared before the Committee on Military Affairs and said that he had been urged by the War Department to select some place in the State of Tennessee where the militia could meet, where it could be mobilized in the event of war, or where it could meet for target practice and instruction during times of peace. He stated that he did not have the money with which to purchase and prepare lands in Tennessee for such purpose, but that if Congress would only agree to accept these 5,000 acres of land he could use about $15,000 which he has in his possession for the purpose of putting this land in good condition for rifle target practice. He says that its natural condition is such that it will not require very much money to put it into suitable condition for a militia rifle range, and that with an extra $15,000 this land can be put in proper condition for national matches, and he urged the Committee on Military Affairs, in the interest of the militia of Tennessee, who now have no permanent place to go for practice or where they can have instruction given them, to report this resolution. We are anxious that Congress shall pass it now, because the Board of Trade of Tullahoma has secured from people living in the vicinity of that city options on this land which are about to run out. Unless the United States Government accepts it now, it may possibly be too late if the matter is deferred, as some gentleman has suggested ought to be done. I see no reason why Congress should not accept it.

If in the future the United States Government shall decide, as I think it ought to decide, to establish a great maneuvering ground for the troops in the Southeastern States, just as they have recently done in Wisconsin, then I believe no better place in the South could be selected than Tullahoma; but that is a question for a future Congress to decide.

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

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

The SPEAKER. Four minutes.

Mr. MANN. Mr. Speaker, I yield two minutes to the gentleman from Tennessee.

Mr. BYRNS of Tennessee. Mr. Speaker, I am very much obliged to the gentleman from Illinois for this courtesy. He is not only one of the most able and useful Members of the House, but he is also exceedingly courteous and obliging at all times.

Mr. Speaker, the passage of this resolution does not pledge any Member of Congress to appropriate money for the improvement of the land in the future. I believe that if the time shall come, if it ever does, when the War Department thinks it proper to recommend that money be expended in order to secure proper maneuvering grounds for troops in the Southeastern States, Congress will see fit to accept this location, since it will have a nucleus of 5,000 acres to start with; but if it does not, the citizens of Tullahoma and the State of Tennessee will not complain. Former Secretary of War Dickinson urged the acceptance of this land in the last Congress, and the House, in the Sixty-first Congress, unanimously passed this bill. It was sent to the Senate, and there amended so as to provide for a commission of Army officers to go down and look over the land. They have made their report to Congress, in which they strongly urge the acceptance of this land. They state that it is well watered; that it is healthy and sanitary; that it is centrally located and easy of access; and that it posseses all those elements necessary for suitable and proper target rifle ranges and camps of instruction, and that it will also provide a place for mobilization whenever needed.

That it is not large enough for maneuvering purposes for Artillery I will admit, but it is large enough for mobilization of troops in the event of war. It is large enough for camps of instruction not only for the Militia of Tennessee but for the militia of any other State that desires to send its troops to that point in time of peace. It is also within easy reach of the regular soldiers located at Fort McPherson, in Georgia, where a brigade post is intended to be established, and I trust that the House will adopt the resolution. [Applause.]

Mr. MANN. Mr. Speaker, I yield the balance of my time to the gentleman from New York [Mr. MICHAEL E. DRISCOLL].

The SPEAKER. The gentleman from New York is recognized for two minutes.

Mr. MICHAEL E. DRISCOLL. Mr. Speaker, I was one of those who opposed the resolution a week ago which provided for the sending of a commission of Army officers down to examine a proposed site in Alabama, and we who opposed that resolution then stated that we believed it was better all around and it was the part of wisdom all around to provide a commission of Army officers to go down there to examine the various sites in the several States, see the several land companies and promoters, and pick out the most advantageous site, all things considered, price and everything else. When land companies come before committees of Congress or to the Government and offer 4,000 or 5,000 acres of land for nothing it always raises suspicion in my mind why this generosity, why this great liberality to the Government? The Government is not going around begging for something for nothing. There is always, I say always——

Mr. SLAYDEN. A negro in the woodpile?

Mr. MICHAEL E. DRISCOLL. A negro in the woodpile. They are trying to throw a sprat to catch a mackerel. You will very often find they are trying to get 10 times what the land is worth. Beware of people who are trying to give something for nothing. Now, why would not it be in the interest of economy to wait and not commit the Government to take this 5,000 acres of land until it can find out how much the 45,000, which are necessary and which surround this, can be bought for? Why would not it be better to wait until we know that the State of Tennessee will surrender sovereignty to this 5,000 acres to the United States Government?

Mr. HOUSTON. Will the gentleman from New York permit a statement?

Mr. MICHAEL E. DRISCOLL. For a question.

Mr. HOUSTON. That information is already furnished in the report of the Army officers.

Mr. MICHAEL E. DRISCOLL. On what conditions will the State surrender sovereignty?

Mr. HOUSTON. I mean in reference to the power to purchase land adjacent to this; that information is already there.

Mr. MICHAEL E. DRISCOLL. Of course, if the United States Government will buy 45,000 acres surrounding this 5,000 acres which are given as a gift, on terms satisfactory to the land promoters down there, then perhaps they will persuade the authorities of the State government to surrender sovereignty to the United States.

The SPEAKER. The time of the gentleman from New York has expired; all time has expired, and the Clerk will read the bill under the five-minute rule for amendment.

The Clerk read as follows:

Resolved, etc., That the Secretary of War be, and he is hereby, authorized and directed to accept the title to approximately 5,000 acres of land in the vicinity of Tullahoma, in the State of Tennessee, which certain citizens have offered to donate to the United States and which have been inspected by the commission authorized under the joint resolution approved February 24, 1911, for the purpose of establishing a maneuver camp and for the maneuvering of troops, establishing and maintaining camps of instruction, for rifle and artillery ranges, and for mobilization and assembling of troops from the group of States composed of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, North Carolina, and South Carolina.

Mr. HOUSTON. Mr. Speaker, I desire to offer an amendment.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Amend by adding at the end of section 1 the following:

"*Provided*, That previous thereto the State of Tennessee shall have ceded jurisdiction over said lands to the United States."

Mr. HOUSTON. Mr. Speaker, that amendment does not need any explanation; it explains itself. I want to state that after that amendment is adopted, if it shall be adopted, I shall propose to strike out section 2 of the bill.

The question was taken, and the amendment was agreed to.

The Clerk read as follows:

SEC. 2. That he is directed to take steps to have the State of Tennessee cede jurisdiction over said lands to the United States Government.

Mr. HOUSTON. Mr. Speaker, I move to strike out the second section of the bill.

The question was taken, and the amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed.

On motion of Mr. HAY, his motion to reconsider the vote by which the bill was passed was laid on the table.

The SPEAKER. The Clerk will call the next committee.

When the Committee on Naval Affairs was called—

SUSPENSION FROM PROMOTION—OFFICERS OF THE NAVY NOT PROFESSIONALLY QUALIFIED.

Mr. PADGETT. Mr. Speaker, by direction of the Committee on Naval Affairs, I call up the bill S. 2004.

The SPEAKER. The Clerk will report the bill.

The Clerk read as follows:

An act (S. 2004) to amend section 1505 of the Revised Statutes of the United States providing for the suspension from promotion of officers of the Navy if not professionally qualified.

Be it enacted, etc., That section 1505 of the Revised Statutes be, and is hereby, amended to read as follows:

"SEC. 1505. Any officer of the Navy on the active list below the rank of commander who, upon examination for promotion, is found not professionally qualified, shall be suspended from promotion for a period of six months from the date of approval of said examination, and shall suffer a loss of numbers equal to the average six months' rate of promotion to the grade for which said officer is undergoing examination during the five fiscal years next preceding the date of approval of said examination, and upon the termination of said suspension from promotion he shall be reexamined, and in case of his failure upon such reexamination he shall be dropped from the service with not more than one year's pay: *Provided*, That the provisions of this act shall be effective from and after January 1, 1911."

Mr. MANN. I think we ought to have some explanation.

Mr. PADGETT. Mr. Speaker, I will ask that the Clerk read the report of the committee containing the letter to the chairman of the committee from the Secretary of the Navy.

Mr. MANN. That is not very satisfactory. Why does not the gentleman explain it?

Mr. PADGETT. My voice is in very bad condition, and I suggested it simply to save my voice. In the early history of the Navy, when the classes were small, the law provided, under section 1505 of the Revised Statutes, that when an officer came up for examination for professional qualifications, if he failed, he should be suspended for 12 months. It now happens that the classes are much larger. When the classes were small the arrangement of one year's suspension put the officer back only a few numbers, but now with the large classes of from 100 to 200 members the effect of it is to put the officer back from 100 to 200 points, so that it is a demotion or a punishment of from 2 to 5 years. It has become entirely too severe, and this provides that he shall be suspended for 6 months, which will give very severe punishment, but not so severe as the other. It has been recommended by the committee unanimously and has passed the Senate. I think it is a good measure. The punishment that is provided in this bill will be amply sufficient and will remove by its passage the severity which has grown out of the enlarged classes from the time that the law was first enacted.

There is another provision in the bill which provides:

And upon the termination of said suspension from promotion he shall be reexamined, and in case of his failure upon such reexamination he shall be dropped from the service with not more than one year's pay:

Provided, That the provisions of this act shall be effective from and after January 1, 1911.

In his letter the Secretary calls attention to that provision, as follows:

The provision of law under consideration has to do only with professional failure and does not at all involve the question of misconduct; the moral qualifications are first passed upon by the examining board and are reported upon in connection with the examination as a whole. If the misconduct shown by an officer's record is such as to require an adverse report as to his moral qualifications, then the following provision of law from the act of August 5, 1882 (22 Stat., 286), applies:

"Whenever on an inquiry had pursuant to law, concerning the fitness of an officer of the Navy for promotion, it shall appear that such officer is unfit to perform at sea the duties of the place to which it is proposed to promote him, by reason of drunkenness, or from any cause arising from his own misconduct, and having been informed of and heard upon the charges against him, he shall not be placed upon the retired list of the Navy, and if the finding of the board be approved by the President, he shall be discharged with not more than one year's pay."

So that if an officer be found morally disqualified, then, whether or not he be found professionally qualified, if the finding of the board be approved by the President, the officer is discharged with not more than one year's pay. Attention is invited to the fact that in such case, i. e., in case of a finding of moral disqualification, the discharged officer is given a year's pay, although in the case of the officer whose record is irreproachable but who fails upon his professional reexamination he is discharged without any further pay whatever. In view of this apparently adverse discrimination against the officer in the case of a final professional failure it has been thought only just to add a similar provision in the proposed modification of the law, a draft of which accompanies this letter.

I think that fully explains the scope and purpose of the bill, and I shall reserve the remainder of my time, Mr. Speaker.

Mr. SISSON. I would like to ask the gentleman whether the committee considered the question of increased pay—as to the number of officers whose pay would be affected by this change in the law?

Mr. PADGETT. It does not increase the pay at all.

Mr. SISSON. It increases the rapidity of promotion, and promotion increases pay, does it not?

Mr. PADGETT. If the officers were to pass their examination, this would have no effect whatever on promotion.

Mr. SISSON. In other words, this bill is for the purpose of promoting the inefficient and those who are unable professionally to pass an examination, in order that they may more easily get up to a higher grade, where they may draw a higher salary, is it not?

Mr. PADGETT. No; I think not. The effect of it is that where a man is called up for examination and fails to pass on the questions on which he is examined, under the law he is given another opportunity.

Mr. SISSON. But it is 12 months.

Mr. PADGETT. He is suspended for 12 months, which operates as a penalizing of from two to five years. This law provides he shall be suspended for 6 months, which would reduce the penalty by one-half. Now, during the 12 months of his present suspension, others coming along for examination would pass on ahead of him, but this one, at the end of 12 months, if he passed his examination, would go along in the line. Under this law he would stand his examination at the end of 6 months, and, if he passed, would proceed in the order of his promotion, with only those going in front of him who had passed during the 6 months instead of during the 12 months.

Mr. SISSON. But the fact still remains that if he is penalized 200 points for failing to pass, it would prevent his promotion for five years. It seems that for as long as five years he would remain in the grade he is now in?

Mr. PADGETT. Yes.

Mr. SISSON. And his pay could not be increased?

Mr. PADGETT. No; but another man would pass on in his place, and the other man's pay would be increased.

Mr. SISSON. That is true; but would it not result in the man who is professionally efficient and could stand the examination proceeding to a higher grade? And he is the man who ought to proceed to a higher grade.

Mr. PADGETT. That may be true; but——

Mr. SISSON. In other words, does it not resolve itself down to this proposition, that it is an easy mode for the inefficient to get another opportunity to get into another grade?

Mr. PADGETT. No. It resolves itself into this proposition, that where a punishment, brought about by a change in conditions, is found to be too severe and unjust, he is promoted to a place where it is fair and just. In other words, it is an adaptation of punishment to changed conditions. For instance, to

illustrate: When I was a child my father dealt with me and punished me as a child, but when I got to be a young man he dealt with me on a different basis, with a different qualification, and a different punishment. That is what the Navy proposes to do. This is to adapt the punishment to the changed conditions that have been brought about by the enlarged condition of the Navy.

Mr. SISSON. In other words, there is a great deal more demand now for promotion and salaries than there was formerly? Is that it?

Mr. PADGETT. I do not know that it is.

Mr. SISSON. You promote a man now after he has stood an examination, and he is not permitted to be examined again until 12 months?

Mr. PADGETT. Yes. Others would go ahead and be examined in his place.

Mr. SISSON. Yes; others would go ahead and be examined in his place, but that would be by virtue of his inefficiency, would it not? The others would not be responsible for that?

Mr. PADGETT. Not at all.

Mr. SISSON. Are you going to hold the child, for example, who wants to remain so a long time, a child who is intellectually inefficient, and enable him to be the more easily promoted, when the man who is a man and who is professionally efficient would be promoted anyway? Under the present law he would be promoted.

Mr. PADGETT. Not at all. Under the present law they would pass up for examination at certain times in their service. For instance, you take the graduate midshipmen. At the end of two years they pass up for examination and promotion to ensign. The next class of graduates at the end of two years passes up for promotion as ensigns, and the next class at the end of two years passes up for examination to the grade of ensign. It is fixed by periods. Now, then, when you hold this man back two or three years you are holding him back behind perhaps two other classes, and the penalty, the punishment, is altogether too severe.

Mr. TALBOTT of Maryland. And in many cases it is not the fault of the officers themselves?

Mr. PADGETT. No; it is not.

Mr. TALBOTT of Maryland. It may be for some reason connected with the officer's service. The kind of service the officer may have been assigned to may have been such as not to make him efficient, or to make him inefficient. He may have contracted some disease in the service that made him physically unfit, and if he were permitted to take an examination in six months he might show that he has got rid of his disability, and he might receive promotion and not be delayed behind others.

Mr. SISSON. Those cases would be rare. They would be exceptions.

Mr. PADGETT. I will say to the gentleman that there are very few of them in fact. This affects 5 ensigns and 2 assistant surgeons.

Mr. SISSON. That is, at this time?

Mr. PADGETT. Yes.

Mr. SISSON. Is it not true that there is a great clamor for easy promotion?

Mr. PADGETT. The promotions can only be affected by legislation, and I do not know of any legislation on that subject since 1899, when the personnel bill was passed.

Mr. SISSON. Then this law simply permits a man to have his second examination at the end of six months instead of at the end of a year?

Mr. PADGETT. Yes.

Mr. SISSON. Therefore the purpose of it is to make it easier for the officer to be promoted.

Mr. PADGETT. Not to make it easier, but to make the punishment less severe. He has to make the same qualifications at the end of 6 months that he would have to make after 12 months. He must show the same efficiency.

Mr. SISSON. But still it renders it easier for him to get an examination, because he gets it in half the time, if he is capable of standing it?

Mr. PADGETT. He has to have the same qualifications. The examination would be the same.

Mr. SISSON. Then, why not make it 30 days?

Mr. PADGETT. The only thing is that he shall have his examination at the end of 6 months instead of at the end of 12 months.

Mr. SISSON. Why not make it 30 days, then?

Mr. PADGETT. Because that would make the penalty too light.

Mr. SISSON. It is not the fault of the law that the man is unable to stand examination?

Mr. PADGETT. No.

Mr. SISSON. And it is doing him a great kindness to permit him to have an examination within the year.

Mr. PADGETT. Suppose the law said that a man who fails to pass an examination shall be hanged. Do you think that would be a reasonable law?

Mr. SISSON. I think that would be just about as reasonable a proposition as the one that you are advancing here now, in order to make it more easy for men to be promoted.

Mr. PADGETT. That is a matter for individual conception, and the gentleman is entitled to his own opinion.

Mr. BATHRICK. Are not these examinations very severe, technically?

Mr. PADGETT. Exceedingly so. There was one case called to my attention. I do not know the officer, but I have heard of the case. He passed in all his studies, but while he was on a boat, the boat ran aground. Now the mere fact that the boat ran aground was charged against his record and, although he was not held responsible for any fault or negligence, the mere fact that it had gone aground was charged against his record, and he was held back from promotion. There the punishment was entirely too severe.

Mr. SISSON. That is the fault of the regulations of the Navy Department and not the fault of the law necessarily.

Mr. PADGETT. The fault of the law is that it is 12 months' punishment instead of 6 months, and this proposes to adapt the punishment more nearly to the grade of the offense.

Mr. BATHRICK. The punishment at the present time, as I understand it, because of a failure to pass an examination, is as severe as if the party were convicted of an immoral act.

Mr. PADGETT. Three or four times more so.

Mr. SISSON. Is it not true that the Navy Department desires to keep up the personnel and discipline in the Navy?

Mr. PADGETT. Yes.

Mr. SISSON. One of the principal objects of these regulations is to be sure to have proper discipline.

Mr. PADGETT. It is and it should be.

Mr. SISSON. Now you want to make the discipline very much less severe in order that these men may be promoted.

Mr. PADGETT. I want to make it less severe in this case; because of the changed conditions it has become entirely too severe.

Mr. SISSON. Why is it too severe now if it was not too severe in the past?

Mr. PADGETT. Simply because in the past, when we had classes of 15 or 20 graduating, if a man lost 10 or 15 points in promotion it was very different from a class now of 200, where he loses 200 points. In the first case, if he lost 10 points he would be set back in his promotion, say, 5 months, but now if he gets behind 200 points he is set back, say, 5 years. There is no trouble in understanding a proposition of that kind.

Mr. SISSON. How much will this increase the pay or the cost? How rapidly will it increase the promotion of officers?

Mr. PADGETT. It does not increase it at all.

Mr. SISSON. The man gets an opportunity to draw the increased salary that much earlier, does he not?

Mr. PADGETT. Yes; but somebody else would have gone in ahead of him anyway. It is only a question whether you shall penalize him so as to set him back five years or whether he shall be set back two years or less.

Mr. SISSON. Are only a certain number promoted anyway every year?

Mr. PADGETT. Yes.

Mr. SISSON. Is there a fixed number; fixed by law?

Mr. PADGETT. Above the grade of ensign; yes, sir.

Mr. SISSON. The number is fixed by law?

Mr. PADGETT. Yes.

Mr. SISSON. So no more than a certain number can be promoted?

Mr. PADGETT. That is true.

Mr. SISSON. This, then, resolves itself into a question of who shall be promoted?

Mr. PADGETT. As to whether the officer shall be penalized and set back a certain time.

Mr. TALBOTT of Maryland. Whether he is set back six months or a year.

Mr. SISSON. I now understand the position of the chairman of the committee [Mr. PADGETT], which he did not make plain to me at first, that it does not increase the number of promotions. It simply changes——

Mr. PADGETT. It simply changes the penalty upon the individual.

Mr. SISSON. So it would not necessarily increase the expenditures under the present law and under the rules of the Navy?

Mr. PADGETT. None whatever. Mr. Speaker, I will reserve the remainder of my time.

Mr. MANN. Mr. Speaker, I appreciate the fact that there may be some hardships under the present conditions, but after all the present conditions tend toward the promotion of the brightest men in the Navy, toward getting the brightest men at the top who are in command. If a man fails in a professional examination he is put back under the existing law. Of course, the effect of that in the end is that the men who pass the professional examination get to the top and become the men who are in command in time of peace, or, what is more important, in time of war.

This bill might properly be entitled "A bill to push to the front men who are not as well professionally qualified as their fellow officers." However, I would like to ask some gentleman familiar with the bill what will be its effect in some respects? Under the existing law the man who fails in his professional examination, where he takes the examination for promotion, does not receive the promotion at that time. At the end of 12 months he is entitled to receive a reexamination, and if he passes it is promoted in accordance with his reexamination.

Under this bill there is a conflict as to the time from which the promotion dates, or as to how the promotion affects the other officers—a conflict which, I think, gentlemen of the committee have not considered, or, at least, have not explained.

The bill first proposes to have a reexamination at the end of 6 months instead of 12 months; and if it stopped there it would provide a reexamination, and if the officer passed the examination he would receive promotion and number accordingly. Now, what will be the effect under the bill? Under this bill if the officer fails in his professional examination he is suspended from promotion for 6 months. At the end of 6 months he takes a reexamination, and if he passes the examination, where does he get his number?

Mr. ROBERTS of Massachusetts. He would take it as if he had passed at the end of 12 months.

Mr. MANN. The gentleman from Massachusetts says he gets it as he would if he passed at the end of 12 months.

Mr. PADGETT. The bill provides:

And shall suffer a loss of numbers equal to the average six months' rate of promotion to the grade for which said officer is undergoing examination during the five fiscal years next preceding the date of approval of said examination.

Mr. MANN. Oh, I know what the bill says. In other words, he displaces all of the numbers above him.

Mr. PADGETT. Oh, no.

Mr. MANN. Certainly, that is absolutely the case; the numbers of men in the Navy are consecutive numbers. Here is a man that failed in his examination professionally; he is suspended from promotion for 6 months. During that 6 months other men are promoted and receive their numbers. Is not that the case, is not that the situation?

Mr. PADGETT. Those who stood the examination at the time he failed would take other numbers, and the next promotion in his grade would be the year following.

Mr. MANN. But they do receive other numbers?

Mr. PADGETT. Yes; those that were examined at the time.

Mr. MANN. Those that passed the examination receive other numbers?

Mr. PADGETT. Yes.

Mr. MANN. The report in this case says that 100 to 200 of them passed in 12 months.

Mr. PADGETT. Yes.

Mr. MANN. Then 100 of them received numbers during 6 months' time.

Mr. PADGETT. The examination takes place——

Mr. MANN. Will the gentleman answer; am I correct that 100 may receive promotion and numbers during the 6 months?

Mr. PADGETT. Yes; they might receive it at the time the examination was taken.

Mr. MANN. The gentleman's report says that in 12 months 100 to 200 may pass above him, so that in 6 months 100 may pass above him.

Mr. PADGETT. The examinations are annual, and during the period there might be none that would pass above him.

Mr. MANN. If the gentleman will be kind enough to try and get my idea, it may be that we can come to a conclusion.

I think the gentleman's bill is defective in this respect; but if the gentleman does not think so, very well. The man who is suspended now stays where he is, and meanwhile during the 6 months 100 officers may be examined, promoted, and receive numbers accordingly. But the gentleman's bill says that at the end of 6 months the officer who has failed may be examined, and if he passes the examination shall lose only in numbers the average for 6 months—"the average 6 months' rate of promotion." But here is a class that comes along and is examined. The class goes up and its members have their numbers, and when the officer who has been suspended passes his examination he is bound to take one of the numbers of the men who have been promoted ahead of him.

Mr. PADGETT. I think not.

Mr. MANN. There is no escape from it.

Mr. PADGETT. Let me make this statement to the gentleman. These examinations are annual. They are not held every two months or three months or six months.

Mr. MANN. I do not understand that they are held annually at all. They are held at different times.

Mr. PADGETT. For instance, a class graduates this year. Two years later they hold an examination for promotion to ensign. They have to serve the two years. At a certain period after that, after serving as ensign for three years, they are examined for promotion for lieutenant of the junior corps. After serving such a length of time, so many years, in that grade, they are examined for promotion to the grade of lieutenant. It is not every month or so that these examinations take place, but they are yearly. There are so many promotions a year. The Personnel Board provides that each year so many shall be retired. If not by death or by resignation, then there is what is called the plucking board, and they are taken out. Then there are so many promotions that go up, and these men stand their examinations for these promotions at these stated periods. With the loss of numbers of six months a man would lose in his class, but he would come in ahead of the other class that follows him a year later.

Mr. MANN. I am perfectly familiar with all that the gentleman has stated which is correct. A part of it is not correct. The gentleman refers to the plucking board, but the ones who are cut out of the service are not cut out at the end of the particular year. It is not all done at one time. Promotions come along in the course of a year. Nor are the examinations for promotions all held at one stated time in the year.

Mr. FITZGERALD. Mr. Speaker, will the gentleman yield?

Mr. MANN. Certainly.

Mr. FITZGERALD. I wish to inquire of the gentleman if this be not the practice. There is a certain period in the year when the so-called plucking board is convened?

Mr. MANN. The plucking board acts only if enough officers have not been retired for other reasons. Under the statement of the gentleman from Tennessee [Mr. PADGETT] all the nominations of the President for promotion in the Navy would be sent in at one time in the year, which we know is not the case.

Mr. PADGETT. The plucking board acts——

Mr. MANN. No; the gentleman stated that all the examinations were held at one time in the year.

Mr. FITZGERALD. I think this is the situation—that the experience of a number of years demonstrates that on an average a certain number of vacancies occur either by death or resignation or from some other cause during the first six months, and practically invariably the plucking board is required to exercise its functions at a definite period in the year.

Mr. MANN. The gentleman is as familiar as I am with the facts. The plucking board really plucks very few birds. Most of them are given timely intimations under which they take retirements, and the promotions are made as the retirements occur. But that is not the point. I would like to get the opinion of the gentleman from New York on the proposition that I suggested, which apparently the gentleman from Tennessee does not understand. Under the existing law a man who is held back for a year when he passes his examination is promoted and takes a number at that time. He is not advanced in number over someone who has already been promoted. But under this bill a man is held back from promotion for six months, and if a large number have been promoted during that time, then he jumps over some of those in order to get his number.

Mr. TALBOTT of Maryland. Oh, no, no.

Mr. PRINCE. Yes, he does.

Mr. MANN. The gentleman can say, "Oh, no, no," but it only shows that he has not thoroughly read the bill. It is absolutely the case that the two provisions in the bill are contradictory to that extent. If a man at the end of six months takes the examination on the basis of 40 promotions as the bill says——

Mr. BOWMAN. Will the gentleman offer an amendment covering that point?

Mr. MANN. No. Now I will appeal to the gentleman from New York [Mr. FITZGERALD] on this. I tried to do so before, and I do not wish to take any of the time of the committee, but if the committee insists in doing something that will bring them

into Congress in a short time for additional legislation that is their misfortune; we can not help it.

Mr. PADGETT. I will state to the gentleman, if he will permit, that this bill was prepared by the Judge Advocate of the Navy, who is supposed to be an expert in naval legislation. It was prepared with very great care; the matter has been investigated by the Senate committee; it was passed by the Senate and has been investigated by our committee; and we do not anticipate the troubles which the gentleman seems to anticipate.

Mr. MANN. I have heard those statements made before, and they do not have any effect. I have seen bills come back for reconstruction when prepared in the department.

Mr. FITZGERALD. If the average number of promotions during six months prior to the five years would be 10, and during the six-months period it would be 15 promotions, then the gentleman's contention is that anybody suspended would necessarily take a number higher than 5 of those promoted.

Mr. MANN. Absolutely. Is there any escape from the contention? Here the gentleman himself says there may be 100 promotions in six months, and in his own report he says there may be 200 promotions in a year, but there can only be 40 during that time. If one of the 40 has been passed and then comes and takes examination for promotion and passes it, he must take the place of some one ahead of him and cut out a number. What is the effect of it? The gentleman in charge of the bill can not explain it, but it is certain that in the effort to accomplish something which in itself ought not to be done they will get the Naval Committee in a tangle which will cause legislation to put extra numbers on. They will be in here soon with bills saying this man should be carried as an extra number because he ought not displace some one who has a number. Under the bill you have to displace men who have a number, and then they will come in and say we must carry these in extra numbers. It means in the end additional promotions and additional places and higher salaries.

Mr. SISSON. Will the gentleman permit a question?

Mr. MANN. I will.

Mr. SISSON. In line with what the gentleman says the proviso in this bill making it retroactive in its effect so as to take effect January 1, 1911, will simply result in just exactly the condition which the gentleman from Illinios has illustrated.

Mr. MANN. Why, certainly.

Mr. SISSON. And these men who have failed since January, 1911, will be compelled to take the places of men who are in line with their class.

Mr. MANN. Of men who now have numbers.

Mr. SISSON. And it makes the bright man in this year's class responsible for the dullness of the one in last year's class.

Mr. MANN. Yes; that will be the case every time.

The SPEAKER pro tempore (Mr. HAY). The question is on the third reading of the bill.

The bill was ordered to be read a third time.

The SPEAKER pro tmpore. The question is, Shall the bill pass?

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

On a division (demanded by Mr. MANN) there were—ayes 17, noes 7.

So the bill was passed.

THE FINANCES.

Mr. PRINCE. Mr. Speaker, I ask unanimous consent to print in the RECORD a speech delivered by me before the State Bankers' Association of Vermont, at Montpelier, February 22, 1912.

The SPEAKER pro tempore. The gentleman from Illinois asks unanimous consent to print in the RECORD a speech delivered by himself before the Bankers' Association of Vermont. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

The following is the address above referred to:

ADDRESS OF HON. GEORGE W. PRINCE, OF ILLINOIS, BEFORE THE STATE BANKERS OF VERMONT AT MONTPELIER, FEBRUARY 22, 1912.

"Mr. Chairman and fellow countrymen, it is true, as the chairman stated, my father was born in this State. He and his elder brother, back in the early thirties, went to Peoria County, Ill., where later on he married and where I was born. This is my first visit to the State of his birth. Illinois is 400 miles in length from north to south. The north part of the State, in which I was born, is about on a line with Boston, Mass.; the southern part of the State is about on a line with Norfolk, Va. The State was peopled by those who went there from the then Eastern and Southern States. The south part of the State was peopled almost wholly by Virginians; the part of the State in which I live by New Englanders, including Vermonters. Coming to Illinois in those early days was that distinguished son of Vermont, the 'little giant'—Stephen A. Douglas [applause]—born up here in Brandon; coming from Kentucky his great political rival—Abraham Lincoln. [Applause.] Strange, it has always seemed to me, that this freedom-loving State, opposed so strongly to servile labor, should send one of its brightest, brainiest men to Illinois to advocate the cause of a party favoring servile labor, while Kentucky, a slave-holding State, should send one of its ablest and best men across from Indiana and over into Illinois to champion the cause of free labor. To my way of thinking, Lincoln and Douglas did more to save this Union than any other men that lived in their time who were not connected with the Civil War. [Applause.]

"But I am not here to retell that story with which you are all familiar, and I must address myself to the subject matter assigned to me to speak upon. As the speaker of the address of welcome said, you represent the enormous amount of $116,000,000—trustees of the wealth of the people of your State. You are a part of the great fraternity of business men of this country, and upon you devolves a tremendous responsibility as part of the banking fraternity of this great Republic. Now, I have no patience with people who abuse bankers. Who are they? The trusted men of your communities. Who are your stockholders? Your neighbors, your associates, your friends. Whose money do you have? Their money. If my wife should survive me—as I hope she may—and desired advice as to the right way to invest the funds which are to be her support for the rest of her life, I should expect her to go to the men in whom I had confidence in my lifetime—bankers. I know of no one to whom she could more properly turn for valuable advice than to the banker to aid her in caring for her money. You men are called upon to be the stewards of the peoples' savings, and faithfully and well do you perform the trust. The responsibility is great, quite as much so in the local country banker as in the banker of the great city; the latter has a larger responsibility, perhaps, more to do with, and greater deals to handle, but the proposition is just the same in its essential features, and both are of the same flesh and blood. Yet we live in an age when you are being discussed and criticized. As a member of the National Monetary Commission I heard such criticism made. When we left New York City on our western trip and asked different people what they thought of the tentative plan of Senator Aldrich, I remember hearing one sensible man in many ways, a man of influence and position, saying, "I am against it." And when asked, "What is the matter with it?" replied, "It bears the name of Aldrich and that is enough to condemn it." Quite a number were opposed to the proposed plan for no other reason in the world than that Senator Aldrich had had to do with it.

"Now, that is a nonsensical, foolish position to take. Senator Aldrich is now out of public life; he is a private citizen; he has given his best thought and the best years of his life to the consideration of this subject. I believe it is now the one burning desire of that man's life to bring about a financial method that shall be of incalculable benefit to this country. I believe he has at heart only the interests of his fellow citizens; that his one great desire is to prepare a measure which will square with the best interests of all the people and of every class. My friends, there comes a time in the life of a man when he turns aside from politics and from the idea of money making, as he is approaching the Great Divide, and turns his thoughts and attention to doing the right thing and putting all else back of him. But this proposed measure is not wholly that of Senator Aldrich; it is the joint work of the members of the commission. As a tentative plan he presented it to the people to discuss, and invited discussion of it and suggestions of improvement, if anyone had such suggestions to make. The American Bankers' Association of this country met in convention approved and adopted it with suggestions of amendment. We had men of finance from all over the country before the commission; we had national-bank examiners to tell us how to prepare bank examinations. We desired to get all the light and all the information we could, to the end that the measure proposed might be the most perfect plan that could be presented. The result of our labors were put in the form of a proposed bill, entitled 'A bill to incorporate the National Reserve Association of the United States.' Now, that is the best we had to offer. I believe in trying to do something in this world; I believe in trying to accomplish something in this world. It is waste of time to do nothing but talk. Let us move along some lines. No one has suggested a better plan than this. Then why not put it to the test? Let us do something. It has been before the public since we made our unanimous report; it has been indorsed by that class of the public that are supposed to be, and should be, more

familiar with the situation and the requirements than any other class of the community—the bankers. And it is the first time in my experience that we have seen the bankers of the country practically unanimous on any proposition.

"For many years I sat as a member of the Committee on Banking and Currency; measures would be before that committee, and the pulling and hauling, this way and that way, the wrangling and contentions about what they wanted and what they did not want, and what they ought to have or ought not to have, were so harassing that I thought if I did not get off of that committee I should end up in a madhouse. Finally we would say to those who appeared before the committee, 'Gentlemen, it is folly to bother us in this way; go back and see if you can find some proposition that you can agree upon and present it to us and we will take some action.' Now, as I say, as to this proposition embodied in the report of the commission, it has got to a point where the bankers and business men of the country are agreed, and they favor the proposed plan, in the main. The theorist favors it, the publicist favors it, the professors in the schools favor it. The only people we found who did not favor it were people in the extreme West, who had other ideas. What were some of the objections made to it? One man says, 'Here, I don't like the idea of having the Government delegate its power of issuing money to banks.' 'Well,' we ask, 'what do you propose?' He says, 'I believe the Government should issue all the money to meet all its obligations.' We ask, 'Where would that lead us to?' 'It don't make any difference where it leads, but issue the money—issue it like the leaves of the forest.' Would you have us do that? No. Some would favor the opening of the mints and having unlimited coinage of gold and silver. We ask them, 'Do you think that is the way to do?' 'Yes,' they say, 'and thousands of people think that way.' Those are the men we have had to deal with.

"Now, gentlemen, the question of improving the currency is a practical legislative question. We have got to get down to brass tacks, and we look to you men for help. So, I would rather speak along that line than 'carry coals to Newcastle' in a scuttle. You men understand this business better than I do; you know your troubles; we have suggested what we think is a good plan to afford relief in those troubles. We think it is better for banks to be a system of banks, organized and coordinated together for purposes of power. In unity is strength. Suppose in the revolutionary period Vermont had said, 'We will take care of Vermont—we will not send our troops away from here,' and other States or Colonies had done the same, what would have been the result? Not victory, but defeat.

"Suppose, to bring it to a concrete point—suppose we should have trouble with our neighbor on the north—which we never shall have—but suppose we should have and 200,000 redcoats are landed of the best soldiery in the world, and the President calls for troops. Vermont says, 'We can provide so many thousand.' New York says, 'We will furnish so many thousand.' But suppose Vermont says, 'We will keep our troops to protect our own border,' and New York says the same; we should have a number of small forces to be met and conquered in turn, succumbing to superior force. On the other hand, let us suppose a large army made up of the several State contingents—an army equal in quality and quantity to the invaders. What would be the result? The invaders would be hurled back over the border, shattered and defeated. Our banks are in that same condition. Trouble comes and men want money. What do you do? You try to get that money as quickly as you can and pay your depositors who call for their money, and you do it at the expense of every bank in the neighborhood or anywhere else you can get it. You seek to protect yourselves, and in so doing you weaken all the rest. Now, suppose you have a national reserve piled up? Under the provisions of this proposed bill you can get your paper discounted at once and get cash or credit to pay to the people who call for their money. Could you not at once avert a threatened panic? Would you not be a solid phalanx, and, in addition to that, would there not be a general system of banking in this country? Who is it you are afraid of? Not yourselves. It is the weak bank—it is the bank not properly conducted—that fails, and then the people can not distinguish one from another. The rush comes for the money; the weak bank succumbs and precipitates trouble upon all the banks throughout the length and breadth of the land. In other words, no chain is stronger than its weakest link, and the weakest link in the chain of banks is the one that breaks first. But if you are coordinated together and the banking system is the same and conducting business in the same way, how much safer and better it will be for the entire country. I asked my friend Farrigden his idea of the way I should discuss this question. 'Well,' he said, 'Mr. PRINCE, there is one point in particular the people seem to be afraid of.' I said, 'Well, that is the one I want to discuss.' He said, 'They are afraid the interests of Wall Street or some other financial power will control this system of banks and control the money centers and the money power of the country.'

"Now, at Washington we hear a good deal said about a so-called Money Trust, and our Democratic friends there say there ought to be an investigation of this Money Trust, but they do not quite know what to do with it or how to handle it. But here is something, whether substance or only shadow, it is something that seems to disturb. Are you men in a Money Trust? Have you anything to do with such an unholy and unrighteous thing, or is it 'the other fellow'? If there is a Money Trust we ought to find it out, and I am in favor of investigating it. If such a thing does exist to-day it is illegal, and exists in spite of the law, and it should be smashed. But if the plan provided by the commission is adopted there will be a general Federal supervision, which would be a sufficient guaranty for the dissolution or destruction of any Money Trust, if such there should be. It is an infinitely better way to regulate and control by Federal legislation than it is to destroy. There are two schools of public life in this country. One says, 'Destroy all the big combinations of this country,' and the other school says, 'No, do not destroy; regulate them by Federal legislation and Federal control.' We should, at any rate, try that first, and then if it be shown that we can not regulate and control them in that way, it is time enough to talk of smashing them altogether.

"I had a letter recently from a friend who was interested in a scheme of investment in a certain direction in conjunction with others, and he wanted to raise funds to finance the scheme and get it started, and he had what appeared to be a good thing, but he could not get the money. He says at once 'There is a combination of wealthy men who control the moneyed men of this country, and that is why I can not get any money in this enterprise.' Not long ago it was my privilege, with a party of Members of Congress and others, a party of about 70, to go to the opening of the Over-Seas Railroad in Florida. The road goes to Key West, and it goes along over bogs, and swamps, and marshes, and through woods of pine trees, where they were at work tapping the trees for turpentine.

"The road goes over a quality of land that those who saw it declared was not worth the paying of taxes on it. Do you believe that if Mr. Flagler had gone to any business or financial interests that he could have induced them to advance money for such a proposed undertaking? No. Yet there was a man with means of his own, a rich man, who had a plan and a proposition that may in the future work out and repay in full what has been expended, and in all probability result in handsome profits on the investment. Yet, as I say, no business man, no bankers holding in trust the money of others, could have been induced to invest that money in such an undertaking. The road was built by Mr. Flagler from his own pocket, but if he had come to you gentlemen for money I think, on the outlook, you would have been justified in refusing to invest any of the $116,000,000 in your control belonging to widows and orphans and living men in that proposition. But the inability to secure the money would not have been because it was controlled by a money trust. But because men are turned down on propositions like that they at once say it is because the money is controlled by a big trust.

"The money power, some say, would control this reserve. But how will they be able to do so? Each individual bank is to have a vote in the selection of the officers, and with such a provision the vote of the small bank counts just as much as that of the large bank. It is on the same principle as the ballot. The man without a dollar goes to the poll and drops in his ballot and it counts for just as much as the ballot of the man worth ten millions. But the theorists who make that objection do not stop to consider how many millions and millions of dollars it would take to control the Reserve Association. That is the trouble with the theorists; they never stop to reason the thing and see if it is likely to be possible as a practicable thing. Now, when they say the money power would get control of this reserve they do not stop to consider that the profit is limited to 5 per cent. All over and above that is to go to the Government except the surplus to be created. Men who have the control of immense funds at their disposal do not put those funds in where they only get 5 per cent when they can always use their money to better advantage.

"This law does not allow loans on stocks and bonds. It says to the stock gambler, 'Get thee behind me, Satan,' and comes straight to the people of the country. It is true that men sometimes pay out enormous sums to get what at first blush seems to be apparently a small return for the amount expended, but

generally there is back of it something that promises the realization of a handsome profit on the amount put in. Do not you remember that Mr. Ryan and his associates bought up the Equitable, paying two millions and a half for stock worth only $100,000 or thereabout, and they made money out of it? Yes; but there was no limitation to the hundreds of millions they could see in the transaction; they were not limited or held in restraint by a law limiting the profits to 5 per cent. Now, Wall Street criticizes us for this feature of the proposition, which is a sufficient guaranty that they do not think it is in their interests. It is not; it is in the interest of the people of the whole country and of all of the banks of the whole country. Study this proposed plan, gentlemen, and if any of you think you can see any way whereby one or two or three interests can get control of the whole, write and let me know; but please do not criticize the plan unless you can suggest a better plan. Do not find fault with any feature of it unless you can suggest a substitute feature that is better than the one proposed by the commission. Neither I nor any other member of the commission is wedded to this particular plan at the expense of any other equally good or better proposition. We did the best we could considering the conditions.

"The gentleman who made the response to the address of welcome spoke about some one still voting for Andrew Jackson. Well, in one matter the people of this country are still for Andrew Jackson, and that is in the matter of the establishment of a central bank, which he disfavored. The people do not want a central bank; and why are they opposed to the idea of a central bank? Because such an institution at once becomes a competitor of every other bank in the Union. We are for 'home rule' to the extent that each and every State should have all the rights it ought to have, and in everything that does not conflict with the power and authority of the National Government. This proposed institution is to be a 'bank of banks'; it does not enter into competition with any bank or banks. It is a reserve fund from which you can as a member of the association draw relief in time of trouble; and when this plan is adopted we think it will obviate the existence of any trouble.

"If this proposed plan becomes a fact, and we have this 'bank of banks,' we will have foreign branches, and there is no reason why New York should not become the financial center of the world; we would wrest that title from London just as London wrested it from Amsterdam.

"Another good feature would be a uniform rate of discount if this bill becomes a law; this would obviate the disturbing element of a fluctuating rate of discount.

"We have to-day our system of subtreasuries of the United States with our army of civilian officers handling the money of the United States piled up in the Treasury like old junk—hundreds of millions piled up there. Is it doing anybody any good? No. But under the provisions of this bill it becomes active, it becomes part of the national reserve; upon it can be based currency or credits, if needed, by the banks of the country.

"I was looking the other day to see how we stood with other countries on the question of gold; here is the list:

Russia	$961,000,000
France	926,400,000
United Kingdom	650,000,000
Germany (in banks and public treasuries)	185,900,000
United States	1,710,000,000

"This immense reserve fund should be made to be of use.

"The adoption of some financial plan that should better existing conditions is recognized and acknowledged by everyone. We have had panic after panic, financial depressions one after another, and bank failures. In the period of 1890–1910, 400 national banks became insolvent and were closed. England was not immune from such troubles, but had many financial depressions and panics down to the year 1866, since which she has not had any such trouble. During the period I stated just now, in addition to the 400 national banks, there were 1,400 savings banks and trust companies—making 1,800 bank failures in all in that period. In that same period Canada had but seven failures. Can't we learn anything by experience? Can we not see what others are doing, and learn to do something ourselves? Here we have a plan proposed that, if adopted as suggested, becomes part of our form of government—that is why it is termed 'National Reserve Association of the United States.' The proposed plan can not come into competition with the banks of this country. We realize the different conditions surrounding State banks and national banks; the one has not to keep the same reserve as the other; the one is not subject to the same rigid examination as the other; the one has apparently wider latitude than the other.

"Many men, and that is especially so in my State of Illinois, think it better to have State banks than national. A man wants money, he has real estate security, but he can not get a loan at a national bank on such security; he must go to the State bank. We have tried to present a measure here wherein the State and national banks will be put on an evener in all respects. We have tried to work out fair legislation for all interests concerned. It only remains to educate the general public to a recognition of the merits of this measure and its indorsement. You have some fine speakers. Witness that elegant speech of welcome and equally pretty little response. If we want legislation it can be readily obtained when it is made clear that the people demand it. So the people must be educated in that direction. You gentlemen, instruments in the hands of the people to do a certain work just as much as the doctors, lawyers, and ministers, have your function to perform in the civic duties of the country. This measure is for the interests of all the people and all classes of business men, bankers, lawyers, farmers, and laborers of the entire country. That is why I favor it. I want you gentlemen to help obtain this legislation and have it put on the statute books. You have a power among the business interests of the country. But you men have been asleep at the switch, intent on making dollars at the expense of your country's best interest. Turn your attention a little along the lines to make men think of the great questions that are presenting themselves and take your part as citizens in the great civic duties of the country. What is there to money, after all? It procures for us certain physical comforts, that is about all. I want to say to you that the head and the heart and the cultivation of their qualities is worth more than money. I am glad to see and to know that in this State of Vermont there are men with big hearts and large brains, ready and willing to do what they can for the uplifting and upbuilding of their fellow men. That is what we are here for, and there is more to it than there is in making money or in winning political honor and distinction. In my judgment bankers are of the most useful classes of the community and of the widest sphere of influence among the people who put their savings into your banks. We can hardly hope to have this proposed measure put on to the statute books until after next November. You know we are approaching a national election. It is near upon us, and at such times things are always unsettled, so we do not look for the enactment of this measure probably until the next session.

"Now, in conclusion, let me say this: Read this bill carefully; forget, if you can, that you are bankers; forget, if you can, that it may make a penny here or lose a penny there; throw aside such small considerations; look over the bill, and if its provisions commend themselves to your approval then write to your splendid Senators, DILLINGHAM and PAGE; write to your live, wide-awake Congressmen, Judge PLUMLEY and Mr. FOSTER; tell them you are in favor of the measure. They will be glad to hear from you; they want knowledge; they want light; they are very busy; they have not the time to come and canvass your people here, to learn their feelings on pending legislation. They are always glad to learn the sentiment of their constituents, of whom they are the representatives. But remember this, if you have any fault to find with any of the provisions of the measure, do not content yourselves with condemning it; indicate wherein it may be improved or a better feature substituted. As I said before, nobody claims this bill is absolute perfection, but it is the very best thing we could produce. Now, I hope I have said something to some good, and if I have said anything that does not commend itself to you as good, please forget that part which I have said.

"I thank you all for listening so patiently. I appreciate greatly the opportunity to make a visit to this great, historic, old State, and to say a few words to you, although I realize they have been said in a rambling manner. Gentlemen, I thank you."

[At the conclusion of Congressman PRINCE's address the audience arose to its feet, and a long round of loud applause showed how much the speech had been enjoyed and appreciated.]

[A few questions were asked the speaker at the conclusion of his remarks as to certain provisions of the bill, and these may all be found answered by a perusal of the measure, a copy of which no doubt is within reach of every member of the association.]

[A renewed applause greeted Congressman PRINCE as he walked from the platform to the door, having shortly thereafter to leave the city to return to Washington.]

PRESERVATION OF BATTLE FLAGS.

Mr. PADGETT. Mr. Speaker, by action of the Committee on Naval Affairs, I wish to call up the bill H. R. 15471.

The SPEAKER pro tempore. The gentleman from Tennessee calls up the bill H. R. 15471, of which the Clerk will report the title.

The Clerk read as follows:

H. R. 15471. A bill making appropriation for repair, preservation, and exhibition of the trophy flags now in store at the Naval Academy at Annapolis, Md.

The SPEAKER pro tempore. The House resolves itself automatically into the Committee of the Whole House on the state of the Union, and the gentleman from Texas [Mr. BEALL] will take the chair.

The CHAIRMAN. The House is in the Committee of the Whole House on the state of the Union for consideration of the bill the Clerk will report.

Mr. TRIBBLE. Mr. Chairman, I would like to ask the Chair for a division of the time in opposition to the bill.

Mr. PADGETT. Mr. Chairman, I ask for a reading of the bill.

The CHAIRMAN. The Clerk will report the bill.

The Clerk read as follows:

Be it enacted, etc., That for the purpose of repair, preservation, and preparation for exhibit of the flags now stored at the United States Naval Academy, Annapolis, Md., which have been taken in battle or after battle by the Navy of the United States of America, the sum of $30,000 be, and is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, the same to be immediately available.

Mr. PADGETT. Mr. Chairman, I yield to the gentleman from Pennsylvania [Mr. BATES].

Mr. BATES. Mr. Chairman, I desire to say a word to the members of this Committee of the Whole in explanation of the pending bill. What I have to say relates to the Navy of the United States and some of its trophies and to the conditions of these trophies and the need of their preservation.

The United States Navy has in the past 100 years accomplished most wonderful naval victories. At the conclusion of many of the naval engagements which have brought such prestige to the American arms the flags, penants, and ensigns of conquered vessels have been brought home in triumph. These trophy flags have been deposited from time to time at the United States Naval School for safe-keeping, and now it being discovered that these flags and trophies are in a most wretched dilapidated condition, many of them injured by moths, and all of them beginning to crumble from age, shall be restored so far as possible, repaired, and placed in the exhibition cases which have been prepared for them in one of the permanent fireproof buildings at Annapolis. Who own these flags? They belong to the people of the United States.

They are proofs of achievements of the American Navy, in which our people have long had a just pride. There are 136 of these flags, most of them taken in battle or after battle by the Navy, and also several of the battle standards of our own victorious fleets. They are of great historical value. One is Perry's battle flag, a trophy of the battle of Lake Erie, September 10, 1813, on the blue field of which is inscribed the words in white letters, "Don't give up the ship." [Applause.] This flag was used as the signal for action by Commodore Perry. Another of very great historical value is an English royal standard, 23 by 27, captured at York, Canada, April 27, 1813, by a squadron under Commander Isaac Chancey. [Applause.] This is said to be the only English royal standard ever captured. [Applause.]

Another is the first United States ensign hoisted in Japan by Commodore Perry in his interview with the Japanese commissioner at Uraga, July 14, 1853. [Applause.]

Another is a Mexican flag taken at Mazatlan, November 14, 1857, by Commodore Shubrick. [Applause.]

Then there is the ensign of the *Alert* taken in 1812 by Capt. David Porter. [Applause.]

There is also the last flag flown by the Spanish squadron at the Battle of Manila Bay. [Applause.] Also the flag of the governor general of the Philippines taken by Admiral Dewey in 1898. [Applause.]

Commander W. C. Cole, of the Navy, now stationed at Annapolis, and senior member of the committee on memorials, has taken a deep interest in the subject of the preservation of these trophies, and after much correspondence and research has found a method by which they can be restored and preserved. It is proposed that they be stretched upon a backing of fine linen and then sewed to the linen by expert needlewomen, using small stitches that will not be visible at the distance an observer will stand when viewing them in exhibition cases. Also using sewing silk of the color and shade to match each part of the flag. A most careful estimate has been made of the entire matter, and it is found that there are about 1,200 yards of surface, and that the material—linen, silk, and so forth—for this work will cost $1,500; that it will require 100 needlewomen working 200 days to accomplish this work. The glass cases for the reception of these flags have been prepared from funds appropriated for memorials in 1910.

It is estimated that the average amount of time to be expended by needlewomen in the restoration of these flags will be 15 hours per square foot.

It is the manifest desire of the American people that these flags be restored. We, as the representatives of the people, would be negligent in our duties if we would allow these trophies, some of which have been preserved 100 years, to now become lost and destroyed for lack of reasonable care. As an evidence of the desires of the country in this matter, I call attention to the large number of memorials and petitions which have been received and filed with the Naval Committee from patriotic societies from all parts of our country:

The Society of the Cincinnati, the General Society of the War of 1812, the Aztec Club of 1847, Order of Founders and Patriots of America, Loyal Legion, Navy League of the United States, National Association of Naval Veterans, Patriotic Sons of America, Sons of American Revolution, Daughters of American Revolution, etc.

These, Mr. Chairman, were among those received five or six weeks ago, and I am informed that other memorials from patriotic societies of our land have since been received.

Two flags are before you to illustrate the treatment and means of restoration that is proposed. One of them, the larger, is the flag of *Epervier*, captured by the *Peacock* April 29, 1814, off the coast of Florida, under Master Commandant Lewis Warrington [applause], in a most spirited engagement, in which 10 were killed and 15 wounded. This flag of the *Epervier* was in a most wretched condition, most of its surface having been reduced to a mere film and also torn badly in many places. It cost $111 to restore this flag. Many of the flags are even in worse condition than was this. The other and smaller flag, which has not received the proposed treatment, was the flag of the *Dominica*, captured August 15, 1813, under Capt. D. Diron in an engagement which resulted in the loss of 23 killed and 67 wounded.

The proposed treatment will be durable. Nearly 1,000 years ago the wife of the Duke of Normandy, with the help of her attendants, made some tapestries which are to-day known as the Bayeux tapestries. They are mounted on fine linen in exactly the same manner it is proposed to mount these flags at Annapolis. They have been constantly under exhibit and have been transported to various exhibitions from time to time.

The Naval Committee of this House, by an almost unanimous vote, approved of this bill and appropriation after according Commander Cole of the Navy a full hearing on all the details of the expenditure of amount sought to be appropriated. It is the opinion of your committee that this work should be done without delay and that the amount asked for in this bill is necessary for the performance of the work. We are accustomed to appropriate a fair sum each year for monuments, statues, columns, and inscriptions to perpetuate great events and to commemorate great names.

I might mention for one moment the appropriations and expenditures that have been made during the whole history of our country to commemorate events such as those symbolized by these trophies and mementos.

I need not call to your mind Bunker Hill nor Washington's Monument, nor the National Museum, in this city, which cost from two to three million dollars and is filled with trophies not one of which, I believe, exceeds in historic value these old battle flags.

Some of the bravest and most conspicuous and most useful achievements that have ever been noted on the pages of American history have been performed by officers and men of the American Navy. There are few names that the American people hold in higher esteem than those of Perry, Farragut, Schley, Sampson, and Dewey. [Applause.] Not only the Nation but communities and States all over this Union delight to honor the names and achievements of those who have been termed great. The name of Virginia is linked with those of Washington and Lee; Texas, with her Houston; Massachusetts, her Samuel Adams and Sumner; Illinois, her Lincoln; Ohio, her Chase, Garfield, and McKinley; Maine, her Fessenden; Pennsylvania, her Franklin.

It is proposed by this bill to place in practically enduring form the mementos of the events and names which are held in honor and esteem by the people of every State of this Union. These flags and trophies, now crumbling into dust, tell more than spoken or written words of the achievements of the American Navy. They are silent witnesses of the bravery and heroism of the American sailor and an inspiration to present and future generations. [Loud applause.]

The following are the articles to which I referred in the course of my remarks and which I herewith submit relating to the capture of the flags of the *Epervia* and the *Dominica:*

Action between U. S. sloop *Peacock*, Master Commandant Lewis Warrington, and English brig of war *Epervier*, Capt. Richard Wales.

The second of the six new sloops to get to sea was the *Peacock*, Master Commandant Lewis Warrington. Sailing from New York on the 12th of March, the *Peacock* went as far south as the Great Isaacs, and then skirted along the coast of Florida to Cape Canaveral. On

Friday morning, April 29, in latitude 27° 47′ north, longitude 80° 9′ west, three merchant ships and a large brig of war were descried to windward. On making out the *Peacock* the merchantmen drew away, while their escort bore down to reconnoiter. The *Peacock* then showed English colors and allowed the stranger to approach, and at 9 a. m. the brig signaled the merchant vessels, and soon afterwards they were hurrying away in different directions. In the meantime the *Peacock* was rapidly nearing her foe, and at 9.40 a. m. she hauled down the English colors and ran up her own. By 10 a. m. the vessels were within half gunshot, but neither of them had opened fire. Master Commandant Warrington now maneuvered to secure a raking position, but the enemy avoided this by putting up his helm until close on the *Peacock's* bow, when, hauling up to the wind, he fired his starboard broadside, and the American replied with their port battery. At the first fire the *Peacock* received two 32-pound shot in the quarter of her foreyard, which disabled the fore and fore-topsail for the remainder of the action. This mishap compelled Master Commandant Warrington to forego maneuvering and to rely entirely on his gunnery. Orders were now given to load with star-and-bar shot, with a view to crippling the enemy's rigging, so that he could not profit by the *Peacock's* disabled foreyard. In a few minutes the American foreyard gave way and the antagonists drew closer, which rendered their fire very destructive. About 10.40 a. m. the enemy lost his head sails, and at the same time his main boom, having been shot through, fell upon the wheel. This brought the wind on his beam, exposing him to a raking fire from the *Peacock*, but the latter had too much headway to avail herself of the advantage except by throwing in two or three shot. Then hauling close under his opponent's lee, Master Commandant Warrington poured in a hot fire, which was chiefly directed at the enemy's hull, and soon her main topmast went over. At 11 a. m. she attempted to wear around so as to bring a fresh broadside to bear, and this brought the vessels so close that the British commander was heard urging his men to attempt boarding; "but," says James, "the British crew declined a measure so fraught with danger." The battle had now lasted 45 minutes and the brig struck. On being boarded the stranger was found to be the British brig sloop *Epervier*, Capt. Richard Wales.

Peacock.

Guns	22
Crew	160
Wounded	2

Epervier.

Guns	18
Crew	128
Killed	8
Wounded	15

Action between U. S. privateer *Decatur 3d*, Capt. Diron, and the English three-masted schooner *Dominica*, Lieut. Barretté commanding, August 5, 1813, latitude 23° 4′ north, longitude 67° 0′ west.

The *Decatur* left port in the summer of 1813 on a general cruise against British commerce, and early in August she was in the track of British West India traders homeward bound. Early on the morning of August 5, when in latitude 23° 4′ north, longitude 67° 0′ west, or a little to the south of the Bermudas, the *Decatur* was heading northward under easy sail, hoping for some prize to appear. About 10.30 a. m. the man at the masthead reported a sail bearing away to the south, and shortly afterwards another, steering in the same direction, was sighted. Capt. Diron promptly tacked southward, with a view of getting the weather gauge of the strangers, so that, should they prove to be British cruisers, he would have the advantage in a chase.

Capt. Diron approached the strangers with caution, knowing that there was a strong probability of their being a couple of British sloops of war. The danger of approaching a stronger force, however, did not prevent the American from coming to closer range, and at 11 a. m. it was seen that the sails were a ship and a schooner, which, on making out the sails of the *Decatur*, had changed their course to the north so as to meet her. The three vessels slowly reduced the distance between them, and at 12.30 p. m. the *Decatur*, having secured a position a little to windward and being almost within gunshot, wore around and ran a little to leeward, upon which the schooner showed English colors. Capt. Diron was now satisfied that he had an English war schooner to deal with, and that the ship was under its protection. Half an hour later he wore again, still keeping the weather gauge, and about 1.30 p. m. the stranger fired a shot, which fell short.

Knowing that the British commander had a heavier armament than the privateer, but believing that he had the greater number of men to man his ship, Capt. Diron determined to have the fight at the closest quarters, and to carry the Englishman by boarding. Accordingly he cleared for action, sent his men to quarters. * * *

Having made all his arrangements for the battle, Capt. Diron about 2 p. m. wore ship, with a view of passing under the stern of the enemy and giving a raking fire, but as the schooners neared each other the Englishman luffed and gave his broadside, most of the shot passing over the American. * * * At 2.15 p. m. the Americans began the fire of their long tom, and as it was aimed with coolness and deliberation, within half gunshot distance, the effect in so small a vessel was serious, disabled several of the Englishman's guns, besides injuring many men. * * *

After delivering their first effective fire, the Englishman filled away so as to prevent the Americans from boarding, while Capt. Diron doggedly followed close under their stern, determined to board at any cost. In this way, bow to stern, the two craft ran several minutes, neither side being able to maintain a very effective fire. The Americans now made another attempt to board, but it was frustrated in the same manner as the first.

But the last move made by the British schooner in her endeavor to avoid boarding gave the *Decatur* the advantage in sailing, and persisting in following close in the wake of his enemy, Capt. Diron finally had the satisfaction of seeing his craft gradually overhaul the Englishman. Again he called for his boarders, and at 3.30 p. m. the *Decatur* ran her bowsprit over the enemy's stern, her jib boom piercing the Englishman's mainsail. This was the signal for the Americans to board, and while some of them poured in a heavy fire of musketry, others, led by Vincent Safitt, the prize master, and Thomas Wasborn, the quartermaster, clambered along the bowsprit and sprang to the Englishman's deck. * * *

It was not until 18 of the *Dominica's* crew were killed and 42 wounded that the few survivors were induced to surrender. A total of 60 killed or wounded in a crew of 88 fully attests the desperate nature of the struggle and the gallantry of the men against whom the Americans fought. * * *

Decatur.

Guns	7
Crew	103
Killed	5
Wounded	15

Dominica.

Guns	16
Crew	88
Killed	18
Wounded	42

Mr. Chairman, I ask that the gentleman from Georgia occupy a portion of the time. I reserve the balance of my time.

The CHAIRMAN. How much time does the gentleman from Pennsylvania yield to the gentleman from Georgia?

Mr. BATES. How much time have I remaining, Mr. Chairman?

The CHAIRMAN. The Chair is advised that the gentleman has 45 minutes remaining. How much time does the gentleman from Pennsylvania yield to the gentleman from Georgia [Mr. TRIBBLE]?

Mr. BATES. I reserve the balance of my time for others who desire to speak in behalf of my measure. I do not yield any of my time to the gentleman from Georgia.

The CHAIRMAN. The Chair is under the impression that the gentleman from Georgia has the floor in his own right.

Mr. TRIBBLE. Mr. Chairman, I have the floor. I was recognized by the Chair.

The CHAIRMAN. The Chair may be mistaken, but the Chair believes that the gentleman from Georgia is entitled to recognition in his own right.

Mr. TRIBBLE. Mr. Chairman, there is not a man in this House that applauds the appearance of these flags more heartily than I do. I do not rise for the purpose of opposing the restoration of them. I do feel, however, being a member of the Committee on Naval Affairs, that it is due to this House that some facts be laid before this House, and when I have done that I shall have discharged the duty and responsibility which I feel rest upon me.

Now, Mr. Chairman, I want to be distinctly understood. I rise in the first place to oppose the enormous amount that is proposed to be appropriated. I rise in the second place for the purpose of opposing the place that is proposed to keep these flags.

The gentleman from Pennsylvania [Mr. BATES] refers to the women's organizations all over this country, and he refers to the Daughters of the Revolution. I have in my possession an article in one of the leading papers published by the Daughters of the Revolution, applauding the action of this committee in proposing to repair the flags and rejoicing that the flags will be brought to the National Capital to be exhibited in some public place. I say the people all over the country can see them then, instead of hiding them away down at Annapolis, where nobody can see them except the students who go there, the professors, and the girls who go there and dance at the commencement periods.

Mr. BOWMAN. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from Georgia yield to the gentleman from Pennsylvania?

Mr. BOWMAN. Just for one question.

Mr. TRIBBLE. Yes, sir.

Mr. BOWMAN. I can not see anything in the bill that decides that these relics shall be stored in any particular place.

Mr. TRIBBLE. I will answer that question. The gentleman from Pennsylvania [Mr. BATES] stated in his speech that they should go to Annapolis. Let me read to you from a statement in the hearings:

> Now, gentlemen, if you will remember, last year when Capt. Coontz and I came before the committee we asked for $3,000 for work on the memorials which we have down there. There are a number of memorials of different kinds, and we had in mind not only the storage of these memorials and monuments and other things, but the arrangement of the flags in places which had been prepared for them by the money the committee had appropriated in former years.

This you will find on page 496. They have prepared certain boxes down there in which to confine them, and the people of America, the people of my district who come to the Capital, and other people who come to the Capital, will not have the privilege of seeing them, placed as it is proposed at this Naval Academy. My children will not have the opportunity to go to Annapolis, in all probability, and none of them, in all probability, will be invited to go to a german there; the children of my constituents will not go there; the American people will not go there, and therefore I am contending that these flags should come to Washington. If this bill were so amended as to place these flags where the people want them to be placed and safeguards placed around the appropriation, then I withdraw my objection.

Mr. ROBERTS of Massachusetts. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from Georgia yield to the gentleman from Massachusetts?

Mr. TRIBBLE. I can not yield just now. I will yield in a moment. I will then yield whatever time the gentleman wants.

Mr. ROBERTS of Massachusetts. If the gentleman will pardon me, just on that point——

The CHAIRMAN. Does the gentleman from Georgia yield?

Mr. TRIBBLE. No; I desire to proceed at this time.

The CHAIRMAN. The gentleman declines to yield.

Mr. TRIBBLE. Now, Mr. Chairman, at the last regular session of Congress, with a Republican House, that House appropriated $3,000 for the restoration of these flags. Now, we occupy the position of being an economical Democratic House, and yet you propose to increase this appropriation to $30,000 instead of $3,000. I do not want to be misunderstood.

The Sixty-first Congress, I say, appropriated $3,000 for this purpose. In the hearings, on page 496, at the bottom of the page, it was stated by a commander that this amount of $3,000 is sufficient. Now, what occurred? A new commander goes there, and he proceeds to use this $3,000 in the restoration of these flags. What does he do? He gets into correspondence with a lady by the name of Mrs. Fowler, who has an office in Boston and who has been doing this class of work for 30 years. She comes down to Annapolis, goes over these flags, and I will not say she wants to get a big price for her work, but she finds $30,000 worth of work there instead of $3,000 worth. Commander Coontz stated before the committee last year this amount would be sufficient; this House appropriated $3,000.

Now, this new commander comes here and asks this House to give $30,000.

There are 136 of these flags. Now follow me, please, for here are figures that will stagger you. There is a certain amount of sentiment in this question, and I go just as far with my sentiment as any Member on the floor of this House; but there is a business proposition involved here as well as sentiment.

There are 136 flags, and the woman to whom it is proposed to give this work took the flag which was in the worst condition of the whole 136. I have forgotten the name of the flag—I believe it is the flag of Epervier—but, anyway, it comes down to us from away back in 1814. She took the worst one and repaired it, and it cost $111 to do the work. Now multiply 136 by that and you have got $14,096. What do you say about that? It is proposed to double that amount. Many of these flags were captured at Manila and different places in the Spanish-American War. They are comparatively new flags. There is comparatively little work to be done on them. Yet they put these flags in at over $200 each. Am I right in coming before this House and throwing some light on this question?

I realize the fact that I have been misunderstood in making my appearance here to oppose this appropriation as provided in this bill. I am not opposing the restoration of these flags. There are flags in this number that ought to be restored, and possibly they all ought to be restored. I do not say they should not be, but I think this committee should give some diligence to the consideration of this question, and I want Members of the House to send for copies of these hearings and read the names of these flags.

Mr. COOPER. Will the gentleman permit a question?

The CHAIRMAN. Does the gentleman from Georgia yield to the gentleman from Wisconsin?

Mr. TRIBBLE. In a minute or two, when I have finished, I will yield to the gentleman.

The CHAIRMAN. The gentleman declines to yield at present.

Mr. TRIBBLE. Mr. Chairman, where does this recommendation come from? It comes from the commandant at Annapolis and from a lady who is interested in getting this work. What about the commandant at Annapolis who comes up here and makes this recommendation? Mr. Chairman, he toils not, neither does he spin. I dare say he never worked a day in his life.

Mr. KOPP. Will the gentleman yield?

Mr. TRIBBLE. No; I will yield when I pass over three more propositions.

Mr. Chairman, the United States spent $18,000 upon the education of this man to start with at Annapolis while he was a student. Yet he comes up here and presents to this committee this kind of an argument. He is a fine business man! When I say that he toils not, neither does he spin, I think I am justified in making that statement, so far as business and financial transactions are concerned. He goes upon the sea. No doubt he is a competent officer, but here is what he says, now, in talking about the amount that should be paid, in the committee hearings, to wit:

> I do not like to get down to the cheap-labor business, but it may be that I will be compelled to under the $30,000. I shall do the best I can.

He does not think $30,000 sufficient.

The point was made that these flags could be done for less, and he rises and says he did not want any cheap labor in this question. I do not think a man who goes to sea has any right to come here and dictate to me, who comes from a farming district and represents farmers and business men. They look to my business qualification and have a right to, and I am not going to take his recommendation.

Mr. BATES. Will the gentleman yield?

Mr. TRIBBLE. No, sir; I can not.

Mr. BATES. It was a member of the committee who said that.

Mr. TRIBBLE. You are in error. Now, I am putting up to the House this business proposition. I am in favor of restoring these flags. I do not care to be misquoted on that proposition by anybody, but I am opposed to it along the lines I have tried to point out, and I call upon the Members who have occupied seats here from day to day and seen the agricultural bill going through this House, and for the purpose of economy have seen section after section trimmed, thereby, as I contend, legislating against the farmer at home who has to work to make the money to pay for this appropriation, and yet cut down the appropriation that will help him and not contest extravagance as I contend this to be. Is it right to legislate against him and come in here and cut down the agricultural bill and then rush through this House an appropriation of $30,000 for flag repair, three times the amount necessary? I shall offer my protest against any such Democratic economy.

Mr. LEVER. Will the gentleman yield?

Mr. TRIBBLE. I will.

Mr. LEVER. I understand the gentleman from Georgia is not opposed to the restoration of the flags, but is opposed to their restoration as provided in the bill.

Mr. TRIBBLE. That is exactly my position.

Mr. LEVER. What amendment does the gentleman propose to offer by which the restoration may be had in the line of his own views?

Mr. TRIBBLE. I think this bill ought to be amended so as to provide that these flags when restored shall be exhibited in the National Capital of the United States. I think that the bill ought to be sent back to the Naval Committee and let them investigate and see how much the restoration of these flags should cost and which one of the flags should be restored. There are a number of them, in my opinion, the country does not care anything about.

Mr. HOWARD. Will the gentleman yield?

Mr. TRIBBLE. I will yield to the gentleman from Georgia.

Mr. HOWARD. I believe that the complaint that the gentleman registers against the bill is that $30,000 is a good price to pay for a little job.

Mr. TRIBBLE. If you take the worst flag that this woman picked out, which she said would cost $111, and multiply it by the number of flags, it will only cost one-half of the amount proposed to be appropriated here. What are you going to do with the other $15,000; where is the other $15,000 going?

Mr. LEVER. I was about to ask the gentleman from Georgia if he had in mind the amount of the appropriation that he believes is necessary for the restoration of the flags.

Mr. TRIBBLE. Yes; I think $10,000 is ample.

Mr. COOPER. Will the gentleman yield?

Mr. TRIBBLE. Yes.

Mr. COOPER. The gentleman says that he thinks $10,000 is ample?

Mr. TRIBBLE. Yes, sir.

Mr. COOPER. What witnesses has he examined as to that point?

Mr. TRIBBLE. The witness they produce here is Mrs. Fowler, and she says that the worst flag, which was captured in 1814, would cost $111, and I multiply it by 136, and the total amount is $15,000. A great many of the flags are recently captured and do not need repairing, and therefore $10,000 is more than enough.

Mr. COOPER. What was the size of the flag to which the gentleman refers?

Mr. TRIBBLE. I am not prepared to say; that flag was selected from among the flags as one of the worst.

Mr. COOPER. Is it not a fact that it was one of the smallest flags?

Mr. TRIBBLE. I am not prepared to say. What I want is an investigation along that line, and I say the Naval Committee acted without necessary facts and was hasty in consideration.

Mr. COOPER. The gentleman is aware, from the report of the committee at least, that this Mrs. Fowler is a leading expert needlewoman, who took up the work originally as a pastime and later as a profession, and who, by the Massachusetts Legislature, has been given charge of the preservation of the flags in

the Massachusetts statehouse, and that she was examined by the commander of the United States Navy, Mr. Cole, who not only has corroborated her, but the commandant of the Naval Academy has also corroborated her.

Mr. TRIBBLE. I am aware of that, and commented on both of them. I said I did not propose to be controlled by the opinion of either of them, because their own facts show that it would not cost more than $10,000.

Mr. COOPER. I inferred from what the gentleman said that he was not to be controlled. I knew he was not to be controlled; but I was asking him for the basis for his opinion. According to his own statement he has not made any examination, and he is not able to identify the flag that he has selected as a basis.

Mr. TRIBBLE. I have got the statement in answer to the gentleman's question, that the worst one cost only $111, and I have got the statement and the facts here that the gentleman can read, that the most of these flags are new flags.

Mr. COOPER. Is the gentleman aware of the fact that this lady says the flags are to be sewn on linen with silk by expert needlewomen, with small stitches that will not be visible at the distance the observer will stand from them in viewing them?

Mr. TRIBBLE. Yes; and I am aware of the fact that the ones she repaired she did exactly as she proposes to do the others.

Mr. COOPER. Is the gentleman aware of the fact that when he says that the work will cost only $10,000, that she says the material will cost $1,500?

Mr. TRIBBLE. Yes, $1,500; but there is a great deal of difference between that and $30,000.

Mr. COOPER. But that does not include what she says is a fair estimate for 100 needle women at $1.28 per day.

Mr. TRIBBLE. Yes; but her estimate does not bear out the fact that she took one and repaired it for $111, one captured in 1814, and here are other flags that do not need repairing that were captured at a much later date.

Mr. COOPER. Was that a large flag or a small flag?

Mr. TRIBBLE. I have just stated to the gentleman that I have not got the information, and I say that the Naval Affairs Committee has not that information, and that committee should have it, and that is what I am protesting against.

Mr. BOWMAN. Mr. Speaker, will the gentleman yield?

Mr. TRIBBLE. I will exhibit the flag which she repaired. Look at it, look at the size of it. See how large it is. Also, see this small one to be repaired.

Mr. ROBERTS of Massachusetts. Mr. Speaker, will the gentleman yield a moment on the question of the size of the flag?

The SPEAKER. Does the gentleman from Georgia yield to the gentleman from Massachusetts?

Mr. TRIBBLE. Yes; I yield to the gentleman from Massachusetts. He is my colleague on the committee.

Mr. ROBERTS of Massachusetts. The flag which the gentleman just exhibited as having been repaired is 4 by 9 feet 8 inches, practically 36 or 37 square feet. The report of the committee shows there are many flags much larger. The first one is 16 by 30 feet, or 480 square feet, and yet the gentleman argues that 480 square feet of flag will be repaired for the same price that 36 feet of flag were repaired for.

Mr. TRIBBLE. Yes; and the committee report shows that part of these flags are very small flags, and some of them are pennants.

Mr. ROBERTS of Massachusetts. But does not the gentleman know that a pennant may be 120 or 160 or 180 feet long?

Mr. TRIBBLE. It is not reasonable to suppose so.

Mr. ROBERTS of Massachusetts. But they are that long in the Navy.

Mr. TRIBBLE. That may be so, but it is not reasonable to suppose so. The complaint I make to the gentleman is that this committee has gone off on a supposition, following this naval commander and this lady who wants the job.

Mr. ROBERTS of Massachusetts. Oh, no. Does not the gentleman remember that we were told this estimate of cost was based on the number of square feet of flags of all sizes, and that it cost $111 for one particular flag, which happens to have in it about 36 square feet?

Mr. TRIBBLE. The gentleman knows that they said that that flag was one of the very worst, and it was brought up to its present condition and exhibited to show what they could do with an old flag—take it and make a good one of it.

Mr. KONOP. Mr. Speaker, will the gentleman yield?

Mr. TRIBBLE. Yes.

Mr. KONOP. This bill provides for an appropriation of $30,000 for the repair, preservation, and exhibition of these flags. Does not the gentleman know that it will require some glass cases in which to put the flags, and that it will take some expense to exhibit them?

Mr. TRIBBLE. But has not the gentleman read here in my very first remarks, on this page right here, that that appropriation has already been made, and provision has been made to receive these flags? That is one of my complaints. They propose to put these flags down there at Annapolis where they will never be seen by anybody. If you want to stir up patriotism and preserve these flags so that your children and my children can see them, introduce an amendment and pass it so that they will be brought to the National Capital.

I now yield to the gentleman from Massachusetts [Mr. McCALL].

Mr. McCALL. Mr. Chairman, I just wish to ask the gentleman whether it would not meet with his approval, so far as the expense goes, to insert, after the word "dollars" on top of page 2, the words "or so much thereof as may be necessary," and then at the end of the bill amend so as to read "the same to be immediately available and to be expended under the direction of the Secretary of the Navy"?

Mr. TRIBBLE. Well, if the gentleman will offer that amendment I will support it. [Applause.]

Mr. McCALL. I wish to ask my friend from Pennsylvania whether there is objection to that amendment?

Mr. PADGETT. We will accept that amendment; I have no objection in the world to it.

Mr. BATES. I will state to the gentleman that we do not desire that a penny more than necessary shall be expended.

Mr. McCALL. Of course, and it seems to me the bill means that now.

Mr. BATES. I will say to the gentleman from Massachusetts, with the permission of the gentleman from Georgia, that it is absolutely impossible to figure out to the last penny, but that the estimate of this expert is that, working with women at the pittance of $1.28 a day, there would not be a margin of $100.

Mr. McCALL. I would like to suggest that when bills are reported from the Committee on the Library somewhat similar to this the rule is to say who shall have charge of the spending of the money, and it seems to me there ought to be added to this bill the authorization that the money is to be expended under the direction of the Secretary of the Navy.

Mr. BATES. I will either offer that amendment or accept such an amendment.

Mr. McCALL. I should prefer that the gentleman should offer it.

Mr. TRIBBLE. Mr. Speaker, I understand the chairman of the Committee on Naval Affairs agrees to accept that, and that settles the question, so far as I am concerned. [Applause.] I understand the gentleman from Massachusetts [Mr. McCALL] provided that they should be brought to the National Capital?

Mr. ROBERTS of Massachusetts. No; let me say to the gentleman——

Mr. PADGETT. It leaves that question open.

Mr. ROBERTS of Massachusetts. I tried to get the gentleman's attention. Right on that point where the flags shall be——

Mr. PADGETT. Let us take the bill up and dispose of it, please.

Mr. BATES. Mr. Speaker, I yield five minutes to the gentleman from Mississippi [Mr. WITHERSPOON].

Mr. WITHERSPOON. Mr. Chairman, this bill appropriating $30,000 for the preservation of 136 flags taken in conflicts between the American Navy and the navies of hostile governments will receive my vote, because I feel that the value of these flags is far greater than the cost of their preservation. [Applause.] When the proposition to make this appropriation was first submitted to the committee it did not have my assent. I have long felt, and I feel now, that the enormous expenditures of the Federal Government far exceed the value of the services it renders the people, and on account of the unfair, unjust apportionment of taxes, have become oppressive and burdensome and should not be increased; and I had, therefore, made up my mind to vote for a reduction in all public expenditures and to vote against all increases in the public expenditures and against the assumption of new obligations on the part of the Government, but when these flags were exhibited to the committee and I saw their torn and tattered fragments struggling, as it were, to hold together and apparently breaking asunder, like the sunlit shreds of a cloud whose glory is about to depart forever, I was unwilling to say by my vote that those fading emblems of the national glory, those neglected tokens of a splendid heroism, those sacred rags of an unconquerable Navy, were not worth the cost of their preservation. [Applause.] If it be difficult to justify this expenditure, it is impossible to excuse an assent

to the impending destruction of these flags. Written all through their precious folds there are lessons which we can not afford to forget; there are memories which we can not afford to dim; and there are hopes which we can not darken without shutting out the very sunlight of our future. These flags tell us of a day when the public good was held high above private gain, of a day when American heroes hastened to surrender and to sacrifice position, place, property, reputation, and life itself for the public good, and when they were never seen rushing with open hands into the Public Treasury when the value of noble deeds and public victories were not measured in dollars and cents.

They tell us of a day when the essence and the glory of the Union were that all the States were equal, and when geography, but not sentiment, divided our country into sections. [Loud applause.]

The preservation of the flags is necessary to the perpetuation of those lofty ideals and noble aims of which they are the emblems.

Mr. Speaker, in this age of commercialism, when avarice has become the dominant passion, and when private gain has become a more potent consideration than justice, there is an imperative need for the continued and repeated expression of all that is unselfish and noble and patriotic in the emblems as well as in the literature of the past. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. CURLEY. Mr. Chairman, I move that the gentleman's time be extended 10 minutes.

Mr. PADGETT. The gentleman is speaking in his own right, and has an hour.

Mr. BATES. Mr. Chairman, I yield to the gentleman from Mississippi such additional time as he may desire.

Mr. PADGETT. The gentleman from Pennsylvania can not yield. The gentleman from Mississippi has an hour in his own right. The time is under his control.

The CHAIRMAN. The Chair was advised to the contrary, and the gentleman from Pennsylvania [Mr. BATES] yielded five minutes.

Mr. BATES. Mr. Chairman, I yield to the gentleman from Mississippi such time as he may desire.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. BATES] yields to the gentleman from Mississippi such time as he may desire.

Mr. WITHERSPOON. Mr. Chairman, it has been urged that even if these flags be preserved they will be seen by such a small number of people that their inspiration for good will be very limited.

Mr. TRIBBLE. May I ask the gentleman a question?

The CHAIRMAN. Does the gentleman from Mississippi [Mr. WITHERSPOON] yield to the gentleman from Georgia [Mr. TRIBBLE]?

Mr. WITHERSPOON. I yield to the gentleman.

Mr. TRIBBLE. Do you not think that those flags ought to be brought to the National Capital and placed in the Capitol or the National Museum, or somewhere else, in order that they may be in a public place?

Mr. WITHERSPOON. Mr. Chairman, I never in my life have had the ability to speak on a question that was not up. And when the question proposed by the gentleman arises, then I will express my views upon it.

But this bill has not one single word in it about the locality in which these flags shall be kept, and according to my recollection of the testimony before the committee, a place has already been prepared at Annapolis at an expense, the amount of which I do not know; and I guess my economical friend from Georgia would like to have this bill require that these flags shall be brought to Washington, so that there would be a good excuse to appropriate $2,000,000 or $3,000,000 to erect another building in which to receive them. [Applause.]

Now, Mr. Chairman, in regard to the proposition raised by my friend from Georgia that the people will not see these flags at Annapolis, I want to say that I do not know how many people will see them there. But if it be assumed that no human being will ever visit Annapolis and observe these flags, yet I submit that the midshipmen who go to Annapolis from every congressional district of the Union will see them, and that the lessons thus taught the young defenders of our country will be worth the amount of this expenditure. [Applause.] And, Mr. Chairman, as has been stated by the gentleman from Pennsylvania [Mr. BATES], the plan of the restoration of these flags is the work of woman. In line with her noble mission to cherish and preserve all that is best and purest in human life, it is the skill of her needle and the touch of her genius that are to make these perishing flags immortal. [Applause.]

I just want to say that if some patriotic artist could paint the picture of 200 skillful needlewomen restoring to their pristine beauty these captured flags of our Navy, such a picture as that would be more potent than the appeals of the orator, than the music of the poet, in the restoration of the nobility and patriotism of a glorious past. [Loud applause.]

Mr. BATES. Mr. Chairman, I yield five minutes of my time to the gentleman from Wisconsin [Mr. KOPP], a member of the committee.

Mr. KOPP. Mr. Chairman and gentlemen of the committee, I have little desire to take your time on this subject, and especially after the most eloquent address of the gentleman from Mississippi [Mr. WITHERSPOON]. But there are two or three things, it seems to me, in view of the remarks of the gentleman from Georgia, that should be called to the committee's attention. The gentleman from Georgia [Mr. TRIBBLE] was very severe in his arraignment of the custodian of these flags at Annapolis for coming before the committee. These flags have been at Annapolis, some of them, for nearly a hundred years. They have been in boxes there, cared for as well as could be. All kinds of preservatives have been used upon them, but notwithstanding this fact these flags have been slowly crumbling to dust. The officer in charge of them saw this fact, realized that they would not long remain unless cared for, and so, performing what he supposed was a patriotic duty, he came before the committee and asked for a sufficient amount of money to care for them. And now he is being severely criticized by the gentleman from Georgia because he came and asked us to make such an appropriation.

Mr. TRIBBLE. Mr. Chairman, may I ask the gentleman a question?

The CHAIRMAN. Does the gentleman from Wisconsin yield to the gentleman from Georgia?

Mr. KOPP. No; I refuse to yield.

The CHAIRMAN. The gentleman declines to yield.

Mr. KOPP. The gentleman from Georgia [Mr. TRIBBLE] criticizes the large amount of money that is to be expended, but I understand his criticism is met by amendments which are to be offered. However, I can not see why he should criticize the bill as it is to-day. It simply provides that the women who do this work shall be paid $1.28, $1.30, or $1.35 per day, but the gentleman from Georgia says he represents farmers, and he protests against this reckless expenditure of money.

I would like to ask him whether his constituents protest against the payment to needlewomen of $1.28 per day? If they do, I am surprised, and I am glad to assert that my constituents do not, and I believe that the constituents of most of the Members in this body have reached that point, that most of the people of this country have reached that period when they want to see the labor either of man or woman paid a wage commensurate with the value of the service rendered. [Applause.]

Now, criticism is also made of the fact that it is proposed to keep these relics at Annapolis. But, as the gentleman from Mississippi [Mr. WITHERSPOON] so well said, that is not now before us. But I might inform the Members of this House, as perhaps they already know, or most of them know, that the large memorial hall which was recently erected there with the expenditure of so much money has a beautiful rotunda, and in that rotunda are appropriate glass cases, which can be made absolutely air proof, for the reception of these flags when they are prepared.

Now, it may be that the children of the gentleman from Georgia [Mr. TRIBBLE] and my children will not go to Annapolis to see these relics. Possibly they would not go to see them if they were in Washington, although it is not probable. Probably the untold millions of America would never see them even in Washington. But, be that as it may, it does seem to me that the best place for these flags is at Annapolis. Annapolis has produced some wonderful men in the past. The men who have graduated from Annapolis have achieved victories on many a sea of which this Nation and many other nations are proud. I believe that if the time should ever come, which God forbid, when we are again engaged in a great war and we must again depend upon our Navy we will find men from Annapolis who will prove to be second Farraguts, Perrys, Deweys, Sampsons, and the other great heroes of our Navy. [Applause.]

What better place is there, Mr. Chairman, for those flags than there, where daily these brightest of our young men whom we are training for the naval life can see them and reflect upon the heroism of the men who brought those flags to Annapolis and from their tattered folds receive inspiration for the glorious deeds which we hope are in store for them? [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. BATES. Mr. Chairman, I yield two minutes more to the gentleman.

The CHAIRMAN. The gentleman from Wisconsin [Mr. KOPP] is recognized for two minutes more.

Mr. KOPP. Now, I think, Mr. Chairman, that that meets most of the objections which have been raised by the gentleman

from Georgia [Mr. TRIBBLE]. As to the main proposition, of course there is no division of opinion among Americans. We all want those flags preserved. We want all our historical landmarks and memorials preserved. The utilitarian says, "Why spend the money? What good is it?" That may be true; but there has not been a great accomplishment in the world's history that has not been permeated with sentiment. Why did we build the Washington Monument? Why did we build Bunker Hill Monument? Why did we appropriate so much money to take from Habana Harbor the wreck of the battleship *Maine*? My utilitarian friend will say, perhaps, that his constituents protest against that terrible expenditure of money, because it does no good. But why do we take that battered hulk out to sea, and there, with all honor due to it, bury it? Merely on account of sentiment. That is the only reason, and yet he protests because we are doing these things for sentiment.

Mr. Chairman, I believe the American people, with one voice, want these tattered flags, mute witnesses of the valor and courage of American sailors in many a naval contest, saved; want them preserved, not for to-day or to-morrow only, but for all time. [Applause.]

Mr. BATES. Mr. Chairman, I have some amendments which have been accepted.

The CHAIRMAN. They will be in order after the general debate is concluded.

Mr. PADGETT. There being no further general debate desired, I ask that the reading of the bill proceed under the five-minute rule.

The Clerk read as follows:

Be it enacted, etc., That for the purpose of repair, preservation, and preparation for exhibit of the flags now stored at the United States Naval Academy, Annapolis, Md., which have been taken in battle, or after battle, by the Navy of the United States of America, the sum of $30,000 be, and is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, the same to be immediately available.

With the following committee amendment:

On page 1, line 7, after the word "America," insert "or those United States flags or trophies deemed to be of historic value."

The committee amendment was agreed to.

Mr. BATES. Mr. Chairman, I move to amend page 2, line 1, after the word "dollars," by adding the words "or as much thereof as may be necessary."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 2, line 1, after the word "dollars," insert the words "or as much thereof as may be necessary."

The amendment was agreed to.

Mr. BATES. Mr. Chairman, I move to amend by adding at the end of the bill the words:

Provided, That the amount so appropriated shall be expended under the direction of the Secretary of the Navy.

The CHAIRMAN. The gentleman from Pennsylvania offers an amendment, which the Clerk will report.

The Clerk read as follows:

On page 2, after the word "available," in line 3, insert: "*Provided*, That the amount so appropriated shall be expended under the direction of the Secretary of the Navy."

The amendment was agreed to.

Mr. PADGETT. Mr. Chairman, I move that the committee do now rise and report the bill with amendments to the House, with the recommendation that the amendments be agreed to and that the bill as amended do pass.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. BEALL of Texas, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill (H. R. 15471) making appropriation for repair, preservation, and exhibition of the trophy flags now in store at the Naval Academy, Annapolis, Md., and had directed him to report the same back to the House with sundry amendments, with the recommendation that the amendments be agreed to, and that the bill as amended do pass.

The SPEAKER. Is a separate vote demanded on any amendment? If not, the Chair will put them in gross.

The amendments were agreed to.

The bill as amended was ordered to be engrossed and read a third time, and was accordingly read the third time and passed.

On motion of Mr. BATES, a motion to reconsider the last vote was laid on the table.

LEAVE OF ABSENCE.

By unanimous consent leave of absence was granted—

To Mr. GOEKE, indefinitely, on account of illness in his family.

To Mr. ASHBROOK, for five days, on account of important business.

LOSS OF CITIZENSHIP BY DESERTERS.

Mr. PADGETT. Mr. Speaker, by direction of the Committee on Naval Affairs, I call up the bill (H. R. 17483) amending section 1998 of the Revised Statutes of the United States, and to authorize the President, in certain cases, to mitigate or remit the loss of rights of citizenship imposed by law upon deserters from the naval service.

The bill was read, as follows:

Be it enacted, etc., That every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section 1996: *Provided*, That the provisions of this section and said section 1996 shall not apply to any person deserting the military or naval service of the United States in time of peace: *And provided further*, That the loss of rights of citizenship imposed by law upon deserters from the naval service may be mitigated or remitted by the President where the offense was committed in time of peace and where the exercise of such clemency will not be prejudicial to the public interests.

With the following committee amendment:

On page 1, line 9, after the word "ninety-six," insert "of the Revised Statutes of the United States."

The SPEAKER pro tempore (Mr. WITHERSPOON). The gentleman from Tennessee is recognized.

Mr. PADGETT. Mr. Speaker, I yield to the gentleman from Massachusetts [Mr. ROBERTS], the author of the bill and the Member who reported it from the committee.

Mr. ROBERTS of Massachusetts. Mr. Speaker, the bill now under consideration is intended to remove one of the harshest penalties that can be imposed upon a man for an offense, to wit, the loss of rights of citizenship. As the law stands at present, it is found in the Revised Statutes of the United States, and in order that the House may understand exactly the situation I will read:

SEC. 1996. All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost marshal within 60 days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.

Section 1998 provides:

SEC. 1998. Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section 1996.

These are the provisions of law which to-day deprive a deserter in the time of peace from both the military and naval branches of the Government from the rights of citizenship. These two statutes which I have read were enacted in 1865, during the Civil War, confessedly as a war measure. I have always maintained since I have been a Member of this House and a member of the Naval Committee that such a drastic penalty was entirely too severe to be imposed upon an American citizen in time of peace.

Now, this is not the only punishment that these young boys receive who in a fit of homesickness or who because of vicious influences are led off the right path or for any other reason desert from the Army or the Navy in the time of peace.

In the War Department, by order of the President, the man who to-day deserts in time of peace may receive a punishment of from one to two and a half years' imprisonment at hard labor, with loss and forfeiture of all pay and a dishonorable discharge from the Army.

It seems to me that from one to two and a half years at hard labor, forfeiture of all pay, and a dishonorable discharge from the Army is a sufficient penalty for desertion in the time of peace.

In the Navy the same young man may receive a sentence from 18 months to 5 years at hard labor for desertion in time of peace and forfeiture of all pay and allowances, except $3 a month for prison expenses, and in addition a dishonorable discharge.

That is the penalty imposed by courts-martial in the Army and Navy, and then comes the law I have read you, imposing an additional penalty of loss of citizenship.

The result is that we have in this country to-day thousands upon thousands of young men of American birth who are literally men without a country, who have lost their right of citizenship by reason of the operation of that harsh Civil War law.

It is time that this matter was looked into and this Government rid its statute books of such a barbarous punishment as that. In the Sixtieth Congress a bill of a similar import passed both branches and was vetoed by the Executive. The reasons assigned were briefly that the bill as it then passed divested the President of some of his pardoning power and applied to only

one branch of the military service when it should apply to both, and that the bill in its terms was somewhat confusing.

The committee submit to the House that the bill before it, with the committee amendments, will relieve this measure of all the objections then made by the Executive in the Sixtieth Congress, and that with these objections removed the bill ought to pass.

Mr. MANN. Will the gentleman yield?

Mr. ROBERTS of Massachusetts. Certainly.

Mr. MANN. The bill proposes to amend section 1998 of the Revised Statutes, but, in fact, does not do so.

Mr. ROBERTS of Massachusetts. If the gentleman will pardon me, it amends it by adding a proviso. It reenacts section 1998 with a proviso, and the proviso is what makes the amendment to the section.

Mr. MANN. But the only reference to section 1998 of the Revised Statutes is in the title. Does not the gentleman think the bill ought to read: "*Be it enacted*, That section 1998 of the Revised Statutes is hereby amended to read as follows"?

Mr. ROBERTS of Massachusetts. I think the suggestion of the gentleman would obviate any opportunity for misconstruction. If the gentleman has it in writing, he can offer it.

Mr. MANN. I have it not in writing; but it is a very simple thing to reduce it to writing.

Mr. ROBERTS of Massachusetts. Mr. Speaker, it would unquestionably remove any possibility of misunderstanding as to the purport of the bill.

Mr. MANN. As it is now it would be an independent law, and it would not go on the statute books in place of section 1998, which undoubtedly the gentleman wants it to do.

Mr. ROBERTS of Massachusetts. It will be immaterial whether it went in as an independent statute or took the place of one it was replacing.

Mr. MANN. But section 1998 would still remain on the statute books.

Mr. ROBERTS of Massachusetts. With a later law amending it.

Mr. MANN. Not amending it, but changing the law. It would be better, it seems to me, to amend the section, which is what the gentleman wishes to do. I will draft the amendment.

Mr. ROBERTS of Massachusetts. Mr. Speaker, I will accept that amendment on behalf of the committee, because it does clear up any possible misunderstanding of the purport of the bill.

I would like to say that a prior Secretary of the Navy had recommended in a communication, dated January 11, 1908, the passage of an act which would, to a limited extent, relieve the deserter in time of peace from the extreme harshness of the law. He recognized at that time that here was a penalty that was barbaric in a civilized country in time of peace. The Navy Department to-day, under its present executive, acting through the Assistant Secretary of the Navy, also appreciates the rigors and hardships of this old Civil War penalty and recommends that that feature of the law be eliminated.

The department, however, recommended a different form of bill, which, in the opinion of the committee, did not reach all the cases that should be reached if we are to abolish that old law.

As I stated a moment ago, there are thousands upon thousands of young men in this country who have deserted in time of peace, who have been court-martialed, served their term in prison, forfeited their pay, received their dishonorable discharge, and who are now robbed of citizenship. They are going about, in and out in their communities, day after day, but they are not of the communities. They have none of the rights of citizenship; they can not vote; they can not hold office; and the committee thought that there should be further provision in the bill so that the President, upon application, could restore citizenship in these cases where it had been forfeited prior to the passage of the act and thus restore these young men to their rights as American citizens. That accounts for the change in the form of the bill recommended by the Navy Department.

I will also place in the RECORD a letter from the Acting Secretary of the Navy and General Orders, No. 77, of the War Department:

DEPARTMENT OF THE NAVY,
Washington, February 21, 1912.

Hon. ERNEST W. ROBERTS, M. C.,
House of Representatives, Washington, D. C.

MY DEAR CONGRESSMAN: I have the honor to acknowledge the receipt of your letter of the 20th instant. In reply you are informed that the limitation to the punishments that can be inflicted in time of peace by a general court-martial sentence are as follows for desertion:

In case of surrender after 30 days: Officer, dismissal; enlisted man, confinement for 18 months and dishonorable discharge.

In case of apprehension: Officer, dismissal and imprisonment for 4 years; enlisted man if less than 6 months in the service, confinement for 18 months and dishonorable discharge; if more than 6 months in the service, confinement for 2½ years and dishonorable discharge.

Desertion from a ship about to sail on an extended cruise: Officer, dismissal and imprisonment for 3 years; enlisted man, confinement for 3 years and dishonorable discharge.

When joined in by two or more men in the execution of a conspiracy, or for desertion in the presence of any unlawful assemblage which the naval forces may be opposing: Officer, dismissal and imprisonment for 5 years; enlisted man, confinement for 5 years and dishonorable discharge.

Loss of all pay and allowances due, or that may become due during confinement, as the case may be, excepting a sum not to exceed $3 a month for prison expenses and a further sum, not to exceed $25, to be paid upon discharge if sentenced to discharge from the service, may be added to any of the foregoing limitations. The confinement may also be at hard labor.

Conviction of desertion, according to law (secs. 1996 and 1998, Rev. Stat.) carries with it the forfeiture of the rights of citizenship and the capacity to hold any office of profit or trust under the United States.

Faithfully, yours,

BEEKMAN WINTHROP,
Acting Secretary of the Navy.

GENERAL ORDERS, NO. 77.

WAR DEPARTMENT,
Washington, June 19, 1911.

I. In connection with General Orders, No. 204, War Department, December 15, 1908; Paragraph II, General Orders, No. 42, War Department, March 15, 1910; and Paragraph II, General Orders, No. 52, War Department, April 22, 1911, the following executive order is published to the Army for the information and guidance of all concerned:

EXECUTIVE ORDER.

The Executive order dated November 25, 1908, establishing limits of punishment for enlisted men of the Army, under act of Congress approved September 27, 1890, which order was published in General Orders, No. 204, War Department, December 15, 1908, and amended by the Executive order dated March 3, 1910, published in General Orders, No. 42, War Department, March 15, 1910, and further amended by the Executive order dated April 14, 1911, published in General Orders, No. 52, War Department, April 22, 1911, is further amended by rescinding Article I and substituting therefor the following:

ARTICLE I.

In all cases of desertion the sentence may include dishonorable discharge and forfeiture of pay and allowances.

Subject to the modifications authorized in section 3 of this article, the limit of the term of confinement (at hard labor) for desertion shall be as follows:

SECTION 1. In case of surrender—

(*a*) When the deserter surrenders himself after an absence of not more than 30 days, 1 year.

(*b*) When the surrender is made after an absence of more than 30 days, 18 months.

SEC. 2. In case of apprehension—

(*a*) When at the time of desertion the deserter shall not have been more than 6 months in the service, 18 months.

(*b*) When he shall have been more than 6 months in the service, 2½ years.

SEC. 3. The foregoing limitations are subject to modification under the following conditions:

(*a*) The punishment of a deserter may be increased by 1 year of confinement at hard labor in consideration of each previous conviction of desertion.

(*b*) The punishment for desertion when joined in by two or more soldiers in the execution of a conspiracy, or for desertion in the presence of an outbreak of Indians or of an unlawful assemblage which the troops may be opposing, shall not exceed dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for 5 years.

This order shall become operative in the United States and contiguous Territories July 1, 1911, and elsewhere within the jurisdiction of the United States August 1, 1911.

WM. H. TAFT.

The WHITE HOUSE, *May 26, 1911.*

II. 1. By the Executive order of May 26 1911, published in Paragraph I of this order, the provisions of the Executive order of June 12, 1905, as amended, in respect of maximum punishments in cases of desertion, are revived and made effective in the United States and contiguous Territories on and after July 1, 1911, and elsewhere within the jurisdiction of the United States on and after August 1, 1911. The limits of punishment which these provisions fix are believed to be sufficiently severe for the gravest cases. The graduated scale of punishments they provide is essential to be reestablished in order to avoid the inequality of punishments that has been so marked a feature of sentences of courts-martial for desertion since the uniform limit of three years was established by Executive order of November 25, 1908.

2. It is the purpose of the new and modified order to secure more appropriate sentences in the cases of inexperienced soldiers who desert in the earlier periods of their enlistment contract and in cases of soldiers who surrender themselves from desertion promptly or show a disposition to atone for the offense. It is expected that under the revised order courts-martial will not in this class of cases generally award dishonorable discharge, but will award terms of confinement with forfeiture as a corrective punishment, giving the soldier an opportunity to return to the colors and redeem himself, to the end that the Government shall not be deprived of the services of one who, as the result of such corrective punishment, will probably become a good soldier.

3. The attention of reviewing authorities is particularly invited to the policy of dealing with desertion and deserters announced in this order, the ends of which can be attained only through their cooperation in the review of trials of this offense by courts-martial.

4. Nothing in this order will be construed by anyone concerned as in any way modifying the policy at present being pursued in the matter of the apprehension of deserters, nor should it influence either courts or reviewing authorities to leniency except in the classes of cases referred to in section 2 of this paragraph.

By order of the Secretary of War:

LEONARD WOOD,
Major General, Chief of Staff.

Official:
HENRY P. MCCAIN, *Adjutant General.*

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

Mr. PADGETT. Mr. Speaker, if there is no further debate, I will ask for the adoption of the committee amendment.

The SPEAKER pro tempore. The Clerk will report the committee amendment.

The Clerk read as follows:

Page 1, line 9, after the word "ninety-six," insert the words "of the Revised Statutes of the United States."

Page 2, line 3, after the word "person," insert the word "hereafter."

Page 2 line 6, after the word "citizenship," insert the word "heretofore."

Page 2, line 7, after the word "the," insert the words "military or."

The SPEAKER pro tempore. The question is on agreeing to the committee amendments.

The question was taken, and the committee amendments were agreed to.

Mr. ROBERTS of Massachusetts. Mr. Speaker, I offer the following amendment, which I send to the desk and ask to have read.

The Clerk read as follows:

Page 1, line 3, at the beginning of the line insert the following:

"That section 1998 of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows: Sec. 1998."

The SPEAKER pro tempore. The question is on agreeing to the amendment offered by the gentleman from Massachusetts.

The question was taken, and the amendment was agreed to.

The SPEAKER pro tempore. The question now is on the engrossment and third reading of the bill as amended.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

The title was amended to read: "A bill amending section 1998 of the Revised Statutes of the United States, and to authorize the President, in certain cases, to mitigate or remit the loss of rights of citizenship imposed by law upon deserters from the military or naval service."

On motion of Mr. PADGETT, a motion to reconsider the vote by which the bill was passed was laid on the table.

Mr. PADGETT. Mr. Speaker, that is all the Committee on Naval Affairs desires to call up at the present time.

The SPEAKER pro tempore. The Clerk will call the next committee.

When the Committee on the Public Lands was called—

GRANT OF CERTAIN LANDS, POND CREEK, OKLA.

Mr. FERRIS. Mr. Speaker, I am authorized by the Committee on the Public Lands to call up the bill H. R. 17119.

The SPEAKER pro tempore. Under the rule the House automatically resolves itself into the Committee of the Whole House on the state of the Union for the consideration of the bill, and the gentleman from Kentucky [Mr. HELM] will take the chair.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 17119, with Mr. HELM in the chair.

The CHAIRMAN. The Clerk will report the bill.

The Clerk read as follows:

A bill (H. R. 17119) granting the courthouse reserve at Pond Creek, Okla., to the city of Pond Creek for school and municipal purposes.

Be it enacted, etc., That block No. 43, designated "Courthouse reserve," in the town site of Round Pond, Okla., as appears from the official survey and plat thereof, approved by the Commissioner of the General Land Office on September 14, 1893, be, and the same is hereby, donated and granted to the city of Pond Creek, Okla., for municipal and school purposes, and that the Secretary of the Interior shall issue patent therefor.

Mr. FERRIS. Mr. Chairman, in 1899 Congress opened a section of Oklahoma, and the town of Pond Creek, or Round Pound as it was then called, was designated the county seat of what was then L County. A few years ago by a vote of the people of that county the county seat was removed to another town. That left a block of land there vacant, unoccupied, the title to which is still in the Government of the United States. It is not a large town. It has about 1,000 people who need this block for school and park purposes, and this bill proposes to give it to them. This land is in the district of the gentleman from Oklahoma [Mr. MCGUIRE], who is here, and I yield to him to give any further explanation that he may desire to give.

Mr. MCGUIRE of Oklahoma. Mr. Chairman, there is no statement to be made in addition to what has been said by the gentleman from Oklahoma [Mr. FERRIS], except that the town of Pond Creek has already voted bonds for a schoolhouse there, believing that this land may be obtained for school purposes rather than courthouse purposes. The county seat having been moved to another town in the county, it is now vacant, unused, and the bonds have been voted for a schoolhouse. The bill does not cost the Government anything. Every lot in the town has been given to the residents of that town, and the only thing you do, if you pass this bill, is simply to change the purpose. It is intended for a courthouse, and if you change the purpose it will be used for a schoolhouse. The committee made a report upon this bill, and after receiving a report from the Secretary of the Interior it contained the recommendation that the land revert back to the Government in case it was not used for schoolhouse purposes. The recommendation of the Secretary of the Interior was adopted, and that amendment is placed in the bill. That is all the statement I desire to make, and contains all the facts.

Mr. FERRIS. Mr. Chairman, unless some one who is opposed to the bill desires to speak, I move that the committee amendment be taken up and disposed of.

The CHAIRMAN. If there is no further debate on the bill before the committee, the Clerk will read the bill under the five-minute rule.

The bill was read.

The committee amendment was read, as follows:

On page 1, line 9, after the word "purposes," strike out the words "and that the Secretary of the Interior shall issue patent therefor" and insert in lieu thereof the words "*Provided*, That the title to said land shall revert to the United States when it is no longer used for school and municipal purposes."

The question was taken, and the amendment was agreed to.

Mr. FERRIS. Mr. Chairman, I move that the committee do now rise and report the bill as amended favorably.

The motion was agreed to.

Accordingly the committee rose; and Mr. FLOYD of Arkansas having assumed the chair as Speaker pro tempore, Mr. HELM, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 17119, and had directed him to report the same back with an amendment, with the recommendation that the amendment be agreed to and the bill as amended do pass.

The question was taken, and the amendment was agreed to.

The bill as amended was ordered to be engrossed and read a third time, was read the third time, and passed.

On motion of Mr. FERRIS, his motion to reconsider the vote by which the bill was passed was laid on the table.

HYDRO-ELECTRIC CO.

Mr. FERRIS. Mr. Speaker, by direction of the Committee on the Public Lands I call up the bill H. R. 12572, and I yield to the gentleman from California [Mr. RAKER] to make a statement.

The SPEAKER pro tempore. The Chair will say to the gentleman from Oklahoma that this bill is on the Union Calendar, and automatically the House resolves itself into the Committee of the Whole House on the state of the Union.

Mr. FERRIS. I so understand.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 12572, with Mr. RUSSELL in the chair.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the consideration of the bill H. R. 12572, which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 12572) for the relief of the Hydro-Electric Co. of California.

Whereas the Hydro-Electric Co., a corporation of California, has constructed and is now operating a water-power plant for the generation of electric energy in Mono County, Cal., such electric energy being for use in the operation of its own mining properties and for sale for mining, manufacturing, and domestic purposes in the vicinity, and the water being available for the irrigation of otherwise arid and barren desert land; and

Whereas a small portion, approximately 3,800 feet only, of the water-pipe line of the said project is located upon unpatented land in the northeast quarter of section 14, township 2 north, range 25 east, Mount Diablo meridian, within the Mono National Forest, in California, such unpatented land being treeless, arid and barren, and not susceptible of forestation, and being claimed by said company under the mining laws of the United States: Therefore

Be it enacted, etc., That the said Hydro-Electric Co. is hereby granted a right of way over the said northeast quarter of section 14, township 2 north, range 25 east, Mount Diablo meridian, California, for its said pipe line during the period of its beneficial use only.

Mr. FERRIS. Mr. Chairman, I yield to the gentleman from California [Mr. RAKER] such time as he desires in which to present his bill.

Mr. RAKER. Mr. Chairman——

Mr. MANN. Mr. Chairman, I think that the gentleman would desire to have the members of the committee present during this debate, and, therefore, before he makes his speech, I will make the point of order that there is no quorum of the committee present.

The CHAIRMAN. Does the gentleman from Illinois [Mr. MANN] make the point of order that there is no quorum present?

Mr. MANN. I do.

The CHAIRMAN. The Chair will count. [After counting.] There are 78 Members present, not a quorum, and the Clerk will call the roll.

The roll was called, and the following-named Members failed to answer to their names:

Adair	Fairchild	Langham	Rees
Aiken, S. C.	Faison	Langley	Reilly
Ainey	Fields	Legare	Reyburn
Ames	Fordney	Levy	Richardson
Ansberry	Fornes	Lindsay	Riordan
Anthony	Foster, Vt.	Littlepage	Roberts, Mass.
Bartholdt	Fowler	Littleton	Robinson
Bartlett	French	Longworth	Rodenberg
Bates	Gardner, Mass.	McCreary	Rothermel
Berger	Gardner, N. J.	McDermott	Rouse
Bingham	Garrett	McGillicuddy	Sabath
Boehne	George	McGuire, Okla.	Saunders
Bradley	Gillett	McHenry	Scully
Brown	Goeke	McKenzie	Sheppard
Buchanan	Gudger	McLaughlin	Sherley
Burke, Pa.	Hamill	Macon	Slemp
Cannon	Hanna	Maher	Smith, J. M. C.
Cantrill	Hardwick	Malby	Smith, Cal.
Cary	Harris	Matthews	Smith, N. Y.
Catlin	Hawley	Moore, Tex.	Sparkman
Cline	Heald	Morse, Wis.	Speer
Connell	Heflin	Mott	Stack
Cooper	Helgesen	Needham	Stanley
Copley	Henry, Conn.	Nelson	Stephens, Cal.
Cox, Ind.	Henry, Tex.	Norris	Taggart
Curley	Hill	Oldfield	Taylor, Ala.
Currier	Hobson	Page	Townsend
Curry	Holland	Parran	Underhill
Dalzell	Howell	Patten, N. Y.	Vreeland
Davenport	Howland	Payne	Warburton
Davidson	Hubbard	Plumley	Wilson, Ill.
De Forest	Hughes, Ga.	Pou	Wilson, N. Y.
Denver	Hughes, W. Va.	Powers	Wilson, Pa.
Dickson, Miss.	James	Prince	Young, Tex.
Dodds	Johnson, S. C.	Pujo	
Ellerbe	Kindred	Randell, Tex.	

The committee rose; and the Speaker having resumed the chair, Mr. FLOOD of Virginia, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee having found itself without a quorum, he had directed the roll to be called, whereupon 251 members, a quorum, had answered to their names, and he returned a list of the absentees.

The SPEAKER. A quorum being present, the committee will resume its session, with the gentleman from South Carolina [Mr. FINLEY] in the chair.

The committee resumed its session, with Mr. FINLEY in the chair.

The CHAIRMAN. The House is in Committee of the Whole. The Clerk will report the bill H. R. 12572.

The bill was again read.

Mr. FERRIS. The bill has already been reported.

Mr. Chairman, this bill has received wide publicity and much newspaper advertisement. The bill consists of about four or five lines and does but one thing. It grants to the Hydro-Electric Co. the right of way to lay a water main across one quarter section of worthless land.

I have been at times in this House criticized for taking steps to preserve the public domain, but I have ever tried to exercise my right and use my prerogative in that direction on the committee and elsewhere since I have been here, but it is my opinion that the todo and excitement that has been worked up over this bill is unnecessary and without warrant. I have myself made a careful investigation, and have ascertained from photographs and from statements that can not be successfully contraverted that this pipe line merely crosses one quarter section of land, consisting of 160 acres, and does nothing more.

The land has not a tree on it. The land is worthless. There is no charge here that this company seeks to extort undue charges from those taking water or light from them. There is simply an arbitrary statement to that effect on the part of some people who are overzealous and who are trying to do good, but in their overzealousness they are doing harm to their cause and holding up a company that is trying to irrigate the West.

And I want to say to my colleagues on this side of the House that the company which asks this right of way across this single quarter section of land owns the water right and owns the water, owns the land on both sides of this 160-acre tract, owns the pipe line, there being no competitor, and there is no controversy about that. You can look at this map in front of us. [Indicating.] They own the land on both sides of this quarter section. There can not be one single thing to arouse or excite the American people over this proposition. There is no element of conservation in it. There is no value to conserve. Nothing will be saved if the bill does not pass. No one can be hurt if it does pass. The newspaper advertisement this matter has had is conservation run mad. Such efforts are a detriment to the true cause of conservation, which we are all keenly interested in.

I want to leave one thought with those on this side of the Chamber, and I want to leave the same thought with the gentlemen on the other side of the Chamber—that there has heretofore been expended $60,000,000 in this Republic for irrigation from the reclamation fund; $20,000,000 were from a bond issue. So true is that that to-day the reclamation fund is prostrated and devastated and they have not the money to complete the projects they now have, let alone take up new ones that need attention and construction.

Here is a concern that is willing, on its own responsibility, owning the land, owning the water, owning the pipe line, owning the plant, willing to irrigate themselves independent of the Federal Government. I ask you with what propriety or consistency can the American Congress be thrown into fever heat over the simple proposition of laying a pipe line over 160 acres of land? Simply a right of way; the pipe even is to be covered up, and could do no damage to anyone anywhere under any conditions.

And I again ask this Congress why and with what consistency they can become excited and refuse to allow a concern in the West a right of way across 160 acres of land when that company owns the land on both sides of it and owns the water right, and there is no charge against that company that they are trying to abuse or charge exorbitant prices for the water? This bill ought to pass by unanimous consent. It is a good bill that has been treated badly. Men who have accomplished much good before and men who I respect are overwrought over a very small matter which has no principle of conservation in it. There are too many big matters of genuine conservation in this Republic to spend our energies on to idle away time on the laying of a pipe line across a barren 160 acres of land that never has in the past and never will in the future be used for any purpose. From such conservation no good results can come. From such conservation ardent believers will lose faith in a noble cause. From such conservation we will place the cause beyond the pale of respect. From such conservation we merely save at the spigot, if at all, and lose at the bung.

I assert there is nothing here to conserve, either in principle or value.

Mr. RAKER. Mr. Chairman, the Committee on the Public Lands had this bill under investigation at the extra session, and then continued it until they met in December, 1911, when they made a unanimous report in favor of its passage.

Until the morning of January 5, when this bill was originally called up, there seemed to be no objection whatever to it. Objection was then made to its consideration because it was on the Private Calendar. The following Monday, January 8, a statement was circulated in regard to this bill. The next day, in order to bring the matter clearly before the Members of the House so that they might have an understanding of the conditions, I prepared a written statement and a history of this matter and sent it to each individual Member. Believing that they have read it, I shall not take the time now to read it, but will here insert it in the RECORD as a part of my speech:

STATEMENT AS TO BILL H. R. 12572 RELATING TO RELIEF FOR THE HYDRO-ELECTRIC CO.

This bill (H. R. 12572) for the relief of the Hydro-Electric Co. of California was the subject of a very full and careful hearing before the Public Lands Committee on August 4, 1911, and the committee reported unanimously in favor of its passage. The bill has been pending six months. There has been no haste or concealment. The statements herein made may be verified by referring to the printed report of the committee hearing and to House Document 1424 of the Sixty-first Congress, third session.

SUMMARY OF FACTS.

The Hydro-Electric Co. is a small local corporation organized under the laws of California for the purpose of irrigating lands and operating mines owned by it and its stockholders.

For more than a year it has been generating electric power for that purpose, selling the surplus to other mine owners and operators, and to the towns of Bodie, Aurora, Lucky Boy, and Wonder for illumination.

It has purchased vested water rights which have been used for more than 30 years.

Its dam and all of its pipe line (except about 3,800 feet), as well as its power plant and all its buildings and machinery, are upon patented lands held by it under absolute title. It is not utilizing any water-power site belonging to the Government. It was obliged to purchase and pay for its water-power sites.

The 3,800 feet of its pipe line just referred to cross five mining claims which are claimed to be duly and regularly located by its grantors and are held by the company under the United States mining laws. The report of the master, adverse to these claims, referred to in document 1424, was never confirmed by the court. These mining claims do not cover any land valuable as a water-power site; they lie in a highly mineralized zone adjoining patented claims which have been operated for over 20 years. The lands are absolutely arid; they are rocky, barren, and precipitous, covered by slide shale and volcanic ash. Upon them is no vestige of vegetation, except an occasional bunch of sage, which survives with difficulty. They are admittedly incapable of forestation. Nevertheless, over these claims has been extended a forest reserve from the original forest reserve about 10 miles west of these lands.

Because the company's pipe line must cross this narrow strip of unpatented mining land, the officers of the Bureau of Forestry of the Department of Agriculture consider it to be their duty under the law to compel the company to waive its legal claims and accept instead the same form of revocable permit as it would be required to accept if it were not operating almost wholly upon its own land, but entirely upon forest-reserve lands belonging to the Government.

Another fact strongly in support of the equitable claim of the company for the relief asked in this bill is the fact that over and across the very land described in the bill the company and its grantors have long owned and operated an open ditch for the same purpose as it now seeks to maintain its pipe line. The ditch was constructed and operated 20 years before the lands were included within the reserve. All that is sought by the company is the right to change from an open circuitous ditch, which it admittedly has the right to maintain, to a more direct closed pipe line, to the end that it may avoid evaporation and breaks in the ditch and confine the water, thereby securing greater efficiency from the water conveyed.

It should be distinctly understood also that this change from an open ditch to a closed pipe line has already been consummated. The pipe line is now, and for more than a year has been, completely buried beneath the slide and shale, and the waters therein conveyed are being applied to beneficial uses: irrigation of otherwise arid lands, development and operation of otherwise barren mines, illumination of otherwise poorly lighted towns. Where before there was nothing but a barren desert taxable property has been created. It is to the public interest, I think, to encourage this enterprise.

THE PURPOSE OF THE BILL.

The purpose of the bill and its only effect will be to clear away any legal doubt as to the company's right to the continued maintenance of this pipe line by granting the express sanction of Congress.

NO POSSIBLE DETRIMENT CAN RESULT FROM THE PASSAGE OF THE BILL.

No principle affecting general legislation is in any way involved. No principle of forestry is at stake, and no danger to the administration of the Forestry Bureau is possible, for the reason that the project of the company is located in a treeless desert waste, miles from any forest growth or any land capable of bearing forest, and the right of way to be granted to the company is across a quarter section of land which is not riparian to any stream. No conditions of stream flow or water supply will be affected because the only water used is taken out of a little stream called Mill Creek, just before it empties into Mono Lake, which is an inland "dead sea," of brackish alkaline water that destroys all plant and animal life it touches.

The Government officers report that the company's pipe line lying buried beneath the surface as it crosses this small barren square of desert land will do absolutely no damage to any Government interests. As shown on page 5 of the report of the hearing before the Public Lands Committee, the local forest officers reported as follows. I quote:

"4. Existing improvements, if any. None.

"6. Character of land involved. Open hillside covered with sagebrush strip and rocky.

"8. Should the applicant pay for any timber cut or destroyed? * * * None will be cut.

"10. What is the purpose of the special use? * * * The greater part of the power will be used by applicants; some may be sold; will be of commercial nature. Water used for power will be turned back to present users for irrigation.

"11. Will the desired special use involve monopoly? No.

"12. State what possible injury might result from granting the desired permit, either to national-forest interests or to the use and enjoyment of the forest by others. None.

"13. What possible complications might arise on account of private land or prior permits granted? None. Right of way over patented land has been secured and right to use water for power purposes purchased.

"15. What is the applicant's reputation and financial standing? Excellent.

"19. Recommendation of examining officer, with reasons therefor: The object of this plant is to furnish power for the mines owned by the company in Bodie and Aurora. It is their intention to generate between 1,000 and 1,300 horsepower. While it is not intended as a commercial venture, some of the power may be sold to other mine owners. The project appears to be for the development of the country, and I am assured by Mr. Cain that it has no connection with any large power company."

Also, as shown on page 41 of the report of the hearing before the committee, the Assistant Solicitor of the Agricultural Department, Mr. Williams, testified as follows:

"Mr. VOLSTEAD. But is the Government going to suffer any damage in any way that would be irreparable?

"Mr. WILLIAMS. No; no individual in the United States will suffer one penny."

This little square is the only land touched at any point by the project to which the Government has any possible claim. If it were owned by a private proprietor this little stretch could be condemned and no jury could well award more than $50 damage. However, no reasonable private owner would make any charge at all. He would be glad to help rather than hinder the enterprise.

WHAT RELIEF IS SOUGHT.

As I have already stated, the purpose of the bill and its only effect will be to clear away any legal doubt as to the company's right to the continued maintenance of its pipe line.

The company claims vested rights to the use of its pipe line as at present located under the mining laws of the United States and also under several different water and right-of-way statutes which have been passed by Congress.

The company claims that it has a right of way and vested easement for its pipe line under the act of Congress approved February 1, 1905, which grants rights of way across forest reserves for mining and municipal purposes. It has admittedly a vested easement for its open ditch under the act of July 26, 1866 (Rev. Stat., secs. 2339 and 2340).

It also claims that the mining laws of the United States clearly authorize the company to construct and to use the pipe line as it has done and is doing, for two reasons:

First, because section 2322 of the Revised Statutes expressly provides that the owner of a valid mining claim is entitled to exclusive use and enjoyment of all of the surface.

Second, because the mining laws authorize such use of mining claims as is consistent with, and reasonable in, the development of the mineral resources of the claim. That has been held true as to the building of roads, trails, tunnels, dwellings, boarding houses, reservoirs, stables, pumping plants, blacksmith shops, commissaries and stores, and even the cutting and removal or destruction of growing timber. In this case the construction of the company's pipe line was for the purpose and with the intent, among other uses, to utilize the electric power to be developed thereby in the exploitation of the very mining claims crossed by the pipe lines.

NECESSITY OF THE RELIEF.

The granting of the relief provided in the bill is necessary, because, as I have before stated, the officers of the Forestry Bureau have considered it to be their duty under the law to compel the company to waive its legal claims and accept the same form of revocable permit as it would be required to accept if it were operating not upon its own lands, but entirely upon forest-reserve lands belonging to the Government. A suit for a permanent injunction against the company has been instituted and is pending in the United States Circuit Court at San Francisco, and in this suit the Government is seeking a final decree perpetually enjoining the maintenance of the company's pipe line across this narrow strip of desert land.

I consider that this litigation is an unjust burden to be borne by this small, isolated company and by the local mining enterprises which are its customers, and that it is wholly unnecessary. In addition to the burden of expense and far outweighing it in importance is the cloud hanging over the company's title and destroying its credit.

While the Government's suit is pending the company has no security of title to the one short link in its right of way which crosses this small square of Government land. Without this one short link, the whole project and the company's valuable water rights, reservoir, pipe line, power house, transmission lines and distributing system, and the mines and mining properties it is operating are practically worthless.

This company at best must operate against heavy odds, located as it is some 60 miles from the nearest railroad, in the midst of a barren desert waste.

I do not think the Government should stand like a stone wall blocking beneficial development of this character. If this plant must shut down, practically every local industry must close.

This bill is not in the interest of the water-power grabbers. It is for this particular individual isolated concern.

Following this statement, I desire to call the attention of the committee to a demonstration of the facts involved in this case by the use of the map that I now have before the House. The top of the map is north, the bottom is south, the right hand is east, and the left hand is west. I want to say to the committee that the map is a fair representation of the condition of that country. I have photographs here in my valise and this map has been drawn from them.

You will notice here, coming from the center of the map down to the southwest, then turning across the blue area, runs a heavy line. That is the exterior boundary line of the Mono National Forest. The land on the east, such of it as is not in private ownership, is open public land. This on the west and south, comprising in the neighborhood of 100,000 acres, is in the Mono National Forest.

This land on the south and over in the east is more level than is the southwesterly part. It is desert sage-brush land without any trees on it, and the land lying on the mountains contains only a few scattered trees, as you will notice, back in these places. There is a little timber upon the lake that is now owned by this company. For miles and miles the land in the national forest is what is known as rough rolling hills, covered with sage brush and rocks, and is practically a desert.

The land marked here as patented, lying between the dotted lines and around what is known as Lundy Lake, is now and has been for more than 30 years in private ownership, the property of the present company and its predecessors. The land on the east of the tract marked in blue, "mining claims," is a tract of mining land upon which for some 30 years there has been a little mill. The land is now in the ownership of this company by mesne conveyances from the original owner. The land east and south of the mining claims marked "patented," upon which is marked a power house, is likewise patented land, owned by the present company. Most of this land has been in private ownership some 25 or 30 years.

Here is Lundy Lake, which is all on the patented land owned by this company. From Lundy Lake is a small stream known as Mill Creek, flowing into Mono Lake on the east. Mono Lake is a dead sea, destructive alike to animal life and to vegetation. The water, as I say, comes from Lundy Lake down Mill Creek into Mono Lake.

Some 30 years ago the predecessors of this company located a ditch, marked here "Old Goleta Power Ditch," which is taken out on the east side of Lundy Lake, crosses the tract of land known as the mining claims, then turns around the hill to the north and west. That side hill is shale, loose soil, and desert sage bruh.

And from that ditch they formerly diverted the water, running it over an old-fashioned overhead or an undershot water wheel for the purpose of crushing the rock and other purposes.

The land at the east is in private ownership, a portion of it. The water thus used by the old company was dropped into the ditch and taken out and used by various farmers on this desert land to the east.

Mr. MOORE of Pennsylvania. Will the gentleman yield?

Mr. RAKER. I will.

Mr. MOORE of Pennsylvania. Why could not the pipe line be carried around the Government land?

Mr. RAKER. I had not got to that point, but I will answer the gentleman in a moment.

Now, this present company was organized May 11, 1910, and was known as the Hydro-Electric Co. At this power site this company placed machinery which cost in the neighborhood of $250,000. They went and bought this old Goleta water ditch and all conflicting rights in it that had been adjudicated in a case in which a Mr. Miller was the plaintiff, and all the water rights in the old ditch, paying over $35,000 for these rights from the farmers and the miners and the old settlers that owned them.

When they had thus bought the water rights, this land being mineral and highly mineralized and valuable for work, they realized that over a million dollars of money had been taken out of this tract south and east of the power site and north of Mono Lake by placer mining. They realized that over at Bodie 10 years ago there was a town of 15,000 inhabitants. Right across the State line had been another, Aurora, in Nevada, of 12,000 inhabitants. They realized that they were 60 miles from a railroad and in the desert. They realized that *from these mining* towns so prosperous years ago, Bodie had come down to a town of 500, Aurora to a town of 300, and Lundy, at the lake, to about 150, and Lucky Boy to about 150. They realized that by a process of electricity if they bought the water, the ditches, and the mining land they could develop power by which they could develop these mining tracts, marked in blue, by cheaper and up-to-date methods.

The mining lands in back of here they owned, as well as the intake of the water for the power plant. And by the canal, marked on the plat in red, carried over the desert they could utilize the water that belonged to them for their mines, and they could use the balance for irrigation.

After having bought the land, as I have stated, and I may as well state it fully and completely, in 1910 these claims, marked here in blue, were filed upon by miners, as well as ranchers, living in this territory, and after they had filed upon the mining claims, after they had recorded their notices, before anything was done, for a valuable consideration, these mining claimants sold their claims to this particular company known as the Hydro-Electric Co.

I will state in that connection that they sold them for $4 or $5 a claim. I will come to that matter later, as one of the objections made against the company is that it has bought the claims at a nominal price.

Now, having all the land and all the water required for the development of the mining property, this company dug a ditch, marked here in red, a little above the old Goleta Ditch and laid down a wooden pipe—a redwood pipe—bound with strips of iron about a foot and a half apart, so as to carry their water from the lake to the mining claim, and then from the mining claim, which belongs to the Government, they intended to put in a pressure pipe a foot and a half in diameter and convey it to the power plant marked upon this plan.

That was the condition of this right until along about the last of July, when they had constructed their ditch clear to the blue line—about 500 feet on the Government line—laying the pipe after having bought all of those rights. They were then notified by the Governent forest ranger that they must not cross this land marked in blue. They telegraphed to their attorney, and the attorney told them to go ahead and lay the pipe, that under the law, since so declared by the Supreme Court of the United States, the forest rangers had no right to arrest them if they gave bond, and to lay their pipe and protect their property. The forest rangers were advised not to arrest the agents of this corporation, but they immediately filed an ex parte application together with a complaint in court alleging that the Government owned the land and that these people intended to destroy and tear up and injure and damage the Government by crossing this particular tract of desert, sage-brush land. Upon that application the court granted ex parte a restraining order. There were affidavits filed then by the company and a hearing was had before the master in chancery. The master in chancery held that because they bought their mining claims for from $4 to $10 a claim they were fraudulent—in face of the fact that the greatest mine in Nevada to-day was discovered and sold for a few meals, and that has been the history of the development of the West. He also held that because they were going to extend their line to Bodie and to the other towns in Nevada they were doing something they had no right to do. They had the board of supervisors of Mono County call a special session, and they presented their application to the county board of supervisors for a right of way—a public highway along this pipe line—from the upper plant on over to Bodie, a distance of 20 miles. They were planning to construct that highway along the whole length of their transmission line and power line to the end that they might be able to better control their property so it would be in proper shape and proper condition.

The board granted their application and declared a public highway along the electric line to the power house, then on to Lundy Lake; but the master held that because and by reason of the fact that the company were going to construct a public highway 18 miles from Bodie along up the sidehill and farther on up to this point they were of necessity guilty of fraud and of doing something they had no right to do. He held, further, that because from these mining claims they did pick up chunks of gold as large as your fist that there had been no valid discovery of mineral. In that connection I desire to read one of the latest statements by the Appellate Court of the State of California upon the question of a valid discovery, and I will read all of the evidence in that case upon that subject. It is the case of McCleary *v.* Broaddus, in the Fourteenth California Appellate Reports at pages 61 to 67. I will read the following statement of the court from page 64:

> Did the said Fisher, in compliance with these requirements of the law, make a valid location of the claim in question? There is evidence in the record that he made the discovery on the 1st day of August, 1905. He testified as follows:
>
> "Q. What was your object and purpose in being there the 1st day of August?—A. I was prospecting.
>
> "Q. I will ask you to state what discovery you made of mineral at that time, if any.—A. I found gold out of the rock, or supposed it to be gold, about the center of the claim."

Mr. TAYLOR of Colorado. When was that decision rendered?

Mr. RAKER. On the 9th of August, 1910, a little while after I resigned. I decided this case, and the court of appeals affirmed it; so I am somewhat familiar with the questions involved. He further stated:

> There was a quartz ledge there; as near as I could trace it, it would be over half the length of the claim.

That is sufficient evidence in the mining States to prove a valid location, and the Appellate Court of California refers to a decision of the Supreme Court of the United States as to location and as to rights to a valid mining claim—a right good as against everybody except the Government—and that if one goes on and spends $100 a year up to five years he owns the claim. I refer to this decision because the master in chancery says that because there was not paying gold found in advance the mining claims were not valid.

As soon as this preliminary injunction, the temporary restraining order, was issued they took the testimony before the master in chancery. I have a copy of that testimony here in my papers, and have read it all over for the purpose of being able to state, and I am now stating, the facts from that sworn statement. The master rendered his decision, holding, first, that the company had no legal rights because of conflicts in the right-of-way statutes—and there are many of them—and, second, that because these people were going to use that electric power for mining purposes, developing their mines, and for irrigation; and because they were to use the surplus to sell, therefore they had no right to cross the land. That is the ruling of the master in this case, although every decision by the courts hold to the contrary.

Mr. SHARP. Mr. Speaker, I wish to ask the gentleman if there is any opposition that comes from private parties or others who own individual claims, mining claims, and so forth, or whether it is from the Government alone?

Mr. RAKER. It is not necessarily from the Government. It is not from any private individuals here in this country. There is a territory lying out there, 60 to 80 miles from civilization, a burning desert, and the people are praying that this Government will give this company relief, that they may work their mines and develop the country, that they may light up the towns of Bodie, Aurora, and Lucky Boy; that they may not only develop the mining claims, but that they may develop this desert land, take the water that comes from the power plant and put it into irrigation ditches and keep it from going into Mono Lake and becoming useless.

Mr. SHARP. Then there is no opposition from the people who live there?

Mr. RAKER. Well, I guess I might as well be plain about the thing here, but I did not want to take up the time. However, I will thrash it out and get the matter fully before the committee. There is no opposition. The testimony before the Committee on the Public Lands shows that the Government would not be injured one dollar. The testimony shows that it is barren desert land. The testimony by the Government officials shows that these people have bought the land, as I have said, and that they have bought the water rights; that this is an old ditch that has been there for years before the Forest Service was ever established, and the attorney for the department says

in his testimony that in all the cases before the department there is not one like this that has ever been presented. Why? Private ownership of the land by the company, private ownership of the source of the water by the company, private ownership of the power site by the company, actual user for over 20 years before these forestry people ever attempted to interfere. Why, my dear sirs, if you take the same method and run these privately owned mining ditches, irrigating ditches, around the mountains and the sides of the hills in California, you will develop millions of dollars' worth of property which is now going to waste, and that is what this company is trying to do. I have an article in relation to this matter, dated Washington, February 12. But before I state that I wish to say this: The department was asked this question, Is there any monopoly involved?. The answer of the department is, "No." What is the character of the men who are behind this project? The answer of the department is, "Excellent." The question is, will the Government be damaged or will any trees be damaged? The answer is, there are no trees there for destruction and the Government will not lose one cent.

Mr. SHARP. In that connection may I venture the statement that I personally know quite a number of the men who are interested in this project, and I do know that they are men of high standing.

Mr. RAKER. Now, gentlemen, this statement has been made in regard to myself in this connection:

RAKER recently introduced a bill in Congress known as the hydroelectric bill, which involves great water-power rights in the Mono National Forest of this State.

That statement is untrue. Every possible water-power right here involved is already privately owned by this company, and these men desire only to move their ditch a few feet and inclose the water in a pipe. Every decision of the Supreme Court of the United States and every decision of the western courts have held that you may change your place of use of water and your mode of use, so long as you do not injure anything; they move it up the hill two or three hundred feet, and instead of having an open ditch they have a closed pipe.

The general rule is that the change in the place of the use of the water not injurious to any other person can be made at will. (Walnut *v.* Burke, California (110 Pac., 518); Bates *v.* Hall, Colorado (98 Pac., 3); Deiz *v.* Hartbauer, Colorado (105 Pac., 868); Whited *v.* Cann, Oregon (105 Pac., 396).)

Change of the character of the use or the method of the use that does not affect injuriously the rights of others can be made at will. (McDonald *v.* Bear River & Auburn Water & Mining Co., California (13 Cal., 220); Butte Table Mountain Co. *v.* Morgan (19 Cal., 609); Gallagher *v.* Montecito Valley Water Co. (101 Cal., 202); Robeson *v.* Wilmoth, Colorado (90 Pac., 95); Power *v.* Sweitzer, Montana (55 Pac., 523); Columbia Mining *v.* Holter (1 Mont., 296).)

A mill owner can change his mill from up the stream to down the stream, provided the rights of others are not injuriously affected. (Rood *v.* Johnson (26 Ver., 64).)

He can also change machinery and character of the use in the mill. (9 N. H., 454.)

He can also change from mining use to power development. In the case of Schwab *v.* Beam et al., Colorado (19 Morr. Min. Rep., 277), it was held that the change in use from placer mining by washing gravel to generation of power for commercial purposes was valid. The court says at 284:

In this connection it may be observed that washing gravel by hydrostatic pressure from a channel bank or a river is not very far removed from running a stamp mill by water power or running dynamos for making electricity. There is some difference in the machinery and appliances of the several kinds of work, but the power is the same.

I quote again from the same statement that was circulated, as follows:

Pinchot to-day states that RAKER is not acting in good faith, as far as the people are concerned.

Gentlemen, I want to say in response to that that Mr. Pinchot and I are personal friends; that while at the National Irrigation Congress, at Portland, five years ago, when he was attacked by various parties before the committee on resolutions, I was then the first man to come to the Forester's aid in regard to those charges and the first man to stand upon the floor of that Congress and defend him, and succeeded, with the aid of my colleagues, in having a resolution of indorsement adopted by that congress. But I want to say now that of all false statements issued by friend or by foe, that is the falsest ever uttered.

I quote again briefly:

And that the real influences behind the bill are the water-power magnates of the State.

That is another falsehood in toto and absolutely. There is no water-power magnate or monopolist connected with this project; but, to the contrary, the Government officials themselves say there is no monopoly involved. I quote the following from the Government officer's report:

Q. Will the desired project involve monopoly?—A. No.
Q. State what possible injury might result either to the national forest interests or to the use and enjoyment of the forest by others.—A. None.

I have here in my valise over 100 telegrams from judges, lawyers, clerks, and boards of supervisors in my district, and from miners, urging me to stand up, as I ought to do, notwithstanding criticism, and see that this bill is passed.

One of them, after he saw this in the newspaper, wrote to me: "What is the matter with you? Are you beginning to eat out of the department's hands or to fall down on our people in the West when they have such a just cause as this?" I said, "No; not yet; not for a while."

I heard it rumored on the morning of the 19th of February that there were monopolies involved in this matter. I immediately sent the following telegram to the man who is at the head of this institution; and I want to say to you to-day that there is not a finer, more elegant, and more cultured and able lawyer in the State of California than he. His name is William H. Metson. He is representing this institution, and he is one of the large stockholders in it. I would like the Clerk to read the telegram which I sent.

The CHAIRMAN (Mr. FINLEY). The Clerk will read.

The Clerk read as follows:

FEBRUARY 20, 1912.

W. H. METSON,
Balboa Building, San Francisco, Cal.:

Have just heard it intimated that when the hydro-electric bill comes up for hearing it will be charged on the floor of the House that you are the head of from five to eight water-power enterprises, and that this bill is intended as an entering wedge, and its passage is sought by you in behalf of water-power grabbers and of monopoly. I have always understood the facts to be to the contrary. I want a statement from you of the exact facts and the whole truth as to this charge. Telegraph immediately.

JOHN E. RAKER, M. C.

Mr. RAKER. I would like the Clerk also to read Mr. Metson's telegram which he sent me in reply.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

SAN FRANCISCO, CAL., *February 20, 1912.*

Hon. JNO. E. RAKER,
House of Representatives, Washington, D. C.:

I am not and never have been at the head of any electric or water-power company, not even of Hydro-Electric and its operating company. I am a stockholder in and of counsel for Hydro. I am not and never have, nor has my firm, been the attorney for any of the large electric or power companies, nor for any small ones, except Humboldt Gas & Electric, Humboldt County, wherein I was for a time a small stockholder and attorney. These relations were severed in 1910, when I sold my stock. Further, our firm was also stockholder in Sacramento Valley Power Co., where our firm got from a stockholder about $5,000 in stock as a fee in individual litigation for the stockholder. Later we acted as attorneys, and I as director, for that company, but that relation later terminated by the sale of that company. Outside of that and the Main River, where I advanced a few thousand dollars for a friend of mine, William Miller by name, and in the California-Nevada Mono Lake Irrigation project and application, near Mono Lake. I have had no employment from electric and or water powers, nor has my firm, nor have I any personal investments in such companies, nor do I owe any fealty to any other electric and or water-power corporations than as explained above. Any statements that have been made are untrue if going further than the above. In conclusion, I own no stock in enterprises of that character at all, except in the projects above named in Mono County. We are employed by none and are backing none. The Hydro bill was never thought of by me or my friends as an entering wedge to bring about water or power legislation or in the slightest for water-power grabbers, but was formulated solely to right a wrong. No one can ever truthfully charge me with being a monopolist or affiliating with any trust. I have always been on the other side.

W. H. METSON.

Mr. RAKER. It was stated that Mr. Metson was interested in oil matters. Therefore I send up the following telegrams to the Clerk's desk.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

SAN FRANCISCO, CAL., *February 20, 1912.*

Hon. JOHN E. RAKER,
House of Representatives, Washington, D. C.:

With reference to my other wire, it is possible that our opponents have mixed me up with Capt. William Matson, of the Matson Navigation Pipe Lines and oil investments, who is quite a heavy investor also in public utility corporations, and that I am credited with some of his investments as well as my own, as our projects are frequently intermixed. Gen. Smith, Marion Devries, of the Customs Court there, and any of the supreme court or Federal judges here would vouch for my integrity and standing. I am also satisfied that any of the banks here would do likewise.

W. H. METSON.

Mr. RAKER. Now, in answer to the question of the gentleman from Ohio [Mr. SHARP] as to the people who will use this

water, I want to say that they are heartily in accord with this project. As I stated before receiving the telegrams that I have here, I received from the entire board of supervisors of the county wherein this land is located a telegram urging the passage of the bill.

Mr. MARTIN of South Dakota. Mr. Chairman——

The CHAIRMAN. Will the gentleman from California yield to the gentleman from South Dakota?

Mr. RAKER. Yes; I yield to the gentleman from South Dakota.

Mr. MARTIN of South Dakota. From what the gentleman has stated, I understand that this company is now under at least temporary injunction in the court from proceeding to use that right of way. Is that correct?

Mr. RAKER. I think so.

Mr. MARTIN of South Dakota. On the suit of the United States?

Mr. RAKER. Yes, sir.

Mr. MARTIN of South Dakota. Has that suit come to a final determination?

Mr. RAKER. It has not. It may be 3 to 10 years before it comes to a final determination.

Mr. MARTIN of South Dakota. Does the gentleman, then, consider it good legislative procedure for Congress to be asked to determine the rights of litigants pending the determination of those questions in suits already brought in the courts?

Mr. RAKER. Yes; I certainly do. I will answer that. I have not reached it, but I will answer it as well as I can. In the first place, there are many conditions to be considered. Under the water law that has been in force since 1866 in all the Western States, these people would have the right to go on there and construct the ditch, and could not be stopped by anybody. The next question is as to their mining claims. Under the same law of 1866—the mining law—they would have the same right without regulation. But you must remember that a man can bring you into court with a half million dollars' worth of property and tie you up by litigation, and the people will then refuse to invest further or help you out. They can by litigation practically ruin your enterprise and destroy your property, which would otherwise be of advantage to the Government, the county, and the State, and which might furnish revenue by taxation and turn idleness into beneficial industry.

Mr. MARTIN of South Dakota. If the suggestion of the gentleman is by reason of the inconvenience or the expense of litigation or delays in litigation he ought not, in propriety, to appeal to Congress to determine the question by legislative act.

Mr. RAKER. I would answer by stating that only yesterday we passed a bill with out objection involving matters now in litigation in the courts, and that bill was passed for the very purpose of disposing of that litigation.

Mr. MARTIN of South Dakota. I very much question if all of us knew what we were doing at the time if we did so.

Mr. RAKER. We did do it. I want to say to the gentleman that for years many were the litigations in regard to those who had made their final proof upon the land in cases pending in the Land Office and in the courts, and Congress by one fell swoop authorized and directed the issuance of patents, and thereby threw out of court over 10,000 cases of pestilential litigation.

Now, just one moment more in that connection. Consider this the same as if a private individual were the owner. The Government owns the land. Congress, consisting of the House and Senate, and the President have control of that land. Now, would a private individual hold you up? Would a county hold you up for this claim? Would a State hold you up like a highway robber?

Mr. MARTIN of South Dakota. I hope the Government would not.

Mr. RAKER. Certainly not; and therefore we have appealed to Congress to allow us to let this pipe lie where it is now, securely buried in the ground, with all of the ditches covered up. This is a question which should properly be passed upon by Congress. Section 3, Article IV, of the United States Constitution provides expressly that—

> Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States.

As said by the Supreme Court in the case of United States *v.* Trinidad Coal Co. (137 U. S., 160), "All the public lands of the Nation are held in trust for the people of the whole country." Also as said by the same court in the Fred Light case (220 U. S., 523):

> It is not for the courts to say how that trust shall be administered. That is for Congress to determine. * * * Congress establishes a forest reserve for what it decides to be national and public purposes. In the same way and in the exercise of this same trust it may disestablish a reserve and devote the property to some other national and public purpose.

Mr. MARTIN of South Dakota. Mr. Chairman, will the gentleman permit another question?

The CHAIRMAN. Does the gentleman from California again yield to the gentleman from South Dakota?

Mr. RAKER. I do.

Mr. MARTIN of South Dakota. As I understand the present law as to right of way over all reservations, it applies to reservations and pipe lines for similar purposes. Is there any reason why a right of way could not have been had before the expenditure of that money, under proper authority, on Government land?

Mr. RAKER. If the gentleman will permit me, I will say that this company bought their claim—their water right; they had the property on the ground; they had the flume here—over four miles; they had the machinery down there, procured with an expenditure of $250,000; and then they were held up with an order to suspend operations, by order of the court.

Mr. MARTIN of South Dakota. May I ask the gentleman if this is in a forest reserve?

Mr. RAKER. Yes; it is in a forest reserve.

Mr. MARTIN of South Dakota. Under the law a right of way can be obtained by proper application for a pipe line over a forest reserve, can it not?

Mr. RAKER. Oh, in this particular case, after the suit had been brought in San Francisco, the district attorney and the attorney for the Department of the Interior and the forest ranger and the attorney for this company met in the district attorney's offices and entered into an agreement that this company should construct its ditch, should lay its pipe line, and go on with its business, and should deposit $75 to answer for any damage that might be done. This corporation then met and authorized its board of directors to sign this agreement. They gave their authorization; the company signed it; and this agreement was signed and sent to the department. When it arrived in Washington the officials said, "We have changed our rules and regulations. Now, what do we want you to do? We want you to abandon your mining claims; we want you to abandon your water right. We want you to expend for us from three to five thousand dollars putting water gauges and weirs over this mountain watershed; we want it made certain that every little official Tom, Dick, and Harry may go in and examine your books." And Heaven only knows what other requirements they have made.

Mr. DIES. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from California yield to the gentleman from Texas?

Mr. RAKER. They granted a temporary injunction when that agreement was signed, because this company would not abandon its claims, which were worth perhaps $100,000 to them. They then shut them down.

Mr. MARTIN of South Dakota. I would like to ask another question of the gentleman.

The CHAIRMAN. Does the gentleman from California yield to the gentleman from South Dakota?

Mr. RAKER. I will yield to the gentleman from Texas [Mr. DIES].

Mr. DIES. I wanted to ask the gentleman from California if it is not true that the company in whose interest the bill is introduced already possesses an easement over the Government's part of the property for an open ditch for conducting the water, and that all they seek to do now is to have the same sort of an easement for the pipe line, to be conducted underground?

Mr. RAKER. Absolutely. The statement is absolutely correct.

Mr. DIES. Is it not also true that the Assistant Attorney General who testified before the committee said, in answer to a question, that no individual in the United States would suffer from the granting of an easement?

Mr. RAKER. That is true. That is a fact. Now I will yield to the gentleman from South Dakota [Mr. MARTIN].

Mr. MARTIN of South Dakota. I was going to ask the gentleman one further question. I understand that the gentleman concedes that the Secretary of the Interior or the Secretary of Agriculture has authority to grant a permanent right of way over this property?

Mr. RAKER. No, sir. Gentlemen, now listen to this proposition——

Mr. MARTIN of South Dakota. Or the Secretary of Agriculture?

Mr. RAKER. No, none of them; absolutely none. Listen: A man may go into the West and spend a million dollars in developing a water right, putting his mills there, building ditches

from 50 to 100 miles, and all the right that the miner can get is a temporary permit, subject to be revoked at the pleasure of the department. That is absolutely true. I have the law here, and the regulations of the Secretary of the Interior and the Secretary of Agriculture.

Mr. MARTIN of South Dakota. I call the attention of the gentleman to the fact that within a year this Congress has passed an act giving a permanent right of way for just such things.

Mr. RAKER. I want to call the attention of the gentleman to the fact that nothing of that kind has been done except as to transmission and telegraph and telephone lines.

Mr. MARTIN of South Dakota. The law previous to that granted rights of way for irrigating ditches.

Mr. RAKER. But I am trying to tell you that after 1866 every man in the West believed that he had a grant. The Supreme Court said it was a grant. Then in 1891 and 1895 and 1898 Congress passed other similar acts. In 1901 it passed another act, in 1905 another, and in 1910 another, and the departments say they are unable to determine which act applies, but they have resolved all against the miner. They have resolved all against those who are trying to improve their property. That is the situation.

Both the Department of the Interior and the Department of Agriculture now hold that this company can not, under the law, be given any legal title to or easement or right of way for their pipe lines. I believe that the departments are clearly wrong in their position on this matter. However, such is their position, and both of these departments absolutely refuse to grant the company any right or to recognize the company as having any right, except under the Forest Service permit act—mind you, I say permit, not right of way, but permit act of February 15, 1901. See volume 31, Statutes at Large, page 790. That act expressly provides as follows—I quote from the act:

And provided further, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right, or easement, or interest in, to, or over any public lands, reservation, or park.

Under this law the power of arbitrary revocation rests supreme and unrestrained in the departmental officials, whether such officials act upon their own knowledge and judgment or whether they act upon the advice of some dyspeptic subordinate of less responsibility than a street-corner policeman. Why, gentlemen, no lawyer of any professional standing or integrity would advise any client to invest money upon such a shadowy security of title as is offered by one of these revocable permits. Furthermore, actual experience of investors under these permits has been such as to aggravate and intensify the feeling of insecurity concerning investments made under these permits. These permits have, as a matter of fact, been revoked by the score, arbitrarily, and without any notice or opportunity for hearing or any semblance of due process of law. For example, on March 2, 1909, Secretary Garfield, just before the expiration of his official term, revoked outright the permits of more than 35 different companies operating in the West and by one stroke of the pen destroyed the security of actual investments amounting to probably $50,000,000.

Another instance of perhaps wider publicity, which demonstrates the unreliability of these revocable permits, is that of the city of San Francisco. It was granted a permit for the development of a mountain water supply from the Hetch Hetchy Valley. This permit was granted after a full and careful investigation by Secretary Garfield. Thereafter, upon the strength of that permit, the city invested more than half a million dollars. Notwithstanding these facts, a subsequent Secretary of the Interior issued an order, which is still pending, for the city of San Francisco to show cause why its permit should not be revoked and its investment of a half million dollars practically forfeited, upon the ground that it was a mistake on the part of Secretary Garfield ever to have granted the permit at all.

In none of these cases of revocation which I have cited had there been any neglect or violation of duty charged against the permittees whose permits have been revoked. The action has always been taken arbitrarily by the public officials, according to their own personal whims and individual ideas or conceptions of propriety.

Mr. PICKETT. Will the gentleman yield?

Mr. RAKER. Yes.

Mr. PICKETT. Relative to the question which the gentleman from South Dakota [Mr. MARTIN] asked as to the propriety of asking for congressional relief while there was a suit pending, I will ask the gentleman if it was not stated several times in the hearing before the committee by the attorney representing the company that all the company desired was to be permitted to remain undisturbed until this litigation was adjudicated in the courts.

Mr. RAKER. The gentleman has the report of the hearing, has he?

Mr. PICKETT. Yes.

Mr. RAKER. Will the gentleman read it?

Mr. PICKETT. Did not the gentleman in the course of the hearing also say the same thing?

Mr. RAKER. Read what I said. That is the best way. I can not remember everything.

Mr. PICKETT. The gentleman was speaking before the committee, and the chairman asked:

Why would not the issue of a permit pending this litigation be satisfactory?

Mr. RAKER. It would.

I follow that with the further question if the committee did not appoint a subcommittee for the purpose of seeing the department, and if as a result of that action a stipulation was not entered into, the substance of which is to permit them to occupy this ground pending the adjudication of this litigation?

Mr. RAKER. A subcommittee was appointed to see the Secretary of Agriculture and the Secretary of the Interior, but they got no result from them.

Mr. PICKETT. Is it not a fact that the stipulation has been entered into?

Mr. RAKER. Just a moment. Let me finish. The committee then requested me to go down. I saw the Secretary of Agriculture two or three times personally——

Mr. PICKETT. I am speaking of the stipulation entered into by the Department of Justice.

Mr. RAKER. Let me finish. I can not tell it all in one breath. They then told me that they had no power or jurisdiction over this case. I then went to the Attorney General's office, and what has been actually done since I am not able to state, as to the present condition.

Mr. PICKETT. When the time comes I will insert the stipulation in the RECORD.

Mr. RAKER. Very well.

Mr. PICKETT. You spoke of the permit in such a way as to leave the impression that the Government had actually issued a permit.

Mr. RAKER. I said a temporary permit.

Mr. PICKETT. I will ask the gentleman if that did not bear on its face the fact that it was necessary to be approved by the Department of Agriculture?

Mr. RAKER. Why, yes; I am telling you that the Department of Agriculture was to sign the stipulation, but when it came back here they said they had drawn a new set of rules and authorizations, and they included these new conditions that were not included in the first agreement.

Mr. PICKETT. And the one referred to was never approved by the Secretary of Agriculture and never was operative?

Mr. RAKER. No; because they went back on the first agreement, the one that was signed by the officials.

Mr. CANNON. Will the gentleman yield?

Mr. RAKER. Certainly.

Mr. CANNON. If I understand the gentleman, this company owns all this land here that I indicate on the map, and if the water runs down in this easterly direction it runs into the salt lake?

Mr. RAKER. Yes.

Mr. CANNON. There is a small strip of land here where the company has an open ditch?

Mr. RAKER. Yes; 3,800 feet long.

Mr. CANNON. And you have the right to have it open?

Mr. RAKER. Yes; and have had for 30 years.

Mr. CANNON. You now have a pipe instead of an open ditch which runs along above the open ditch and is covered up?

Mr. RAKER. Yes.

Mr. CANNON. And the question is whether you have got to take that pipe out?

Mr. RAKER. Yes; and ruin our business worth $500,000.

Mr. CANNON. Take the pipe out and put the open ditch in, or abandon it if it does not suit your purpose. Is anybody interested in land on the other side?

Mr. RAKER. Absolutely all the rights have been bought up and are owned by this company; all the waters involved in this lake and the creek from it.

Mr. CANNON. If the gentleman is correct and it was a private individual who insisted on your keeping an open ditch instead of a pipe line, I should say that he was a contentious fellow. [Laughter and applause.]

Mr. RAKER. Now, I want to tell you gentleman my experience 30 years ago as a boy in water litigation. I rode up to an

adjoining town and heard that three men had been killed on the ditch. The first proprietor had gone on the stream and appropriated the water 10 years before and had used it for 10 years. Subsequently a man came in, got title to the land over which the ditch crossed, and he laid silently by until he got his patent, and then when the spring came and they wanted to dig out the ditch he came and sat down and said, "Don't you go on that ditch." They went on the ditch, but they took their shotguns and Henry rifles.

The other fellows came out with their guns and told them to get off. The result was that all three on one side were killed. That has been the history of the West for 40 years, and we are trying to adjust these matters by virtue of the consent of corporations and individuals. But here we find that we have the Government of the United States trying to hold up the corporation simply because it is a corporation. It has got the power to put it in court and hold it there for years, and thereby ruin the corporation rather than let it cross this small tract of land.

Mr. MADDEN. Will the gentleman yield?

Mr. RAKER. I will yield to the gentleman.

Mr. MADDEN. If this bill is enacted into law, it will set the injunction aside?

Mr. RAKER. Absolutely.

Mr. MADDEN. Does the gentleman think that is good legislation?

Mr. RAKER. Absolutely.

Mr. MADDEN. Is there not a prospect that the company could get a temporary permit pending the legislation?

Mr. RAKER. I do not know.

Mr. MADDEN. Has there been any suggestion for a temporary permit to be granted pending the litigation?

Mr. RAKER. As I said to the gentleman from Iowa, there was some arrangement after this matter was reported.

Mr. MADDEN. If such an arrangement can be had, does not the gentleman think it is unwise to try to pass this bill and set aside the injunction?

Mr. RAKER. No, sir.

Mr. HAYES. Will the gentleman yield to me for a moment?

Mr. RAKER. I yield to the gentleman from California.

Mr. HAYES. I will say that no such permit is possible unless this company gives up all their rights. Permits have been refused.

Mr. PICKETT. Why, Mr. Chairman, I hold in my hand a stipulation entered into between the Department of Justice and this company.

Mr. HAYES. Yes; and as I understand that stipulation, they are obliged to give up their rights to that property and take it as though it was a part of the public domain.

Mr. PICKETT. It simply holds the matter in statu quo, I will say to the gentleman; and if there ever was a case of absolute bad faith on the part of anybody coming before this House, I will prove from the RECORD before we get through with it, it is the case of the representatives of this company now asking for equitable relief.

Mr. RAKER. Mr. Chairman, I will say in answer to the gentleman, understanding water rights and the conditions there, that he will be unable to show anything against this company and against its methods or anything against the justice of this claim, or that these people ought not to have the right of passage.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RAKER. Mr. Chairman, I would like to have 15 minutes more in which to finish one other matter, and then I will be through.

Mr. MANN. Mr. Chairman, I ask unanimous consent that the gentleman have 15 minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. HUMPHREY of Washington. Mr. Chairman, before the gentleman proceeds, will he yield to me for a moment?

Mr. RAKER. Yes.

Mr. HUMPHREY of Washington. Mr. Chairman, I regret to say that I was not here when the gentleman commenced his argument, but I want to ask this question: Who is going to be injured if this permit is granted?

Mr. RAKER. No one; absolutely no one.

Mr. HUMPHREY of Washington. Who is to be benefited by holding it up?

Mr. RAKER. No one. No one is benefited by holding it up. It is a question of the department objecting. Of course, they have objected, and they believe that they must continue in order to hold their jobs.

Mr. BUTLER. Why is it held up?

Mr. RAKER. Has the gentleman read the report of the master?

Mr. BUTLER. No; I have not.

Mr. KENDALL. This is simply litigation instituted by the Government of the United States to determine the questions involved in this legislation that is proposed now. That is true, is it not?

Mr. RAKER. Yes.

Mr. LENROOT. Mr. Chairman, will the gentleman yield?

Mr. RAKER. I yield to the gentleman.

Mr. LENROOT. Has the gentleman from California not seen or read a copy of the stipulation that has been entered into between the Government and the Hydro-Electric Co. for the use of this pipe line until the final ending of the litigation?

Mr. RAKER. When the stipulation was in process of formation I was at the Attorney General's office. Since it has been completed, whatever it might be in its final completion, I have not seen it.

Mr. LENROOT. Has the gentleman made any effort to ascertain that important fact?

Mr. RAKER. It was not necessary. They do not intend to let us have this until it is disposed of by the various courts, right clean up to the Supreme Court of the United States.

Mr. LENROOT. Does not the gentleman think that this committee is interested in knowing what that stipulation was?

Mr. RAKER. I think the gentleman has a copy of it in his pocket, has he not?

Mr. LENROOT. I have one in my desk, and I think the gentleman ought to be familiar with it.

Mr. BUTLER. Is it signed?

Mr. HAYES. It never has been signed. There is no stipulation in this case.

Mr. McCALL. Mr. Chairman, will the gentleman yield for a question?

Mr. RAKER. I yield to the gentleman from Massachusetts.

Mr. McCALL. I would like to ask whether it has not been proposed to this company that they might exercise this easement for a certain fixed sum of money?

Mr. RAKER. Well, that was not objected to, that one feature.

Mr. McCALL. How much was that amount?

Mr. RAKER. I think they got an arrangement of about ten or twelve dollars a year.

Mr. HAYES. Seventy-five dollars a month?

Mr. RAKER. No; that was strictly temporary; that was to go in the contingent fund.

Mr. McCALL. Does not the gentleman think, as we are granting here by bill a right of way over property of the Government, that we should not give that away without providing for the payment of something?

Mr. RAKER. Not in matters of this kind; and I will say in answer to the gentleman from Massachusetts that since 1866 there are 100,000 ditches in the West that have a grant of their right of way without paying one dollar. I want to say to the gentleman from Massachusetts that California in 1910 adopted a constitutional amendment and that the legislature in 1911 passed an act—a public utilities act—by which every individual or corporation or association that is engaged in the delivery of electric power or water must have their property valued by the State board, and they can only charge the amount that the State of California directs. Now, do you want the State to collect one toll, with the full power to do it, and then just because these people have gone out here in this desert and asked to cross and use what is really theirs in law that they should pay another toll?

Mr. McCALL. But the State would not be receiving toll, would they, if we made a distinct grant in the terms of this bill?

Mr. RAKER. That corporation under the State law and under the constitution will have its physical property valued. The board will first determine what they can charge per kilowatt, and they will not be permitted to sell one kilowatt contrary to the regulations of that board without being subject to having their charter forfeited, and they also pay to the State of California a tax for being a corporation. Do you want to put them under more penalties? Is there any stronger law against monopoly? Could there be any more stringent provision than that a board of five should physically value their property and fix the prices which they may charge?

Mr. MADDEN. Does not the propriety of Congress setting aside an order of the court enter into the consideration of this question?

Mr. RAKER. The Government can do as it pleases with its lands, and that power is retained in the Congress. As I before stated, the Federal Constitution expressly gives to Congress full power over the public lands and reservations. Just look, also,

at the cases pending in all the States. Many an act has been passed to repeal a certain law changing the rights of property; many an act has been repealed by which men have been actually convicted of crime, and they have been turned loose because the judgment had not become final. Private individuals get into litigation, and subsequently make amicable settlements. And over the public land Congress has all the powers that an individual has over his property, and Congress should certainly be equally willing to effect any fair, amicable adjustment settling litigation.

Mr. MADDEN. Why did not these people act under the provisions that now exist instead of coming to Congress and asking Congress to set aside an order of the court?

Mr. RAKER. I have already answered that by pointing out that the present departmental regulations would allow the company only a bare revocable license—a mere permit. No security of title at all for their property and their investment. We have been here before Congress for some time, and last year we passed a resolution calling for this information, and it was obtained and is now printed in House Document 1424 of the Sixty-first Congress, third session. These people living in my district presented the bill, and it seemed to me as a Representative of that district, representing men interested, representing the development of the country, being in favor of turning these many thousands of acres of desert lands into valuable lands, being in favor of opening up these mineral lands in the development of this country, it seemed to me I would have been a poor Representative, it seemed to me I would have failed in every representative duty had I not presented this bill and urged upon this House the necessity and the right and the justice of passing this legislation.

Furthermore, I know of no company operating in the Western States that is situated as is this company. No general law nor any regulations which are in existence or which could be devised or enacted would be properly applicable to this case. Such laws or regulations would necessarily have in mind the protection of water-power sites, dam sites, or reservoir sites or other similar property of value to the Government. In this present case there is no such property belonging to the Government. The company owns under absolute title its reservoir site, its dam site, and its water-power site. All these the company has purchased and paid for. It owns also all of the ground crossed by its pipe line except less than 2 acres across these mining claims. You can figure it up, and you will find that even a 20-foot right of way across these 3,800 linear feet will cover actually less than 2 acres. This land is absolutely valueless. And even across this land the company and its predecessors in title have owned for more than 30 years a vested easement for an open water ditch. The company's title to this old ditch can not be denied. All that this company has done, and all that it asks the sanction of Congress for having done, upon Government land is simply that it has changed this old, open, wasteful water ditch into a less circuitous closed pipe line, which it has buried beneath the surface of the desert. It has changed less than 2 acres of open water ditch into a buried pipe line which occupies actually less than 2 acres of desert land. There is no other company similarly situated. In this regard I quote from the testimony of Mr. Williams, the assistant solicitor of the Agricultural Department, given before the committee:

Mr. MONDELL. Then, it is a fact that no one similarly situated to these people is required to sign these stipulations?

Mr. WILLIAMS. Not similarly situated, because they have been the only ones.

Now, Mr. Chairman, at this point, before I proceed further, I wish to correct some statements which I fear I have made in response to questions which were asked me a few moments ago by the gentleman from South Dakota [Mr. MARTIN], by the gentleman from Iowa [Mr. PICKETT], by the gentleman from Illinois [Mr. MADDEN], by the gentleman from Wisconsin [Mr. LENROOT], and by my colleague, Mr. HAYES, of California. I find that I have here a copy of the stipulation which was evidently referred to, particularly by the gentleman from Wisconsin [Mr. LENROOT] and the gentleman from Iowa [Mr. PICKETT]. I will say to the gentleman from Wisconsin [Mr. LENROOT] that I have made, I believe, every effort within reason to ascertain every important fact bearing upon this case. I would say also to the gentleman from Iowa [Mr. PICKETT] that if the stipulation which I now have before me is in fact the stipulation drawn by the Department of Justice to which he refers, and I think probably it is, then I do not wish that the reply which I made to his question shall stand in the record as my answer. I wish to beg the gentleman's pardon. At the moment, during the heat of debate, my mind did not recall the fact that this stipulation which I have here had been agreed to.

The stipulation, which was prepared by the Department of Justice as the result of the committee's action and of my own efforts before the department, was transmitted to me during the recess of Congress last September. I will ask that it be printed in the RECORD following the close of my remarks and that it be marked "Exhibit A" in the RECORD so that it may be more easily identified. I remember now that this stipulation was agreed to by both parties to the suit and was filed in court.

I wish to say also that this stipulation answers completely the question of the gentleman from South Dakota [Mr. MARTIN] regarding the company being now under a temporary injunction in the court from proceeding to use the right of way. This stipulation was filed with the court in October, 1911, and since that time there has been no injunction or restraining order in force against the company. The case is now simply the ordinary case of a suit by the Government in which a permanent injunction is being sought against the company. If the Government should ultimately succeed in its present suit the result would be that the company must then either tear up this short link of its pipe line and thereby destroy the value of all of its property and shut down the mines on its own ground as well as the mines at Bodie, Cal., and Aurora and Lucky Boy, Nev., or else the company must, as its only alternative, throw itself upon the mercy of the departments which have been fighting it and, as I have before stated, those departments hold that under the law the company could be granted no other security than that of a bare revocable license which might be abrogated at will. Furthermore, the departments claim for themselves also the power of unrestrained liberty and discretion either to grant or to refuse to grant this company even the temporary revocable permit which they prescribe.

In response to the gentleman from Iowa [Mr. PICKETT] and also to the gentleman from South Dakota [Mr. MARTIN] I wish to say also that to my mind there can be no question as to the propriety of Congress, as the proprietor of the public lands and the guardian of the public interests involved, withdrawing the present suit of the Government and quieting the company's title to its right of way covering 2 acres of worthless desert land. It would be the duty of an individual proprietor, and I hold it to be the duty of Congress in its capacity of proprietor of this land, to settle fairly and sanely and justly this vexatious litigation, which is now clouding the title of, and jeopardizing the legitimate investment in, this power plant and in the mining properties in the several important adjoining mining camps which are dependent upon this company. It is true that when the hearing was had before the committee last August the company then asked only for special relief as an emergency measure. At that time the caucus rule of the special session of Congress forbade any other legislation of this character except that required by some special emergency. At that time there was a temporary restraining order in force against the company under which the Forestry Service officials were attempting to force the company to tear up its pipe line immediately without giving it the opportunity of even a fair hearing before the court. No evidence had been taken except the preliminary hearing before the master in chancery and the company then asked, as a special emergency measure of relief only, that the company be relieved from the threats of immediate destruction which were being made against it by the Forest Service officials.

However, there has been no subterfuge or concealment or misrepresentation in this matter either by the company or by myself. At the regular session, the present session of Congress, when the matter was again taken up before the committee on December 19 and 20, 1911, it was then plainly stated before the committee that the stipulation which will appear in the RECORD as "Exhibit A" had been filed with the court; that there was no longer any temporary restraining order in force against the company, nor any danger of immediate destruction of its property. The company then asked to be relieved from the pending suit which still involves the possible granting of a permanent injunction. This was understood by the committee clearly, and with that understanding the committee voted to report the bill favorably for passage.

In order to set the matter fully and fairly before this House in its every detail, I wish to give a very brief chronological synopsis showing the various stages in the development of the controversy and referring, where possible, to the particular pages of House Document 1424 of the Sixty-first Congress, third session. In that document will be found printed all of the correspondence up to the 4th of March, 1911.

Summer of 1909, up to and including the early summer of 1910, the representatives of the proposed company, which was not yet organized, made preliminary plans and purchased from private owners all of the property touched in any way by the

project except the 3,800 linear feet of pipe line described in the present bill, and purchased also all water rights and the old Goleta ditch, which crosses this same land.

Spring of 1910, local residents familiar with mining operations and local conditions located 20 or 21 mining claims along the mineral ledge, which crosses the land described in the present bill. These claims join the old patented mining property, now belonging to the Hydro-Electric Co., upon the north and extend along the outcroppings southerly. Of these claims only five are crossed by the pipe line, although the corner of a sixth one is touched by the pipe line.

Spring of 1910, company purchased all these mining claims.

July, 1910, construction of dam, pipe line, and power house begun.

August 3, 1910, pipe line constructed over company's patented land and over several hundred feet of the land described in the present bill. At this time the ditch was completely excavated throughout its entire length.

August 3, 1910, forest officers stopped the work and threatened arrest of workmen.

August 10, 1910, Government suit filed and temporary restraining order secured ex parte upon affidavit.

September 6–10, 1910, hearing before master in chancery on order to show cause why the temporary restraining order should not be continued and an injunction pendente lite issued.

October 17, 1910, master renders report adverse to company. This report was never confirmed by the court.

November 12, 1910, district forestry office at San Francisco telegraphs to the Forester at Washington suggesting such temporary agreement as would permit continuance of construction work without jeopardizing the pending suit of the Government. (See telegram, p. 68, H. Doc. 1424; also letter on same page.)

November 14, 1910, Forester at Washington authorizes and directs such temporary agreement as is described in the telegram on page 68 of House Document 1424. (See p. 67, H. Doc. 1424.)

November 17, 1910, temporary agreement permitting construction work was drawn in compliance with Forester's direction and was executed and acknowledged by company and approved by board of directors. (See pp. 65, 66, 67, H. Doc. 1424.)

With this agreement the company continued always to comply faithfully. Upon the strength of this agreement, as directed by the Forester's telegram, the company consented, in open court, to withdraw its objections and exceptions to the master's report and to consent voluntarily to the issuance of an injunction pendente lite.

November 18, 1910, company consents in court to issuance of injunction pendente lite in accordance with its agreement. (See two telegrams, p. 64, H. Doc. 1424.)

November 23, 1910, Forester issues temporary permit in accordance with agreement. (See letter to Messrs. Copp, Luckett & Pierce, the company's attorneys, p. 61, H. Doc. 1424.)

November 26, 1910, Forester sends out notice to the district forester that the permit issued on November 23, while unconditional in form, would be revoked unless a new stipulation and agreement more onerous than that signed by the company on November 17, 1910 (see pp. 65, 66, 67, H. Doc. 1424), should be agreed to by the company before December 30, 1910. This more onerous stipulation appears on pages 57, 58, 59, 60, and the upper half of page 61, House Document 1424. This notice was not formally served upon the company until December 30, 1910. (See first paragraph of letter to district forester, p. 53, H. Doc. 1424.)

December 29, 1910 (one day before formal service of Forester's demands), company requests certain modifications of the proposed more onerous agreement. (See pp. 56, 57, H. Doc. 1424.)

January 1, 1911, projects completed and electric current turned on wires.

January 21, 1911, Forester refuses to modify objectionable stipulation or agreement. (See pp. 53, 54, H. Doc. 1424.)

February 10, 1911, company's attorney appears personally before Forester in Washington, requesting reconsideration and the granting of the modifications requested. Request is summarily refused, with remark that the company can "fish, cut bait, or swim ashore." (See paragraph at top of p. 48, H. Doc. 1424.)

February 13, 1911, company appeals to the Secretary of Agriculture from the Forester's refusal to modify objectionable agreement. (See pp. 47, 48, 49, 50, 51, H. Doc. 1424.)

February 15, 1911, Secretary denies company's appeal. (See pp. 46 and 47, H. Doc. 1424.) The company's attorney states—and it is uncontradicted—that the appeal of February 13 was not mailed until after midnight of that day, and could not have reached any official's desk for consideration earlier than 11 o'clock of February 14, and that within 24 hours thereafter, namely, before 11 o'clock of February 15, he had received definite word of the rejection of the appeal by the Secretary. (See speech of Hon. W. F. Englebright, printed in RECORD of Mar. 5, 1911.)

February 17, 1911, Congressman Englebright introduces resolution of inquiry (H. Res. 980).

March 2, 1911, resolution adopted.

March 4, 1911, House document 1424 transmitted.

April 12, 1911, United States district attorney notifies company's attorneys by letter, as follows:

UNITED STATES V. HYDRO-ELECTRIC POWER CO.

APRIL 12, 1911.

Messrs. CAMPBELL, METSON, DREW, OATMAN & MACKENZIE,
San Francisco.

GENTLEMEN: I am in receipt of a letter from the Attorney General instructing me to inform you, as counsel for the Hydro-Electric Power Co., that the injunction heretofore issued in the above-entitled case will be enforced against the company and its agents according to its terms, and that you will be allowed a reasonable time, not exceeding 60 days, within which to restore its exceptions to the master's report and to present to the court such contentions as you may care to make against the continuance of the injunction throughout the litigation.

It is stated to be the desire of the Department of Justice that this litigation should be proceeded with vigorously, so that a conclusion may be reached as soon as possible. The department refuses to allow any permit, except a general permit in the usual form required by the practice and regulations of the department governing such matters.

Yours, very truly,

ROBT. T. DEVLIN,
United States Attorney.

This action restored the company to statu quo as of November 17, 1910—that is to say, to the same position before the court as it occupied before it had acted in accordance with the Forester's telegram of November 14. The Department of Justice, in taking this action, recognized that the company had acted in good faith upon the agreement drawn November 17, 1910, in accordance with the Forester's instructions of November 14, 1910, and that the action of the Forest Service in abrogating that agreement, as it did by letter of November 26, 1910, had made it necessary for the Government, in fairness to the company, to replace the company in the same position as it had occupied before it had acted upon faith and reliance in the Forester's telegram.

April 12, 1911, the order, given on this date, just referred to above placed the company back under the force of a temporary injunction. However, the company had, in reliance upon the agreement of November 17 and the permit issued November 23, 1911, invested its money and completely constructed its plant. Therefore the Forestry Service officials, who subsequent to April 12, 1911, attempted to enforce the temporary restraining order of the court against the use of the company's pipe line thereby—that is to say, by attempting, as they did, to enforce the temporary restraining order—were attempting to force the company, before any final hearing could be had, to tear up its pipe line, which it had constructed according to the agreement of November 17, 1910.

July 15, 1911, on account of the circumstances above outlined, I introduced the present bill granting the company a right of way.

August 4, 1911, three hours' hearing was had on the bill before the Public Lands Committee. The committee voted unanimously to grant the company at that time the following relief as an emergency measure, namely, it appointed a subcommittee to request of the Department of Agriculture that that department discontinue its attempts to force the company to tear up its pipe line pending litigation. This the department refused to do, but referred me personally, after the subcommittee had exhausted its efforts, to the Department of Justice.

September, 1911. During this month, after adjournment of Congress, the Department of Justice submitted the stipulation which follows my remarks under the designation "Exhibit A."

October, 1911, the stipulation was executed and filed.

been no temporary restraining order, nor any injunction or other order of court against the company. However, the suit for permanent injunction is still pending by which the Government seeks to obtain a final order of court forcing the company to tear up its pipe line.

December 19 and 20, 1911, hearing on the bill before Public Lands Committee.

December 20, 1911, unanimous report of the committee in favor of the bill.

January 5, 1912, bill ordered removed from Private Calendar and placed on House Union Calendar.

In view of this prolonged fight, and in view of the wide publicity which has been given to this case, and in view of the bitterly contentious attitude which the department is so widely known to have taken against the company, there is a general public feeling of distrust as to the security of the company's title and as to the outcome of the case in the courts. Also there is, unfortunately, a very widespread belief that if the com-

pany should by any chance be defeated in the litigation the department would, by reason of the strong personal prejudices which have been aroused among its officials, be inclined to continually harass the company thereafter. All of these considerations and all of these circumstances tend now and will continue to have a strong tendency to unsettle business conditions in all of the mining camps dependent upon this company, to discourage legitimate mineral development and the opening up of new mines, and to hamper and interfere with the financial support and the operations of the company. I can see no reason why the Government, through this Congress, should practice such odious and utterly useless tactics. I believe that the Government should grant this right of way and thereby encourage legitimate industry. Merely from those considerations of reasonable fairness and equity which should prompt any private proprietor, this company should be granted its right of way by this Congress.

Mr. HAYES. Mr. Chairman, will the gentleman yield?

Mr. RAKER. I yield to my colleague from California.

Mr. HAYES. I thought the gentleman had finished.

Mr. RAKER. I want to finish this on the question of conservation, so that I may conclude. While in my campaign in 1910 I found my people were against conservation, frequently because of the method and the manner of using the forest reserves. I took the position that the Forestry Department of the Government had taken a stand that was right and that we should maintain these reserves; that we should conduct them in a proper method and in a proper manner. And in a public platform, of which I sent out tens of thousands, I made the following statements:

I am in favor of conservation of our natural national and State resources, and a progressive upbuilding policy, honestly and economically enforced—that we control our natural resources and use them now, in the present—but still control them so that the future use of them will be saved for the people of this Nation. Keep them from the hands of the few.

That was my statement then; that is my belief now and my position.

Let me read you another article now by the greatest conservationist in the land, as well as the greatest progressive—a man whom these progressives are pretending to follow. This article is from La Follette's Weekly Magazine of February 17, 1912, and is as follows:

WISE USE; NOT FOOLISH DISUSE.

True conservation consists not in hoarding our resources, but in using them properly. Our water powers running night and day from year to year without turning a wheel are of no value to the public. To permit the mature trees of our forests to rot in waste is not conservation. To deny to this generation the advantage of the proper development of our coal fields and other mineral wealth is to deny to them participation in the benefits which rightly belong to them. The problem before us is not to hoard our resources, but to develop them in such a way that the benefits flowing from development will inure not to a few men, but to the rightful owners—all the people of the United States.

My language is a little stronger and a little better than the language of the great conservationist and progressive, Mr. LA FOLLETTE. I made my statement two years ago and he made his a week ago.

Use what you have to-day. Do not let the water run to waste. Use the mature trees, and do not let them die and decay or be burned up. Use your mineral resources now instead of letting them lie in the ground unhunted, unsought, and undeveloped. That is all we ask for, and I again appeal to this committee to look to this map as a speaking illustration of what we are asking here to-day, and as demonstrating to you the value of the Government's property that will be involved.

I want to ask you that if you owned this barren, treeless, desert waste, 60 miles from a railroad or from civilization, would you want to stop the development of an enterprise of this kind? Why, every man would say "no."

Mr. Chairman, I have another statement here that I want to have printed in the RECORD as Exhibit B, following the close of my remarks. It is a letter from James F. Farraher, written under date of January 17, 1912. He is one of the ablest lawyers in the State of California. The letter will follow later, marked "Exhibit B."

I also wish to submit a copy of an amendment to the constitution and a copy of the public-utilities bill of the State of California covering this subject, to show that the State government and not the Federal Government is regulating these matters. These will follow later as Exhibits C and D, respectively. I want to submit one other matter.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RAKER. Mr. Chairman, I would like just one minute in order to put this document in the RECORD.

Mr. MANN. Mr. Chairman, I ask unanimous consent that the gentleman have two minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. RAKER. I wish to submit in the RECORD a memorandum showing the various right-of-way statutes passed by Congress and the decisions of the various courts, showing the rights of this company to this land. In addition to the memorandum I have had collected and copied verbatim several of the conflicting right-of-way statutes now in force. The verbatim copies of statutes I will append for purposes of reference as Exhibit E. The memorandum concerning this company's rights here follows:

RIGHT-OF-WAY STATUTES.

Memorandum concerning the hydro-electric bill (H. R. 12572).

The Hydro-Electric Co. should never have been required to come to Congress for relief in this case. They are entitled to the right of way as a matter of plain legal right under the general laws which have been enacted by Congress.

ACT OF 1866.

As early as 1866 Congress passed a general right-of-way act granting rights of way for ditches and canals for the beneficial use of water for mining, agricultural, manufacturing, and other like purposes. The original act was passed July 26, 1866 (14 Stat. L., 253), and is entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes." Section 9 of the act, since embodied in the Revised Statutes as section 2339, provided:

"Whenever by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes have vested and accrued and the same are recognized and acknowledged by the local customs, laws, and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same, and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed."

This act is still the law. It has never been repealed or modified by Congress, and that the Hydro-Electric Co. is entitled to its right of way under the terms of this statute is established by the admitted facts of the case. It has been conclusively established, as shown by the printed report of the hearing on this bill before the Public Lands Committee, that the Hydro-Electric Co. is the owner of the water which it uses by virtue of more than 20 years of priority of possession and actual use by itself and its predecessors in interest. It was shown at the hearing, and is admitted by the Government officers, that the company is using this water for mining, milling, and the reduction of ores, and for agricultural purposes in the irrigation of otherwise arid land, just as prescribed by the statute. It comes, therefore, clearly within the terms of the statute and is entitled to its benefits.

IRRIGATION ACT OF 1891.

However, this is not the only law under which the company is plainly entitled to the right of way for its pipe line. It is entitled to its right of way under the irrigation right-of-way act passed by Congress on March 3, 1891 (26 Stat. L., 1095). Section 18 of that act provides:

"That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation and duly organized under the laws of any State or Territory." * * *

It is an established fact and not denied that the Hydro-Electric Co. is a canal and ditch company organized for the purpose of irrigation as prescribed by that law of Congress. The water after it passes through the company's pipe line and over its water wheel at the power house is available for the irrigation of otherwise arid lands, and as reported by the Government officer the water is to be utilized for that purpose. Not only does the company's pipe lines convey this water for irrigation, but by its dam at the lake—Lundy Lake—it stores the storm and flood waters which otherwise would run to waste and conserves them, thereby increasing the water available for irrigation.

It is true that this irrigation right-of-way act of 1891 provides in terms for the filing of certain maps and plats before the Secretary of the Interior, but these provisions have been held by the United States Supreme Court to be permissive only and not conditions precedent. It has been held by the United States Supreme Court, and repeatedly by the Secretary of the Interior, that actual construction of the ditch and laying of the pipe line amounts to full compliance with the law and vests in the company full legal title to its right of way with or without previous or subsequent filing of any plats or maps. The Hydro Electric Co. has admittedly completed the digging of its ditch and the laying and covering of its pipe line. Its right of way is therefore clearly vested. The point is so well established that no one at all familiar with the subject will question it. See the Supreme Court decision in the case of Jamestown & Northern R. R. Co. v. Jones (177 U. S., 125) and the decisions there referred to. That decision involved a construction by the court of the railroad right-of-way act of 1875, but the two acts are practically identical in terms, and the controlling authority of the Supreme Court's decision just cited over cases arising under the irrigation right of way act has been expressly recognized repeatedly in the decision of the Secretary of the Interior. (See vols. 38 and 39, Land Decisions.)

It is true that the departmental officials have, by regulations and decisions, attempted to rob this irrigation right-of-way act of its beneficial effect by claiming that it is not applicable unless the water is used solely for irrigation. However, Congress attempted expressly to remedy such a narrowness of construction by the amendatory act which it passed on May 11, 1898 (30 Stat. L., 404). That amendatory act provides that rights of way under this irrigation act of 1891—I quote from the act—"may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power as subsidiary to the main purpose of irrigation." I claim that under these acts this Hydro-Electric Co., and other companies which are developing the industries of the West, are entitled by plain provisions of law to rights of way in such cases as the present one.

MINING ACT OF 1905.

However, there is yet another act of Congress which is applicable in even more pointed and express terms to the present case. I refer to the act of February 1, 1905 (33 Stat. L., 628). Section 4 of that act provides:

"That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals, within and across the forest reserves of the United States, are hereby granted to citizens and corporations of the United States for municipal

or mining purposes and for the purpose of milling and reduction of ores during the period of their beneficial use, under such rules and regulations as may be prescribed by the Secretary of the Interior and subject to the laws of the State or Territory in which said reserves are respectively located."

That act describes with exact precision the admitted purposes and object of this Hydro-Electric Co. The testimony shows, and the Government admits, that the company's object is the development of its own mining properties, the milling and reduction of its own ores, and the sale of its surplus power to other miners and mine owners and operators. By this act Congress plainly granted to this company, and to every other company and individual in the West similarly situated, a right of way for ditches and pipe lines. The object of the act, its scope and purpose, are clear and unmistakable. This act was passed by Congress for the benefit and encouragement of the legitimate industry of mining, milling, and ore reduction. The Supreme Court of the United States declared in the case of United States *v.* Verde Copper Co. (196 U. S., 207) that acts of this character—I quote from the decision of the court—"are not to be so construed as to defeat the intent of the legislature or to withhold what is given there expressly or by necessary or fair implication." In this right-of-way act which I have quoted to you there is no possible ground for doubt or uncertainty, no hint of ambiguity. And even if there were any ambiguity such ambiguity should be resolved liberally in favor of the industry which Congress intended to encourage, namely, that of mining and mineral development. In the statute under consideration, in the Verde Copper case just referred to, there was some ambiguity, but the court said that even "ambiguity should not be resolved to take from the industries designated by Congress the license given them." The court said:

"When an act operates as a general law and manifests clearly the intention of Congress to secure public advantage or to subserve the public interests and welfare by means of benefits more or less valuable offered to individuals or to corporations as an inducement to undertake and accomplish great and expensive enterprises or works of a quasi public character in or through immense and undeveloped public domain, such legislation stands upon a somewhat different footing from a private grant and should receive at the hands of the courts a more liberal construction in favor of the purpose for which it was enacted."

Language more aptly fitting to the present case could not well be imagined. The law grants the right of way. This company has accepted its terms and actuated by the inducement offered it has undertaken and completed in a barren desert region—60 miles from the nearest railroad—this enterprise of great local public benefit.

Nevertheless, in spite of the language of the Supreme Court just quoted, the Land Department has, by regulation and decision, attempted to defeat this law of Congress of its beneficial effect and to deprive the mining industry in the Western States of the legitimate encouragement which Congress granted it. In the Northern California Power Co. case (37 Land Dec., 80) the Secretary of the Interior Imported into this statute restrictions not found in the act and inconsistent with its terms.

The Secretary held that no right of way could be granted to any mining company unless such right of way was to be used solely and exclusively for the operation of mines and the milling and reduction of ores owned by the company itself. In other words, that this Hydro-Electric Co., though using the right of way for mining and milling and municipal purposes, as prescribed by the act, nevertheless could not have the benefit of the act because some of the power was to be utilized by other mine owners in the locality. In this way this beneficial act of Congress has, in effect, been abrogated by departmental rule and decision. The will of Congress has been set aside and overruled in the face of the plainest possible language that Congress could use.

And there is no possible justification for such a judicial quibble as this decision represents. At the time this act was passed the Supreme Court and the Department of the Interior had both held under the similar right-of-way act for irrigation companies, passed March 3, 1891, that the ultimate use of the right of way and not any question of ownership was the determining factor. The language in the irrigation right-of-way act is, "That the right of way * * * is hereby granted * * * for the purpose of irrigation."

In the mining right-of-way act of February 1, 1905, just referred to, the language is just the same—"That rights of way * * * are hereby granted * * * for municipal or mining purposes and for the purpose of milling and reduction of ores."

As showing the scope and effect of the ruling of the Supreme Court under the irrigation right-of-way act, just referred to, I quote from the decision of the Secretary of the Interior, rendered November 19, 1909, in the case of the Sierra Buttes Canal & Water Co. In that decision the Secretary of the Interior said:

"The decision of the Supreme Court in the case of Gutierres *v.* Albuquerque Land & Irrigation Co. (188 U. S., 545) * * * held in that case that in order to be entitled to the benefits of the acts of Congress providing for rights of way over the public domain it was not necessary for the company securing such rights of way to engage in the irrigation of land or to own the lands intended to be irrigated."

It was held to be sufficient if the water was sold to others who used it for irrigation.

That is certainly the only reasonable construction of that act, and the same application, by every recognized rule of statutory construction, must be given to the mining right-of-way act of February 1, 1905. That act was passed by Congress subsequent to the Supreme Court decision on the irrigation act, and in the light of that decision Congress incorporated the same language. The same construction must be given, and under that construction the Hydro-Electric Co. is legal owner of the right of way and entitled to have its title confirmed by this pending bill.

And the company's right under this statute is not dependent upon the filing of any map or plat. It has definitely located and designated its line by actual construction upon the ground. The construction work is already completed. The line is legally designated thereby, and the title to the right is vested by operation of law without the filing of any plat or map. This was the decision of the Supreme Court in the case of Jamestown & Northern R. R. Co. *v.* Jones, which I have already cited, and it is equally applicable to this case.

EQUITABLE CONSIDERATIONS IN FAVOR OF THIS BILL.

The legal and equitable considerations to which I have heretofore called your attention are such as are applicable generally to the enterprises which are attempting to develop and open up the western public domain. It is vitally essential that all such legitimate development should be fostered and encouraged, not discouraged and obstructed.

But in this particular instance there are far greater reasons of equity and justice in favor of the company named in the bill. It is a small local corporation, operating against exceptional odds in a barren desert region far removed from railroad communication, where every item of cost is excessive and where nothing but the hardiest courage and boldest individual initiative would dare to venture. Where before was nothing but barren desert and unproductive mines this company is creating taxable and productive property. It is irrigating the desert lands and stimulating mineral development.

Furthermore, it is not operating on Government land. It is an exceptional instance, where only an insignificant shoe string of unpatented Government land must be crossed.

This shoe string is admittedly valueless. It is not a water-power site in any sense of that term. The water-power sites are at the lake, where the dam is situated, and at the power-house site, where the fall is secured. Both of these sites are owned by the company by absolute title in fee simple. This shoe string of land involved in the bill merely happens to lie in the path of the pipe line and is neither a power site nor riparian land.

Furthermore, the company, as proven at the hearings, has for 20 years, by itself and its predecessors, owned an open ditch across this same parcel of land and has done nothing more than to shorten the ditch and change it into a buried pipe line in order better to conserve the power of the water.

I think that the company is clearly entitled to the relief sought.

Mr. KAHN. Was this bill reported unanimously from the Committee on Public Lands?

Mr. RAKER. I have before me the original bill, given to me by the clerk of the committee, with his writing on it, as follows: "Unanimously adopted after amendment."

Mr. KAHN. So that it is the unanimous report of the committee?

Mr. RAKER. That is the unanimous report handed to me by the clerk of the Committee on Public Lands, and after that I made out the report, took it back to the committee, and read it—read the report that they were going to file in the House and in the committee—and not one living man said a word or made objection to it.

Mr. PICKETT. Mr. Chairman, I want to call the attention of the gentleman from California to the fact that I stated I was opposed to the bill that summer and that I reserved the right to oppose it on the floor of the House.

EXHIBIT A.

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL DISTRICT, NORTHERN DISTRICT OF CALIFORNIA.

United States of America, plaintiff, *v.* Hydro-Electric Co., a corporation, defendant.	No. —.

STIPULATION.

Whereas the said defendant is desirous of permission to maintain and operate, within the limits of the Mono National Forest, during the pendency of this cause, the conduit and pipe line mentioned and described in the pleadings in this cause and in the proceedings heretofore had herein, and has represented and insisted to the plaintiff that it desires in good faith to use and operate the said conduit and pipe line in its business of generating electrical energy, and that refusal of such permission would entail great and irreparable injury and loss to the defendant and possibly the destruction of its said business; and

Whereas the plaintiff is willing to accord such aforesaid permission, provided this may be done with due regard to the public rights and interests, and provided further such permission shall be availed of by the defendant in good faith for the preservation of its business as aforesaid in the actual operation of its electrical plant during the pendency of this cause:

It is hereby stipulated and agreed by and between the parties that the said defendant may until a final decree shall be entered in this cause operate and maintain the said conduit as the same now is within the national forest, subject to the following terms, conditions, and limitations; that is to say:

1. In case any injury to the said forest or other damage to the plaintiff shall be occasioned by water breaking, leaking, or flowing from the said pipe and conduit or from any dam, reservoir, or conduit owned by the defendant or subject to its control, or in case any injury to the said forest or damage to the plaintiff through ony other force or agency shall be occasioned by the willful action or negligence in any respect of the defendant or any of its officers, agents, or employees, or any of its present or future contractors, or any of their officers, agents, or employees, the amount or amounts of money reasonably required to compensate the plaintiff for such damage or injury shall in each such case be examined into, fixed, and determined by the district forester having supervision over said forest at the time of such examination, or by such other official as then shall be exercising the functions of district forester in respect of said forest; and the amount or amounts so fixed and determined shall be thereupon immediately paid by the defendant to the plaintiff by payment to such national depository or such officer as the Attorney General shall designate to receive the same.

2. The defendant shall make such disposition of brush and refuse on the lands described in the bill of complaint as may be from time to time required by the forest officer.

3. The defendant shall protect all forest service and other telephone lines at crossings of and at all places of proximity to the transmission line in a standard manner and satisfactory to the forest officers, and maintain the line in such a manner as not to injure stock grazing on the forest.

4. The defendant shall do and cause to be done all within its power, and that of its employees, contractors, and employees of contractors, both independently and upon the request of the forest officers, to prevent and suppress forest fires.

5. The defendant shall build and repair roads and trails as required by the forest officer, or other duly authorized officer or agent of the United States, whenever any roads or trails are destroyed or injured by the construction work of the defendant or by flooding, and build and maintain suitable crossings as required by the forest officer, or other duly authorized officer or agent of the United States, for all roads and trails which intersect the said conduit and pipe line on the said described lands.

6. The defendant shall forthwith execute and file with the United States district attorney for the district above named a good and sufficient bond, to be approved by the said United States attorney, in the sum of $5,000, conditioned upon the faithful compliance by the de-

fendant with all and singular the terms and provisions of this stipulation.

7. If by the final decree to be rendered in this cause it shall be determined and adjudged as to said conduit and pipe line that the same or any material portion thereof was constructed or maintained by the defendant without authority of Congress, then and in that event the defendant shall pay to such Government depositary or officer, as may hereafter be designated by the Attorney General, a sum of money for the plaintiff to be computed at the rate of $75 per year from and after the 1st day of August, 1910, to and until the time when the defendant shall have fully complied with the terms of such final decree.

8. This stipulation shall not be construed to extend any right, privilege, or permission whatever to the defendant beyond the time when a final decree shall be entered in this cause.

Upon the execution, filing, and approval of such bond as above provided and the noting of the fact by the United States attorney upon this stipulation, the complainant's motion for a preliminary injunction may be withdrawn and the restraining order now in force may be vacated. This provision is subject to the distinct understanding that in case of any violation by the defendant of any of the terms hereof this stipulation shall, at the election of the plaintiff, be and become thenceforth null and of no effect, and the plaintiff shall be at liberty to restore and insist upon said motion for preliminary injunction without prejudice from or on account of this stipulation or from or on account of any action that shall have been taken or thing that shall have been done hereunder, but the exercise of such election shall not operate to release the defendant or its sureties on said bond from any liability which theretofore shall have arisen in favor of the plaintiff.

Dated at San Francisco, Cal., September —, 1911.

——— ———,
United States Attorney.
——— ———,
——— ———,
Attorneys for Defendant.

EXHIBIT B.

YREKA, CAL., *January 17, 1912.*

Hon. JOHN E. RAKER,
Member of Congress from California,
Washington, D. C.

MY DEAR JUDGE: Inclosed is carbon copy of dispatch filed last evening, which expresses, I think, a reasonable view upon a very live to-day proposition. I was present for quite a good portion of the time at the extra session of the legislature in the interest of legislation on water rights based upon actual field conditions in our end of the State, and aided in framing measures based upon the principle that the highest possible degree of service should be exacted from every inch of water available from a gravity source. With this principle as the measure of the right, not only as to appropriationists but as to riparianists, supplemented as it is by the regulatory powers granted by the public utilities bill, which has also become a law, it would seem, in so far at least as California is concerned, that we are in a position not only to exact the service, but to control distribution and cost to public consumers. If there is an answer to Government ownership of public utilities, these measures, reasonably applied, would seem to furnish it, since they permit initiative on the one side and restrain its abuse on the other—sounds like good democracy, doesn't it?

It is needless to add, I hope, that my information as to the Hydro-Electric Co. shows it to be within the classification and under the control indicated. With best wishes, I am,

Very truly, yours, JAMES F. FARRAHER.

EXHIBIT C.

12. Senate constitutional amendment 47.

CHAPTER 60.

A resolution proposing to the people of the State of California an amendment to section 23 of article 12 of the constitution of the State of California, to confer upon the railroad commission power and jurisdiction to regulate and control the business of furnishing certain commodities and performing certain services to or for the public.

The Legislature of the State of California at its regular session, commencing on the 2d day of January, 1911, two-thirds of all the members elected to each of the two houses of said legislature voting in favor thereof, hereby proposes to the people of the State of California that section 23 of article 12 of the constitution of the State of California be amended so as to read as follows:

"SEC. 23. Every private corporation and every individual or association of individuals owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plan, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this State, for the transportation or conveyance of passengers or express matter, or freight of any kind, including crude oil, or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery, or furnishing of heat, light, water, or power, or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier is hereby declared to be a public utility subject to such control and regulation by the railroad commission, as may be provided by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities in the State of California and to fix the rates to be charged for commodities furnished or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution.

"From and after the passage by the legislature of laws conferring powers upon the railroad commission respecting public utilities all powers respecting such public utilities vested in boards of supervisors or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns in this State, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission: *Provided, however,* That this section shall not affect such powers of control over any public utility vested in any city and county or incorporated city or town as, at an election to be held pursuant to laws to be passed hereafter by the legislature, a majority of the qualified electors voting thereon of such city and county or incorporated city or town shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law: *And provided further,* That where any such city and county or incorporated city or town shall have elected to continue any powers respecting public utilities it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the railroad commission in the manner to be prescribed by the legislature; or if such municipal corporation shall have surrendered any powers to the railroad commission it may, by like vote, thereafter reinvest itself with such power. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith."

Section 23 of article 12, proposed to be amended as above, now reads as follows:

"SEC. 23. Until the legislature shall district the State the following shall be the railroad districts: The first district shall be composed of the counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, Eldorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one railroad commissioner shall be elected. The second district shall be composed of the counties of Marin, San Francisco, and San Mateo, from which one railroad commissioner shall be elected. The third district shall be composed of the counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one railroad commissioner shall be elected."

EXHIBIT D.

California Statutes 1911–1912—Public utilities act.

CHAPTER 14.

An act to provide for the organization of the railroad commission, to define its powers and duties and the rights, remedies, powers, and duties of public utilities, their officers, define its powers and duties and the rights, remedies, of patrons of public utilities, and to provide penalties for offenses by public utilities, their officers, agents, and employees, and by other persons and corporations, creating the "railroad commission fund" and appropriating the moneys therein to carry out the provisions of this act, and repealing the railroad commission act, approved February 10, 1911, and also repealing an act entitled "An act to amend the railroad-commission act by amending section 15 thereof relating to powers and duties of the railroad commission of the State of California, and to amend section 37 thereof relating to free and reduced-rate transportation for freight and passengers," approved April 6, 1911, and all acts and parts of acts inconsistent with the provisions of this act.

[Approved December 23, 1911.]

The people of the State of California do enact as follows:

SECTION 1. This act shall be known as the "Public Utilities Act" and shall apply to the public utilities and public services herein described and to the commission herein referred to.

SEC. 2. (*a*) The term "commission," when used in this act, means the railroad commission of the State of California.

(*b*) The term "commissioner," when used in this act, means one of the members of the commission.

(*c*) The term "corporation," when used in this act, includes a corporation, a company, an association, and a joint-stock association.

(*d*) The term "person," when used in this act, includes an individual, a firm, and a copartnership.

(*e*) The term "transportation of persons," when used in this act, includes every service in connection with or incidental to the safety, comfort, or convenience of the person transported and the receipt, carriage, and delivery of such person and his baggage.

(*f*) The term "transportation of property," when used in this act, includes every service in connection with or incidental to the transportation of property, including in particular its receipt, delivery, elevation, transfer, switching, carriage, ventilation, refrigeration, icing, dunnage, storage and handling, and the transmission of credit by express corporations.

(*g*) The term "street railroad," when used in this act, includes every railway, and each and every branch or extension thereof, by whatsoever power operated, being mainly upon, along, above, or below any street, avenue, road, highway, bridge, or public place within any city and county, or city or town, together with all real estate, fixtures and personal property of every kind used in connection therewith, owned, controlled, operated, or managed for public use in the transportation of persons or property; but the term "street railroad," when used in this act, shall not include a railway constituting or used as a part of a commercial or interurban railway.

(*h*) The term "street railroad corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any street railroad for compensation within this State.

(*i*) The term "railroad," when used in this act, includes every commercial, interurban, and other railway other than a street railroad, and each and every branch or extension thereof, by whatsoever power operated, together with all tracks, bridges, trestles, rights of way, subways, tunnels, stations, depots, union depots, ferries, yards, grounds, terminals, terminal facilities, structures, and equipment, and all other real estate, fixtures, and personal property of every kind used in connection therewith, owned, controlled, operated, or managed for public use in the transportation of persons or property.

(*j*) The term "railroad corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any railroad for compensation within this State.

(*k*) The term "express corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, engaged in or transacting the business of transporting any freight, merchandise, or other property for compensation on the line of any common carrier or stage or auto stage line within this State.

(*l*) The term "common carrier," when used in this act, includes every railroad corporation; street-railroad corporation; express corporation; dispatch, sleeping car, dining car, drawing-room car, freight, freight line, refrigerator, oil, stock, fruit, car loaning, car renting, car loading, and every other car corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, operating for compensation within this State; and every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any vessel regularly engaged in the transportation of persons or property for compensation upon the waters of this State or upon the high seas, over regular routes between points within this State.

(*m*) The term "pipe line," when used in this act, includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the transmission, storage, distribution, or delivery of crude oil or other fluid substances except water through pipe lines.

(*n*) The term "pipe-line corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any pipe line for compensation within this State.

(*o*) The terms "gas plant," when used in this act, includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of gas (natural or manufactured) for light, heat, or power.

(*p*) The term "gas corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any gas plant for compensation within this State, except where gas is made or produced on and distributed by the maker or producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

(*q*) The term "electric plant," when used in this act, includes all real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power.

(*r*) The term "electrical corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any electric plant for compensation within this State, except where electricity is generated on or distributed by the producer through private property alone solely for his own use or the use of his tenants and not for sale to others.

(*s*) The term "telephone line," when used in this act, includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.

(*t*) The term "telephone corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any telephone line for compensation within this State.

(*u*) The term "telegraph line," when used in this act, includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telegraph, whether such communication is had with or without the use of transmission wires.

(*v*) The term "telegraph corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any telegraph line for compensation within this State.

(*w*) The term "water system," when used in this act, includes all reservoirs, tunnels, shafts, dams, dikes, head gates, pipes, flumes, canals, structures, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate the diversion, development, storage, supply, distribution, sale, furnishing, carriage, apportionment, or measurement of water for power, irrigation, reclamation, or manufacturing, or for municipal, domestic, or other beneficial use.

(*x*) The term "water corporation," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any water system for compensation within this State.

(*y*) The term "vessel," when used in this act, includes every species of water craft, by whatsoever power operated, which is owned, controlled, operated, or managed for public use in the transportation of persons or property.

(*z*) The term "wharfinger," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any dock, wharf, or structure used by vessels in connection with or to facilitate the receipt or discharge of freight or passengers for compensation within this State.

(*aa*) The term "warehouseman," when used in this act, includes every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any building or structure in which property is regularly stored for compensation within this State, in connection with or to facilitate the transportation of property by a common carrier or vessel, or the loading or unloading of the same, other than a dock, wharf, or structure owned, operated, controlled, or managed by a wharfinger.

(*bb*) The term "public utility," when used in this act, includes every common carrier, pipe-line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, and warehouseman, as those terms are defined in this section, and each thereof is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of this act.

SEC. 3. (*a*) The railroad commission shall consist of five members, who shall be appointed by the governor from the State at large: *Provided*, That the three commissioners in office on the 10th day of October, 1911, shall serve out the term for which they were elected, and that two additional commissioners shall be appointed by the governor, to hold office during the same term. Upon the expiration of said term the term of office of each commissioner thereafter shall be six years, excepting that of the commissioners first appointed after the expiration of said term one shall be appointed to hold office until the 1st day of January, 1917, two until the 1st day of January, 1919, and two until the 1st day of January, 1921. The commissioners shall elect one of their number president of the commission.

(*b*) Whenever a vacancy in the office of commissioner shall occur the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. The legislature, by a two-thirds vote of all members elected to each house, may remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency.

SEC. 4. The commission shall have power to appoint as attorney to the commission an attorney at law of this State, who shall hold office during the pleasure of the commission. It shall be the right and the duty of the attorney to represent and appear for the people of the State of California and the commission in all actions and proceedings involving any question under this act or under any order or act of the commission, and, if directed to do so by the commission, to intervene, if possible, in any action or proceeding in which any such question is involved; to commence, prosecute, and expedite the final determination of all actions and proceedings directed or authorized by the commission; to advise the commission and each commissioner, when so requested, in regard to all matters in connection with the powers and duties of the commission and the members thereof; and generally to perform all duties and services as attorney to the commission which the commission may require of him.

SEC. 5. The commission shall appoint a secretary, who shall hold office during its pleasure. It shall be the duty of the secretary to keep a full and true record of all proceedings of the commission, to issue all necessary process, writs, warrants, and notices, and to perform such other duties as the commission may prescribe. The commission may appoint an assistant secretary, who shall have all the powers conferred by law upon peace officers to carry weapons, make arrests, and serve warrants and other process in any county or city and county of this State.

SEC. 6. The commission shall have power to employ, during its pleasure, such officers, experts, engineers, statisticians, accountants, inspectors, clerks, and employees as it may deem necessary to carry out the provisions of this act or to perform the duties and exercise the powers conferred by law upon the commission.

SEC. 7. Each commissioner and each person appointed to a civil executive office by the commission shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office. Each commissioner shall be a qualified elector of this State, and no person in the employ of or holding any official relation to any corporation or person, which said corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed to or hold the office of commissioner or be appointed or employed by the commission: *Provided*, That if any such person shall become the owner of such stocks or bonds or become pecuniarily interested in such corporation otherwise than voluntarily he shall within a reasonable time divest himself of such ownership or interest; failing to do so, his office or employment shall become vacant.

SEC. 8. (*a*) The office of the commission shall be in the city and county of San Francisco. The office shall always be open, legal holidays and nonjudicial days excepted. The commission shall hold its sessions at least once in each calendar month in said city and county of San Francisco, and may also meet at such other times and in such other places as may be expedient and necessary for the proper performance of its duties. For the purpose of holding sessions in places other than the city and county of San Francisco, the commission shall have power to rent quarters or offices, and the expense thereof and in connection therewith shall be paid in the same manner as other expenses authorized by this act. The sessions of the commission shall be public.

(*b*) The commission shall have a seal, bearing the following inscription: "Railroad Commission, State of California." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct. All courts shall take judicial notice of said seal.

(*c*) The commission is authorized to procure all necessary books, maps, charts, stationery, instruments, office furniture, apparatus, and appliances, and the same shall be paid for in the same manner as other expenses authorized by this act.

SEC. 9. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry, or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the commission, and every finding, order, or decision made by a commissioner so designated pursuant to such investigation, inquiry, or hearing, when approved and confirmed by the commission and ordered filed in its office, shall be and be deemed to be the finding, order, or decision of the commission.

SEC. 10. (*a*) The annual salary of each commissioner shall be six thousand ($6,000) dollars. All officers, experts, engineers, statisticians, accountants, inspectors, clerks, and employees of the commission shall receive such compensation as may be fixed by the commission. The commissioners, attorney, secretary, rate expert, and assistant secretary shall be civil executive officers, and their salaries, as fixed by law or the commission, shall be paid in the same manner as are the salaries of other State officers. The salary or compensation of every other person holding office or employment under the commission shall be paid monthly from the funds appropriated for the use of the commission, after being approved by the commission, upon claims therefor to be audited by the board of control.

(*b*) All expenses incurred by the commission pursuant to the provisions of this act, including the actual and necessary traveling and other expenses and disbursements of the commissioners, their officers, and employees, incurred while on business of the commission, shall be paid from the funds appropriated for the use of the commission, after being approved by the commission, upon claims therefor to be audited by the board of control.

SEC. 11. The commissioners and the officers and employees of the commission shall, when in the performance of their official duties, have the right to pass, free of charge, on all railroads, cars, vessels, and other vehicles of every common carrier, as said term is defined in this act, subject in whole or in part to control or regulation by the commission, between points within this State, and such persons shall not be denied the right to travel upon any railroad, car, vessel, or other vehicle of such common carrier, whether such railroad, car, vessel, or other vehi-

cle be used for the transportation of passengers or freight, and regardless of its class.

SEC. 12. The commission shall make and submit to the governor on or before the first day of December of each year subsequent to the year 1912 a report containing a full and complete account of its transactions and proceedings for the preceding fiscal year, together with such other facts, suggestions, and recommendations as it may deem of value to the people of the State.

SEC. 13. (*a*) All charges made, demanded, or received by any public utility, or by any two or more public utilities, for any product or commodity furnished or to be furnished or any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded, or received for such product or commodity or service is hereby prohibited and declared unlawful.

(*b*) Every public utility shall furnish, provide, and maintain such service, instrumentalities, equipment, and facilities as shall promote the safety, health, comfort, and convenience of its patrons, employees, and the public and as shall be in all respects adequate, efficient, just, and reasonable.

(*c*) All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable.

SEC. 14. (*a*) Every common carrier shall file with the commission and shall print and keep open to the public inspection schedules showing the rates, fares, charges, and classifications for the transportation between termini within this State of persons and property from each point upon its route to all other points thereon; and from each point upon its route to all points upon every other route leased, operated, or controlled by it; and from each point on its route or upon any route leased, operated, or controlled by it to all points upon the route of any other common carrier, whenever a through route and a joint rate shall have been established or ordered between any two such points. If no joint rate over a through route has been established, the schedules of the several carriers in such through route shall show the separately established rates, fares, charges, and classifications applicable to the through transportation. The schedules printed as aforesaid shall plainly state the places between which property and persons will be carried and shall also contain the classification of passengers or property in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the commission may require to be stated, all privileges or facilities granted or allowed, and all rules or regulations which may in any wise change, affect, or determine any part or the aggregate of such rates, fares, charges, and classifications or the value of the service rendered to the passenger, shipper, or consignee. Subject to such rules and regulations as the commission may prescribe, such schedules shall be plainly printed in large type, and a copy thereof shall be kept by every such carrier readily accessible to and for inspection by the public in every station or office of such carrier where passengers or property are respectively received for transportation, when such station or office is in charge of an agent, and in every station or office of such carrier where passenger tickets or tickets for sleeping, parlor car, or other train accommodations are sold or bills of lading or waybills or receipts for property are issued. Any or all of such schedules kept as aforesaid shall be immediately produced by such carrier for inspection upon the demand of any person. A notice printed in bold type and stating that such schedules are on file with the agent and open to inspection by any person, and that the agent will assist any person to determine from such schedules any rates, fares, rules, or regulations in force, shall be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of every such schedule shall be prescribed by the commission and shall conform in the case of common carriers subject to the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, as nearly as may be to the form of schedules prescribed by the Interstate Commerce Commission under said act.

(*b*) Under such rules and regulations as the commission may prescribe, every public utility other than a common carrier shall file with the commission within such time and in such form as the commission may designate, and shall print and keep open to public inspection schedules showing all rates, tolls, rentals, charges, and classifications collected or enforced, or to be collected or enforced, together with all rules, regulations, contracts, privileges, and facilities which in any manner affect or relate to rates, tolls, rentals, classifications, or service The rates, tolls, rentals, and charges shown on such schedules when filed by a public utility as to which the commission by this act acquires the power to fix any rates, tolls, rentals, or charges shall not, within any portion of the territory as to which the commission acquires as to such public utility such power, exceed the rates, tolls, rentals, or charges in effect on the 10th day of October, 1911. The rates, tolls, rentals, and charges shown on such schedules, when filed by any public utility as to any territory as to which the commission does not by this act acquire as to such public utility such power, shall not exceed the rates, tolls, rentals, and charges in effect at the time the commission acquires as to such territory and as to such public utility the power to fix rates, tolls, rentals, or charges. Nothing in this section contained shall prevent the commission from approving or fixing rates, tolls, rentals, or charges from time to time in excess of or less than those shown by said schedules.

(*c*) The commission shall have power from time to time, in its discretion, to determine and prescribe by order such changes in the form of the schedules referred to in this section as it may find expedient, and to modify the requirements of any of its orders, rules, or regulations in respect to any matter in this section referred to.

SEC. 15. Unless the commission otherwise orders, no change shall be made by any public utility in any rate, fare, toll, rental, charge, or classification, or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service, or in any privilege or facility, except after 30 days' notice to the commission and to the public as herein provided. Such notice shall be given by filing with the commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The commission, for good cause shown, may allow changes without requiring the 30 days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take effect and the manner in which they shall be filed and published. When any change is proposed in any rate, fare, toll, rental, charge, or classification, or in any form of contract or agreement, or in any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service, or in any privilege or facility, attention shall be directed to such change on the schedule filed with the commission by some character to be designated by the commission immediately preceding or following the item.

SEC. 16. The names of the several public utilities which are parties to any joint tariff, rate, fare, toll, contract, classification, or charge shall be specified in the schedule or schedules showing the same. Unless otherwise ordered by the commission, a schedule showing such joint tariff, rate, fare, toll, contract, classification, or charge need be filed with the commission by only one of the parties to it: *Provided*, That there is also filed with the commission in such form as the commission may require a concurrence in such joint tariff, rate, fare, toll, contract, classification, or charge by each of the other parties thereto.

SEC. 17. (*a*) 1. No common carrier subject to the provisions of this act shall engage or participate in the transportation of persons or property between points within this State until its schedules of rates, fares, charges, and classifications shall have been filed and published in accordance with the provisions of this act.

2. No common carrier shall charge, demand, collect, or receive a greater or less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, except upon order of the commission as hereinafter provided, nor extend to any corporation or person any privilege or facility in the transportation of passengers or property except such as are regularly and uniformly extended to all corporations and persons.

3. No common carrier subject to the provisions of this act shall, directly or indirectly, issue, give, or tender any free ticket, free pass, or free or reduced-rate transportation for passengers between points within this State, except to its officers, agents, employees, attorneys, physicians, and surgeons, and members of their families; to ministers of religion, traveling secretaries of railroad men's religious associations, or executive officers, organizers, or agents of railroad employees' mutual benefit associations giving the greater portion of their time to the work of any such association; inmates of hospitals or charitable or eleemosynary institutions, and persons exclusively engaged in charitable or eleemosynary work, and persons and property engaged or employed in educational work or scientific research when permitted by the commission; to the executive officers of mercantile or promotion boards or bodies within this State when traveling in the performance of duties affecting the advancement of the business of such boards or bodies, or the development of trade or industry within or without this State, when authorized by the commission; to hotel employees of season resort hotels, when authorized by the commission; to indigent, destitute, and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or State homes for disabled volunteer soldiers and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers, going and returning, of live stock, poultry, milk, fruit, and other freight, under uniform and nondiscriminatory regulations; to employees of sleeping-car corporations, express corporations, and telegraph and telephone corporations; to Railway Mail Service employees, United States internal-revenue officers, post-office inspectors, customs officers and inspectors, and immigration inspectors when traveling in the course of their official duty; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the carrier is interested, persons injured in accidents or wrecks and physicians and nurses attending such persons: *Provided*, That the term "employees" as used in this section shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such carrier, ex-employees traveling for the purpose of entering the service of any such carrier, and the remains of persons dying while in the employment of any such carrier; and the term "families" as used in this section shall include the families of those persons heretofore named in this proviso, the families of persons killed, and the widows during widowhood and minor children during minority of persons who died while in the service of any such carrier: *And provided further*, That no free ticket, free pass, or free or reduced-rate transportation shall be issued, given, or tendered to any officer, agent, or employee of a common carrier, who is at the same time a shipper or receiver of freight, or an officer, agent, or employee of a shipper or receiver of freight, unless such officer, agent, or employee devotes substantially his entire time to the service of such carrier: *And provided further*, That the members of the railroad commission, their officers and employees, shall be entitled, when in the performance of their official duties, to free transportation over the lines of all common carriers within this State: *And provided further*, That passenger transportation may issue to the proprietors and employees of newspapers and magazines and the members of their immediate families, in exchange for advertising space in such newspapers or magazines at full rates, subject, however, to such reasonable restrictions as the commission may impose.

Nothing in this act contained shall be construed to prohibit the issue by express corporations of free or reduced-rate transportation for express matter to their officers, agents, employees, attorneys, physicians, and surgeons, and members of their families, or the interchange of free or reduced-rate transportation for passengers or express matter between common carriers, their officers, agents, employees, attorneys, physicians, and surgeons, and members of their families: *Provided*, That such express matter be for the personal use of the person to or for whom such free or reduced-rate transportation is granted, or of his family; nor to prohibit the issue of passes or franks by telegraph or telephone corporations to their officers, agents, employees, attorneys, physicians, and surgeons, and members of their families, or the exchange of passes or franks between such telegraph and telephone corporations or between such corporations and such common carriers, for their officers, agents, employees, attorneys, physicians, and surgeons, and members of their families; nor to prevent the carrying out of contracts for free or reduced-rate passenger transportation heretofore made, founded upon adequate consideration and lawful when made; nor to prevent a common carrier from transporting, storing, or handling free or at reduced rates the household goods and personal effects of its employees, or persons entering or leaving the service, and of persons killed or dying while in its service.

4. Every common carrier subject to the provisions of this act may transport, free or at reduced rates, persons or property for the United States, State, county or municipal governments, or for charitable purposes, or to provide relief in cases of general epidemic, pestilence, or other calamitous visitation, and property to or from fairs or expositions for exhibit thereat; also contractors and their employees, material or

supplies for use or engaged in carrying out their contracts with said carriers, for construction, operation, or maintenance work or work incidental thereto on the line of the issuing carrier, to the extent only that such free or reduced-rate transportation is provided for in the specifications upon which the contract is based and in the contract itself. Common carriers may also enter into contracts with telegraph and telephone corporations for an exchange of service.

(*b*) Except as in this section otherwise provided, no public utility shall charge, demand, collect, or receive a greater or less or different compensation for any product or commodity furnished or to be furnished, or for any service rendered or to be rendered, than the rates, tolls, rentals, and charges applicable to such product or commodity or service as specified in its schedules on file and in effect at the time, nor shall any such public utility refund or remit, directly or indirectly, in any manner or by any device, any portion of the rates, tolls, rentals, and charges so specified, nor extend to any corporation or person any form of contract or agreement or any rule or regulation or any facility or privilege except such as are regularly and uniformly extended to all corporations and persons: *Provided*, That the commission may by rule or order establish such exceptions from the operation of this prohibition as it may consider just and reasonable as to each public utility.

SEC. 18. Every common carrier and every telegraph and telephone corporation shall print and file or cause to be filed with the commission schedules showing all the rates, fares, tolls, rentals, charges, and classifications for the transportation of persons or property or the transmission of messages or conversations between all points within this State and all points without the State upon its route, and between all points within this State and all points without the State upon every route leased, operated, or controlled by it, and between all points on its route or upon any route, leased, operated, or controlled by it within this State and all points without the State upon the route of any other common carrier or telegraph or telephone corporation, whenever a through route and joint rate shall have been established between any two such points.

SEC. 19. No public utility shall, as to rates, charges, service, facilities, or in any other respect make or grant any preference or advantage to any corporation or person or subject any corporation or person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service. The commission shall have the power to determine any question of fact arising under this section.

SEC. 20. Nothing in this act shall be taken to prohibit any public utility from itself profiting, to the extent permitted by the commission, from any economies, efficiencies, or improvements which it may make, and from distributing by way of dividends, or otherwise disposing of, the profits to which it may be so entitled, and the commission is authorized to make or permit such arrangement or arrangements with any public utility as it may deem wise for the purpose of encouraging economies, efficiencies, or improvements and securing to the public utility making the same such portion, if any, of the profits thereof as the commission may determine.

SEC. 21. Nothing in this act shall be taken to prohibit a corporation or person engaged in the production, generation, transmission, or furnishing of heat, light, water, or power, or telegraph or telephone service, from establishing a sliding scale of charges: *Provided*, That a schedule showing such scale of charges shall first have been filed with the commission and such schedule and each rate set out therein approved by it. Nothing in this act shall be taken to prohibit any such corporation or person from entering into an arrangement for a fixed period for the automatic adjustment of charges for heat, light, water, or power, or telegraph or telephone service, in relation to the dividends to be paid to stockholders of such corporation, or the profit to be realized by such person: *Provided*, That a schedule showing the scale of charges under such arrangement shall first have been filed with the commission and such schedule and each rate set out therein approved by it. Nothing in this section shall prevent the commission from revoking its approval at any time and fixing other rates and charges for the product or commodity or service, as authorized by this act.

SEC. 22. (*a*) Every common carrier shall afford all reasonable, proper, and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage, and cars, loaded or empty, between the lines owned, operated, controlled, or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers, or carriers either as to compensation charged, service rendered, or facilities afforded. Every railroad corporation shall receive from every other railroad corporation at any point of connection freight cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon a line owned, operated, or controlled by such railroad corporation, or to point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.

Nothing in this section contained shall be construed as in any wise limiting or modifying the duty of a common carrier to establish joint rates, fares, and charges for the transportation of passengers and property over the lines owned, operated, controlled, or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares, and charges.

(*b*) Every telephone corporation and telegraph corporation operating in this State shall receive, transmit, and deliver, without discrimination or delay, the conversations and messages of every other telephone or telegraph corporation with whose line a physical connection may have been made.

SEC. 23. (*a*) No common carrier, or any officer or agent thereof, or any person acting for or employed by it, shall, by means of known false billing, classification, weight, weighing, or report of weight, or by any other device or means assist, suffer, or permit any corporation or person to obtain transportation for any person or property between points within this State at less than the rates and fares then established and in force as shown by the schedules filed and in effect at the time. No person, corporation, or any officer, agent, or employee of a corporation shall, by means of false billing, false or incorrect classification, false weight or weighing, false representation as to contents or substance of a package, or false report or statement of weight, or by any other device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agents, or employees, seek to obtain or obtain such transportation for such property at less than the rates then established and in force therefor.

(*b*) No person or corporation, or any officer, agent, or employee of a corporation, shall knowingly, directly or indirectly, by any false statement or representation as to cost or value, or the nature or extent of an injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, or upon any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate, or payment for damage, in connection with or growing out of the transportation of persons or property, or an agreement to transport such persons or property, whether with or without the consent or connivance of a common carrier or any of its officers, agents, or employees, nor shall any common carrier, or any officer, agent, or employee thereof, knowingly pay or offer to pay any such allowance, rebate, or claim for damage.

SEC. 24. (*a*) No common carrier subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transportation of persons or of a like kind of property for a shorter than for a longer distance over the same line or route in the same direction, within this State, the shorter being included within the longer distance, or charge any greater compensation as a through rate than the aggregate of the intermediate rates, but this shall not be construed as authorizing any such common carrier to charge or receive as great a compensation for a shorter as for a longer distance or haul. Upon application to the commission such common carrier may, in special cases, after investigation be authorized by the commission to charge less for a longer than for a shorter distance for the transportation of persons or property, and the commission may from time to time prescribe the extent to which such carrier may be relieved from the operation and requirements of this section.

(*b*) No telephone or telegraph corporation subject to the provisions of this act shall charge or receive any greater compensation in the aggregate for the transmission of any long-distance message or conversation for a shorter than for a longer distance over the same line or route in the same direction within this State, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates or tolls subject to the provisions of this act, but this shall not be construed as authorizing any such telephone or telegraph corporation to charge and receive as great a compensation for a shorter as for a longer distance. Upon application to the commission a telephone or telegraph corporation may, in special cases, after investigation be authorized by the commission to charge less for a longer than for a shorter distance service for the transmission of messages or conversations, and the commission may from time to time prescribe the extent to which such telephone or telegraph corporation may be relieved from the operation and requirements of this section.

SEC. 25. (*a*) Every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, for a connection between the railroad of such railroad corporation and any existing or contemplated private track, tracks, or railroad of such corporation or person, shall make such connection and provide such switches and tracks as may be necessary for that purpose and deliver and receive cars thereover: *Provided*, That such connection is reasonably practicable and can be installed and used without materially increasing the hazard of the operation of the railroad with which such connection is sought, and that the business which may reasonably be expected to be received by such railroad corporation over such connection is sufficient to justify the expense of such connection to such railroad corporation.

(*b*) Under the conditions specified in the proviso in subsection (*a*) hereof, every railroad corporation, upon the application of any corporation or person, being a shipper or receiver or contemplated shipper or receiver of freight, shall construct upon its right of way a spur or spurs for the purpose of receiving and delivering freight thereby, and shall receive and deliver freight thereby.

SEC. 26. No foreign corporation other than those which by a compliance with the laws of this State are entitled to transact a public-utility business within this State shall henceforth transact within this State any public-utility business, nor shall any foreign corporation which is at present lawfully transacting business within this State henceforth transact within this State any public-utility business of a character different from that which it is at present authorized by its charter or articles of incorporation to transact, nor shall any license, permit, or franchise to own, control, operate or manage any public-utility business, or any part or incident thereof, be henceforth granted or transferred, directly or indirectly, to any foreign corporation which is not at present lawfully transacting within this State a public-utility business of like character: *Provided*, That foreign corporations engaging in commerce with foreign nations or commerce among the several States of this Union may transact within this State such commerce and intrastate commerce of a like character.

SEC. 27. No street or interurban railroad corporation shall charge, demand, collect, or receive more than 5 cents for one continuous ride in the same general direction within the corporate limits of any city and county, or city or town, except upon a showing before the commission that such greater charge is justified: *Provided*, That until the decision of the commission upon such showing a street or interurban railroad corporation may continue to demand, collect, and receive the fare in effect on October 10, 1911, or at the time the commission acquires as to such corporation the power to fix fares within such city and county or city or town. Every street or interurban railroad corporation shall, upon such terms as the commission shall find to be just and reasonable, furnish to its passengers transfers entitling them to one continuous trip in the same general direction over and upon the portions of its lines within the same city and county, or city or town, not reached by the originating car.

SEC. 28. (*a*) Every public utility shall furnish to the commission, in such form and such detail as the commission shall prescribe, all tabulations, computations, and all other information required by it to carry into effect any of the provisions of this act, and shall make specific answers to all questions submitted by the commission.

(*b*) Every public utility receiving from the commission any blanks, with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question propounded therein; in case it is unable to answer any question, it shall give a good and sufficient reason for such failure.

(*c*) Whenever required by the commission every public utility shall deliver to the commission copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers, and records in its possession or in any way relating to its property or affecting its business, and also a complete inventory of all its property in such form as the commission may direct.

(*d*) No information furnished to the commission by a public utility, except such matters as are specifically required to be open to public inspection by the provisions of this act, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any officer or employee of the commission who, in violation of the provisions of this subsection, divulges any such information shall be guilty of a misdemeanor.

SEC. 29. Every public utility shall annually furnish to the commission, at such time and in such form as the commission may require, a report in which the utility shall specifically answer all questions propounded by the commission upon or concerning which the commission may desire information. The commission shall have authority to require any public utility to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized by this or any other act to inquire or to keep itself informed or which it is required to enforce. All reports shall be under oath when required by the commission.

SEC. 30. Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule, or regulation made or prescribed by the commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule, or regulation by all of its officers, agents, and employees.

SEC. 31. The railroad commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the State and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

SEC. 32. (*a*) Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, tolls, rentals, charges, or classifications, or any of them, demanded, observed, charged, or collected by any public utility for any service or product or commodity, or in connection therewith, including the rates or fares for execution or commutation tickets, or that the rules, regulations, practices, or contracts, or any of them, affecting such rates, fares, tolls, rentals, charges, or classifications, or any of them, are unjust, unreasonable, discriminatory, or preferential, or in anywise in violation of any provision of law, or that such rates, fares, tolls, rentals, charges, or classifications are insufficient, the commission shall determine the just, reasonable, or sufficient rates, fares, tolls, rentals, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and in force and shall fix the same by order, as hereinafter provided.

(*b*) The commission shall have power, upon a hearing had upon its own motion or upon complaint, to investigate a single rate, fare, toll, rental, charge, classification, rule, regulation, contract, or practice, or any number thereof, or the entire schedule or schedules of rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts, and practices, or any thereof, of any public utility, and to establish new rates, fares, tolls, rentals, charges, classifications, rules, regulations, contracts or practices, or schedule or schedules, in lieu thereof.

SEC. 33. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rates, fares, or charges in force over two or more common carriers between any two points in this State are unjust, unreasonable, or excessive, or that no satisfactory through route or joint rate, fare, or charge exists between such points, and that the public convenience and necessity demand the establishment of a through route and joint rate, fare, or charge between such points, the commission may order such common carriers to establish such through route and may establish and fix a joint rate, fare, or charge which will be fair, just, reasonable, and sufficient, to be followed, charged, enforced, demanded, and collected in the future, and the terms and conditions under which such through route shall be operated. The commission may order that freight moving between such points shall be carried by the different common carriers parties to such through route and joint rate without being transferred from the originating cars. In case the common carriers do not agree upon the division between them of the joint rates, fares, or charges established by the commission over such through routes, the commission shall, after hearing, by supplemental order, establish such division: *Provided*, That where any railroad which is made a party to a through route has itself over its own line an equally satisfactory through route between the termini of the through route established, such railroad shall have the right to require as its division of the joint rate, fare, or charge its local rate, fare, or charge over the portion of its line comprised in such through route, and the commission may, in its discretion, allow to such railroad more than its local rate, fare, or charge whenever it will be equitable so to do. The commission shall have the power to establish and fix through routes and joint rates, fares, or charges over common carriers and stage or auto-stage lines and to fix the division of such joint rates, fares, or charges.

SEC. 34. The commission shall have the power to investigate all existing or proposed interstate rates, fares, tolls, charges, and classifications, and all rules and practices in relation thereto, for or in relation to the transportation of persons or property or the transmission of messages or conversations where any act in relation thereto shall take place within this State; and when the same are, in the opinion of the commission, excessive or discriminatory or in violation of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, or of any other act of Congress, or in conflict with the rulings, orders, or regulations of the Interstate Commerce Commission, the commission may apply, by petition or otherwise, to the Interstate Commerce Commission or to any court of competent jurisdiction for relief.

SEC. 35. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations, practices, equipment, appliances, facilities, or service of any public utility, or the methods of manufacture, distribution, transmission, storage, or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate, or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service, or methods to be observed, furnished, constructed, enforced, or employed and shall fix the same by its order, rule, or regulation. The commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility, and, on proper demand and tender of rates, such public utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

SEC. 36. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements, or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements, or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes, or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes, or new structure or structures which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

SEC. 37. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that any railroad corporation or street railroad corporation does not run a sufficient number of trains or cars, or possess or operate sufficient motive power, reasonably to accommodate the traffic, passenger or freight, transported by or offered for transportation to it, or does not run its trains or cars with sufficient frequency or at a reasonable or proper time having regard to safety, or does not stop the same at proper places, or does not run any train or trains, car or cars, upon a reasonable time schedule for the run, the commission shall have power to make an order directing any such railroad corporation or street railroad corporation to increase the number of its trains or of its cars or its motive power or to change the time for starting its trains or cars or to change the time schedule for the run of any train or car, or to change the stopping place or places thereof, or to make any other order that the commission may determine to be reasonably necessary to accommodate and transport the traffic, passenger or freight, transported or offered for transportation.

SEC. 38. Whenever the commission, after a hearing had upon its own motion or upon complainant, shall find that the public convenience and necessity would be subserved by having connections made between the tracks of any two or more railroad or street railroad corporations, so that cars may readily be transferred from one to the other, at any of the points hereinafter in this section specified, the commission may order any two or more such corporations owning, controlling, operating, or managing tracks of the same gauge to make physical connections at any and all crossings, and at all points where a railroad or street railroad shall begin or terminate or run near to any other railroad or street railroad. After the necessary franchise or permit has been secured from the city and county, or city or town, the commission may likewise order such physicial connection, within such city and county, or city or town, between two or more railroads which enter the limits of the same. The commission shall by order direct whether the expense of the connections referred to in this section shall be borne jointly or otherwise.

SEC. 39. (*a*) Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that application has been made by any corporation or person to a railroad corporation for a connnection or spur as provided in section 25 of this act, and that the railroad corporation has refused to provide such connection or spur and that the applicant is entitled to have the same provided for him under said section 25, the commission shall make an order requiring the providing of such connection or spur and the maintenance and use of the same upon reasonable terms which the commission shall have the power to prescribe. Whenever any such connection or spur has been so provided, any corporation or person shall be entitled to connect with the private track, tracks, or railroad thereby connected with the railroad of the railroad corporation and to use the same or to use the spur so provided upon payment to the party or parties incurring the primary expense of such private track, tracks, or railroad, or the connection therewith or of such spur, of a reasonable proportion of the cost thereof to be determined by the commission after notice to the interested parties and a hearing thereon: *Provided*, That such connection and use can be made without unreasonable interference with the rights of the party or parties incurring such primary expense.

(*b*) The commission shall likewise have the power to require one railroad corporation to switch to private spurs and industrial tracks upon its own railroad the cars of a connecting railroad corporation and to prescribe the terms and compensation for such service.

SEC. 40. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that a physical connection can reasonably be made between the lines of two or more telephone corporations or two or more telegraph corporations whose lines can be made to form a continuous line of communication, by the construction and maintenance of suitable connections for the transfer of messages or conversations, and that public convenience and necessity will be subserved thereby, or shall find that two or more telegraph or telephone corporations have failed to establish joint rates, tolls, or charges for service by or over their said lines, and that joint rates, tolls, or charges ought to be established, the commission may, by its order, require that such connection be made, except where the purpose of such connection is primarily to secure the transmission of local messages or conversations between points within the same city and county, or city or town, and that conversations be transmitted and messages transferred over such connection under such rules and regulations as the commission may establish, and prescribe through lines and joint rates, tolls, and charges to be made, and to be used, observed, and in force in the future. If such telephone or telegraph corporations do not agree upon the division between them of the cost of such physical connection or connections or the division of the joint rates, tolls, or charges established by the commission over such through lines, the commission shall have authority, after further hearing, to establish such division by supplemental order.

SEC. 41. Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes, or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes, or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the

public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes, or other equipment for such damage as may result therefrom to the property of such owner or other users thereof.

SEC. 42. The commission shall have power, after a hearing had upon its own motion or upon complaint, by general or special orders, rules, or regulations, or otherwise, to require every public utility to maintain and operate its line, plant, system, equipment, apparatus, tracks, and premises in such manner as to promote and safeguard the health and safety of its employees, passengers, customers, and the public, and to this end to prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signalling, to establish uniform or other standards of equipment, and to require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand.

SEC. 43. (*a*) No public road, highway, or street shall hereafter be constructed across the track of any railroad corporation at grade, nor shall the track of any railroad corporation be constructed across a public road, highway, or street at grade, nor shall the track of any railroad corporation be constructed across the track of any other railroad or street railroad corporation at grade, nor shall the track of a street railroad corporation be constructed across the track of a raiload corporation at grade, without having, first, secured the permission of the commission: *Provided*, That this subsection shall not apply to the replacement of lawfully existing tracks. The commission shall have the right to refuse its permission or to grant it upon such terms and conditions as it may prescribe.

(*b*) The commission shall have the exclusive power to determine and prescribe the manner, including the particular point of crossing, and the terms of installation, operation, maintenance, use, and protection of each crossing of one railroad by another railroad or street railroad, and of a street railroad by a railroad, and of each crossing of a public road or highway by a railroad or street railroad and of a street by a railroad or vice versa, subject to the provisions of section 2694 of the Political Code, so far as applicable, and to alter or abolish any such crossing, and to require where, in its judgment it would be practicable, a separation of grades at any such crossing heretofore or hereafter established and to prescribe the terms upon which such separation shall be made and the proportions in which the expense of the alteration or abolition of such crossings or the separation of such grades shall be divided between the railroad or street railroad corporations affected or between such corporations and the State, county, municipality, or other public authority in interest.

SEC. 44. The commission shall investigate the cause of all accidents occurring within this State upon the property of any public utility or directly or indirectly arising from or connected with its maintenance or operation, resulting in loss of life or injury to person or property and requiring, in the judgment of the commission, investigation by it, and shall have the power to make such order or recommendation with respect thereto as in its judgment may seem just and reasonable: *Provided*, That neither the order or recommendation of the commission nor any accident report filed with the commission shall be admitted as evidence in any action for damages based on or arising out of the loss of life or injury to person or property in this section referred to. Every public utility is hereby required to file with the commission, under such rules and regulations as the commission may prescribe, a report of each accident so occurring of such kinds or classes as the commission may from time to time designate.

SEC. 45. (*a*) The commission shall have power to provide by proper rules and regulations the time within which all railroad corporations shall furnish, after demand therefor, all cars, equipment, and facilities necessary for the handling of freight in carload and less than carload lots, the time within which consignors or persons ordering cars shall load the same, and the time within which consignees or persons to whom freight may be consigned shall unload and discharge the same and receive freight from the freight rooms, and to provide penalties to be paid for failure on the part of the railroad corporations, consignors, and consignees to conform to such rules. Charges for demurrage shall be uniform so that the same penalty shall be paid by both shipper or consignee and railroad corporation for an equal number of cars for each day for which demurrage is charged.

(*b*) The commission shall also have power to provide the time within which express packages shall be received, gathered, transported, and delivered at destination, and the limits within which express packages shall be gathered and distributed and telegraph and telephone messages delivered without extra charge.

SEC. 46. (*a*) The commission shall have power, after hearing had upon its own motion or upon complaint, to ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed by all electrical, gas, and water corporations; to ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any such public utility; to prescribe reasonable regulations for the examination and testing of such product, commodity, or service, and for the measurement thereof; to establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements; and to provide for the examination and testing of any and all appliances used for the measurement of any product, commodity, or service of any such public utility.

(*b*) The commissioners and their officers and employees shall have power to enter upon any premises occupied by any public utility for the purpose of making the examinations and tests and exercising any of the other powers provided for in this act, and to set up and use on such premises any apparatus and appliances necessary therefor. The agents and employees of such public utility shall have the right to be present at the making of such examinations and tests.

(*c*) Any consumer or user of any product, commodity, or service of a public utility may have any appliance used in the measurement thereof tested upon paying the fees fixed by the commission. The commission shall establish and fix reasonable fees to be paid for testing such appliances on the request of the consumer or user, the fee to be paid by the consumer or user at the time of his request, but to be paid by the public utility and repaid to the consumer or user if the appliance is found defective or incorrect to the disadvantage of the consumer or user, under such rules and regulations as may be prescribed by the commission.

SEC. 47. The commission shall have power to ascertain the value of the property of every public utility in this State and every fact which, in its judgment, may or does have any bearing on such value. The commission shall have power to make revaluations from time to time and to ascertain all new construction, extensions, and additions to the property of every public utility.

SEC. 48. The commission shall have power to establish a system of accounts to be kept by the public utilities subject to its jurisdiction, or to classify said public utilities and to establish a system of accounts for each class, and to prescribe the manner in which such accounts shall be kept. It may also, in its discretion, prescribe the forms of accounts, records, and memoranda to be kept by such public utilities, including the accounts, records, and memoranda of the movement of traffic, as well as the receipts and expenditures of moneys, and any other forms, records, and memoranda which, in the judgment of the commission, may be necessary to carry out any of the provisions of this act. The system of accounts established by the commission and the forms of accounts, records, and memoranda prescribed by it shall not be inconsistent, in the case of corporations subject to the provisions of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, with the systems and forms from time to time established for such corporations by the Interstate Commerce Commission, but nothing herein contained shall affect the power of the commission to prescribe forms of accounts, records, and memoranda covering information in addition to that required by the Interstate Commerce Commission. The commission may, after hearing had upon its own motion or upon complaint, prescribe by order the accounts in which particular outlays and receipts shall be entered, charged, or credited. Where the commission has prescribed the forms of accounts, records, or memoranda to be kept by any public utility for any of its business, it shall thereafter be unlawful for such public utility to keep any accounts, records, or memoranda for such business other than those so prescribed, or those prescribed by or under the authority of any other State or of the United States, excepting such accounts, records, or memoranda as shall be explanatory of and supplemental to the accounts, records, or memoranda prescribed by the commission.

SEC. 49. The commission shall have power, after hearing, to require any or all public utilities to carry a proper and adequate depreciation account in accordance with such rules, regulations, and forms of account as the commission may prescribe. The commission may, from time to time, ascertain and determine and by order fix the proper and adequate rates of depreciation of the several classes of property of each public utility. Each public utility shall conform its depreciation accounts to the rates so ascertained, determined, and fixed, and shall set aside the moneys so provided for out of earnings and carry the same in a depreciation fund and expend such fund only for such purposes and under such rules and regulations, both as to original expenditure and subsequent replacement, as the commission may prescribe. The income from investments of moneys in such fund shall likewise be carried in such fund.

SEC. 50. (*a*) No street railroad corporation, gas corporation, electrical corporation, telephone corporation, or water corporation shall henceforth begin the construction of a street railroad, or of a line, plant, or system, or of any extension of such street railroad, or line, plant, or system, without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction: *Provided*, That this section shall not be construed to require any such corporation to secure such certificate for an extension within any city and county or city or town within which it shall have theretofore lawfully commenced operations, or for an extension into territory either within or without a city and county or city or town contiguous to its street railroad, or line, plant, or system and not theretofore served by a public utility of like character, or for an extension within or to territory already served by it, necessary in the ordinary course of its business: *And provided further*, That if any public utility, in constructing or extending its line, plant, or system, shall interfere or be about to interfere with the operation of the line, plant, or system of any other public utility already constructed, the commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions for the location of the lines, plants, or systems affected as to it may seem just and reasonable.

(*b*) No public utility of a class specified in subsection (*a*) hereof shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted but not heretofore actually exercised, or the exercise of which has been suspended for more than one year, without first having obtained from the commission a certificate that public convenience and necessity require the exercise of such right or privilege: *Provided*, That when the commission shall find, after hearing, that a public utility has heretofore begun actual construction work and is prosecuting such work in good faith uninterruptedly and with reasonable diligence in proportion to the magnitude of the undertaking, under any franchise or permit heretofore granted but not heretofore actually exercised, such public utility may proceed, under such rules and regulations as the commission may prescribe, to the completion of such work, and may, after such completion, exercise such right or privilege: *And provided further*, That this section shall not be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this State.

(*c*) Before any certificate may issue under this section a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the commission. Every applicant for a certificate shall file in the office of the commission such evidence as shall be required by the commission to show that such applicant has received the required consent, franchise, or permit of the proper county, city and county, municipal, or other public authority. The commission shall have power, after hearing, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue it for the construction of a portion only of the contemplated street railroad, line, plant, or system, or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing, but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issue of the certificate. The commission may thereupon make an order declaring that it will thereafter, upon application, under such rules and regulations as it may prescribe, issue the desired certificate, upon such terms and conditions as it may designate, after the public utility has obtained the contemplated franchise or permit. Upon the presentation to the commission of evidence satisfactory to it that such franchise or permit has been secured by such public utility the commission shall thereupon issue such certificate.

SEC. 51. (*a*) No railroad corporation, street railroad corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, or water corporation shall thenceforth sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, or system, necessary or useful in the performance of its duties to the public, or any franchise or permit, or any right thereunder, nor by any means whatsoever, direct or indirect, merge or consolidate its railroad, street railroad, line, plant, or system, or franchises or permits, or any part thereof, with any other public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing the same shall be void. The permission and approval of the commission to the exercise of a franchise or permit under section 50 of this act, or the sale, lease, assignment, mortgage, or other disposition or encumbrance of a franchise or permit under this section shall not be construed to revive or validate any lapsed or invalid franchise or permit, or to enlarge or add to the powers or privileges contained in the grant of any franchise or permit, or to waive any forfeiture. Nothing in this subsection contained shall be construed to prevent the sale, lease, or other disposition by any public utility of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such public utility shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

(*b*) No public utility shall hereafter purchase or acquire, take, or hold any part of the capital stock of any other public utility, organized or existing under or by virtue of the laws of this State without having been first authorized to do so by the commission. Every assignment, transfer, contract, or agreement for assignment or transfer of any stock by or through any person or corporation to any corporation or otherwise in violation of any of the provisions of this section shall be void and of no effect, and no such transfer shall be made on the books of any public utility. Nothing herein contained shall be construed to prevent the holding of stock heretofore lawfully acquired.

SEC. 52. (*a*) The power of public utilities to issue stocks and stock certificates, and bonds, notes, and other evidences of indebtedness and to create liens on their property situated within this State is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall continue to be vested in the State, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe.

(*b*) A public utility may issue stocks and stock certificates, and bonds, notes, and other evidences of indebtedness, payable at periods of more than 12 months after the date thereof, for the following purposes and no others, namely, for the acquisition of property, or for the construction, completion, extension, or improvement of its facilities, or for the improvement or maintenance of its service, or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the public utility not secured by or obtained from the issue of stocks or stock certificates, or bonds, notes, or other evidences of indebtedness of such public utility, within five years next prior to the filing of an application with the commission for the required authorization, for any of the aforesaid purposes except maintenance of service and replacements, in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of moneys so expended and the purposes for which such expenditure was made: *Provided*, That such public utility, in addition to the other requirements of law, shall first have secured from the commission an order authorizing such issue and stating the amount thereof and the purpose or purposes to which the issue or the proceeds thereof are to be applied, and that, in the opinion of the commission, the money, property, or labor to be procured or paid for by such issue is reasonably required for the purpose or purposes specified in the order, and that, except as otherwise permitted in the order in the case of bonds, notes, or other evidences of indebtedness, such purpose or purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income. To enable it to determine whether it will issue such order the commission shall hold a hearing and may make such additional inquiry or investigation, and examine such witnesses, books, papers, documents, and contracts and require the filing of such data as it may deem of assistance. The commission may by its order grant permission for the issue of such stocks or stock certificates, or bonds, notes, or other evidences of indebtedness, in the amount applied for, or in a lesser amount, or not at all, and may attach to the exercise of its permission such condition or conditions as it may deem reasonable and necessary. The commission may authorize issues of bonds, notes, or other evidences of indebtedness less than, equivalent to, or greater than the authorized or subscribed capital stock of a public utility corporation, and the provisions of sections 309 and 456 of the Civil Code of this State, in so far as they contain inhibitions against the creation by corporations of indebtedness, evidenced by bonds, notes, or otherwise, in excess of their total authorized or subscribed capital stock, shall have no application to public utility corporations. No public utility shall, without the consent of the commission, apply the issue of any stock or stock certificate, or bond, note, or other evidence of indebtedness, or any part thereof, or any proceeds thereof, to any purpose not specified in the commission's order or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order or a modification thereof. A public utility may issue notes, for proper purposes and not in violation of any provision of this act or any other act, payable at periods of not more than 12 months after the date of issuance of the same, without the consent of the commission, but no such note shall, in whole or in part, be refunded by any issue of stocks or stock certificates, or of bonds, notes of any term or character, or any other evidence of indebtedness, without the consent of the commission. The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever, or the right to own, operate, or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to a political subdivision thereof as the consideration for the grant of such franchise, permit, or right; nor shall any contract for consolidation or lease be capitalized; nor shall any public utility hereafter issue any bonds, notes, or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger.

(*c*) The commission shall have the power to require public utilities to account for the disposition of the proceeds of all sales of stocks and stock certificates, and bonds, notes, and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order.

(*d*) All stock and every stock certificate, and every bond, note, or other evidence of indebtedness, of a public utility, issued without an order of the commission authorizing the same then in effect, shall be void, and, likewise, all stock and every stock certificate, and every bond, note, or other evidence of indebtedness, of a public utility, issued with the authorization of the commission, but not conforming in its provisions to the provisions, if any, which it is required by the order of authorization of the commission to contain, shall be void; but no failure in any other respect to comply with the terms or conditions of the order of authorization of the commission shall render void any stock or stock certificate, or any bond, note, or other evidence of indebtedness, except as to a corporation or person taking the same otherwise than in good faith and for value and without actual notice.

(*e*) Every public utility which, directly or indirectly, issues or causes to be issued any stock or stock certificate, or bond, note, or other evidence of indebtedness, in nonconformity with the order of the commission authorizing the same, or contrary to the provisions of this act or of the constitution of this State, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes specified in the commission's order, as herein provided, or to any purpose specified in the commission's order in excess of the amount in said order authorized for such purpose, is subject to a penalty of not less than $500 nor more than $20,000 for each offense.

(*f*) Every officer, agent, or employee of a public utility, and every other person who knowingly authorizes, directs, aids in, issues, or executes, or causes to be issued or executed, any stock or stock certificate or bond, note, or other evidence of indebtedness in nonconformity with the order of the commission authorizing the same, or contrary to the provisions of this act or of the constitution of this State, or who, in any proceeding before the commission, knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the commission any false statement or representation, which said statement or representation so made, filed, or caused to be filed may tend in any way to influence the commission to make an order authorizing the issue of any stock or stock certificate or any bond, note, or other evidence of indebtedness, or which results in procuring from the commission the making of any such order, or who, with knowledge that any false statement or representation was made to the commission in any proceeding tending in any way to influence the commission to make such order, issues or executes or negotiates, or causes to be issued, executed, or negotiated, any such stock or stock certificate or bond, note, or other evidence of indebtedness, or who, directly or indirectly, knowingly applies, or causes or assists to be applied, the proceeds, or any part thereof, from the sale of any stock or stock certificate or bond, note, or other evidence of indebtedness to any purpose not specified in the commission's order, or to any purpose specified in the commission's order in excess of the amount authorized for such purpose, or who, with knowledge that any stock or stock certificate or bond, note, or other evidence of indebtedness has been issued or executed in violation of any of the provisions of this act, negotiates, or causes the same to be negotiated, shall be guilty of a felony.

(*g*) No provision of this act, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the State of California to pay or guarantee, in any manner whatsoever, any stock or stock certificate or bond, note, or other evidence of indebtedness authorized, issued, or executed under the provisions of this act.

(*h*) All stocks and stock certificates and bonds, notes, and other evidences of indebtedness issued by any public utility, after this act takes effect, upon the authority of any articles of incorporation or amendments thereto or vote of the stockholders or directors filed, taken, or had, or other proceedings taken or had, previous to the taking effect of this act, shall be void, unless an order of the commission authorizing the issue of such stocks or stock certificates or bonds, notes, or other evidences of indebtedness shall have been obtained from the commission prior to such issue. The commission may by its order impose such condition or conditions as it may deem reasonable and necessary.

SEC. 53. All hearings and investigations before the commission or any commissioner shall be governed by this act and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission nor any commissioner shall be bound by the technical rules of evidence. No informality in any proceeding or in the manner of taking testimony before the commission or any commissioner shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission.

SEC. 54. The commission and each commissioner shall have power to issue writs of summons, subpœnas, warrants of attachment, warrants of commitment, and all necessary process in proceedings for contempt in the like manner and to the same extent as courts of record. The process issued by the commission or any commissioner shall extend to all parts of the State and may be served by any person authorized to serve process of courts of record, or by any person designated for that purpose by the commission or a commissioner. The person executing any such process shall receive such compensation as may be allowed by the commission, not to exceed the fees now prescribed by law for similar services, and such fees shall be paid in the same manner as provided herein for payment of the fees of witnesses.

SEC. 55. (*a*) The commission and each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpœnas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of the State. Each witness who shall appear by order of the commission or a commissioner shall receive for his attendance the same fees and mileage allowed by law to a witness in civil cases, which amount shall be paid by the party at whose request such witness is subpœnaed. When any witness who has not been required to attend at the request of any party shall be subpœnaed by the commission, his fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpœnaed, except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioner as directed in the subpœna. All fees or mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees

are payable. No witness furnished with free transportation shall receive mileage for the distance he may have traveled on such free transportation.

(*b*) The superior court in and for the county, or city and county, in which any inquiry, investigation, hearing, or proceeding may be held by the commission or any commissioner shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, including waybills, books, accounts, and documents, as required by any subpœna issued by the commission or any commissioner. The commission or the commissioner before whom the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by such subpœna, may report to the superior court in and for the county, or city and county, in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or the production of said papers, and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers required by the subpœna, before the commission or commissioner, in the cause or proceeding named in the notice and subpœna, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify or produce said papers before the commission. The court, upon the petition of the commission or such commissioner, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than 10 days from the date of the order, and then and there show cause why he has not attended and testified or produced said papers before the commission. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpœna was regularly issued by the commission or a commissioner the court shall thereupon enter an order that said witness appear before the commission or said commissioner at the time and place fixed in said order, and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court. The remedy provided in this subsection is cumulative, and shall not be construed to impair or interfere with the power of the commission or a commissioner to enforce the attendance of witnesses and the production of papers, and to punish for contempt in the same manner and to the same extent as courts of record.

(*c*) The commission or any commissioner or any party may, in any investigation or hearing before the commission, cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the superior courts of this State, and to that end may compel the attendance of witnesses and the production of books, waybills, documents, papers, and accounts.

(*d*) No person shall be excused from testifying or from producing any book, waybill, document, paper, or account in any investigation or inquiry by or hearing before the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, waybill, document, paper, or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished, or subjected to any penalty or forfeiture for or on account of any act, transaction, matter, or thing concerning which he shall, under oath have testified or produced documentary evidence: *Provided*, That no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. Nothing herein contained shall be construed as in any manner giving to any public utility immunity of any kind.

SEC. 56. (*a*) Copies of all official documents and orders filed or deposited according to law in the office of the commission, certified by a commissioner or by the secretary under the official seal of the commission to be true copies of the originals, shall be evidence in like manner as the originals.

(*b*) Every order, authorization or certificate issued or approved by the commission under any provision of sections 38, 39, 40, 41, 43, 50, 51, or 52 of this act shall be in writing and entered on the records of the commission. Any such order, authorization, or certificate, or a copy thereof, or a copy of the record of any such order, authorization, or certificate, certified by a commissioner or by the secretary under the official seal of the commission to be a true copy of the original order, authorization, certificate, or entry, may be recorded in the office of the recorder of any county, or city and county, in which is located the principal place of business of any public utility affected thereby, or in which is situated any property of any such public utility, and such record shall impart notice of its provisions to all persons. A certificate under the seal of the commission that any such order, authorization, or certificate has not been modified, stayed, suspended, or revoked may also be recorded in the same offices in the same manner and with like effect.

SEC. 57. The commission shall charge and collect the following fees: For copies of papers and records not required to be certified or otherwise authenticated by the commission, 10 cents for each folio; for certified copies of official documents and orders filed in its office, 15 cents for each folio and $1 for every certificate under seal affixed thereto; for certifying a copy of any report made by a public utility, $2; for each certified copy of the annual report of the commission, $1.50; for certified copies of evidence and proceedings before the commission, 15 cents for each folio; for certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, $1 for each $1,000 of the face value of the authorized issue or fraction thereof up to $1,000,000, and 50 cents for each $1,000 over $1,000,000 and up to $10,000,000, and 25 cents for each $1,000 over $10,000,000, with a minimum fee in any case of $250: *Provided*, That no fee shall be required when such issue is made for the purpose of guaranteeing, taking over, refunding, discharging, or retiring any bond, note, or other evidence of indebtedness up to the amount of the issue guaranteed, taken over, refunded, discharged, or retired. No fees shall be charged or collected for copies of papers, records, or official documents furnished to public officers for use in their official capacity, or for the annual reports of the commission in the ordinary course of distribution, but the commission may fix reasonable charges for publications issued under its authority. All fees charged and collected under this section shall be paid at least once each week, accompanied by a detailed statement thereof, into the treasury of the State to the credit of a fund to be known as the railroad commission fund, which fund is hereby created.

SEC. 58. The commission, each commissioner, and each officer and person employed by the commission shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public utility, and the commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths shall have power to examine under oath any officer, agent, or employee of such public utility in relation to the business and affairs of said public utility: *Provided*, That any person other than a commissioner or an officer of the commission demanding such inspection shall produce, under the hand and seal of the commission, his authority to make such inspection: *And provided further*, That a written record of the testimony or statement so given under oath shall be made and filed with the commission.

SEC. 59. The commission may require, by order served on any public utility in the manner provided herein for the service of orders, the production within this State at such time and place as it may designate, of any books, accounts, papers, or records kept by said public utility in any office or place without this State, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the commission or under its direction.

SEC. 60. Complaint may be made by the commission of its own motion or by any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural, or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public utility, including any rule, regulation, or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: *Provided*, That no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless the same be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city and county, or city or town, if any, within which the alleged violation occurred, or not less than 25 consumers or purchasers or prospective consumers or purchasers, of such gas, electricity, water, or telephone service. All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties; and in any review by the courts of orders or decisions of the commission the same rule shall apply with regard to the joinder of causes and parties as herein provided. The commission shall not be required to dismiss any complaint because of the absence of direct damage to the complainant. Upon the filing of a complaint the commission shall cause a copy thereof to be served upon the corporation or person complained of. Service in all hearings, investigations, and proceedings pending before the commission may be made upon any person upon whom a summons may be served in accordance with the provisions of the Code of Civil Procedure of this State, and may be made personally or by mailing in a sealed envelope, registered, with postage prepaid. The commission shall fix the time when and place where a hearing will be had upon the complaint, and shall serve notice thereof, not less than 10 days before the time set for such hearing, unless the commission shall find that public necessity requires that such hearing be held at an earlier date.

SEC. 61. (*a*) At the time fixed for any hearing before the commission or a commissioner, or the time to which the same may have been continued, the complainant and the corporation or person complained of, and such corporations or persons as the commission may allow to intervene, shall be entitled to be heard and to introduce evidence. The commission shall issue process to enforce the attendance of all necessary witnesses. After the conclusion of the hearing the commission shall make and file its order containing its decision. A copy of such order, certified under the seal of the commission, shall be served upon the corporation or person complained of or his or its attorney. Said order shall, of its own force, take effect and become operative 20 days after the service thereof, except as otherwise provided, and shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission. If an order can not, in the judgment of the commission, be complied with within 20 days, the commission may grant and prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission or any commissioner on any formal hearing had and all testimony shall be taken down by a reporter appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order or decision of the commission, a transcript of such testimony, together with all exhibits or copies thereof introduced and all information secured by the commission on its own initiative and considered by it in rendering its order or decision, and of the pleadings, record, and proceedings in the cause shall constitute the record of the commission: *Provided*, That on review of an order or decision of the commission the petitioner and the commission may stipulate that a certain question or questions alone and a specified portion only of the evidence shall be certified to the supreme court for its judgment, whereupon such stipulation and the question or questions and the evidence therein specified shall constitute the record on review.

SEC. 62. Any public utility shall have a right to complain on any of the grounds upon which complaints are allowed to be filed by other parties, and the same procedure shall be adopted and followed as in other cases, except that the complaint may be heard ex parte by the commission or may be served upon any parties designated by the commission.

SEC 63. (*a*) No public utility shall raise any rate, fare, toll, rental, or charge or so alter any classification, contract, practice, rule, or regulation as to result in an increase in any rate, fare, toll, rental, or charge, under any circumstances whatsoever, except upon a showing before the commission and a finding by the commission that such increase is justified.

(*b*) Whenever there shall be filed with the commission any schedule stating an individual or joint rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation, not increasing or resulting in an increase in any rate, fare, toll, rental, or charge, the commission shall have power, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested public utility or utilities, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation, and pending the hearing and the decision thereon such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation shall not go into effect: *Provided*, That the period of suspension of such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation shall not extend beyond 120 days beyond the time when such rate, fare, toll, rental, charge, classification, contract, practice, rule, or regulation would otherwise go into effect unless the commission, in its discretion, extends the period of suspension for a further period not exceeding six months. On such hearing the commission shall establish the rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules,

or regulations proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. All such rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules, or regulations not so suspended shall, on the expiration of 30 days from the time of filing the same with the commission, or of such lesser time as the commission may grant, go into effect and be the established and effective rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules, and regulations, subject to the power of the commission, after a hearing had on its own motion or upon complaint, as herein provided, to alter or modify the same.

SEC. 64. The commission may at any time, upon notice to the public utility affected, and after opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or amending a prior order or decision shall, when served upon the public utility affected, have the same effect as is herein provided for original orders or decisions.

SEC. 65. In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.

SEC. 66. After any order or decision has been made by the commission, any party to the action or proceeding, or any stockholder or bondholder or other party pecuniarily interested in the public utility affected, may apply for a rehearing in respect to any matters determined in said action or proceeding and specified in the application for rehearing, and the commission may grant and hold such rehearing on said matters if in its judgment sufficient reason therefor be made to appear. No cause of action arising out of any order or decision of the commission shall accrue in any court to any corporation or person unless such corporation or person shall have made, before the effective date of said order or decision, application to the commission for a rehearing. Such application shall set forth specifically the ground or grounds on which the applicant considers said decision or order to be unlawful. No corporation or person shall in any court urge or rely on any ground not so set forth in said application. Any application for a rehearing made 10 days or more before the effective date of the order as to which a rehearing is sought shall be either granted or denied before such effective date or the order shall stand suspended until such application is granted or denied. Any application for a rehearing made within less than 10 days before the effective date of the order as to which a rehearing is sought, and not granted within 20 days, may be taken by the party making the application to be denied, unless the effective date of the order is extended for the period of the pendency of the application. If any application for a rehearing be granted without a suspension of the order involved, the commission shall forthwith proceed to hear the matter with all dispatch and shall determine the same within 20 days after final submission, and if such determination is not made within said time, it may be taken by any party to the rehearing that the order involved is affirmed. An application for rehearing shall not excuse any corporation or person from complying with and obeying any order or decision or any requirement of any order or decision of the commission theretofore made or operate in any manner to stay or postpone the enforcement thereof, except in such cases and upon such terms as the commission may by order direct. If, after such rehearing and a consideration of all the facts, including those arising since the making of the order or decision, the commission shall be of the opinion that the original order or decision or any part thereof is in any respect unjust or unwarranted or should be changed, the commission may abrogate, change, or modify the same. An order or decision made after such rehearing abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the commission.

SEC. 67. Within 30 days after the application for a rehearing is denied, or, if the application is granted, then within 30 days after the rendition of the decision on rehearing, the applicant may apply to the supreme court of this State for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than 30 days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day the cause shall be heard by the supreme court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the supreme court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the Constitution of the United States or of the State of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the supreme court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the code of civil procedure of this State relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the supreme court under the provisions of this section. No court of this State (except the supreme court to the extent herein specified) shall have jurisdiction to review, reverse, correct, or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties: *Provided*, That the writ of mandamus shall lie from the supreme court to the commission in all proper cases.

SEC. 68. (*a*) The pendency of a writ of review shall not of itself stay or suspend the operation of the order or decision of the commission, but during the pendency of such writ the supreme court, in its discretion, may stay or suspend, in whole or in part, the operation of the commission's order or decision.

(*b*) No order so staying or suspending an order or decision of the commission shall be made by the supreme court otherwise than upon 3 days' notice and after hearing, and if the order or decision of the commission is suspended the order suspending the same shall contain a specific finding based upon evidence submitted to the court and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner and specifying the nature of the damage.

(*c*) In case the order or decision of the commission is stayed or suspended the order of the court shall not become effective until a suspending bond shall first have been executed and filed with, and approved by the commission (or approved, on review, by the supreme court), payable to the people of the State of California, and sufficient in amount and security to insure the prompt payment, by the party petitioning for the review, of all damages caused by the delay in the enforcement of the order or decision of the commission, and of all moneys which any person or corporation may be compelled to pay, pending the review proceedings, for transportation, transmission, product, commodity, or service in excess of the charges fixed by the order or decision of the commission, in case said order or decision is sustained. The supreme court, in case it stays or suspends the order or decision of the commission in any matter affecting rates, fares, tolls, rentals, charges, or classifications, shall also by order direct the public utility affected to pay into court, from time to time, there to be impounded until the final decision of the case, or into some bank or trust company paying interest on deposits, under such conditions as the court may prescribe, all sums of money which it may collect from any corporation or person in excess of the sum such corporation or person would have been compelled to pay if the order or decision of the commission had not been stayed or suspended.

(*d*) In case the supreme court stays or suspends any order or decision lowering any rate, fare, toll, rental, charge, or classification, the commission, upon the execution and approval of said suspending bond, shall forthwith require the public utility affected, under penalty of the immediate enforcement of the order or decision of the commission (pending the review and notwithstanding the suspending order), to keep such accounts, verified by oath, as may, in the judgment of the commission, suffice to show the amounts being charged or received by such public utility, pending the review, in excess of the charges allowed by the order or decision of the commission, together with the names and addresses of the corporations or persons to whom overcharges will be refundable in case the charges made by the public utility, pending the review, be not sustained by the supreme court. The court may, from time to time, require said party petitioning for a review to give additional security on, or to increase the said suspending bond, whenever in the opinion of the court the same may be necessary to insure the prompt payment of said damages and said overcharges. Upon the final decision by the supreme court all moneys which the public utility may have collected, pending the appeal in excess of those authorized by such final decision, together with interest, in case the court ordered the deposit of such moneys in a bank or trust company, shall be promptly paid to the corporations or persons entitled thereto, in such manner and through such methods of distribution as may be prescribed by the commission. If any such moneys shall not have been claimed by the corporations or persons entitled thereto within one year from the final decision of the supreme court, the commission shall cause notice to such corporations or persons to be given by publication, once a week for two successive weeks, in a newspaper of general circulation, printed and published in the city and county of San Francisco, and such other newspaper or newspapers as may be designated by the commission, said notice to state the names of the corporations or persons entitled to such moneys and the amount due each corporation or person. All moneys not claimed within three months after the publication of said notice shall be paid by the public utility, under the direction of the commission, into the State treasury for the benefit of the general fund.

SEC. 69. All actions and proceedings under this act, and all actions or proceedings to which the commission or the people of the State of California may be parties, and in which any question arises under this act, or under or concerning any order or decision of the commission, shall be preferred over all other civil causes except election causes and shall be heard and determined in preference to all other civil business except election causes, irrespective of position on the calendar. The same preference shall be granted upon application of the attorney of the commission in any action or proceeding in which he may be allowed to intervene.

SEC. 70. For the purpose of ascertaining the matters and things specified in section 47 of this act, concerning the value of the property of public utilities, the commission may cause a hearing or hearings to be held at such time or times and place or places as the commission may designate. Before any hearing is had the commission shall give the public utility affected thereby at least 30 days' written notice, specifying the time and place of such hearing, and such notice shall be sufficient to authorize the commission to inquire into the matters designated in this section and in said section 47 of this act, but this provision shall not prevent the commission from making any preliminary examination or investigation into the matters herein referred to, or from inquiring into such matters in any other investigation or hearing. All public utilities affected shall be entitled to be heard and to introduce evidence at such hearing or hearings. The commission is empowered to resort to any other source of information available. The evidence introduced at such hearing shall be reduced to writing and certified under the seal of the commission. The commission shall make and file its findings of fact in writing upon all matters concerning which evidence shall have been introduced before it which in its judgment have bearing on the value of the property of the public utility affected. Such findings shall be subject to review by the supreme court of this State in the same manner and within the same time as other orders and decisions of the commission. The findings of the commission so made and filed, when properly certified under the seal of the commission, shall be admissible in evidence in any action, proceeding, or hearing before the commission or any court, in which the commission, the State, or any officer, department, or institution thereof, or any county, city and county, municipality, or other body politic and the public utility affected may be interested whether arising under the provisions of this act or otherwise, and such findings, when so introduced, shall be conclusive evidence of the facts therein stated as of the date therein stated under conditions then existing, and such facts can only be controverted by showing a subsequent change in conditions bearing upon the facts therein determined. The commission may, from time to time, cause further hearings and investigations to be had for the purpose of making revaluations or ascertaining the value of any betterments, improvements, additions, or extensions made by any public utility subsequent to any prior hearing or investigation, and may examine into all matters which may change, modify, or affect any finding of fact previously made, and may at such time make findings of fact supplementary to those theretofore made. Such hearings shall be had upon the same notice and be conducted in the same manner, and the findings so made shall have the same force and effect as is provided herein for such original notice, hearing, and findings: *Provided*, That such findings made at such supplemental hearings or investigations shall be considered in connection with and as a part of the original findings except in so far as such supplemental findings shall change or modify the findings made at the original hearing or investigation.

SEC. 71. (*a*) When complaint has been made to the commission concerning any rate, fare, toll, rental, or charge for any product or commodity furnished or service performed by any public utility, and the

commission has found, after investigation, that the public utility has charged an excessive or discriminatory amount for such product, commodity, or service, the commission may order that the public utility make due reparation to the complainant therefor, with interest from the date of collection: *Provided*, No discrimination will result from such reparation.

(*b*) If the public utility does not comply with the order for the payment of reparation within the time specified in such order, suit may be instituted in any court of competent jurisdiction to recover the same. All complaints concerning excessive or discriminatory charges shall be filed with the commission within two years from the time the cause of action accrues, and the petition for the enforcement of the order shall be filed in the court within one year from the date of the order of the commission. The remedy in this section provided shall be cumulative and in addition to any other remedy or remedies in this act provided in case of failure of a public utility to obey an order or decision of the commission.

SEC. 72. It is hereby made the duty of the commission to see that the provisions of the constitution and statutes of this State affecting public utilities, the enforcement of which is not specifically vested in some other officer or tribunal, are enforced and obeyed, and that violations thereof are promptly prosecuted and penalties due the State therefor recovered and collected, and to this end it may sue in the name of the people of the State of California. Upon the request of the commission it shall be the duty of the attorney general or the district attorney of the proper county or city and county to aid in any investigation, hearing, or trial had under the provisions of this act, and to institute and prosecute actions or proceedings for the enforcement of the provisions of the constitution and statutes of this State affecting public utilities and for the punishment of all violations thereof.

SEC. 73. (*a*) In case any public utility shall do, cause to be done, or permit to be done any act, matter, or thing prohibited, forbidden, or declared to be unlawful, or shall omit to do any act, matter, or thing required to be done, either by the constitution, any law of this State, or any order or decision of the commission, such public utility shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom, and if the court shall find that the act or omission was willful, the court may, in addition to the actual damages, award damages for the sake of example and by way of punishment. An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.

(*b*) No recovery as in this section provided shall in any manner affect a recovery by the State of the penalties in this act provided or the exercise by the commission of its power to punish for contempt.

SEC. 74. (*a*) This act shall not have the effect to release or waive any right of action by the State, the commission, or any person or corporation for any right, penalty, or forfeiture which may have arisen or accrued, or may hereafter arise or accrue, under any law of this State.

(*b*) All penalties accruing under this act shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to or affect the recovery of any other penalty or forfeiture, or be a bar to any criminal prosecution against any public utility, or any officer, director, agent, or employee thereof, or any other corporation or person, or be a bar to the exercise by the commission of its power to punish for contempt.

SEC. 75. Whenever the commission shall be of the opinion that any public utility is failing or omitting, or about to fail or omit, to do anything required of it by law, or by any order, decision, rule, direction, or requirement of the commission, or is doing anything, or about to do anything, or permitting anything or about to permit anything to be done contrary to or in violation of law or of any order, decision, rule, direction, or requirement of the commission, it shall direct the attorney of the commission to commence an action or proceeding in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of resides, in the name of the people of the State of California, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney of the commission shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation or threatened violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding 20 days after the service of the copy of the petition, within which the public utility complained of must answer the petition, and in the meantime said public utility may be restrained. In case of default in answer, or after answer, the court shall immediately inquire into the facts and circumstances of the case. Such corporations or persons as the court may deem necessary or proper to be joined as parties in order to make its judgment, order, or writ effective may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction issue or be made permanent as prayed for in the petition, or in such modified or other form as will afford appropriate relief. An appeal may be taken to the supreme court from such final judgment in the same manner and with the same effect, subject to the provisions of this act, as appeals are taken from judgments of the superior court in other actions for mandamus or injunction.

SEC. 76. (*a*) Any public utility which violates or fails to comply with any provision of the constitution of this State or of this act, or which fails, omits, or neglects to obey, observe, or comply with any order, decision, decree, rule, direction, demand, or requirement, or any part or provision thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for such public utility, is subject to a penalty of not less than $500 nor more than $2,000 for each and every offense.

(*b*) Every violation of the provisions of this act or of any order, decision, decree, rule, direction, demand, or requirement of the commission, or any part or portion thereof, by any corporation or person is a separate and distinct offense, and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

(*c*) In construing and enforcing the provisions of this act relating to penalties, the act, omission, or failure of any officer, agent, or employee of any public utility, acting within the scope of his official duties or employment, shall in every case be and be deemed to be the act, omission, or failure of such public utility.

SEC. 77. Every officer, agent, or employee of any public utility who violates or fails to comply with, or who procures, aids, or abets any violation by any public utility of any provision of the constitution of this State or of this act, or who fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement, or any part or provision thereof, of the commission, or who procures, aids, or abets any public utility in its failure to obey, observe, and comply with any such order, decision, rule, direction, demand, or requirement, or any part or provision thereof, in a case in which a penalty has not hereinbefore been provided for such officer, agent, or employee, is guilty of a misdemeanor and is punishable by a fine not exceeding $1,000, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 78. Every corporation other than a public utility which violates any provision of this act, or which fails to obey, observe, or comply with any order, decision, rule, direction, demand, or requirement, or any part or provision thereof, of the commission, in a case in which a penalty has not hereinbefore been provided for such corporation, is subject to a penalty of not less than $500 nor more than $2,000 for each and every offense.

SEC. 79. Every person who, either individually or acting as an officer, agent, or employee of a corporation other than a public utility, violates any provision of this act or fails to observe, obey, or comply with any order, decision, rule, direction, demand, or requirement, or any part or portion thereof, of the commission, or who procures, aids, or abets any such public utility in its violation of this act or in its failure to obey, observe, or comply with any such order, decision, rule, direction, demand, or requirement, or any part or portion thereof, in a case in which a penalty has not hereinbefore been provided for such person is guilty of a misdemeanor, and is punishable by a fine not exceeding $1,000, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 80. Actions to recover penalties under this act shall be brought in the name of the people of the State of California in the superior court in and for the county, or city and county, in which the cause or some part thereof arose, or in which the corporation complained of, if any, has its principal place of business, or in which the person, if any, complained of, resides. Such action shall be commenced and prosecuted to final judgment by the attorney of the commission. In any such action all penalties incurred up to the time of commencing the same may be sued for and recovered. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State in any such action, together with the costs thereof, shall be paid into the State treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order.

SEC. 81. Every public utility, corporation, or person which shall fail to observe, obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement, or any part or portion thereof, of the commission or any commissioner shall be in contempt of the commission, and shall be punishable by the commission for contempt in the same manner and to the same extent as contempt is punished by courts of record. The remedy prescribed in this section shall not be a bar to or affect any other remedy prescribed in this act, but shall be cumulative and in addition to such other remedy or remedies.

SEC. 82. This act shall not affect such powers of control over any public utility vested in any city and county or incorporated city or town as at an election to be held pursuant to laws to be hereafter passed by the legislature, a majority of the qualified electors voting thereon of such city and county, or incorporated city or town, shall vote to retain, and until such election such powers shall continue unimpaired in such city and county or incorporated city or town; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the commission: *Provided*, That where any such city and county or incorporated city or town shall have elected to continue any powers respecting public utilities it may, by a vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the commission in the manner to be prescribed by the legislature; or if such municipal corporation shall have surrendered any powers to the commission it may by like vote thereafter reinvest itself with such power.

SEC. 83 (*a*) This act shall not affect pending actions or proceedings brought by or against the people of the State of California or the commission, or by any other person or corporation under the provisions of chapters 20 or 386 of the laws of 1911, but the same may be prosecuted and defended with the same effect as though this act had not been passed. Any investigation, hearing, or examination undertaken, commenced, instituted, or prosecuted prior to the taking effect of this act may be conducted and continued to a final determination in the same manner and with the same effect as if it had been undertaken, commenced, instituted, or prosecuted in accordance with the provisions of this act. All proceedings hitherto taken by the commission in any such investigation, hearing, or examination are hereby ratified, approved, validated, and confirmed, and all such proceedings shall have the same force and effect as if they had been undertaken, commenced, instituted, and prosecuted under the provisions of this act and in the manner herein prescribed.

(*b*) No cause of action arising under the provisions of chapters 20 or 386 of the laws of 1911 shall abate by reason of the passage of this act, whether a suit or action has been instituted thereon at the time of the taking effect of this act or not, but actions may be brought upon such causes in the same manner, under the same terms and conditions, and with the same effect as though said chapters had not been repealed.

(*c*) All orders, decisions, rules, or regulations heretofore made, issued, or promulgated by the commission shall continue in force and have the same effect as though they had been lawfully made, issued, or promulgated under the provisions of this act.

(*d*) This act, in so far as it embraces the same subject matter, shall be construed as a continuation of chapter 20 of the Laws of 1911, approved February 10, 1911, and chapter 386 of the Laws of 1911, approved April 6, 1911.

SEC. 84. If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

SEC. 85. Neither this act nor any provision thereof, except when specifically so stated, shall apply or be construed to apply to commerce with foreign nations or commerce among the several States of this Union, except in so far as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

SEC. 86. All moneys which are paid into the State treasury by the commission up to and including the 30th day of June, 1913, under the provisions of section 57 of this act and credited to the railroad-commission fund are hereby appropriated to be used by the commission in carrying out the provisions of this act, and the controller is hereby directed to draw his warrant on said fund from time to time in favor of the commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same.

SEC. 87. The railroad-commission act approved February 10, 1911, and the act entitled "An act to amend the railroad-commission act by amending section 15 thereof, relating to powers and duties of the railroad commission of the State of California, and to amend section 37 thereof, relating to free and reduced-rate transportation for freight and passengers," approved April 6, 1911, and all acts or parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 88. This act shall take effect 90 days after the final adjournment of this session of the legislature.

EXHIBIT E.

COPIES OF RIGHT-OF-WAY STATUTES—RIGHT-OF-WAY ACT OF 1866.

The act of July 26, 1866 (14 Stat. L., 253), was entitled "An act granting the right of way to ditch and canal owners over the public lands, and for other purposes."

This legislation has since been embodied in the Revised Statutes as sections 2339 and 2340, which provide:

"SEC. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

"SEC. 2340. All patents granted or preemption or homesteads allowed shall be subject to any vested and accrued water rights or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by the preceding section."

RIGHT-OF-WAY ACT OF MARCH 3, 1891.

(26 Stat. L., 1095, 1101, 1102.)

Sections 18 to 21, inclusive, of this act provide:

"SEC. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation and duly organized under the laws of any State or Territory, which shall have filed or may hereafter file with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and 50 feet on each side of the marginal limits thereof; also, the right to take from the public lands adjacent to the line of the canal or ditch material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation by the Government of any such reservation, and all maps of location shall be subject to the approval of the department of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

"SEC. 19. That any canal or ditch company desiring to secure the benefits of this act shall within 12 months after the location of 10 miles of its canal, if the same be upon surveyed lands and if upon unsurveyed lands, within 12 months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch, or reservoir, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

"SEC. 20. That the provisions of this act shall apply to all canals, ditches, or reservoirs heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals, on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior and with the register of the land office where said land is located a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it: *Provided*, That if any section of said canal or ditch shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

"SEC. 21. That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch."

NOTE.—It was held by the United States Supreme Court, under the railroad right-of-way act of March 3, 1875 (18 Stat. L., 482), that construction is equivalent for every purpose to the filing and approval of maps and plats. The two acts are practically identical in language, and therefore the Department of the Interior has held repeatedly that actual construction under the foregoing act vests in irrigation companies complete legal title to their rights of way in advance of and irrespective of the filing or approval of any plats or maps. (See Jamestown & Northern Railroad Co. *v.* Jones (177 U. S., 125), De Weese *v.* Henry Investment Co. (39 L. D., 27).)

RIGHT-OF-WAY ACT OF JANUARY 21, 1895.

(28 Stat. L., 635.)

That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of the right of way through the public lands of the United States not within the limits of any park, forest, military, or Indian reservation for tramroads, canals, or reservoirs, to the extent of the ground occupied by the water of the canals and reservoirs and 50 feet on each side of the marginal limits thereof, or 50 feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber.

RIGHT-OF-WAY ACT OF MAY 14, 1896.

(29 Stat. L., 120.)

That the act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January 21, 1895, be, and the same is hereby, amended by adding thereto the following:

"SEC. 2. That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way to the extent of 25 feet, together with the use of necessary ground, not exceeding 40 acres, upon the public lands and forest reservations of the United States by any citizen or association of citizens of the United States, for the purpose of generating, manufacturing, or distributing electric power."

RIGHT-OF-WAY ACT OF MAY 11, 1898.

(30 Stat. L., 404.)

That the act entitled "An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes," approved January 21, 1895, be, and the same is hereby, amended by adding thereto the following:

"That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way upon the public lands of the United States not within the limits of any park, forest, military, or Indian reservations, for tramways, canals, or reservoirs, to the extent of the ground occupied by the water canals and reservoirs and 50 feet on each side of the marginal limits thereof, or 50 feet on each side of the center line of the tramroad, by any citizen or association of citizens of the United States, for the purposes of furnishing water for domestic, public, and other beneficial uses.

"SEC. 2. That the rights of way for ditches, canals, or reservoirs heretofore or hereafter approved under the provisions of sections 18, 19, 20, and 21 of the act entitled 'An act to repeal timber-culture laws, and for other purposes,' approved March 3, 1891, may be used for purposes of a public nature; and said rights of way may be used for purposes of water transportation, for domestic purposes, or for the development of power as subsidiary to the main purpose of irrigation."

PERMIT ACT OF FEBRUARY 15, 1901.

(31 Stat. L., 790.)

That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of rights of way through the public lands, forest, and other reservations of the United States, and the Yosemite, Sequoia, and General Grant National Parks, Cal., for electrical plants, poles, and lines for the generation and distribution of electrical power, and for telephone and telegraph purposes, and for canals, ditches, pipes and pipe lines, flumes, tunnels, or other water conduits, and for water plants, dams, and reservoirs used to promote irrigation or mining or quarrying, or the manufacturing or cutting of timber or lumber, or the supplying of water for domestic, public, or any other beneficial uses to the extent of the ground occupied by such canals, ditches, flumes, tunnels, reservoirs, or other water conduits or water plants, or electrical or other works permitted hereunder, and not to exceed 50 feet on each side of the marginal limits thereof, or not to exceed 50 feet on each side of the center line of such pipes and pipe lines, electrical, telegraph, and telephone lines and poles, by any citizen, association, or corporation of the United States, where it is intended by such to exercise the use permitted hereunder or any one or more of the purposes herein named: *Provided*, That such permits shall be allowed within or through any of said parks or any forest, military, Indian, or other reservation only upon the approval of the chief officer of the department under whose supervision such park or reservation falls and upon a finding by him that the same is not incompatible with the public interest: *Provided further*, That all permits given hereunder for telegraph or telephone purposes shall be subject to the provision of title 65 of the Revised Statutes of the United States, and amendments thereto, regulating rights of way for telegraph companies over the public domain: *And provided further*, That any permission given by the Secretary of the Interior under the provisions of this act may be revoked by him or his successor in his discretion, and shall not be held to confer any right or easement, or interest in, to, or over any public land, reservation, or park.

RIGHT-OF-WAY ACT OF FEBRUARY 1, 1905.

(33 Stat. L., 628.)

This is the Forest Service transfer act, which transferred that service from the Department of the Interior to the Department of Agriculture. Section 4 of the act provides:

"SEC. 4. That rights of way for the construction and maintenance of dams, reservoirs, water plants, ditches, flumes, pipes, tunnels, and canals within and across the forest reserves of the United States are hereby granted to citizens and corporations of the United States for municipal or mining purposes and for the purposes of the milling and reduction of ores during the period of their beneficial use under such rules and regulations as may be prescribed by the Secretary of the Interior and subject to the laws of the State or Territory in which said reserves are respectively situated."

WATER-RIGHT ACT OF MARCH 3, 1877.

(19 Stat. L., 377.)

The first section provided for the preemption of desert lands. It then provided:

"*Provided, however*, That the right to the use of the water by the person so taking the same on or to any tract of desert land of 640 acres shall depend upon bona fide prior appropriation, and such right shall not exceed the actual amount of water appropriated and necessarily used for the purposes of irrigation and reclamation.

"And all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of supply upon the public lands and not available, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes, subject to existing rights."

WATER RIGHTS WITHIN FOREST RESERVATIONS.

The Forest Service administration act of June 4, 1897 (30 Stat. L., 11, 36), provides:

"All waters on such reservations may be used for domestic, mining, milling, or irrigation purposes under the laws of the State wherein such forest reservations are situated or under the laws of the United States and the rules and regulations established thereunder."

Mr. HAYES. Mr. Chairman——

The CHAIRMAN. The gentleman from California is recognized.

Mr. HAYES. Mr. Chairman——

Mr. MANN. Mr. Chairman, how did the gentleman from California [Mr. HAYES] get the floor?

The CHAIRMAN. I recognized him.

Mr. MANN. The Chair has not the right to recognize two gentlemen on the same side of the question.

The CHAIRMAN. The Chair was not informed as to how the gentleman from California [Mr. HAYES] stood. Is the gentleman from California opposed to the bill?

Mr. HAYES. No; I am in favor of the bill.

Mr. FERRIS. Mr. Chairman, I desire to make the motion that the committee do now rise. It is apparent that we shall not finish the bill to-night, and I understand that a number of gentlemen on the other side want to be heard. I move that the committee do now rise.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. SISSON, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill (H. R. 12572) for the relief of the Hydro-Electric Co. of California, and had come to no resolution thereon.

Mr. PALMER. Mr. Speaker, I move that the House do now adjourn.

ARGUMENT ON INJUNCTION IN LABOR DISPUTES BEFORE JUDICIARY COMMITTEE, 1904.

Mr. HUGHES of New Jersey. Mr. Speaker, pending that motion, I desire to submit the following statement on the subject of injunction legislation.

The SPEAKER. The gentleman from New Jersey asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. HUGHES of New Jersey. This is the statement:

STATEMENT OF MR. A. FURUSETH, REPRESENTING THE INTERNATIONAL SEAMEN'S UNION OF AMERICA.

"Mr. Chairman and gentlemen of the committee, the contention that has been brought here and which I am here now to dispute is that there is a property right in labor.

"This bill and the hearings thereon bring to your attention a conflict which is but another phase of that oldest of struggles in human society, the struggle between the house of Have and the house of Want; on the part of labor the cry for freedom, on the part of capital the argument of necessity.

"There are some positions taken by the employers and their attorneys which, to say the least, will be startling reading for thoughtful men, and which, properly considered, will bring the public to our side as surely as the American public mind is yet of the opinion which made this country pour out its blood and treasure to abolish the ownership of man by man in any sense.

"What is the strife between employers and employees? It is usually called the labor question. What is it? What does it mean?

"In the old Roman world, from which we obtain many of our ideas, especially our ideas about law, and certainly our injunctions, the basic principle was autocracy or absolutism—absolutism in religion, absolutism in the state, and absolutism in industry. The whole philosophy of life was in the concept that there were sons of the gods to teach, to govern, to pray; and sons of the earth, without souls, to be saved or damned, to be taught, to be governed, to be preyed upon. Into this came the teachings of the Christ, the concept that there is but one God and that all men are His children, equal heirs to all the bounties of the Father. We have been taught to pray, 'Thy kingdom come, Thy will be done, as in heaven so also on earth.' We have been taught to bear each other's burden; that God is no respecter of persons; that each will be responsible for his own acts, and so forth.

"It took some fifteen hundred years of intense struggle, expressing itself through organizations based upon religious discontent, to establish religious freedom. It took 300 more years for organizations based upon political discontent to give us such political freedom as we now have. And the labor movement is but this fundamental Christian idea taking hold of the industrial field in an endeavor to transform it into its own image. This, gentlemen, is, in short, the labor movement. Absolutism has been removed from church and the state; it yet holds full sway in industry. Yet the employer says, 'This is my business; I am this business.' Like the dictum of Louis the Fourteenth, 'I am the state.' We of the labor movement dispute this. We hold that since the business can not exist without the worker, he has something to say, or should have something to say, about it. We do not claim that we are always right in what we say, but since the toiler can not be divorced from his labor power, the claim set up here of a vested right in so much labor power as will make a plant profitable is not only un-Christian but un-American.

"This evolution toward 'The Kingdom' meets on the industrial field a most formidable power. There are plants which employ in different ways 150,000 men. Allowing 5 to a family, this means 750,000 men, women, and children. The owner or owners claim the right to determine the hours of labor, which means what time the employee may be with his family. They claim the sole right to determine wages. This means the power to say in what kind of house the worker shall live, what kind of clothing shall be worn by his wife and children, what shall be their food, what kind of education they shall gain, what character shall be developed by the rising generation. The power of kings is as nothing to this. Kingly power only touches the life of the people in spots—at intervals. Here is a power which goes into the very essence of life, and at no time in the history of the Gotho-Germanic race was such a power vested in individual man. As it has grown it has sought to control the political action of the workmen subject to it, and did so control it that it was necessary to make the ballot secret. It controls in a measure the legal profession through patronage and place; the newspapers, through their advertising columns; the churches, through the pew; the institutions of learning, through endowments; and the jury system is threatened through an unwarranted use of the writ of injunction—nay, we have found judges who were not proof against this power and who have used their holy office contrary to the settled law. Thus the virus of industrial absolutism is burrowing through every safeguard and filling the holes with maggots of its own making.

"What can the working class do? In the developments and the law, of which we complain, we are considered and treated as a class. Here is a power which watches over us in the shop, at our home, at our evening meeting, and at the polls. To incur its displeasure means discharge, and this means the finding, if we can, employment in some other line of industry and loss of such value as our acquired skill may have.

"We apply the lessons, taught us by the animals, of 'mutual aid.' We come together for protection and endeavor to put into practice the instruction 'to bear each other's burden,' but are promptly met by an order from the court under which this is called 'conspiracy'; and the oldest of Saxon rights, the trial by jury, is swept away.

"Not that all our employers act thus. Many, nay, perhaps a majority, would have it otherwise; but they have to keep up with the procession or go out of business.

"We exercise the right of assembly; we discuss our grievances; we appoint our committee and respectfully submit our petition for redress; and we are told that Jones, Smith & Co. would gladly grant our petition, but there is Hogg, Hunger & Co. working one hour more per day now and paying less wages. Jones, Smith & Co. can not grant our request. It would mean going out of business. We know that there is some truth in this statement, and we set aside a few cents per week, and after a while we send somebody to the employees of Hogg, Hunger & Co. to inform them that we and they may have better conditions if they will make common cause, and that we have saved together a few dollars which we will share with them in feeding the little ones if they will stand in. They weigh the chances of success or failure and determine to risk all in an effort to better the condition of themselves and those dependent on them. Their petition is presented to their employers, who promptly refuse even to consider it.

"The employers are that business, and the mere presenting of the petition is to dispute their authority. The bearers of the petition are promptly dismissed from the service. Then follows a strike—a refusal to furnish the labor power, without which the great plant is of no value. Working people far and near are notified of the strike and requested to keep away; pickets are placed to inform those who come and may have heard nothing or who may have been influenced by some false statement from the agents sent out by the company to find men. A vacant lot near the plant is handy. The strikers obtain permission to occupy it, and they establish a camp, where they are together, encourage each other, watch each other and the men going into the plant. They do not destroy tangible property or

assault the men; but their presence, the look of reproach on the faces, and the knowledge of why they are out of work quicken the conscience of those at work, and they, too, quit.

"This, gentlemen of the committee, was the development up to and including the situation at the Collins Colliery Co. in West Virginia when that corporation submitted its petition to the court for an injunction. It illustrates, as well as I can, the whole movement in the general lines upon which it develops. The 'fear of want,' which appears in every step, is not given the weight to which it is entitled; but it follows every step, like the shark follows the ship in distress. In every strike hope had conquered fear when the petition was presented.

"The Collins Colliery Co., finding the men leaving its employ, goes into court and sets forth that it has a coal plant in which it has invested $250,000, upon which it must pay $10,000 per annum as royalty. It has a market in several States; it is under contract to deliver the coal, but can not, because the laborers, for reasons of their own, refuse to work. True, their reasons for quitting were given, so were the conditions upon which they would continue; but in place of dealing with the men the company now comes to the court. The company figured on the labor supply being there when it invested its money and assumed obligations. The investment, plant, and contracts give to the company a vested right in necessary labor supply with which to operate the plant, which will otherwise 'lie idle and deteriorate in value.'

"Its real stock in trade was the labor, and since labor can not be divorced from the laborer it was in the laborers. There was no rioting, no disturbance of peace, of which the peace officers of the country could take cognizance; there was no tangible property destroyed. The earning power of the plant had passed, or was about to pass, and the court was appealed to to protect that kind of property. The court took the view of the company and issued the injunction. That this was an assertion that property right in labor went with the ownership of the mine, and that this property right on the part of the mine owner destroyed the property right of the miner himself and put him outside the Bill of Rights never occurred to the judge. These men had done nothing but meeting, marching, persuading, inducing, and making 'inflammatory speeches,' and this they had done many times before—nay, prior to election they had done it under fear of discharge and want if refusing.

"I have said that the court destroyed the property right of the miners in themselves. Is there any law permitting any judge, or is there any inherent power in any judge, to prevent one freeman from inducing another freeman to do what he has a legal right to do, unless such action would destroy the vested right of some third person? John Doe, who is working for Hogg, Hunger & Co., has the right to quit work; but in so doing he exposes himself and family to want, and hence he continues at work. The employees of Jones, Smith & Co. offer to share with them their savings, to give them food and shelter, and the court steps in and forbids. John Doe and his family are isolated and must continue in the employ of Hogg, Hunger & Co. against their will. The court has, by preventing help coming to them, accomplished by indirection what it could not do directly.

"If Hogg, Hunger & Co. has no property right in John Doe—if John Doe is a freeman—why can he not be advised, persuaded, and helped? Again, if Jones, Smith & Co. should offer to John Doe a place in their employ, John may leave and accept the new employment. So that, as against some other employer, there is no vested right in the wage earner. The employers are on an equality as to him, and he may go from one to the other. He has the right to choose a new master if he can find one; but he may not be given such assistance as will enable him to refuse to work at all unless the employer can find somebody to take his place, keep the business going, and thus prevent the plant from being idle and deteriorating. If he be free, if his body be his own, by what right is his coming and going obstructed? That the obstruction comes through depriving him of the means to move and is indirect makes it no whit less effective, no less real. If he be part of that business, if the plant has a property right in him, then the whole proceeding is logical and right. Upon any other concept how can this be defended?

"As citizens he and his fellows are under the protection of the Bill of Rights; as workmen they are property—not as individuals, no; but as a class, yes. Is this American? We hold that the workman is merged in the citizen and that the Declaration of Independence issued 'in decent respect to the opinions of mankind,' where it says that 'All men are created equal and are by their Creator endowed with certain inalienable rights, among which are life, liberty, and the pursuit of happiness,' meant then and means now what it says, and that the wage earner is no exception. We maintain that the equal protection of the bill of rights and the laws to all men, regardless of their station, is the American idea. We claim no immunity from any law; we claim the same right to be considered innocent until proven guilty as other citizens; that we shall be held, as other men, to be law-abiding.

"Would anybody dream of protecting the earning power of a small store by getting out an injunction against the department store? Why not serve us with an injunction forbidding us to transfer our patronage from one store to another? Is it because they both have a vested right in our patronage that we may not combine to withhold it from either? Yet these absurdities, these invasions of our right to individual liberty, this claim of vested right in our labor and our patronage are gravely called by employers their 'property rights,' which must be protected by injunction. They organize a society to take the place of the State in enforcing the law, and send their delegates here to file an indictment against the system of government, preparatory to, as they threaten, taking the law into their own hands if the Congress shall refuse to sustain their new American claim to property right in the labor of the wage earner.

"There are two thoughts growing in our industrial life equally unreasonable and dangerous, that the employer has a property right in the labor of his workmen and that the employee has some kind of property right in his job. If there should be any such right as last mentioned it would naturally follow that the job has some right in the employee, and the workman who sets up such claim is selling his birthright for a mess of pottage.

"In their essence these claims are socialistic. It is these claims accepted that from the basis of the theories of State socialism. And yet when we ask that the Congress shall pass a bill which will protect the employer and employee alike, the employers pronounce it socialistic and dub us Socialists.

"Nor is there the slightest possibility of any such claims being considered for a moment. Is there a 'right to work'? If so, it must be based upon the 'right to life' and run against the State, which in protecting and making such right effective is bound under the same declaration to do so without in any way destroying the 'right to liberty,' which is on an exact equality with the 'right to life' in that instrument. Such right is an individual right. Labor is an attribute of life, inseparable therefrom, hence is life.

"Property is something which we may acquire, possess, and part with. It may be contracted away; it may be alienated; it may be destroyed without destroying the possessor. Labor is therefore not property in which some other person may acquire a property right which will give him a standing in an equity court. That no such property right exists was decided by the Supreme Court of Massachusetts in December, 1892.

"In Worthington *v.* Waring (157 Mass., 421, December, 1892), laborers who had been employed in a mill in Fall River and had left because they could not obtain higher wages, brought a bill against the treasurer and superintendent of the corporation, the employment of which they had left, and officers of other mills, charging that these officers had conspired together and put the names of the plaintiffs upon a 'blacklist,' stating that the petitioners had been engaged in a strike, and had induced all employers of their kind of labor in Fall River to refuse to employ them—

"with intent to compel them either to go without work in Fall River or to go back to work for the corporation, the employment of which they had left, at such wages as that corporation should see fit to pay them—

"And asked that the defendants be restrained—

"from annoying the petitioners and interfering with their rights to earn their livelihood at their trade in Fall River, and to withdraw and destroy all blacklists or other devices used by the defandants or under their orders for that purpose.

"To this the court said that if the petition charged a conspiracy, which was a misdemeanor at common law, the remedy was by indictment; and if the injury caused to the petitioners by the conduct of the defendants constituted a cause of action, the remedy was 'by an action of tort to be brought by each petitioner separately.' The court then said that while—

"courts of equity often protect property from threatened injury when the rights of property are equitable, or when, although the rights are legal, the civil and criminal remedies at common law are not adequate, but the rights which the petitioners allege the defendants were violating at the time the petition was filed are personal rights, as distinguished from the rights of property—

"and, therefore, the court declined to entertain the petition.

"Being personal rights, as distinct from property rights, when not contracted away, and as such incapable of being protected by a court of equity, the laborer can not assign a right which he does not possess, hence a contract to labor will give no right in the laborer which can be enforced in equity.

"We thus come back to the one fundamental question: 'Is there going along with the ownership of the mine, factory, or

means of transportation a vested right in so much labor as is needed to make it profitable?'

"If such right exists, whence is it obtained? It surely is contrary to the thirteenth amendment of the Constitution. If any such right runs against us as a class, upon what members of the class can it be enforced?

"The employers and business men, who come here in good faith and make this claim of vested right in our labor and our patronage, are perhaps not much to be blamed. They find this idea expressing itself in the capitalization of the earning power of great enterprises; they have possibly paid good money for stocks and bonds, which are nothing but a mortgage upon the labor of the future. We learn from our industrial superiors; they from their financial principals. But that some of their attorneys should take the same position is a matter of some surprise and apprehension, to me at least.

"Can it be possible that these attorneys hold such contention to be sound? Through all the testimony and arguments there seems to run this idea of vested right in so much labor power as will run the plant, except in the argument of Mr. Bond, who recognized that such right does not exist and who mourns that fact.

"They urge with apparent sincerity the bill be not passed, because it will put a blot upon the judiciary, while they in the same breath claim that the whole machinery for the administration of justice and keeping the peace has broken down.

"They say that the police will not arrest, and when they do the police judge will not convict, or if he will convict, the accused will ask for a jury, and on it will be one or two members of the unions, conviction failing, and you have your labor for your pains.

"According to this the citizen is, by his occupation as a wage earner, so warped in judgment and tainted morally that he can not be trusted as a juror if one of his own class is to be tried. As this unfitness is based on moral turpitude, it follows that his testimony as a witness is of no value and must therefore be rejected. This is entirely consistent with the claim that he is property. The slave never could testify against his owner nor against the owner's equals. His evidence could be and was taken by the master against a fellow serf or slave, and so it is now with the wage earner. The employing corporation goes into court, and, to quote from the petition of the coal corporation already mentioned, says:

"That the remainder of the miners and employees engaged as such * * * are willing to work and continue their employment; * * * that they are idle now for the reason that they are intimidated and in fear; that all of the miners at its said mines are very desirous of being permitted to continue their said work at the present rate of wages, and will do, as your orator is advised, and so alleges, if not interfered with and disturbed as hereinafter alleged."

"The petitioner then alleges that a confederation, combination, and association of men have gone among the miners and other laborers for the purpose of inducing or persuading them to quit work, and by threats, menaces, inflammatory speeches, and demonstrations, and that if this continues those now at work will quit, and thus cause the 'said coal plant to lie idle and deteriorate in value.'

"It is submitted that if the men at work and the men idle were free men entitled to the protection of the Bill of Rights there was nothing in these facts or allegations which could in any way justify the use of the writ of injunction. It is alleged that they used threats. What kind of threats? That is a question of fact, and under the 'Bill of Rights' they were entitled to a jury if they were threats within the meaning of the criminal law.

"We are told that the jurisdiction conferred on our court of equity was such as existed in England at the time of the founding of our Republic, and that it went to the protection of vested rights. If this be true, then either there is a vested right in the laborer going with the ownership of the mine or the use of the writ was a gross usurpation. If it is the first, we ask of you to abolish it as inconsistent with the thirteenth amendment; if the second, then we pray that you stop the usurpation by the passage of this bill. In either case it is a symptom of that growing "industrial absolutism" which is gradually depriving us of our freedom as men and which is digging from under our form of government its very foundation.

"That we can be freemen in fact is so incomprehensible to Mr. Beck that he assumes that our voluntary associations are a kind of padrone system, by which Mr. Gompers farms out our labor in some way for his own profit.

"Gentlemen, it is time that this growing, grinding power of industrial absolutism be checked. If permitted to grow, it will not only grind every vestige of personal freedom out of the wage earners, but it will destroy this Republic, subvert Christian civilization, and build upon the ruins an industrial feudalism more destructve of human liberty and progress than was the old feudalism in the time of its lowest depths and decadence.

"Mr. Chairman and gentlemen of the committee, we bring our grievances, as we feel them, to you, with our respectful petition that they be remedied. We can not believe that you will fail us. We can not explain our pain in that logical way which would address itself to your intellects. We trust that your human sympathies will do what our speech—the mere wailing of pain and groping for the cause—shall not accomplish.

"In conclusion, you will not misunderstand me when I say that should your sympathy fail to persuade your intellect that here is a real grievance and that this bill is a remedy, then, of course, your conclusion will be an indorsement, at least to some extent, of the employers' position—that combination amongst the laborers is a crime against the property rights of the employers, and that the criminal law failing to protect such rights, the writ of injunction is and has been properly used.

"Then to us can remain but the old remedy—to disobey the king, peacefully, of course, and take as penalties for such peaceful disobedience whatever may befall. Should this be, and God forbid that it should, then there will be more of these injunctions than ever; imprisonments in consequence, as yet comparatively rare, will multiply, and hosts of men and women will find out for the first time how a prison looks on the inside.

"If this has to be, it must be, but—

"And tho' ye gave her felon fare,
"Bid felon garb her liv'ry be;
"And tho' ye set the oakum task—
"I tell you all, she still is free!"

ENROLLED BILLS SIGNED.

The SPEAKER announced his signature to enrolled bills of the following titles:

S. 4728. An act to authorize the change of the name of the steamer *Salt Lake City;*

S. 3211. An act authorizing that commission of ensign be given midshipmen upon graduation from the Naval Academy; and

S. 4521. An act to authorize the change of the name of the steamer *William A. Hawgood.*

ADJOURNMENT.

The SPEAKER. The gentleman from Pennsylvania [Mr. PALMER] moves that the House do now adjourn.

The motion was agreed to; accordingly (at 5 o'clock and 30 minutes p. m.) the House adjourned until to-morrow, Thursday, March 7, 1912, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

A letter from the Secretary of the Treasury, submitting a revised estimate of appropriation for placing electrical protection to vaults in post-office buildings in Cleveland and Dayton, Ohio (H. Doc. No. 598); to the Committee on Appropriations and ordered to be printed.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS INTRODUCED.

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

By Mr. O'SHAUNESSY: A bill (H. R. 21420) providing for the establishment of a naval base on Narragansett Bay, in the State of Rhode Island; to the Committee on Naval Affairs.

By Mr. BRADLEY: A bill (H. R. 21421) to provide for the acquisition of a site and the erection of a public building thereon at Liberty, N. Y.; to the Committee on Public Buildings and Grounds.

By Mr. LEVER: A bill (H. R. 21422) to amend the act of August 2, 1886 (24 Stat. L., 209), as amended by the act of May 9, 1902 (32 Stat. L., 194), defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine; to the Committee on Agriculture.

By Mr. STEPHENS of Texas: A bill (H. R. 21423) to amend an act entitled "An act granting to certain employees of the United States the right to receive from it compensation for injuries sustained in the course of their employment," approved May 30, 1908 (35 Stat. L., 556); to the Committee on Indian Affairs.

By Mr. DONOHOE: A bill (H. R. 21424) to regulate the compensation of adult male unskilled laborers in United States arsenals; to the Committee on Military Affairs.

By Mr. SPARKMAN: A bill (H. R. 21425) to extend the provisions of the existing bounty-land laws to the officers and enlisted men, and the officers and men of the boat companies, of the Florida Seminole Indian War; to the Committee on the Public Lands.

By Mr. HOBSON: A bill (H. R. 21426) to carry out the provisions and to extend the scope of section 1528 of the Revised Statutes of the United States; to the Committee on Naval Affairs.

By Mr. SLAYDEN: A bill (H. R. 21427) to provide for a site and public building at Coleman, Coleman County, Tex.; to the Committee on Public Buildings and Grounds.

By Mr. HANNA: Joint resolution (H. J. Res. 263) to authorize allotments to Indians of the Fort Berthold Indian Reservation, N. Dak., of lands valuable for coal; to the Committee on Indian Affairs.

By Mr. STEPHENS of Texas: Joint resolution (H. J. Res. 264) to authorize allotments to Indians of the Fort Berthold Indian Reservation, N. Dak., of lands valuable for coal; to the Committee on Indian Affairs.

PRIVATE BILLS AND RESOLUTIONS INTRODUCED.

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

By Mr. ASHBROOK: A bill (H. R. 21428) granting a pension to Sarah J. Neighbor; to the Committee on Invalid Pensions.

By Mr. CAMPBELL: A bill (H. R. 21429) granting an increase of pension to Arcenith F. Walker; to the Committee on Invalid Pensions.

By Mr. CANDLER: A bill (H. R. 21430) granting a pension to John M. Cornelison; to the Committee on Pensions.

Also, a bill (H. R. 21431) for the relief of William F. Campbell, sole heir of Caroline Marion Campbell, deceased; to the Committee on War Claims.

By Mr. DAUGHERTY: A bill (H. R. 21432) granting a pension to John H. Mooney; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21433) granting a pension to Frances S. Gooding; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21434) granting an increase of pension to William Edwards; to the Committee on Invalid Pensions.

By Mr. DANIEL A. DRISCOLL: A bill (H. R. 21435) granting a pension to Bennie C. Longan; to the Committee on Invalid Pensions.

By Mr. FIELDS: A bill (H. R. 21436) granting an increase of pension to George H. Skeens; to the Committee on Invalid Pensions.

By Mr. FERRIS: A bill (H. R. 21437) granting a pension to Henry B. Furbee; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21438) granting an increase of pension to George Judkins; to the Committee on Invalid Pensions.

By Mr. FULLER: A bill (H. R. 21439) granting an increase of pension to Marcus F. Nesmith; to the Committee on Invalid Pensions.

By Mr. GOULD: A bill (H. R. 21440) granting an increase of pension to Francis B. Overlock; to the Committee on Invalid Pensions.

By Mr. HAMILTON of West Virginia: A bill (H. R. 21441) granting an increase of pension to Solomon Freeland; to the Committee on Invalid Pensions.

By Mr. HANNA: A bill (H. R. 21442) granting an increase of pension to Caleb E. Stewart; to the Committee on Invalid Pensions.

By Mr. HOWARD: A bill (H. R. 21443) for the relief of the heirs of Robert Webster, deceased; to the Committee on War Claims.

Also, a bill (H. R. 21444) for the relief of heirs of James Wellsman; to the Committee on War Claims.

Also, a bill (H. R. 21445) for the relief of the heirs of J. P. Watson, sr.; to the Committee on War Claims.

Also, a bill (H. R. 21446) for the relief of the heirs of Robert Webster; to the Committee on War Claims.

By Mr. LEE of Pennsylvania: A bill (H. R. 21447) granting an increase of pension to Joseph Southam; to the Committee on Invalid Pensions.

By Mr. McGILLICUDDY: A bill (H. R. 21448) granting an increase of pension to John Hanley; to the Committee on Invalid Pensions.

By Mr. McGUIRE of Oklahoma: A bill (H. R. 21449) granting a pension to Emma Kinsey; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21450) granting an increase of pension to William E. Neville; to the Committee on Invalid Pensions.

By Mr. OLDFIELD: A bill (H. R. 21451) for the relief of the heirs of James H. Branch, deceased; to the Committee on War Claims.

By Mr. OLMSTED: A bill (H. R. 21452) granting a pension to Elizabeth Hummelbaugh; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21453) granting an increase of pension to John L. Whisler; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21454) granting an increase of pension to Herman Neumyer; to the Committee on Invalid Pensions.

By Mr. PARRAN: A bill (H. R. 21455) for the relief of Judson Stewart; to the Committee on Naval Affairs.

By Mr. REILLY: A bill (H. R. 21456) to remove the charge of desertion from the military record of James Carey; to the Committee on Military Affairs.

By Mr. SMALL: A bill (H. R. 21457) granting an increase of pension to Thomas B. King; to the Committee on Pensions.

By Mr. SPEER: A bill (H. R. 21458) granting an increase of pension to Frederick Glass; to the Committee on Invalid Pensions.

By Mr. STERLING: A bill (H. R. 21459) granting an increase of pension to John W. Towner; to the Committee on Invalid Pensions.

By Mr. SWEET: A bill (H. R. 21460) granting a pension to Floyd L. Green; to the Committee on Pensions.

Also, a bill (H. R. 21461) granting a pension to Archie H. Wright; to the Committee on Pensions.

Also, a bill (H. R. 21462) granting an increase of pension to William J. Hammond; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21463) granting an increase of pension to Theodore Salnave; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21464) granting a pension to Louis A. Giron; to the Committee on Pensions.

Also, a bill (H. R. 21465) granting an increase of pension to Charles H. Eding; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21466) granting an increase of pension to Charles G. Goodfruit; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21467) granting an increase of pension to George B. Griffin; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21468) granting an increase of pension to John P. Schoein; to the Committee on Invalid Pensions.

Also, a bill (H. R. 21469) granting an increase of pension to Reuben Bradish; to the Committee on Invalid Pensions.

By Mr. TALBOTT of Maryland: A bill (H. R. 21470) for the relief of James S. Baer; to the Committee on Military Affairs.

By Mr. TILSON: A bill (H. R. 21471) granting an increase of pension to Lucretia J. Bean; to the Committee on Invalid Pensions.

By Mr. UTTER: A bill (H. R. 21472) granting an increase of pension to John P. Campbell; to the Committee on Invalid Pensions.

By Mr. WARBURTON: A bill (H. R. 21473) granting an increase of pension to Samuel Brantner; to the Committee on Invalid Pensions.

By Mr. WICKLIFFE: A bill (H. R. 21474) for the relief of heirs of Turner Merritt; to the Committee on War Claims.

By Mr. WILSON of Illinois: A bill (H. R. 21475) granting an increase of pension to Andrew W. Buckham; to the Committee on Invalid Pensions.

By Mr. WILSON of New York: A bill (H. R. 21476) for the relief of Frederick Bittmann; to the Committee on Claims.

PETITIONS, ETC.

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

By the SPEAKER: Petition of the Woman's Christian Temperance Union of Wright City, Mo., for enactment of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, memorial of Rockland County (N. Y.) Woman's Christian Temperance Union, for House joint resolution 163; to the Committee on the Judiciary.

By Mr. ANSBERRY: Memorial of Farmers' Institute held at Convoy, Ohio, in favor of parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. ASHBROOK: Petition of Grange No. 1326, of West Lafayette, Ohio, for parcel post, etc.; to the Committee on the Post Office and Post Roads.

Also, petition of Christian Endeavor Society of the Presbyterian Church, of West Carlisle, Ohio, for enactment of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, papers to accompany bill for the relief of Wilson S. Fauts (H. R. 21296); to the Committee on Invalid Pensions.

By Mr. BARCHFELD: Petition of Council of Jewish Women, of Pittsburgh, Pa., against Dillingham immigration bill; to the Committee on Immigration and Naturalization.

Also, petition of the Woman's Christian Temperance Union, of Sheridanville, Pa., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. BOWMAN: Petition of Kane's Pharmacy, of Pittston, Pa., for 1-cent letter postage; to the Committee on the Post Office and Post Roads.

Also, petitions of churches of Hazleton, Pa., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of Polish National Alliance, protesting against illiteracy test in pending immigration legislation; to the Committee on Immigration and Naturalization.

Also, petitions of Nat Williams, of Luzerne; H. Roy Hibbard, of Plymouth; Council No. 517, Junior Order United American Mechanics, of Sugarloaf; and John H. Green, of Wilkes-Barre, Pa., for enactment of House bill 1343; to the Committee on Immigration and Naturalization.

By Mr. BRADLEY: Petitions of business men of Monroe, Suffern, Walden, and Warwick, N. Y., protesting against parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petitions of business men of Monroe, Suffern, Walden, and Warwick, N. Y., for regulation of express rates and classification; to the Committee on Interstate and Foreign Commerce.

By Mr. CALDER: Petition of the Cammeyer, New York, protesting against the passage of House bill 16844, prohibiting fraud upon the public by requiring manufacturers to place their names upon manufactured articles; to the Committee on Interstate and Foreign Commerce.

Also, petition of Carson, Pirie, Scott & Co., of Chicago, Ill., protesting against House bill 16844; to the Committee on Interstate and Foreign Commerce.

By Mr. CAMPBELL: Petition of citizens of Baxter Springs, Kans., for enactment of House bill 16819; to the Committee on the Post Office and Post Roads.

Also, petitions of citizens of the State of Kansas, protesting against parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of Weir, Kans., for passage of old-age pension legislation; to the Committee on Pensions.

By Mr. CANDLER: Papers to accompany bill for the relief of William F. Campbell; to the Committee on War Claims.

By Mr. CLARK of Florida: Petition of city council of the city of Jacksonville, Fla., favoring passage of Bulkley bill, providing for the coinage of 3-cent pieces; to the Committee on Coinage, Weights, and Measures.

Also, petition of E. L. Johnson and 11 other citizens of the State of Florida, protesting against any legislation to extend the parcel post; to the Committee on the Post Office and Post Roads.

By Mr. COOPER: Petitions of citizens of Sharon and Bradford, Wis., asking for the passage of the Kenyon-Sheppard interstate-commerce liquor bill; to the Committee on the Judiciary.

By Mr. COX of Ohio: Petitions of citizens of the State of Ohio, for enactment of an effective interstate liquor law; to the Committee on the Judiciary.

Also, petition of citizens of Hamilton, Ohio, for combining certain departments; to the Committee on Interstate and Foreign Commerce.

Also, petition of a certain labor organization of Middleton, Ohio, for enactment of House bill 5970; to the Committee on Reform in the Civil Service.

By Mr. CRAVENS: Petition of official board of the Methodist Episcopal Church South, of Greenwood, Ark., asking for the passage of the Kenyon-Sheppard interstate-commerce liquor bill; to the Committee on the Judiciary.

By Mr. DANFORTH: Petition of 60 members of the Independent Order of Red Men of Lima, N. Y., favoring the erection of an Indian memorial building in Washington, D. C.; to the Committee on Public Buildings and Grounds.

Also, petitions of Pittsford Grange, No. 424, against the passage of House bill 18493, relating to oleomargarine; to the Committee on Agriculture.

Also, petition of 109 members of Mendon Grange, No. 83, of Pittsford, N. Y., against House bill 18493, to change the name of oleomargarine to margarin, etc.; to the Committee on Agriculture.

By Mr. DE FOREST: Petitions of members of Improved Order of Red Men of twenty-third congressional district of New York, for an American Indian memorial and museum building in the city of Washington, D. C.; to the Committee on Public Buildings and Grounds.

By Mr. DRAPER: Memorial of Polish National Alliance, in opposition to illiteracy test in pending immigration legislation; to the Committee on Immigration and Naturalization.

By Mr. MICHAEL E. DRISCOLL: Petitions of sundry citizens and storekeepers of the State of New York, protesting against parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. DYER: Petition of citizens of St. Louis, Mo., against certain provisions of pending immigration legislation; to the Committee on Immigration and Naturalization.

By Mr. ELLERBE: Memorial of Retail Grocers' Association of Cheyenne, Wyo., for repeal of tax on oleomargarine; to the Committee on Agriculture.

Also, petition of citizens of Columbia, S. C., for children's bureau; to the Committee on Labor.

Also, petitions of churches in the State of South Carolina, for enactment of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. ESCH: Petition of Association of Army Nurses of the Civil War, for certain pension legislation; to the Committee on Invalid Pensions.

By Mr. FERGUSSON: Petition of New Mexico Christian Endeavor Union, favoring the passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of sundry citizens of the State of New Mexico, favoring a more liberal homestead law; to the Committee on the Public Lands.

By Mr. FITZGERALD: Petition of Union No. 23, International Printing Pressmen and Assistants' Union of North America, for increased compensation to pressmen and assistants in the Government Printing Office; to the Committee on Printing.

Also, petition of Camps Nos. 21 and 62, United Spanish War Veterans, for enactment of House bill 17470; to the Committee on Pensions.

Also, petition of Fancy Leather Goods Manufacturers' Association of New York, for passage of House bill 5601; to the Committee on Interstate and Foreign Commerce.

Also, petition of Naval Camp, No. 49, United Spanish War Veterans, for enactment of Senate bill 291 and House bill 1235; to the Committee on Naval Affairs.

Also, petition of board of managers of the New York Produce Exchange, protesting against proposed reduction in the appropriation for Diplomatic and Consular Service; to the Committee on Foreign Affairs.

By Mr. FULLER: Petition of Ottawa Trades and Labor Assembly, of Ottawa, Ill., favoring the passage of the Wilson bill (H. R. 11032), relating to the issuance of restraining orders, etc.; to the Committee on the Judiciary.

Also, petition of the James E. Pepper Distilling Co., of Chicago, Ill., against the passage of the Kenyon-Webb bills (S. 4043 and H. R. 17593), relating to interstate-commerce shipments of intoxicating liquor; to the Committee on the Judiciary.

Also, petition of the Seventy-second Regiment Illinois Infantry Volunteer Society, of Chicago, Ill., favoring the passage of the Madden bill (H. R. 14398), for the relief of Annie Robb; to the Committee on Invalid Pensions.

Also, petition of the National Vigilance Society of New York City, favoring an appropriation of not less than $250,000 for the prosecution of the white-slave traffic; to the Committee on the Judiciary.

Also, petitions of William Pryde and others, of Oglesby, Ill., and numerous citizens of Portland City, Ill., favoring the passage of the Berger old-age pension bill; to the Committee on Pensions.

By Mr. GARNER: Petition of citizens of the State of Texas, for improvement of Aransas Pass Harbor, Tex.; to the Committee on Rivers and Harbors.

By Mr. GOLDFOGLE: Memorial of Legislative League of New York, for children's bureau; to the Committee on Labor.

Also, petition of Hogan & Son, of New York City, for 1-cent letter postage; to the Committee on the Post Office and Post Roads.

Also, petition of Department of New York, Army and Navy Union, for passage of House joint resolution 239; to the Committee on Military Affairs.

Also, petition of Camp No. 19, United Spanish War Veterans, for enactment of House bill 17470; to the Committee on Pensions.

Also, memorial from Old Guard Camp, No. 19, United Spanish War Veterans, New York, favoring House bill 17470, pension bill; to the Committee on Pensions.

Also, memorial from Army and Navy Union, United States of America, Brooklyn, N. Y., favoring House joint resolution 239; to the Committee on Military Affairs.

Also, petition of Legislative League of New York, favoring passage of bill to create in Department of Commerce and Labor a bureau to be known as the children's bureau; to the Committee on Labor.

Also, memorial of Hogan & Son, of New York, favoring 1-cent postage bill; to the Committee on the Post Office and Post Roads.

By Mr. GOULD: Petition of citizens of the State of Maine, for passage of Berger old-age pension bill; to the Committee on Pensions.

By Mr. GRIEST: Petition of residents of Lancaster County, Pa., for old-age pension bill; to the Committee on Pensions.

By Mr. HANNA: Petition of citizens of Hope, N. Dak., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of citizens of Edmore, N. Dak., for repeal of the Canadian reciprocity pact; to the Committee on Ways and Means.

Also, petition of citizens of Napoleon, N. Dak., for enactment of House bill 14; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of Selma, N. Dak., protesting against parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of William Olson, of Palermo, N. Dak., for reduction in duties on raw and refined sugars; to the Committee on Ways and Means.

Also, petition of Northwestern Cream Shippers' Association, relative to oleomargarine legislation; to the Committee on Agriculture.

By Mr. HARTMAN: Petition of citizens of Johnstown, Pa., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of citizens of the State of Pennsylvania, for reduction in duties on raw and refined sugars; to the Committee on Ways and Means.

Also, petition of Grange No. 1116, Patrons of Husbandry, for changes in the laws affecting oleomargarine; to the Committee on Agriculture.

By Mr. HAYES: Petitions of citizens of the State of California, urging enactment of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. HOWELL: Petition of Women's Atheneum Club, of Park City, Utah, in favor of parcel post; to the Committee on the Post Office and Post Roads.

Also, petition of the Church of Jesus Christ of Latter-day Saints of Ogden, Utah, for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. HUGHES of New Jersey: Petitions of the Woman's Christian Temperance Unions and churches in the State of New Jersey, for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. LOBECK: Petition of Tri-City District Council, United Brotherhood of Carpenters and Joiners of America, protesting against provision in the Smoot printing bill; to the Committee on Printing.

Also, petition of Printing Pressmen's Union, No. 32, of Omaha, Nebr., for increase in compensation to pressmen and assistants in the Government Printing Office; to the Committee on Printing.

Also, memorial of Omaha (Nebr.) Woman's Club, for children's bureau; to the Committee on Labor.

Also, petition of the Frances E. Willard Union, of Blair, Nebr., for Kenyon bill and constitutional amendment; to the Committee on the Judiciary.

Also, petition of the Kearney County Farmers' Mutual Fire Insurance Co., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of National Association of Life Insurance Policy Holders, for certain amendment to corporation-tax law; to the Committee on Ways and Means.

Also, petitions of residents of Canal Zone, Isthmus of Panama, for passage of House resolution 287; to the Committee on Rules.

By Mr. LOUD: Petition of Pomona Grange, Gaylord, Mich., favoring the passage of parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. McCREARY: Petition of First Reformed Presbyterian Church of Philadelphia, Pa., praying for passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of St. Ignatius Congregation, of Philadelphia, Pa., praying for the speedy passage of the Esch phosphorus bill; to the Committee on Ways and Means.

Also, petition of St. Ignatius Congregation, of Philadelphia, Pa., relative to Catholic Indian mission interests; to the Committee on Indian Affairs.

By Mr. McGILLICUDDY: Petitions of Congregational Church of South Paris, Me., and the Norway Grange, of Norway, Me., favoring the passage of the Kenyon-Sheppard bill; to the Committee on the Judiciary.

By Mr. McMORRAN: Petition of business men of Mount Clemens, Mich., protesting against the establishment of a parcel post; to the Committee on the Post Office and Post Roads.

Also, petition of the Horticultural Society of Michigan and members of the farmers' institutes, favoring the Lever bill, to establish agricultural extension departments, and the Sulzer bill (H. R. 17936), providing for standardizing of apples; to the Committee on Agriculture.

By Mr. MOTT: Petition of M. M. Lyman, master Lowville (N. Y.) Grange, protesting against Lever bill; to the Committee on Agriculture.

By Mr. OLMSTED: Petition of the Booster Club, of Carlisle, Pa., urging passage of House bill 19133; to the Committee on Interstate and Foreign Commerce.

Also, petition of Harrisburg (Pa.) Pressmen and Assistants' Union, for increased compensation to pressmen and assistants in the Government Printing Office; to the Committee on Printing.

By Mr. PARRAN: Papers to accompany bill for the relief of Lillie Garner (H. R. 19765); to the Committee on Pensions.

By Mr. PRAY: Petition of residents of Concord, Chester, Rudyard, Wibaux, Hodges, Shawmut, Kendall, and Lewistown, Mont., favoring amendment to homestead law allowing three years' residence and extension of time for cultivation, according to financial condition of homesteaders; to the Committee on the Public Lands.

By Mr. RAKER: Memorials of Sausalito (Cal.) Promotion and Improvement Club, and the Passadena (Cal.) Board of Trade, for improvement of the Yosemite Valley National Park; to the Committee on Appropriations.

Also, memorial of California Club, of California, urging enforcement of the white-slave traffic act; to the Committee on the Judiciary.

Also, memorial of Los Angeles (Cal.) Chamber of Commerce, relative to distribution of immigration in the United States; to the Committee on Immigration and Naturalization.

Also, petition of Chamber of Commerce of Sacramento, Cal., against Kenyon-Webb bill; to the Committee on the Judiciary.

Also, memorial of Chamber of Commerce of Redding, Cal., against reduction in tariff on olive oil; to the Committee on Ways and Means.

Also, petition of National Federation of United States Internal-Revenue Storekeepers, etc., for enactment of House bill 17017; to the Committee on Ways and Means.

Also, memorial of California Club, of California, relative to certain legislation; to the Committee on the Judiciary.

By Mr. REILLY: Petition of Nebraska Wholesale Liquor Dealers' Association, protesting against interstate-commerce liquor legislation; to the Committee on the Judiciary.

Also, petitions of Dakota Retail Hardware Association, Wisconsin Retail Hardware Association, and the Oklahoma Hardware & Implement Association, protesting against a parcel post; to the Committee on the Post Office and Post Roads.

Also, petition of the International Dry-Farming Congress, favoring more liberal homestead laws; to the Committee on the Public Lands.

Also, petition of the International Dry-Farming Congress, favoring agricultural extension departments, as provided in the bill introduced by Mr. LEVER; to the Committee on Agriculture.

By Mr. SIMS: Petition of Frank Pelham and sundry other citizens of Monsfield, Tenn., favoring House bill 14, the Postal Progress League parcel-post bill; to the Committee on the Post Office and Post Roads.

By Mr. SAMUEL W. SMITH: Petitions of the Woman's Christian Temperance Union of Orion and citizens of Atlas, Mich., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of citizens of Detroit, Mich., for enactment of House bill 16690; to the Committee on Ways and Means.

By Mr. SPEER: Papers to accompany bill for the relief of Andrew J. Jacobs (H. R. 21207); to the Committee on Invalid Pensions.

By Mr. STEPHENS of California: Petitions of the Woman's Christian Temperance Union and churches of Glendora, Cal., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. STEVENS of Minnesota: Petitions of merchants of Freeport, Minn., and Retail Hardware Association of Minnesota, opposing parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of R. B. Bromer, of St. Cloud, Minn., favoring passage of bill to extend charter of St. Cloud Electric Power Co.; to the Committee on the Judiciary.

By Mr. SULZER: Petition of citizens of the State of Ohio, for enactment of House bill 14; to the Committee on the Post Office and Post Roads.

Also, petitions of the Chamber of Commerce and Manufacturers' Club of Buffalo, N. Y., and Merchants' Exchange of St. Louis, Mo., relative to International Congress of Chambers of Commerce; to the Committee on Foreign Affairs.

Also, memorial of committee of wholesale grocers, relative to sugar; to the Committee on Ways and Means.

Also, petition of Russian Caviar Co., of New York, for a specific duty of 15 cents per pound on caviar; to the Committee on Ways and Means.

Also, petition of National Guard Association of the United States, in favor of House bill 8141; to the Committee on Military Affairs.

Also, petition of Camp No. 59, United Spanish War Veterans, for enactment of House bill 17470; to the Committee on Pensions.

Also, petition of the International Dry-Farming Congress, for agricultural extension work; to the Committee on Agriculture.

Also, petition of the National Vigilance Committee, for enforcement of the white-slave traffic act; to the Committee on the Judiciary.

By Mr. THAYER: Petitions of members of Improved Order of Red Men, of third congressional district of Massachusetts, for an American Indian memorial and museum building in the city of Washington, D. C.; to the Committee on Public Buildings and Grounds.

Also, petitions of residents of Worcester, Mass., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. TILSON: Petition of citizens of New London, Conn., for passage of House bills 16802 and 18244; to the Committee on Indian Affairs.

By Mr. UTTER: Memorial of Retail Grocers and Manufacturers' Association of Providence, R. I., indorsing Sulzer bill to establish a standard for packages and grades of apples; to the Committee on Coinage, Weights, and Measures.

Also, petition of Audubon Society of Rhode Island, for legislation protecting migratory wild fowl in the United States; to the Committee on Agriculture.

Also, petition of Department of Rhode Island Spanish War Veterans, for enactment of House bill 17470; to the Committee on Pensions.

By Mr. WHITE: Petition of citizens of Zanesville, Ohio, for passage of Berger old-age pension bill; to the Committee on Pensions.

By Mr. WILSON of New York: Petition of the Association of Army Nurses of the Civil War, favoring pensions for volunteer nurses of the Civil War; to the Committee on Invalid Pensions.

Also, petitions of East New York Volksverein, of Brooklyn, and St. Joseph's Men's Society, of East New York, relative to Catholic Indian missions; to the Committee on Indian Affairs.

Also, petition of Franklin Union, No. 23, International Printing Pressmen and Assistants' Union of North America, protesting against the Smoot printing bill; to the Committee on Printing.

Also, petition of Fancy Leather Goods Manufacturing Association of New York, favoring the passage of the Booher bill (H. R. 5601); to the Committee on Interstate and Foreign Commerce.

By Mr. WILSON of Pennsylvania: Petition of the Woman's Christian Temperance Union of Lawrenceville, Pa., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petitions of labor unions of San Juan, P. I., asking that United States citizenship be granted citizens of Porto Rico; to the Committee on Insular Affairs.

Also, petition of National Anti-Injunction League, for enactment of Wilson bill (H. R. 11032); to the Committee on the Judiciary.

Also, petition of Federal Labor Union No. 13134, of Caguas, P. R., for creation in the island of Porto Rico of a department of labor; to the Committee on Labor.

Also, petition of Jersey Shore (Pa.) Division of Railway Conductors, for repeal of tax on oleomargarine; to the Committee on Agriculture.

Also, petition of merchants of Lycoming, Tioga, Potter, and Clinton Counties, Pa., asking that the duties on raw and refined sugars be reduced; to the Committee on Ways and Means.

Also, petition of the Woman's Christian Temperance Union of Lycoming County, Pa., protesting against repeal of the anti-canteen law; to the Committee on Military Affairs.

SENATE.

THURSDAY, *March 7, 1912.*

(Continuation of legislative day of Tuesday, March 5, 1912.)

The Senate met as in open executive session after the expiration of the recess, at 12 o'clock meridian, Thursday, March 7, 1912.

GENERAL ARBITRATION TREATIES.

The Senate resumed the consideration of the treaties of arbitration between Great Britain and France and the United States.

Mr. ROOT. Mr. President——

Mr. LODGE. If the Senator from New York will yield to me for a moment, I made a little correction the other day on something I stated in my speech of Thursday last in regard to the postal conventions.

My attention had been called to the treaty with Great Britain, the Palmerston-Bancroft treaty, and I thought it constituted an exception. I had not examined the treaty as I should have done. I have since examined it, and I find it stands on precisely the same ground as the treaty with New Granada of 1844 and the treaty with Mexico of 1861, the Corwin treaty, which provides a transit through foreign territory of closed mails, which, of course, makes the action of the treaty making power absolutely essential.

Mr. President, I make the point of no quorum.

The VICE PRESIDENT. The Senator from Massachusetts suggests the absence of a quorum. The Secretary will call the roll.

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

Bacon	Cullom	Lodge	Pomerene
Borah	Cummins	Lorimer	Richardson
Bourne	Curtis	McCumber	Root
Bradley	Dillingham	McLean	Shively
Briggs	du Pont	Martin, Va.	Smith, Ga.
Bristow	Foster	Martine, N. J.	Smith, Mich.
Brown	Gallinger	Myers	Smith, S. C.
Burnham	Gardner	Nelson	Smoot
Burton	Guggenheim	Newlands	Stephenson
Chamberlain	Hitchcock	Nixon	Swanson
Chilton	Johnson, Me.	O'Gorman	Thornton
Clapp	Johnston, Ala.	Oliver	Tillman
Clark, Wyo.	Kenyon	Overman	Townsend
Clarke, Ark.	Kern	Page	Watson
Crawford	Lea	Percy	Wetmore
Culberson	Lippitt	Perkins	Williams

The VICE PRESIDENT. Sixty-four Senators have answered to the roll call. A quorum of the Senate is present.

Mr. BACON. Before the Senator from New York proceeds, I ask leave to submit two amendments in order that they may be printed immediately, so that we may have them before us when the time for voting arrives.

The VICE PRESIDENT. The Senator from Georgia presents certain amendments which will be printed and lie on the table.

Mr. SWANSON. Mr. President——

Mr. ROOT. I yield to the Senator from Virginia.

Mr. SWANSON. I wish to introduce a bill by unanimous consent.

The VICE PRESIDENT. Bills can not be received under the unanimous-consent agreement. The Senator from New York will proceed.

Mr. ROOT. Mr. President, when the Senate took a recess on the last calendar day I was about to spread upon the records of the Senate certain statements made by the Secretary of State, Mr. Knox, in respect of these pending treaties and contained in Senate Document No. 298, Sixty-second Congress, second session, that document being a reprint of an address upon "The pending arbitration treaties," made by Secretary Knox before the American Society of Judicial Settlement of International Disputes at Cincinnati, Ohio, on the 8th of November, 1911.

I wish to leave no question whatever as to the fact that these statements by the Secretary of State constitute a part of the matter under consideration by the Senate when it consents to the ratification of these treaties, as I hope it will. The speech of Secretary Knox was an open, public, formal, and solemn declaration contemporaneous with the discussion of the treaties by the negotiator of them in behalf of the United States. The speech has been sent, I understand, to all the Members of the Senate. It was published widely in the public press. It has been presented formally to the Senate by the Senator from Texas [Mr. BAILEY] and has been printed as a public document. It has, of course, we are at liberty to assume, come to the knowledge of the representatives of Great Britain and France, the other parties to the treaties, and we are entitled to consider it as a part of the subject matter upon which we are to make