Also, petition of Seth C. Earl Post, Department of Illinois, Grand Army of the Republic, of Ottawa, Ill., against the passage of the Owen bill relating to a Federal department of public health; to the Committee on Interstate and Foreign Commerce.

Also, petition of C. A. Mohr and other merchants of Shabbona, Ill., in opposition to the enactment of parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr. GREEN of Iowa: Petitions of citizens of Orient, Iowa, for passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of citizens of Iowa, in favor of the Berger old-age pension bill; to the Committee on Pensions.

By Mr. HANNA: Petition of Emil Barth, of Haynes, N. Dak., asking that the duties on raw and refined sugars be reduced; to the Committee on Ways and Means.

Also, petition of Presbyterian Church of Kintyre, N. Dak., for passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of citizens of Glen Ullin, N. Dak., against removing the special tax on oleomargarine; to the Committee on Agriculture.

Also, petition of Charles Hull, of Edgeley, N. Dak., for enactment of House bill 20595, amending the copyright act of 1909; to the Committee on Patents.

Also, petitions of citizens of Kathryn and Kensal, N. Dak., protesting against parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of Paradise, N. Dak., for investigation of an alleged combination between coal dealers; to the Committee on Rules.

By Mr. HAWLEY: Petition of the Woman's Christian Temperance Union of Klamath Falls, Oreg., for passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, resolution of the quarterly conference of the Drain Charge of the Methodist Episcopal Church, for the passage of an effective interstate liquor law; to the Committee on the Judiciary.

By Mr. HENSLEY: Petition of E. D. Vogt, of Ste. Genevieve, Mo., for enactment of House bill 20595, amending the copyright act of 1909; to the Committee on Patents.

By Mr. JACOWAY: Petition of Local Union 665, F. E. and C. U. A., of Quitman, Ark., for parcel-post legislation, etc.; to the Committee on the Post Office and Post Roads.

By Mr. LEWIS: Petitions of Grange No. 195, Patrons of Husbandry, of Oakland, Md., for passage of House bill 19133 and Senate bill 5474, for establishment of a postal express; to the Committee on Interstate and Foreign Commerce.

Also, petition of Grange No. 195, Patrons of Husbandry, of Oakland, Md., for passage of Senate bill 3, providing for vocational education; to the Committee on Agriculture.

By Mr. MAGUIRE of Nebraska: Petition of citizens of Palmyra, Nebr., for enactment of the Haugen oleomargarine bill; to the Committee on Agriculture.

By Mr. MANN: Resolution of Chicago Veterinary Society, in favor of House bill 16843; to the Committee on Military Affairs.

Also, petition of directors of Milk Producers' Association of Illinois, favoring retention of 10 per cent tax on oleomargarine, etc.; to the Committee on Agriculture.

By Mr. REILLY: Petition of members of New Haven (Conn.) Lodge, No. 726, International Association of Machinists, for construction of one battleship in a Government navy yard; to the Committee on Naval Affairs.

Also, petition of members of Improved Order of Red Men of the second congressional district of Connecticut, 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. SHARP: Petition of residents of Huron County, Ohio, protesting against the passage of any legislation establishing a parcel-post service; to the Committee on the Post Office and Post Roads.

Also, petition of the Woman's Christian Temperance Union of Perrysville, Ohio, favoring passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. SPARKMAN: Petition of citizens of Tampa, Fla., for construction of one battleship in a Government navy yard; to the Committee on Naval Affairs.

By Mr. SULZER: Memorial of the National Civic Federation, Washington, D. C., indorsing the workmen's compensation bill now pending in Congress; to the Committee on the Judiciary.

Also, petition of citizens of Conifer, Colo., for enactment of House bill 14, providing for a general parcel-post system; to the Committee on the Post Office and Post Roads.

Also, petition of the National Civic Federation, for enactment of a workmen's compensation law; to the Committee on the Judiciary.

By Mr. TAYLOR of Ohio. Petition of Joseph Schonthal and other citizens of Columbus, Ohio, protesting against passage of the Dillingham bill; to the Committee on Immigration and Naturalization.

By Mr. YOUNG of Kansas: Petition of citizens of Norton, Kans., protesting against the passage of a parcel-post system; to the Committee on the Post Office and Post Roads.

SENATE.

MONDAY, *April 8, 1912.*

The Senate met at 2 o'clock p. m.

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

DESIGNATION OF PRESIDENT PRO TEMPORE.

Mr. LODGE took the chair as Presiding Officer and said:

Acting under the resolution of the Senate, in the absence of the Vice President, I call the Senate to order.

Mr. GALLINGER. It is proper, Mr. President, that I should state that on Friday last the Vice President called my attention to the fact that he would be absent from the Senate today, and it was my purpose during the day to ask that the senior Senator from Georgia [Mr. BACON] should be selected as President pro tempore for this day. It quite escaped my mind that that duty rested upon me and it was neglected.

I now, Mr. President, ask unanimous consent that the senior Senator from Georgia [Mr. BACON] be designated to act as President pro tempore for this day.

The PRESIDING OFFICER. The Senator from New Hampshire asks unanimous consent that the Senator from Georgia [Mr. BACON] be designated as President pro tempore for this day. Is there objection? The Chair hears none, and it is so ordered.

Mr. BACON thereupon took the chair as President pro tempore.

Mr. GALLINGER. I offer the following resolution, for which I ask present consideration.

The PRESIDENT pro tempore. Does the Senator desire that it shall be acted upon before the Journal is read?

Mr. GALLINGER. I think it ought to be. It relates to the selection of a President pro tempore.

The resolution (S. Res. 277) submitted by Mr. GALLINGER was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That the Secretary wait upon the President of the United States and inform him that the Senate has elected AUGUSTUS O. BACON, a Senator from the State of Georgia, President of the Senate pro tempore, to hold and exercise the office this day in the absence of the Vice President.

Mr. GALLINGER submitted the following resolution (S. Res. 278), which was read, considered by unanimous consent, and agreed to:

Resolved, That the Secretary notify the House of Representatives that the Senate has elected AUGUSTUS O. BACON, a Senator from the State of Georgia, President of the Senate pro tempore, to hold and exercise the office this day in the absence of the Vice President.

THE JOURNAL.

The PRESIDENT pro tempore. The Secretary will read the Journal of the last legislative day.

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

MOTOR AND OTHER VEHICLES IN GOVERNMENT SERVICE (S. DOC. NO. 496).

The PRESIDENT pro tempore laid before the Senate a communication from the Secretary of Commerce and Labor, transmitting in response to a resolution of the 25th ultimo certain information relative to the number of carriages, motor vehicles, etc., owned and operated by the Government and used by the Department of Commerce and Labor, which was referred to the Committee on Appropriations and ordered to be printed.

FINDINGS OF THE COURT OF CLAIMS.

The PRESIDENT pro tempore laid before the Senate communication from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact and conclusions of law filed by the court in the following causes:

Charles A. Miner *v.* United States (S. Doc. No. 510); and

Bessie Frazer, Nannie Frazer, and Kate Frazer Redd, sole heirs of Oliver Frazer, deceased, *v.* United States (S. Doc. No. 511).

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims and ordered to be printed.

The PRESIDENT pro tempore laid before the Senate communications from the assistant clerk of the Court of Claims, transmitting certified copies of the findings of fact filed by the court in the following causes:

Emmet W. Smith *v.* United States (S. Doc. No. 512);
Ambrose B. Williams *v.* United States (S. Doc. No. 513);
Abram Epstein *v.* United States (S. Doc. No. 514);
Nelson F. English *v.* United States (S. Doc. No. 515);
Stephens A. Ingles *v.* United States (S. Doc. No. 516);
John Glanzmann *v.* United States (S. Doc. No. 522);
Dennis Kelly *v.* United States (S. Doc. No. 517);
Sidney B. Williams *v.* United States (S. Doc. No. 520);
Forest Crocket *v.* United States (S. Doc. No. 521);
Moses Molette *v.* United States (S. Doc. No. 519);
Henry C. Mace *v.* United States (S. Doc. No. 523);
William G. Singleton *v.* United States (S. Doc. No. 531);
John Pinckney *v.* United States (S. Doc. No. 518);
Fred H. Collins *v.* United States (S. Doc. No. 541);
William H. Parker *v.* United States (S. Doc. No. 526);
Alfred Strange *v.* United States (S. Doc. No. 542);
Ezra T. Marney *v.* United States (S. Doc. No. 540);
William M. Terrill *v.* United States (S. Doc. No. 525);
John J. O'Neill *v.* United States (S. Doc. No. 527);
William F. Burns *v.* United States (S. Doc. No. 528);
Harry E. Drake *v.* United States (S. Doc. No. 530);
James Downing *v.* United States (S. Doc. No. 529);
Perry McCarty *v.* United States (S. Doc. No. 532);
Joseph M. Mohr *v.* United States (S. Doc. No. 524);
William G. Govan *v.* United States (S. Doc. No. 534);
Joseph M. Taylor *v.* United States (S. Doc. No. 533);
Joseph A. Decatur *v.* United States (S. Doc. No. 535);
Silas S. Myers *v.* United States (S. Doc. No. 537);
John Jordan *v.* United States (S. Doc. No. 538);
Erbin P. Higgins *v.* United States (S. Doc. No. 539);
Stephen A. Smith *v.* United States (S. Doc. No. 536);
Willis E. Stimson *v.* United States (S. Doc. No. 543);
William H. Witta *v.* United States (S. Doc. No. 546);
Sandy Hester *v.* United States (S. Doc. No. 544);
Thomas Thompson *v.* United States (S. Doc. No. 545);
Louis Pryor *v.* United States (S. Doc. No. 509);
George King *v.* United States (S. Doc. No. 508);
James E. Rogers *v.* United States (S. Doc. No. 507);
George Jacobus *v.* United States (S. Doc. No. 505);
David D. Hannegan *v.* United States (S. Doc. No. 504);
John Brown *v.* United States (S. Doc. No. 498);
Lemuel Gay *v.* United States (S. Doc. No. 506);
Olaf Swanson *v.* United States (S. Doc. No. 502);
Wilson R. Scribner *v.* United States (S. Doc. No. 501);
Fergus McCarthy *v.* United States (S. Doc. No. 497);
Jacob Renner *v.* United States (S. Doc. No. 499);
John W. Graham *v.* United States (S. Doc. No. 500);
Charles B. Carter *v.* United States (S. Doc. No. 547); and
Llewellyn K. Webber *v.* United States (S. Doc. No. 503).

The foregoing findings were, with the accompanying papers, referred to the Committee on Claims and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by A. C. Johnson, its assistant enrolling clerk, announced that the House had passed the joint resolution (S. J. Res. 96) appropriating $10,000 for the purpose of maintaining and protecting against impending floods the levee at Mound City, Ill., with amendments, in which it requested the concurrence of the Senate.

ENROLLED JOINT RESOLUTION SIGNED.

The message also announced that the Speaker of the House had signed the enrolled joint resolution (S. J. Res. 93) authorizing the Librarian of Congress to furnish a copy of the daily and bound CONGRESSIONAL RECORD to the undersecretary of state for external affairs of Canada in exchange for a copy of the Parliamentary Hansard, and it was thereupon signed by the President pro tempore.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented petitions of the congregations of the Greendale People's Church, of Worcester, Mass.; the Swedish-Finnish Lutheran Church, of Worcester, Mass.; the Congregational Church of Warwick, R. I.; the Baptist Church of Fairlawn, Ala.; of the Fairview Methodist Church, of Birmingham, Ala.; of the Woman's Christian Temperance Unions of Ceres, Cal., and Shelbyville, Tenn., praying for the adoption of an amendment to the Constitution to prohibit the manufacture, sale, and importation of intoxicating liquors, which were referred to the Committee on the Judiciary.

He also presented a petition of the Chamber of Commerce of the State of New York, praying that an appropriation be made for the improvement and deepening of the channels in New York Harbor, which was referred to the Committee on Commerce.

Mr. GALLINGER presented the petitions of D. E. Danforth and M. P. Baker, of North Weare, N. H., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were referred to the Committee on the Judiciary.

He also presented resolutions adopted by the Anacostia Citizens' Association, of the District of Columbia, favoring an appropriation for the maintenance of the Columbia Hospital, Washington, D. C., which were ordered to lie on the table.

He also presented a petition of Local Grange No. 48, Patrons of Husbandry, of Antrim, N. H., praying for the establishment of a parcel-post system, which was referred to the Committee on Post Offices and Post Roads.

He also presented a resolution adopted by the Anacostia Citizens' Association, of the District of Columbia, remonstrating against the assessment of property in the eastern section of Washington, D. C., to pay for parks, which was referred to the Committee on the District of Columbia.

Mr. CULLOM presented a petition of Siboney Bay Camp, No. 8, Department of Illinois, United Spanish War Veterans, of Rock Island, Ill., and a petition of C. A. York Camp, No. 14, Department of Illinois, United Spanish War Veterans, of Elgin, Ill., praying for the enactment of legislation to pension widow and minor children of any officer or enlisted man who served in the War with Spain or the Philippine insurrection, which were referred to the Committee on Pensions.

He also presented a petition of sundry citizens of West Salem, Ill., praying for the establishment of a parcel-post system, which was referred to the Committee on Post Offices and Post Roads.

He also presented resolutions adopted by the Association of Commerce of Chicago, Ill., favoring the negotiation of commercial reciprocity treaties between the United States and the Latin-American Republics, which were referred to the Committee on Finance.

He also presented petitions of sundry citizens of Villa Grove, Dupo, and Chicago, all in the State of Illinois, and a petition of the Illinois State Legislative Board of the Brotherhood of Locomotive Engineers, praying for the passage of the so-called employers' liability and workmen's compensation bill, which were ordered to lie on the table.

He also presented a memorial of Seth C. Earl Post, Department of Illinois, Grand Army of the Republic, of Ottawa, Ill., remonstrating against the establishment of a national department of health, which was referred to the Committee on Public Health and National Quarantine.

Mr. GRONNA presented a petition of the Woman's Christian Temperance Union of Hankinson, N. Dak., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which was referred to the Committee on the Judiciary.

He also presented a petition of 131 members of Local Lodge, Brotherhood of Railroad Trainmen, of Enderlin, N. Dak., and a petition of Local Lodge No. 463, Brotherhood of Railroad Trainmen, of Grand Fork, N. Dak., praying for the enactment of legislation to provide an exclusive remedy and compensation for accidental injuries, resulting in disability or death, to employees of common carriers by railroads engaged in interstate or foreign commerce, or in the District of Columbia, and for other purposes, which was ordered to lie on the table.

Mr. WORKS presented memorials of sundry citizens of California, remonstrating against any reduction of the duty on sugar, which were referred to the Committee on Finance.

Mr. OWEN presented resolutions adopted at a mass meeting of sundry citizens of Osage County, Okla., favoring the rules and regulations with reference to oil and gas leases recommended to the Secretary of the Interior by the Osage Tribe of Indians, which were referred to the Committee on Indian Affairs.

Mr. CULBERSON presented a memorial of sundry citizens of Sour Lake, Tex., remonstrating against the extension of the parcel-post system beyond its present limitations, which was referred to the Committee on Post Offices and Post Roads.

Mr. HITCHCOCK presented a memorial of members of the Scottsbluff Club, of Scottsbluff, Nebr., remonstrating against any reduction in the duty on sugar, which was referred to the Committee on Finance.

He also presented memorials of sundry citizens of Diller and Auburn, in the State of Nebraska, remonstrating against the enactment of legislation to permit the coloring of oleomargarine in imitation of butter, which were referred to the Committee on Agriculture and Forestry.

Mr. ASHURST presented a petition of the Woman's Christian Temperance Union of Camp Verde, Ariz., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which was referred to the Committee on the Judiciary.

He also presented a petition of sundry citizens of Bellevue, Ariz., praying for the establishment of a parcel-post system, which was referred to the Committee on Post Offices and Post Roads.

He also presented a petition of the Board of Trade of Nogales and Santa Cruz County, Ariz., praying that an appropriation be made for the construction of a Federal building at Nogales, in that State, which was referred to the Committee on Public Buildings and Grounds.

He also presented a petition of sundry citizens of San Pascual Valley, Imperial County, Cal., praying that an appropriation be made for the construction of a bridge across the Colorado River at Yuma, Ariz., which was referred to the Committee on Indian Affairs.

Mr. GARDNER presented petitions of Local Grange, Patrons of Husbandry, of Charleston, and of sundry citizens of Warren, Washington, Appleton, Waldoboro, Union, Liberty, and South Hope, all in the State of Maine; of sundry citizens of Haverhill, Mass.; and of Local Grange of Fredonia; Ross Grange, of Falconer; and Centralia Grange, of Sinclairville, Patrons of Husbandry, in the State of New York, praying for the establishment of a postal-express system, which were referred to the Committee on Post Offices and Post Roads.

Mr. OLIVER presented a petition of members of the Fruit Growers' Association of Adams County, Pa., praying for the enactment of legislation providing for the further dissemination of agricultural and domestic science information from State experiment stations, which was referred to the Committee on Agriculture and Forestry.

He also presented petitions of Washington Camps, No. 465, of Waymart, No. 75, of St. Clair, and No. 256, of Schaefferstown, all of the Patriotic Order Sons of America, in the State of Pennsylvania, praying for the enactment of legislation to further restrict immigration, which were ordered to lie on the table.

He also presented a petition of Union Grange, No. 977, Patrons of Husbandry, of Lake, Pa., praying for the establishment of a parcel-post system, which was referred to the Committee on Post Offices and Post Roads.

He also presented petitions of the congregations of the St. James Lutheran Church, of Pittsburgh; of the Philadelphia Conference of the Methodist Episcopal Church; of the Methodist Episcopal Church of Pittsburgh; and of the Presbyterian Church of Gettysburg, all in the State of Pennsylvania, praying for the adoption of an amendment to the Constitution to prohibit the manufacture, sale, and importation of intoxicating liquors, which were referred to the Committee on the Judiciary.

He also presented petitions of the congregations of the Church of God of Alberton, of the Methodist Episcopal Church of Ambridge, of the Presbyterian Church of New Salem, of the Methodist Episcopal Church of Gettysburg, of the Presbyterian Church of Gettysburg, of the Christian Endeavor Society of Monessen, and of the Philadelphia Conference of the Methodist Episcopal Church, all in the State of Pennsylvania, praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were referred to the Committee on the Judiciary.

Mr. KERN presented memorials of sundry citizens of Kokomo, Ind., remonstrating against the enactment of legislation compelling the observance of Sunday in post offices, which were referred to the Committee on Post Offices and Post Roads.

He also presented memorials of sundry citizens of Kokomo, Ind., remonstrating against the enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

He also presented a memorial of members of the Commercial Club of Decatur, Ind., remonstrating against any reduction of the duty on sugar, which was referred to the Committee on Finance.

He also presented petitions of sundry citizens of Richmond, Ind., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were referred to the Committee on the Judiciary.

He also presented a petition of Iron Molders' Local Union No. 345, of Peru, Ind., praying for the enactment of legislation providing for the construction of one of the proposed new battleships in the Brooklyn Navy Yard, which was referred to the Committee on Naval Affairs.

Mr. POMERENE presented a petition of sundry citizens of Lafayette, Ohio, praying for the adoption of an amendment to the Constitution to prohibit the manufacture, sale, and importation of intoxicating liquors, which was referred to the Committee on the Judiciary.

He also presented a petition of the Tug Firemen and Linemen's Protective Association of Cleveland, Ohio, praying for the passage of the so-called eight-hour bill, which was referred to the Committee on Education and Labor.

He also presented a petition of Local Lodge No. 14, Licensed Tugmen's Protective Association, of Sandusky, Ohio, praying for the enactment of legislation providing that all motor boats in excess of 40 feet in length engaged in freight or passenger traffic shall carry a licensed pilot and a licensed engineer, which was referred to the Committee on Commerce.

He also presented petitions of Guiding Star Council, No. 124, of Syracuse; Pride of the Valley Council, of East Liverpool; and Local Council No. 176, of Mount Washington, of the Daughters of America; and of members of the Junior Order United American Mechanics of Brad, all in the State of Ohio, praying for the enactment of legislation to further restrict immigration, which were ordered to lie on the table.

He also presented a petition of the Woman's Christian Temperance Union of Neffs, Ohio, praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which was referred to the Committee on the Judiciary.

Mr. BROWN presented petitions of sundry citizens of Ravenna, Gering, Neligh, and Stratton, all in the State of Nebraska, praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were referred to the Committee on the Judiciary.

He also presented memorials of sundry citizens of Riverside, Wausa, and Shea, all in the State of Nebraska, remonstrating against the enactment of legislation to permit the coloring of oleomargarine in imitation of butter, which were referred to the Committee on Agriculture and Forestry.

He also presented a memorial of members of the Commercial Club of Bayard, Nebr., remonstrating against any reduction of the duty on sugar, which was referred to the Committee on Finance.

Mr. OVERMAN presented petitions of sundry citizens of Spray, Winston Salem, and Louisburg, all in the State of North Carolina, praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were referred to the Committee on the Judiciary.

He also presented memorials of sundry citizens of Pollocksville, Murphy, and Roxboro, all in the State of North Carolina, remonstrating against the extension of the parcel-post system beyond its present limitations, which were referred to the Committee on Post Offices and Post Roads.

He also presented petitions of sundry citizens of Statesville and Hightowers, in the State of North Carolina, praying for the establishment of a parcel-post system, which were referred to the Committee on Post Offices and Post Roads.

Mr. SHIVELY presented resolutions adopted by the board of directors of the Chamber of Commerce of South Bend, Ind., favoring the erection of a memorial to Abraham Lincoln in monumental form on the site approved by the Fine Arts Commission, which were referred to the Committee on the District of Columbia.

He also presented petitions of sundry members of the Brotherhood of Locomotive Engineers, residents of Howell, Garrett, Huntington, and Indianapolis, all in the State of Indiana, praying for the passage of the so-called employers' liability and workmen's compensation bill, which were ordered to lie on the table.

He also presented a petition of John Hill Division, No. 248, Brotherhood of Locomotive Engineers, of Elkhart, Ind., praying for the enactment of legislation authorizing the construction of one of the proposed new battleships in a Government navy yard, which was referred to the Committee on Naval Affairs.

Mr. WETMORE presented a petition of the congregation of the Roger Williams Baptist Church, of Providence, R. I., and a petition of sundry citizens of Carolina, R. I., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were referred to the Committee on the Judiciary.

He also presented a petition of Rock Hill Grange, Patrons of Husbandry, of East Greenwich, R. I., praying for the establishment of a parcel-post system, which was referred to the Committee on Post Offices and Post Roads.

Mr. RAYNER presented petitions of sundry citizens of Oakland and Lanham, in the State of Maryland, praying for the establishment of agricultural extension departments in the various State colleges, which were ordered to lie on the table.

He also presented petitions of sundry citizens of Oakland and Lanham, in the State of Maryland, praying for the establish-

ment of a governmental system of postal express, which were referred to the Committee on Post Offices and Post Roads.

He also presented a petition of the congregation of the Church of The Brethren, of Frederick City, Md., and a petition of the Woman's Christian Temperance Union of Woodensburg, Md., praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were referred to the Committee on the Judiciary.

Mr. SMITH of Michigan presented petitions of sundry citizens of Prattville, Comstock, Hartford, Owosso, Detroit, Ensley, Dowagiac, and Chesaning, all in the State of Michigan, praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were referred to the Committee on the Judiciary.

He also presented a petition of Local Grange No. 1362, Patrons of Husbandry, of Thompsonville, Mich., praying for the establishment of a parcel-post system, which was referred to the Committee on Post Offices and Post Roads.

Mr. McLEAN presented a petition of Local Grange No. 136, Patrons of Husbandry, of East Canaan, Conn., and a petition of Mattabessett Grange, No. 42, Patrons of Husbandry, of Middletown, Conn., praying for the establishment of a parcel-post system, which were referred to the Committee on Post Offices and Post Roads.

He also presented a petition of sundry citizens of Bridgeport, Conn., praying for the passage of the so-called eight-hour bill, which was referred to the Committee on Education and Labor.

He also presented a petition of Consolidated Lodge, No. 609, Independent Order American Mechanics, of New Haven, Conn., praying for the enactment of legislation authorizing the construction of one of the proposed new battleships in the Brooklyn Navy Yard, which was referred to the Committee on Naval Affairs.

Mr. PERKINS presented a petition of the Chamber of Commerce of San Francisco, Cal., praying for the adoption of certain amendments to the navigation laws, which was referred to the Committee on Commerce.

He also presented a memorial of members of Group No. 7, Polish National Alliance of the United States of North America, of San Francisco, Cal., remonstrating against the enactment of legislation to further restrict immigration, which was ordered to lie on the table.

He also presented a petition of sundry citizens of Oakland, Cal., praying for the enactment of legislation ceding the vacant Government land adjacent to the Redwood Park to that State, which was referred to the Committee on Public Lands.

He also presented memorials of sundry citizens of San Francisco, Willows, Hamilton City, and Chico, all in the State of California, remonstrating against any reduction of the duty on sugar, which were referred to the Committee on Finance.

Mr. SMITH of Arizona presented a petition of members of the Corporation Commission of Arizona, praying for the enactment of legislation providing for the abolishment of the Commerce Court, which was referred to the Committee on the Judiciary.

MEMORIAL OF LEGISLATURE OF ARIZONA.

Mr. SMITH of Arizona. Mr. President, in this connection, if it is appropriate, and I confess myself as yet unfamiliar with the rules of the Senate, I presented a day or two ago, soon after my first introduction to this body, a joint resolution from the State Legislature of Arizona that touched on the question of the confirmation of a public officer appointed by the President. It was ruled by the Vice President that the memorial must be referred to the executive session of the Senate. I for the time consented to the ruling. I have since considered the matter, and I am convinced that the resolution of a State legislature directed to this body is not to be forever buried in the darkness and silence of the executive session, but that it is entitled to publication in the RECORD.

I ask unanimous consent that the memorial passed by the Legislature of Arizona remonstrating against the confirmation of R. E. Sloan as judge of the District Court for the District of Arizona be printed in the RECORD.

Mr. LODGE. I thought the Senator had concluded.

Mr. SMITH of Arizona. I only want to make another motion in case unanimous consent is not granted.

Mr. LODGE. Mr. President, all matters relating to the confirmation of nominees are part of the executive business. Although treaties have been discussed on two occasions in public, which are also executive business, I have never known a confirmation discussed, and papers relating to the confirmation of nominees have always been held to be executive documents.

The practice of printing resolutions of legislatures in the RECORD is, I think, not a matter of rule but only of courtesy. It seems to me this resolution, if submitted at all, ought to be submitted in executive session. It can there be spread upon the journal of the executive session. I think it would be very dangerous to set the precedent of presenting in open session papers relating to confirmations. We are all well aware that papers relating to the character and fitness of nominees often contain assertions which are entirely unfounded, and it would do great damage to the individual if published. They are submitted only to committees for consideration and are guarded with the greatest confidence and care. I think to break through that precedent would be most unfortunate.

In this case it is impossible to suggest that there is any desire of maintaining secrecy about this paper, because it is a public document. All I am contending for is the preservation of what seems to me a very essential rule in the consideration of the executive business in regard to confirmations.

Mr. GALLINGER. The rule has never been violated.

Mr. LODGE. I am not aware that the rule has ever been broken through. Moreover, Mr. President, there are many resolutions in favor of this nominee. If we print the resolutions of the legislature, we must print also in the RECORD the resolutions of the minority of the legislature in favor of the confirmation of Mr. Sloan; we must print resolutions of the bar association in his favor, and I think we open the door to a very dangerous practice.

I therefore object to unanimous consent.

Mr. SMITH of Arizona. Mr. President, I appreciate fully the dangers to which the Senator from Massachusetts alludes in printing in the RECORD personal petitions or private letters or charges against a nominee, but he is going entirely outside of the present proposition when he fails to discriminate between the solemn resolution of a State legislature, addressed to the Senate of the United States in temperate, proper, and modest language, being denied publication in the RECORD and a private petition which might vilify and assail the character of a nominee. It appears at once that these questions stand on different grounds.

I am only at this time carrying out the request of the legislature of my State, which asked me to present this memorial. I have looked over the RECORD as far as I could, and I have failed to discover a single case where the printing of the memorial of a State legislature has been refused. I do not know what has been the rule of the Senate, but as far as I can discover from recent investigation the resolutions of a State legislature have been printed in the RECORD. I have looked the precedents over, and I have not found a single case where a resolution of a State legislature, no matter what it touched upon, was hidden forever from the proceedings of the session of the legislative body.

I therefore move the Senate that the resolutions to which I have referred be printed in the RECORD.

The PRESIDENT pro tempore. The Senator will send the resolution to the desk and the Secretary will state it.

Mr. LODGE. Mr. President, I make the point of order that it is not in order to print in the RECORD a document relating to executive session.

Mr. SMITH of Arizona. The very question for the Senate to decide is whether it is in order.

Mr. LODGE. It is a question of order.

The PRESIDENT pro tempore. If the document has been presented and is a part of the files of the executive session, the Chair would regard the point of order as well taken. The Chair was not present at the last session of the Senate and therefore is not personally advised as to whether or not this paper belongs to the executive files.

Mr. LODGE. The Vice President, at the last session, ruled that it was out of order to present it in open session. There has been no opportunity to present it in executive session since, that I am aware of.

Mr. SMITH of Arizona. If the Senator will permit an interruption, I did not present it in executive session. The memorial was sent to me and to my colleague for presentation before the Senate and not in executive session. I refused to present it in executive session. The President of the Senate did rule on my first application that it was executive business. Confessing my want of knowledge of the rule, I consented that it should be passed over for the time. The Vice President may or may not have presented it in executive session. I have nothing to say about that. I have presented the resolution here. I do not know whether the Vice President presented it in executive session or not. I simply take the position that the resolution of a State legislature has the privilege of being printed in the RECORD. I could get it in the RECORD by rising and reading it. I would not infringe a single law of the Senate or any rule of it under any conditions.

Mr. GALLINGER. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Arizona yield to the Senator from New Hampshire?

Mr. GALLINGER. I will not interrupt the Senator. I thought he had concluded. I desire to say a word in my own right.

Mr. SMITH of Arizona. This is all I have to say. I am in an embarrassing position on account of not knowing the rules of the Senate.

Mr. GALLINGER. Mr. President, the exact status of this case is that the Senator from Arizona offered this memorial as coming from the State legislature, stating the purport of it. Manifestly it related to executive business. The Vice President, as I think properly, ruled that it could not be received in open session, and thereupon the Senator from Arizona, as I remember, withdrew the memorial. No executive session has supervened that I recall and it is again presented in open session.

Now, Mr. President, I have been here a good while and I have never known an instance where a matter relating to the confirmation of a nomination sent to the Senate by the President of the United States was presented, or at least was admitted in open session, and I think when the Senator from Arizona comes to consider this matter fully he will see that it would be a very unfortunate thing if the Senate should break down that well-established rule, which, so far as I know, has never been called in question. I therefore trust that the present occupant of the chair will rule that it can not be received in open session, inasmuch as it is a matter pertaining to the executive business of this body.

Mr. CULBERSON. Mr. President, I call attention to Rule XXIX, which expressly provides how communications and resolutions from the legislature of a State of the Union may be received. The rule provides that motions to print shall go to the Committee on Printing unless the Senate otherwise orders, and the Senator from Arizona has moved that the matter be printed in the RECORD.

The PRESIDENT pro tempore. What is the particular point that the Senator makes on that rule?

Mr. CULBERSON. The particular point is that it is for the Senate at this time to decide the matter on the motion of the Senator from Arizona.

Mr. LODGE. That rule relates to printing; not to publication in the RECORD.

The PRESIDENT pro tempore. The Chair will state that the present occupant of the chair, being but a temporary occupant of it, would not undertake to overrule the ruling made by the Vice President, but the Chair will submit the point of order to the Senate if it is so desired. If it is desired that the point of order shall be submitted to the Senate, the Chair occupying the embarrassing position which has just been stated, will submit it to the Senate. If it were an original proposition submitted to the Chair, of course the Chair would take the responsibility of ruling upon it.

Mr. SMITH of Arizona. I was not thinking of the absence of the Vice President at the time I made the motion, but if the present occupant of the chair would prefer to leave it to the Vice President upon his return or feels any embarrassment in now acting, I will defer the matter to a near future day.

The PRESIDENT pro tempore. The Chair would prefer that that should be done, because of the embarrassment which necessarily would be involved in a reconsideration by the present occupant of the chair of what has already been decided by the permanent presiding officer of the body.

Mr. SMITH of Arizona. Appreciating that situation, I withdraw the motion for the present.

The PRESIDENT pro tempore. The motion for the present is withdrawn.

REPORTS OF COMMITTEE ON FISHERIES.

Mr. OVERMAN, from the Committee on Fisheries, to which was referred the bill (S. 1569) to establish a fish-cultural station in the State of North Carolina, reported it with an amendment and submitted a report (No. 594) thereon.

He also (for Mr. FLETCHER), from the same committee, to which was referred the bill (S. 2346) to establish a fish hatchery and biological station in the third congressional district of Florida, reported it with amendments and submitted a report (No. 593) thereon.

BILLS INTRODUCED.

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

By Mr. CLARKE of Arkansas:

A bill (S. 6203) to establish a fish-cultural station at Monte Ne, in the State of Arkansas; to the Committee on Fisheries.

By Mr. JOHNSTON of Alabama:

A bill (S. 6204) granting certain lands to the State of Alabama for the use of the insane hospital; to the Committee on Public Lands.

A bill (S. 6205) for the relief of Charles J. Allison; to the Committee on Claims.

By Mr. SHIVELY:

A bill (S. 6206) granting an increase of pension to Joseph Cole (with accompanying papers); to the Committee on Pensions.

By Mr. KERN:

A bill (S. 6207) for the relief of Edgar A. Darling (with accompanying papers); and

A bill (S. 6208) for the relief of John Lynch (with accompanying paper); to the Committee on Military Affairs.

A bill (S. 6209) granting an increase of pension to Henry Whitinger;

A bill (S. 6210) granting an increase of pension to Charles S. Leonard (with accompanying papers);

A bill (S. 6211) granting an increase of pension to Jonas Skinner (with accompanying papers);

A bill (S. 6212) granting an increase of pension to John Miller (with accompanying papers); and

A bill (S. 6213) granting a pension to William H. Albert (with accompanying papers); to the Committee on Pensions.

By Mr. BRANDEGEE:

A bill (S. 6214) granting an increase of pension to Wilfred Norman, jr.; to the Committee on Pensions.

By Mr. BURNHAM:

A bill (S. 6215) granting an increase of pension to John S. Varney; and

A bill (S. 6216) granting an increase of pension to Patrick Conley (with accompanying papers); to the Committee on Pensions.

By Mr. OVERMAN:

A bill (S. 6217) to codify, revise, and amend the laws relating to the Judiciary, ratified March 3, 1911; to the Committee on the Judiciary.

A bill (S. 6218) granting a pension to James M. Odell; to the Committee on Pensions.

By Mr. OWEN:

A bill (S. 6219) providing for the purchase of permanent improvements on the segregated coal and asphalt lands of the Choctaw and Chickasaw Nations by the citizens erecting such improvements; to the Committee on Indian Affairs.

A bill (S. 6220) for the relief of certain Shawnee and Delaware Indians (with accompanying paper); to the Committee on Claims.

By Mr. BOURNE:

A bill (S. 6221) for the relief of John W. Hagan; and

A bill (S. 6222) for the relief of William Corley; to the Committee on Public Lands.

AMENDMENT TO RIVER AND HARBOR BILL.

Mr. CULBERSON submitted an amendment relative to the nonnavigability of all or any of the waters lying between Harbor Island and the mainland, Texas, etc., intended to be proposed by him to the river and harbor appropriation bill (H. R. 21477), which was referred to the Committee on Commerce and ordered to be printed.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. JONES submitted an amendment proposing to appropriate $3,000 for the repair and improvement of the road in the military reservation at Fort Canby, Wash., etc., intended to be proposed by him to the Army appropriation bill (H. R. 18956), which was ordered to lie on the table and be printed.

Mr. WETMORE submitted an amendment proposing to appropriate $25,000 for the establishment of a fish-cultural station in the State of Rhode Island, intended to be proposed by him to the sundry civil appropriation bill, which was referred to the Committee on Fisheries and ordered to be printed.

Mr. OLIVER submitted an amendment proposing to create an additional division of the Railway Mail Service at Pittsbugh, Pa., etc., intended to be proposed by him to the Post Office appropriation bill, H. R. 21279 (with accompanying paper), which was referred to the Committee on Post Offices and Post Roads and ordered to be printed.

PARTY FUNDS (S. DOC. NO. 495).

Mr. HITCHCOCK. I present a pamphlet prepared by Perry Belmont on the abolition of the secrecy of party funds, the origin of the movement, its purposes, and effect. I move that the pamphlet be printed as a Senate document.

The motion was agreed to.

WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY (S. DOC. NO. 479).

Mr. SUTHERLAND. I have a number of letters which have been transmitted to me from trainmen's organizations relative to the pending workmen's compensation bill. I do not ask that the letters be printed in the RECORD or that they be referred. I move that they be printed as a Senate document.

The motion was agreed to.

COST OF LIVING IN EUROPEAN COUNTRIES.

Mr. SMOOT. I ask that 500 additional copies of House Document 617 be printed, 150 copies for the use of the Department of State and 350 copies for the use of the Senate document room.

The PRESIDENT pro tempore. Without objection, the order will be entered.

The order as agreed to was reduced to writing, as follows:

Ordered, That there be printed 500 additional copies of House Document No. 617, "Cooperation and Cost of Living in Certain Foreign Countries," of which 150 copies shall be for the use of the Department of State, and 350 copies for the Senate document room.

WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY.

Mr. SMOOT. I ask that 1,000 additional copies of Senate Document 475, being the opinions of the State Supreme Courts of New York, Massachusetts, Washington, Montana, Wisconsin, and Ohio construing the workmen's compensation and industrial insurance laws of those States, and the Supreme Court of the United States in the second employers' liability cases, January 15, 1912, be printed for the use of the Judiciary Committee of the Senate.

The PRESIDENT pro tempore. Without objection, the order will be entered.

The order as agreed to was reduced to writing, as follows:

Ordered, That 1,000 additional copies of Senate Document 475, "Workmen's Compensation and Employers' Liability," be printed for the use of the Committee on the Judiciary of the Senate.

LEVEE PROTECTION AT MOUND CITY, ILL.

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the joint resolution (S. J. Res. 96) appropriating $10,000 for the purpose of maintaining and protecting against impending floods the levee at Mound City, Ill., which was to strike out all after the resolving clause and insert:

That the appropriation made by the act entitled "An act appropriating $350,000 for the purpose of maintaining and protecting against impending floods the levees on the Mississippi River," approved April 3, 1912, is hereby made available for the purpose of maintaining and protecting against impending floods the levees on rivers tributary to the Mississippi River.

Mr. CULLOM. I move that the amendment be concurred in.

The motion was agreed to.

The title was amended so as to read: "A joint resolution to amend an act entitled 'An act appropriating $350,000 for the purpose of maintaining and protecting against impending floods the levees on the Mississippi River,' approved April 3, 1912."

WORKMEN'S COMPENSATION AND EMPLOYERS' LIABILITY.

Mr. CHAMBERLAIN. Mr. President, I desire to have placed before the Senate the bill (S. 5382) to provide an exclusive remedy and compensation for accidental injuries, resulting in disability or death, to employees of common carriers by railroads engaged in inerstate or foreign commerce, or in the District of Columbia, and for other purposes.

The PRESIDENT pro tempore. The bill referred to by the Senator from Oregon, in the absence of objection, will be considered as before the Senate.

Mr. CHAMBERLAIN. Mr. President, I would have much preferred to have had the distinguished chairman of the commission [Mr. SUTHERLAND] address the Senate in the opening discussion upon this bill, but he prefers to have me first address the Senate, reserving what he has to say in the matter to some further stage of the bill.

Mr. President, the whole purpose of the bill now under consideration, the principles involved, both as to the law governing such legislation and the facts necessary to be considered in the preparation thereof, are so fully discussed and presented in the report of the commission, of which I had the honor to be a member, to the President of the United States and by him transmitted in a special message to Congress, that it would seem to be a work of supererogation to attempt to further discuss the subject. It is a measure, however, of such vast import, involving the rights of so many employers and employees engaged in interstate transportation and affecting such immense financial interests that even if it be difficult to add anything of value to what has been said in the report of the commission, yet I deem it proper, at the risk of repetition, to discuss the subject briefly here.

The principle of compensation for injury or death was first recognized by Congress in the 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 employment," approved May 30, 1908. That act provides for the payment of compensation for injuries to any person employed by the United States as an artisan or laborer in any of the manufacturing establishments, arsenals, or navy yards, or in the construction of river and harbor or fortification work, or in hazardous employment on construction work in the reclamation of arid lands, or the management or control of the same, or in hazardous employment under the Isthmian Canal Commission, where such injury was received in the course of such employment, unless such injury is due to the negligence or misconduct of the employee injured, and where the injury continues more than 15 days. It provides, further, for the payment to certain next of kin and dependents of the employee in case death results from the injury, and the methods of procedure in case of injury or death are prescribed at length by the act.

It will thus be seen that the justice as well as the policy of the payment of compensation by the Government to its own employees has been fully recognized by Congress.

But the act under consideration is one of first impression, so far as it seeks to regulate interstate commerce or those engaged therein, and its importance necessitates a discussion of the constitutional provision out of which must be derived the power of Congress to legislate upon the subject as well as those provisions which, from the viewpoint of those who oppose the same, seem to restrict, limit, or prohibit the exercise of such power.

As a preliminary step to the discussion it seems pertinent to call attention to conditions which exist with reference to those engaged in interstate commerce and to the necessities which, from the standpoint of a sound public policy, a due regard for justice and the safety of the public, the employees, and those dependent upon them have given birth to the suggestion of the propriety of legislation fixing the liability of the employer and the compensation of the employee or his representatives in case of death.

It is unfortunate that reliable statistics in the United States are not accessible to show the total number of injuries and deaths as the result thereof in the different, and particularly in the hazardous, employments of the country. Nor is it possible to show, except approximately, what employment here is the most hazardous, or what rank in that respect employment in the railway service bears. It would be fair, however, it seems to me, to apply as a standard of comparison, the result of reliable information obtained in England as to the death rate from injuries of those engaged in the different employments. There the annual mortality has been found to be as follows:

Seamen, per 10,000	58.06
Miners, per 10,000	12.88
Quarrymen, per 10,000	10.73
Railway employees, per 10,000	8.01
Nontextile factory operatives, per 10,000	2.23
Textile factory operatives, per 10,000	.72

From this it would appear that railway employees rank fourth in the list of mortality per annum, but statistics prove that the annual mortality rate in this country among railway employees is far greater than in Great Britain or in any of the countries of Europe. Railway employment must be ranked as one of the most hazardous of employments in the United States, judging from the carefully compiled statistics of other countries. Certain it is that if the number of those killed and injured in all other hazardous employments were added to those killed and injured in railway employment, the figures would not only be terribly appalling, but would shock the minds, hearts, and consciences of the American people, who, as they come and go in the ordinary avocations of life, do not stop to think that for almost every moment of time in each day of the year one or more of their fellow men are being killed or so crippled and maimed as to be thrown upon the cold charities of the world absolutely without hope, themselves and families dependent upon the private and public charities of the country.

An examination of the statistics furnished by the Interstate Commerce Commission discloses that from June 30, 1899, to June 30, 1907, there were engaged in railway employment for each year the number of persons following.

Mr. President, I am not going to tire the Senate by reading statistics, but I make the general request, without repeating it in each instance, that the statistics I intend to embody in my remarks may be printed in the RECORD without reading them.

The PRESIDENT pro tempore. Without objection, it will be so ordered.

Mr. CHAMBERLAIN. I deem it sufficient to say simply that in 1899 there were 928,924 men employed, and in 1907 their number had increased to 1,672,074:

1899	928,924
1900	1,017,653
1901	1,071,169
1902	1,189,315
1903	1,312,537
1904	1,296,121
1905	1,382,196
1906	1,521,355
1907	1,672,074

In this connection I submit certain comparative statements and analysis thereof contained in one of the briefs submitted to the commission in the course of the hearings had on the bill under consideration, covering the period from June 30, 1888, to June 30, 1907:

SUMMARY A.—*Comparative statement of accidents to railway employees for the years named.*

Year ending June 30—	Employees killed.		Employees injured.		Total employees killed or injured.	
	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.
1907	4,534	8.55	87,644	10.79	92,178	10.65
1906	3,929	7.41	76,701	9.44	80,630	9.32
1905	3,361	6.34	66,833	8.23	70,194	8.11
1904	3,632	6.85	67,067	8.26	70,699	8.17
1903	3,606	6.80	60,481	7.44	64,087	7.40
1902	2,969	5.60	50,524	6.22	53,493	6.18
1901	2,675	5.04	41,142	5.06	43,817	5.05
1900	2,550	4.81	39,643	4.88	42,193	4.87
1899	2,210	4.16	34,923	4.30	37,133	4.29
1898	1,958	3.69	31,761	3.91	33,719	3.90
1897	1,693	3.19	27,667	3.40	29,360	3.39
1896	1,861	3.51	29,969	3.69	31,830	3.68
1895	1,811	3.41	25,696	3.16	27,507	3.18
1894	1,823	3.44	23,422	2.89	25,245	2.92
1893	2,727	5.14	31,729	3.90	34,456	3.98
1892	2,554	4.81	28,267	3.48	30,821	3.57
1891	2,660	5.01	26,140	3.23	28,800	3.33
1890	2,451	4.62	22,396	2.76	24,847	2.88
1889	1,972	3.72	20,028	2.47	22,000	2.55
1888	2,070	3.90	20,148	2.49	22,218	2.57
Total	53,046	100.00	812,181	100.00	865,227	100.00

SUMMARY B.—*Comparative statement showing number of railway employees in service and the per cent killed or injured for the years named.*

Year ending June 30—	Employees in service.	Employees killed.		Employees injured.		Total employees killed or injured.	
		Number.	Per cent.	Number.	Per cent.	Number.	Per cent.
1907	1,672,074	4,534	0.27	87,644	5.24	92,178	5.51
1906	1,521,355	3,929	.26	76,701	5.04	80,630	5.30
1905	1,382,196	3,361	.24	66,833	4.84	70,194	5.08
1904	1,296,121	3,632	.28	67,067	5.17	70,699	5.45
1903	1,312,537	3,606	.27	60,481	4.61	64,087	4.88
1902	1,189,315	2,969	.25	50,524	4.25	53,493	4.50
1901	1,071,169	2,675	.25	41,142	3.84	43,817	4.09
1900	1,017,653	2,550	.25	39,643	3.90	42,193	4.15
1899	928,924	2,210	.24	34,923	3.76	37,133	4.00
1898	874,559	1,958	.22	31,761	3.63	33,719	3.85
1897	823,476	1,693	.21	27,667	3.36	29,360	3.57
1896	826,620	1,861	.23	29,969	3.62	31,830	3.85
1895	785,034	1,811	.23	25,696	3.27	27,507	3.50
1894	779,608	1,823	.23	23,422	3.01	25,245	3.24
1893	873,602	2,727	.31	31,729	3.63	34,456	3.94
1892	821,415	2,554	.31	28,267	3.44	30,821	3.75
1891	784,285	2,660	.34	26,140	3.33	28,800	3.67
1890	749,301	2,451	.33	22,396	2.99	24,847	3.32
1889	704,743	1,972	.28	20,028	2.84	22,000	3.12
1888	(1)	2,070	(1)	20,148	(1)	22,218	(1)

[1] Figures not available.

SUMMARY C.—*Comparative statement showing mileage operated and accidents to railway employees per 100 miles of line for the years named.*

Year ending June 30—	Mileage operated (single track).	Employees killed.		Employees injured.		Total employees killed or injured.	
		Number.	Per 100 miles of line.	Number.	Per 100 miles of line.	Number.	Per 100 miles of line.
1907	229,951	4,534	2	87,644	38	92,178	40
1906	222,340	3,929	2	76,701	34	80,630	36
1905	216,974	3,361	1	66,833	31	70,194	32
1904	212,243	3,632	2	67,067	31	70,699	33
1903	205,314	3,606	2	60,481	29	64,087	31
1902	200,155	2,969	1	50,524	25	53,493	26
1901	195,562	2,675	1	41,142	21	43,817	22
1900	192,556	2,550	1	39,643	20	42,193	21
1899	187,535	2,210	1	34,923	19	37,133	20
1898	184,648	1,958	1	31,761	17	33,719	18
1897	183,284	1,693	1	27,667	15	29,360	16
1896	181,983	1,861	1	29,969	16	31,830	17
1895	177,746	1,811	1	25,696	14	27,507	15
1894	175,691	1,823	1	23,422	13	25,245	14
1893	169,780	2,727	1	31,729	19	34,456	20
1892	162,397	2,554	2	28,267	17	30,821	19
1891	161,275	2,660	1	26,140	16	28,800	17
1890	156,404	2,451	1	22,396	14	24,847	15
1889	153,385	1,972	1	20,028	13	22,000	14
1888	136,884	2,070	1	20,148	15	22,218	16

SUMMARY D.—*Comparative statement of accidents to railway employees showing the number of minutes elapsing for one employee killed or injured, and the average number of employees killed or injured per day, for the years named.*

Year ending June 30—	Employees killed.			Employees injured.			Total employees killed or injured.		
	Number.	Number minutes elapsing for one killed.	Average per day.	Number.	Number minutes elapsing for one injured.	Average per day.	Number.	Number minutes elapsing for one killed or injured.	Average per day.
1907	4,534	116	12	87,644	6	240	92,178	6	252
1906	3,929	134	11	76,701	7	210	80,630	7	221
1905	3,361	156	9	66,833	8	183	70,194	7	192
1904	3,632	145	10	67,067	8	183	70,699	7	193
1903	3,606	146	10	60,481	9	166	64,087	8	176
1902	2,969	177	8	50,524	10	138	53,493	10	146
1901	2,675	196	7	41,142	13	113	43,817	12	120
1900	2,550	207	7	39,643	13	108	42,193	12	115
1899	2,210	238	6	34,923	15	96	37,133	14	102
1898	1,958	268	5	31,761	17	87	33,719	16	92
1897	1,693	310	5	27,667	19	76	29,360	18	81
1896	1,861	283	5	29,969	18	82	31,830	17	87
1895	1,811	290	5	25,696	21	70	27,507	19	75
1894	1,823	288	5	23,422	22	64	25,245	21	69
1893	2,727	193	7	31,729	17	87	34,456	15	94
1892	2,554	206	7	28,267	19	77	30,821	17	84
1891	2,660	198	7	26,140	20	72	28,800	18	79
1890	2,451	214	7	22,396	23	61	24,847	21	68
1889	1,972	266	5	20,028	26	55	22,000	24	60
1888	2,070	255	6	20,148	26	55	22,218	24	61
Total	53,046	.....	.....	812,181	.....	.....	865,227	.....	.....
Average	.....	214	7	.....	16	111	.....	15	133

ANALYSIS OF SUMMARIES.

Summary A.—The first summary presented shows the number of railway employees killed, the number injured, and the total casualties for 20 years from 1888, the first year after the establishment of the Interstate Commerce Commission, to 1907, inclusive. During this period 53,046 employees lost their lives at the post of duty and over 800,000 employees were either maimed or crippled. The total casualties numbered 865,227, an average for the 20 years covered of over 43,000 a year. The per cent column is introduced to facilitate comparison of the years given with the total figures for the entire period.

Summary B.—The next summary shows the number of employees in service and the proportion killed and injured. The falling off in the number employed, as indicated by the figures for the years 1894 to 1898, was due to the panic of 1893, and reflects one of the economies introduced by the railway managements during the hard times following this financial crisis. The per cent column for employees killed clearly indicates the constant recurring death risk of the railway employee. There is hardly any perceptible fluctuation of this ratio for the years shown, and means approximately that 1 employee out of every 400 in service was killed each year. The proportion of injured has gradually increased each year until for 1907, the last year covered, the 5.24 per cent given indicates that 1 employee out of every 20 in service is injured, or that an employee in the service of a railway for 10 years has an even chance of being injured.

Summary C.—This summary, showing the mileage operated and the number of employees killed and injured per 100 miles of line, reflects from another angle the constant recurring death risk year after year. The number injured increases each year in a greater ratio than the mileage operated, and apparently substantiates the results shown by the injured column of Summary B.

Summary D.—The last summary presented shows the number of minutes elapsing for each casualty and the average number of casualties per day. Approximately in every seven minutes of every hour of every day for the last four years named 1 employee was killed or injured. During the 20 years covered the average was 1 killed or injured for every 15 minutes of this entire period. The average killed each day for the whole period covered was 7 and the average injured 111.

It is instructive to compare the figures of other countries with those given above, and I draw your attention to those in continental Europe, where workmen's compensation laws have been generally adopted. The figures show that the number of killed and injured in this country, as I have heretofore stated, is much larger in proportion to the number of employees engaged in railway traffic than in continental Europe.

Five-year average.

Countries.	Injured.	Killed.	Number of employees to 1 injured.	Number of employees to 1 killed.	Number of employees.
Argentina	320	88	258	928	82,670
Austria	1,455	106	160	2,205	233,726
Belgium	611	54	113	1,380	69,129
British India	612	375	786	1,282	481,109
Canada[1]	1,015	217	118	552	119,845
Denmark	19	11	588	1,017	11,187
France	576	278	517	1,068	296,887
Germany	1,498	636	431	1,016	646,426
Hungary	215	108	496	988	106,726
Norway	12	2	340	2,125	4,251
Prussia	916	452	485	984	445,076
Russia	2,209	644	261	1,180	760,452
Sweden	148	36	250	1,031	37,123
Switzerland	1,467	37	26	1,071	40,031
United Kingdom[1]	4,250	430	134	1,351	580,953
United States	77,334	3,568	19	421	1,502,944

[1] United Kingdom, 14-year average; Canada, 4-year average.

For the years 1908, 1909, and 1910 our commission has made an exhaustive and searching inquiry into the accidents to railroad employees in the United States, a subcommittee (of which I had the honor of being chairman) being formed for that purpose, and blanks being specially devised by the efficient secretary of the commission, Mr. Launcelot Packer, to ascertain the relative seriousness of the injuries, their relation to the numbers employed, and the economic loss to the country as well as to the railroads during that period. The results having been published with our report, I need only call attention to the startling fact that calculations, based on the age of those killed and the actual days of disability of those injured, indicate that approximately 161,634,000 possible days' work were withdrawn from the productive energy of the country solely through accidents to railroad employees. The figures tabulated are indeed appalling, and it is not to be wondered, in view of these facts that in the past 25 years, or I may say within the past decade, there has been a loud and persistent demand on the part of employees engaged in all forms of hazardous employment for a modification of the doctrines which have prevailed and which, in their ultimate effect, have practically cast the burdens of industrial accidents upon the employees and their families, who are least able to bear them, and who have been, in the majority of instances, forced to become objects of public charity or else have been assisted and supported by the insurance organizations of employees themselves that have been created to meet the conditions of modern industrial life. One would suppose that because of the laws which have been passed from time to time requiring the installation of safety appliances and other instrumentalities for the prevention of accidents to employees within the past few years the percentage of employees killed and injured, notwithstanding the increase in the number of such employees, would have gradually diminished, but the contrary is true, and in consequence the number of injured and helpless men and their dependents has been steadily growing larger. The burden of their support, no matter from whence that support comes, gradually became heavier and in consequence, thinking men, whether of the class of employers or employees, in every civilized country have been drawn to a profound consideration of the whole question. The trend of opinion is toward a policy that will make every business bear the burden of industrial accident where human agencies are involved, just as it does and has always done with respect to the inanimate instrumentalities employed.

Let us inquire into the relations of the master and servant as it existed originally, and at common law, and its gradual modification to meet varying social and industrial conditions. The subject is so large that it would be out of place to do more than to state general principles, and that in a most general way. While the fundamental rules may not differ essentially in the various civilized countries, they have found different application, not only in other countries, but as well in the several States of the Union. It was because of the harshness of the modern law of negligence, its injustice to the employee, and the economic waste that has always followed attempts to enforce the claims of employees against the employers that has had much to do with crystallizing the idea of compensation, irrespective of negligence, into concrete legislation whereby the burdens of industrial accident in all employments are being shifted from the employee to the employer and hence upon the business itself.

Strange as it may seem, the United States and the several States of the Union have been rather behind other countries in legislation along the lines of the bill under consideration for the amelioration of conditions growing out of industrial accident. Only within very recent years has the subject been brought to general attention and discussion, although for more than a quarter of a century compensatory legislation has been in force on the Continent of Europe and elsewhere. Changes in the form of this legislation are gradually taking place everywhere as experience suggests them. It is not possible that an ideal condition can ever be attained, but there is certainly reason to hope, judging the future by the past, that the time is not far distant when employer and employee will be brought closer together, and the condition of both be very much improved by wholesome legislation for compensating employees for industrial accidents.

The history of responsibility for tortious acts shows several stages of development common to the leading nations of the world. These successive stages represented adjustments of the law by legislatures and by courts to the prevailing social policy of the times. There was at first an absolute liability irrespective of negligence for tortious acts, a voluntary act causing harm being inevitably followed by civil responsibility. A successive stage then recognized certain defenses to that absolute liability by appeal to some standard of moral blame, such as "inevitable necessity." From this stage developed by degrees the more modern law of negligence with its "command or consent test" of responsibility, which in the last century developed into the test of "implied command from a general command or authority known as the doctrine of 'respondeat superior.'" Very similar developments took place in all countries with reference to the liability of the master to his servant for injuries received in the course of his employment, and it became the rule, briefly and generally stated, that the injured servant could not recover from the master except by showing that he was guilty of negligence; in other words, that he had failed in a given case to exercise a proper degree of care or to perform some duty required by the express or implied terms of his contract, and that the injury had resulted therefrom. This rule was adopted when the conditions of industrial life were entirely different from those which exist to-day. The relations between the master and servant were of the simplest kind, and not only did the master come in direct contact with the servant, but each was known to the other, and the servant generally received instructions directly from the master without the intervention of an agent or other person. With the development in social and industrial life these conditions have entirely changed, and relations which were formerly simple have become exceedingly complex. The master now is generally not the individual, but an aggregation of individuals in the form of a corporation, employing thousands and some times hundreds of thousands of men, all receiving employment and instructions through numerous agencies in the different departments of the master's work. Not only that, but the master in the great majority of cases does not know his servants and never comes in touch or contact with them. The earliest departure from the common-law rule of liability is to be found in the case of Priestly *v.* Fowler (3 Mees. and W., 1), decided by Lord Abinger in 1837, where it was held that a master could not be held responsible for an injury to his servant if such injury was caused by the negligence of a fellow servant, and that "the principles of justice and good sense require that a workman should take on himself all the ordinary risks of his employment."

In 1841 the Supreme Court of South Carolina, in Murray *v.* South Carolina R. R. (1 McMullan, 385), laid down the doctrine that wherever a company, or an individual, employs several persons to effect by a joint effort any business, each person so employed takes on himself all the risks of the service which do not result from the mismanagement or improper conduct of the company itself, and each servant agrees to take on himself the risk of all injuries to result from the mismanagement or negligence of the other servants of the company engaged in the same undertaking.

In Farwell *v.* Boston & Worcester R. R. Corporation (4 Met., 49) the question was whether, for damages sustained by one of the persons in the employ of the defendant, by means of the carelessness and negligence of another, the plaintiff has a remedy against the common employer. The court, through Judge Shaw, stated: "The general rule resulting from considerations as well of justice as of policy is that he who engages in the employment of another for the performance of specified duties and services for compensation takes upon himself the natural and ordinary risks and perils incident to the performance of such services, and, in legal presumption, the compensation is adjusted accordingly, and we are not aware of any principle which should except the perils arising from the carelessness and negligence of those who are in the same employment."

These decisions form the basis, largely, of all subsequent decisions involving the relations of master and servant in cases of negligence, and have become as firmly established as the law of the land as if their origin were traced to legislative enactment. The result has been to place the burden of accidents caused by the carelessness of a fellow servant on the employee and to compel the employee to assume as a part of his contract of employment the burden of all risks inherent in the trade or business in which he is engaged.

It would be interesting to trace the modification and application of these doctrines of defense, which, together with that of contributory negligence, have their birth in the decisions of the courts rather than in legislative enactment, but it is not practicable to do so. There are as many applications of the rules growing out of them as there are States in the Union, and one might with entire propriety say, as there are courts administering the law in the various States of the Union. It is only necessary to state the underlying principle of the law of negligence as it exists to-day as a result of the decisions of the courts, and in a general way to add that the same restrictions put upon it have prevailed in the Federal as well as in the State courts, where there has been no legislative modification thereof. That law is, that the employer is liable only in case he is at fault—that is, he must have been negligent in some

respect—and this negligence must have been the proximate and sole cause of the accident. Under it the contract of employment carries with it four obligations on the part of the employer, and these are: First, to provide and maintain a reasonably safe place to work; second, to supply reasonably safe machinery, tools, and appliances with which to work; third, to furnish reasonably competent servants to assist in the work; fourth, to promulgate rules and regulations to conduct business on a safe system. The default of the employer in any of these respects resulting in injury to the servant while the servant himself was in the exercise of due care for his own safety, rendered the master liable for such injury. In the same contract, on the other hand, it is agreed on the part of the servant, either expressly or by implication, first, that the servant would assume the ordinary risks of the service which he engaged to perform, including the risk of injury from the negligence of his fellow servants; and, second, that he himself would use reasonable care to avoid injury. The defenses which, through the decisions of the courts, were thus made available to the master to defeat the claims of the servant were, first, that the injury was the result of the negligence of a fellow servant; second, that the injury was one of the risks which the servant had assumed as incident to the employment; and, third, that the servant was not in the exercise of due care or was guilty of contributory negligence.

The result in practice of the application of these rules as enunciated by the courts, with the burden of proof upon the employee, who in the very nature of things has not the facilities for obtaining the evidence necessary to sustain his case, has made recovery impossible in the great majority of cases involving claims of employees for damages for injuries received in the course of their employment.

Nor is that the only result. The negligence basis for compensating for industrial injuries engenders hostility and bitter antagonism between employer and employee; it renders uncertain the claims of those injured, where uncertainty, above all things, should be eliminated, and entails litigation which is tedious, sometimes endless, and always expensive; it makes possible the ambulance-chasing lawyer, who, whether the injured employee has a just claim or not, induces the execution of a contract, under the terms of which he is to receive for his services from 25 per cent to 50 per cent of any amount that may be recovered; it causes great economic waste, and a large part of the money which ought to be paid to the injured employee is dissipated in vexatious litigation, with all its concomitant evils; and, finally, it in effect shifts the burdens of industrial accident from the employer, or, in the final analysis, from the business where it should fall, to the employee, who is least able to bear it.

Many of the States of the Union have gradually modified and some have abolished one or other of the defenses of fellow-servant fault, assumption of risk, and contributory negligence, in some instances measurably restoring the relation between the employer and employee as it existed prior to the decision in Priestly against Fowler, supra, and the other leading cases to which I have referred, making the master liable to the servant for injuries received in the course of his employment; but it may be stated with reasonable certainty that no two States have adopted uniform statutes governing the subject, so that it is practically impossible to harmonize the various decisions of the courts except as to the general principle involved.

It was in this state of the law and under such conditions growing out of its application in the several Commonwealths that Congress passed the employers' liability law, which was approved June 11, 1906, whereby it undertook to establish the relation between employer and employee, abolished the defense of fellow-servant fault, and alleviated the harshness of the doctrine of contributory negligence by providing that in all actions thereafter brought against any common carrier to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee.

The constitutionality of the act was successfully called in question; not, however, on account of any lack of power upon the part of Congress to legislate upon and to regulate the relations between employers and employees, and between the latter amongst themselves, when engaged in interstate commerce, but because it included many subjects wholly beyond the power to regulate commerce, although dependent for its sanction upon that authority. On the contrary, the power of Congress over the subject of the agencies of interstate commerce, whether animate or inanimate, while so engaged is expressly recognized, and I shall refer to the decision later in this argument.

To meet the objections raised by the Supreme Court, Congress passed the act approved April 22, 1908, which reenacted the provision of the former act with respect to contributory negligence, abolished the fellow-servant rule, and modified that of assumption of risk. The constitutionality of this last act was assailed, but was sustained by the Supreme Court in a decision to which I shall later refer.

While both of these statutes are steps in the right direction, in that they tend to alleviate the conditions of employees engaged in interstate commerce, they yet fail to meet the necessities of the situation, because in the final analysis they afford relief to the comparatively few who can establish negligence on the part of the employer and leave the majority of the employees without any remedy for injuries resulting from risks inherent in the business and in cases not covered in terms by the provisions of the act.

Reliable statistics are not obtainable in this country showing the proportion of accidents due to the carelessness of the employee, those due to the employee, and those inherent in the trade or business; but the Imperial Insurance Office of Germany publishes at 10-year intervals special studies of industrial accidents compensated under the national accident insurance system for workmen. It would be fair to use the figures thus compiled for purposes of comparison here, for it is probable that the results would not be materially different in this country if reliable data were accessible. I call attention to the German statistics for the two decades ending 1897 and 1907, as published in Bulletin 92 of the Bureau of Labor, January, 1911, at page 65, as follows:

Fault of the employer, of the workmen, etc.: Per cent of accidents due to fault of employer, of workman, etc., classified by causes of injury, 1907 and 1897.

Apparatus, etc., causing the injury.	Per cent of persons killed or injured to whom compensation was paid for the first time for whom reports were obtained.	Per cent of accidents due to— Fault of employer.				Per cent of accidents due to— Fault of the workman.						Fault of both employer and workman.	Fault of fellow workman or third party.	General hazard of the industry.	Other causes (chance, act of God, etc.).
		Defective apparatus, arrangements, etc.	Absence of or defective safety appliances.	Absence of or defective regulations, supervision, etc.	Total.	Lack of skill, inattention, or carelessness.	Failure to use safety appliances or removal of same.	Acts contrary to rules, regulations, etc.	Horseplay, mischief, intoxication, etc.	Unsuitable clothing.	Total.				
Grand total:															
1907.....(81,248 cases).....	99.13	5.40	4.69	1.97	12.06	28.96	2.22	9.48	0.55	0.05	41.26	0.91	5.94	37.65	2.18
1897.....	97.66	7.15	7.82	1.84	16.81	20.85	1.92	5.44	1.19	.49	29.89	4.66	5.28	42.05	1.31
Accidents caused by machinery:															
1907.....(19,803 cases).....	99.56	5.42	12.00	1.55	18.97	28.75	4.61	18.04	.67	.14	52.21	2.01	3.93	22.57	.31
1897.....	98.16	6.96	16.32	2.34	25.62	25.58	3.23	13.29	1.60	.88	44.58	9.52	3.97	16.04	.27
Accidents due to causes other than machinery:															
1907.....(61,445 cases).....	98.99	5.39	2.32	2.11	9.82	29.03	1.44	6.70	.51	.03	37.71	3.56	6.59	42.53	2.79
1897.....	97.50	7.21	5.00	1.68	13.89	19.29	1.48	2.84	1.05	.36	25.02	.05	5.72	50.66	1.66

If the figures in the foregoing table are accurate, or approximately so, and if the same conditions had existed in the United States, recoveries under the present liability laws could have been had in 1897 in 12.06 per cent of the cases of accidents, and in 1907 in 16.81 per cent, these being the numbers attributable to the fault of the employer, whilst all other accidents were due either to the fault of the workman, or of employer and workman, or of the fellow workman or a third party, or the general hazard of the industry, or other causes. How much to be preferred, therefore, is a law like the one under consideration, which abolishes the doctrine of negligence and compensates for injuries without regard to fault?

So complex have become the instrumentalities and appliances for carrying on interstate commerce that in the majority of cases it is impossible to fix the blame for accidents, or to ascertain whether the employer or employee is at fault, or whether they are, in given cases, inherent in the business itself. To meet innumerable cases, therefore, in which there is at present no relief attainable under liability laws, to put an end to litigation, to save the present great economic waste, to fix the status of those injured without regard to negligence or fault, and to place the burden of accident where in justice and on the grounds of public policy it properly belongs, most of the civilized countries of the world, and many of the States of the Union, have resorted to the principle of compensation for all injuries, doing away entirely with the doctrine of negligence as the basic principle of recovery and abolishing the defenses which have been instrumental in defeating recovery in times past. In other words, to the enactment of laws which allow a compensation to the employee for accidents which occasion injury or death without the necessity for tracing them to fault in either party, proportionate to the wage scale of the employee at the time of such injury or death.

This the act under consideration has attempted to do. The tendency of all civilized countries has been toward the enactment of laws fixing beforehand definitely the liability of the master and the rights of the employee through the instrumentality of compensatory legislation. It would be interesting to trace the development of this legislation through its several stages in this and other countries, but works upon the subject are easily accessible, and I do not deem it necessary to attempt more than to call attention to the fact that, since the enactment of the first law upon the subject by Germany in 1884, with its subsequent modification and amendments, the following countries have moved along the lines toward which the act under consideration is tending: Austria, Belgium, Denmark, Finland, France, Greece, Hungary, Great Britain, Alberta, British Columbia, Quebec, Cape of Good Hope, Transvaal, New Zealand, New South Wales, Queensland, South Australia, Western Australia, Italy, Luxemburg, Netherlands, Norway, Russia, Spain, Sweden, and Switzerland.

Having traced briefly the history of the growth and development of the law of liability for negligence, and the defenses which have gradually become available to defeat recovery in the majority of cases, and having shown that under the present system no recovery can be had for accidents inherent in the trade or due to the negligence of the employee, which together constitute the major part of accidents in industrial life, I will discuss the act under consideration from the constitutional standpoint.

Mr. HITCHCOCK. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Nebraska?

Mr. CHAMBERLAIN. Certainly.

Mr. HITCHCOCK. Do I understand the Senator, in quoting the experiences of other countries, to refer to their laws as being confined to railroads and transportation companies?

Mr. CHAMBERLAIN. The laws of continental countries cover all hazardous enterprises.

Mr. HITCHCOCK. All hazardous enterprises?

Mr. CHAMBERLAIN. Yes, sir.

Mr. HITCHCOCK. Manufacturing and mining——

Mr. CHAMBERLAIN. Yes.

Mr. HITCHCOCK. As well as transportation?

Mr. CHAMBERLAIN. They cover nearly all the hazardous enterprises.

To proceed with the discussion of the act from the constitutional standpoint:

First. Congress has the power to exercise control over the relations of common carriers by railroads and their employees while both are engaged in interstate commerce under the commerce clause of the Constitution, which vests in it the authority—

> to regulate commerce with foreign nations and among the several States.

Second. There is no restriction upon the exercise of this power imposed either by—

(*a*) The fifth amendment, which provides that no person shall—

> be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

(*b*) The seventh amendment, which provides—

> In suits at common law where the value in controversy shall exceed $20 the right of trial by jury shall be preserved.

(*c*) The fourteenth amendment, which provides that no State shall—

> deprive any person of life, liberty, or property without due process of law.

The fourteenth amendment really is an inhibition against the States upon the enactment of laws which shall violate the provisions of the fourteenth amendment. I have referred to it here because it is referred to in so many of the decisions where the fourteenth amendment is invoked as a defense to legislation enacted by the several States of the Union.

The Supreme Court of the United States, it seems to me, has settled the question that Congress has the power under the commerce clause to reasonably regulate the relations between employer and employee where both are engaged in foreign commerce or in commerce between the States, including commerce between the District of Columbia and a State or in the District of Columbia; and that there are no restrictions, limitations, or inhibitions in either the fifth, the seventh, or the fourteenth amendments that would prevent the full exercise of that power in the manner it is sought to be exercised in the act under consideration, or that would render the act obnoxious to any other constitutional provision.

I will discuss these propositions in their order as briefly as it is possible to do so.

First. *Congress has the power under the commerce clause to legislate upon and to exercise control over the relations of employers and employees while both are engaged in interstate commerce.*

Chief Justice Marshall, in Gibbons *v.* Ogden (9 Wheat., 196), in discussing the power of Congress under the commerce clause, said:

> We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States. The wisdom and the discretion of Congress, their identity with the people, and the influence which their constituents possess at elections are in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are restraints on which the people must often rely solely in all representative governments.

As sustaining the same proposition I refer to the following cases: Lottery case, 188 U. S., 354; Northern Securities Co. *v.* United States, 193 U. S., 335; Employers' Liability cases, 207 U. S., 492; Southern Ry. Co. *v.* United States, decided October 30, 1911; Edgar G. Mondou *v.* New York, New Haven & Hartford Ry. Co.; Northern Pacific Ry. Co. *v.* Babcock, administratrix; New York, New Haven & Hartford Ry. Co. *v.* Walsh, administratrix; Walsh, administratrix, *v.* New York, New Haven & Hartford Ry. Co., all decided January 15, 1912.

Mr. WILLIAMS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Mississippi?

Mr. CHAMBERLAIN. I do.

Mr. WILLIAMS. In this bill as it came from the author there was a provision to which my attention was called which seemed to me to be very objectionable. It was a provision intended to shift the losses from the employer to the consuming public. It was a provision directing virtually the Interstate Commerce Commission to take into consideration when it was dealing with the question of the reasonableness of rates——

Mr. CHAMBERLAIN. That was eliminated, I will say to the Senator.

Mr. WILLIAMS. Yes; and I want to emphasize it. It directed virtually the Interstate Commerce Commission to take into consideration when fixing rates the loss that was placed on these railroads by the payment of this compensation.

I had handed me this morning a circular attacking this bill upon the ground that that provision was in it. With that attack I had, of course, a very great deal of sympathy, because if you enable the transportation companies merely to charge up to the consumer, the shipper, the general public, all these things it

would have no tendency to make them any more careful than they are now. I think the actual statistics show now that we kill and wound on our railroads 50 persons where in Great Britain 1 is killed or wounded in the same service.

I want, therefore, in this connection, with the consent of the Senator, to call attention to the fact that section 31 of the House bill has been stricken out by the Senate committee.

Mr. CHAMBERLAIN. That has been eliminated.

Mr. WILLIAMS. That is the fact.

Mr. CHAMBERLAIN. Yes.

Mr. SUTHERLAND. Will the Senator from Oregon allow me a moment?

Mr. CHAMBERLAIN. Certainly.

Mr. SUTHERLAND. The bill was introduced in both Houses.

Mr. WILLIAMS. I will revise that for the RECORD. I do not mean the House bill. I meant the first print of the bill as introduced by the Senator from Utah.

Mr. SUTHERLAND. The Senate Committee on the Judiciary eliminated the section to which the Senator from Mississippi has called attention.

Mr. WILLIAMS. Section 31 of the bill as introduced.

Mr. SUTHERLAND. Yes; and the House committee has not yet concluded its consideration of the bill. What will happen to the section there of course we do not know.

Mr. WILLIAMS. That was a mere slip of the tongue, about the House bill. I merely meant the printed bill before me.

Mr. CULBERSON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Texas?

Mr. CHAMBERLAIN. I yield.

Mr. CULBERSON. I ask the Senator from Oregon, in connection with what the Senator from Mississippi has invited attention to, if the bill does not, notwithstanding the elimination referred to, fix the expenses of administering the law on the people of the United States through the Treasury?

Mr. CHAMBERLAIN. There is not any question about that, and I am frank enough to say that in the final analysis in the administration of this bill the consumer will have to pay the expenses incurred under it.

In this connection, inasmuch as the question has been raised, I want to call the attention of the Senate to a little pamphlet by Mr. Edward Bunnell Phelps, who is the editor of the American Underwriter, on the cost of this added expense to the consumer. He makes a computation from the data obtained by the commission at its hearings, and says:

> A complete shift to the traveling public by American railways of the entire presumable cost of the United States commission's plan of workmen's compensation, as the commission figures it out, would add eighty-nine one-hundredths of 1 per cent to the operating expenses of the railway service of this country, had not a large part of the cost already been included in their expenses for the last three years. Even if the entire eighty-nine one-hundredths of 1 per cent were to be added and the cost evenly distributed all along the line, the men who had been paying $50 for a railway ticket or for the use of a freight car would be asked henceforth to pay precisely $50.45 for that same service.

Mr. WILLIAMS. Yes; but, Mr. President, if the Senator from Oregon will forgive me a moment more, if I believed that the effect of this bill, with section 31 stricken out, would be naturally to enable the railroads anyhow to charge up their negligence and carelessness and maladminstration to the shipping public, instead of charging it to their stockholders, and therefore making their stockholders more careful about whom they selected as directors and presidents, I would not be in favor of the bill. If, with the provision stricken out, they would still do that, I shall offer at the proper time a provision in the language of section 31, except that instead of saying that it shall be declared to be the policy of Congress that the burden under this act shall be considered an element in the cost of transportation, I shall insert the word "not," so as to read "not the policy, and the Interstate Commerce Commission in any proceeding before it affecting rates is expressly directed not to recognize the effect of this policy."

Now, as to the point mentioned by the Senator from Texas, the mere compensation of these adjusters and that sort of thing, I think is almost infinitesimal in comparison with the entire matter. In addition to that, it seems to me that the public does owe some duty to the men employed and injured.

Mr. CHAMBERLAIN. I will ask the Senator if he does not think that the animate agencies of interstate commerce—that is, the men—ought to be placed on as lofty a plane as the inanimate agencies; that is, the cars?

Mr. WILLIAMS. That is precisely what I am contending for.

Mr. CHAMBERLAIN. But in the final analysis that expense comes out of the consumer. It must come out of the consumer, in the very nature of things.

Mr. WILLIAMS. Oh, I beg the Senator's pardon. If I am conducting a factory, and the Senator is conducting another, and I conduct mine so carefully and so well, or, to be complimentary, the Senator conducts his so carefully and so well, as to have very little broken machinery, very few accidents to boilers, and various other things, if he keeps things well oiled and well taken care of, he can add every item of that saving to the dividends of his stockholders. And if I am careless about mine I have to take it out of the dividends of my stockholders, because he and I are engaged in a competitive business, and he with good administration will fix the price at his cost of production plus a fair profit, unless we combine.

Now, railroads can not fix the price. The best-conducted railroad can not fix the price for another, because they do not compete. They run in different territory. So the State, the Government, has to fix the price of transportation. But in general industrial business, except at the minimum, except under the best administration, the charges of deterioration and destruction of machinery are not charged to the consumer, for every dollar is taken out of the pockets of the stockholders in their dividends.

Mr. CHAMBERLAIN. I can not see, whether a business is well conducted or ill conducted, but that the expenses of operation, whether good or bad, must be deducted from the earnings of the industrial enterprise, whatever it may be.

Mr. WILLIAMS. Surely, then, the Senator has not understood me if he says he can not see any difference in operating expenses. The main difference between a well-conducted business and a badly conducted business would be in regard to small operating expenses in comparison with the output and large operating expenses in comparison with the output. When you come to a very badly conducted business and a very well-conducted business the difference in the life of machines is one of the most important things. If you come to the simplest business, like farming, for example, the farmer who takes care of his mowers and reapers and plows and wagons and the farmer who does not take care of them are differentiated by a sum sufficient to cause the one farmer to make money and the other to go out of profitable business. That is true of all sorts of business.

In this connection I will say that one of the greatest fallacies in economic administration is that we presume to deal with an imaginary average when, of course, there is none. Some people, and notably our friends on the other side of the Chamber, are dealing with business the least well administered, with business the least economically conducted, and then they want to carry it on with a profit. The real truth is that we ought to view our legislation from the standpoint of well-conducted business and not from the standpoint of badly conducted business.

Mr. CHAMBERLAIN. I will ask the Senator if he does not think it will tend to make the railroad companies more careful if they find by a law which we have enacted that they are compelled to pay a fixed liability in cases of accident?

Mr. WILLIAMS. That is the proposition I am disputing. I am in favor of the bill, but the proposition I have in mind is that if by any means you permit the transportation companies to charge up to the shipping public the losses which they have incurred largely by their own negligence or carelessness you do not accomplish the main purpose that you and I ought to have in view. The main purpose that you and I ought to have in view is not the purpose of compensating the man who is injured or of compensating the widow and children of the man who is killed but to prevent the man from being killed and the man from being injured.

Mr. CHAMBERLAIN. That is the inevitable tendency of this legislation.

Mr. WILLIAMS. I think so, too, but that tendency will be emphasized if you provide that the carriers must themselves lose on account of these accidents.

Mr. SUTHERLAND. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Utah?

Mr. CHAMBERLAIN. I yield to the Senator.

Mr. SUTHERLAND. Will the Senator permit me to make a suggestion to the Senator from Mississippi? The Senator from Mississippi of course will recognize that some accidents happening on a railroad and happening in any industry are inevitable.

Mr. WILLIAMS. Yes; but I also recognize that they ought to be only one-fiftieth of what we now suffer. Great Britain has demonstrated that.

Mr. SUTHERLAND. I do not care for the exact figures now. It is sufficient for the purpose of illustrating what I am going to say to have it admitted that some number of accidents are

inevitable. Now, with reference to those accidents which are inevitable I think the Senator from Mississippi will concede that that would be a proper element to charge against the consumer or against——

Mr. WILLIAMS. If they could be differentiated from the others, I think I would agree with you about that, but you must have a general rule after all. So I would make a general rule to fit the major part and not the minor part of accidents so called.

Mr. SUTHERLAND. With the permission of the Senator from Oregon I will say that after this law goes into operation, I imagine the Interstate Commerce Commission will discover what number of accidents are normal or are properly to be charged as the inevitable risks of the industry; and to that extent—of course, it will not be an exact figure—but as nearly as possible to that extent it will permit them to enter into its calculation fixing the amount of charges which the railroad company may make. Now, then, having determined that, when any railroad company exceeds that by negligence or in any other way, to that extent it will be penalized. It can collect from the traveling public and to the extent that it may curtail its accidents so that they fall below the normal, the stockholders will reap the benefit of it.

Mr. WILLIAMS. I hope the Senator is right, but the Senator from Oregon had just made the admission that, in his opinion, all of it must come out of the shipper, or, as we call it for the purpose of discussion, the consumer, because the consumer of the transportation is the shipper.

Mr. CHAMBERLAIN. Just as all other expenses of operation.

Mr. WILLIAMS. It was that admission I was calling attention to, and it is because of that admission, under the provisions of this bill, that I shall at the proper time offer an amendment directing the Interstate Commerce Commission not to consider it, because, even if what the Senator from Utah says is true, to wit, that a certain number of unavoidable accidents occur out of the natural hazard of business than can not be avoided by any human intelligence or any human carefulness or foresight, and even if that part ought to be charged to the consumer, it is so small in comparison with the general loss that rather than run any risk of having it all charged up to the consumer and considered by the Interstate Commerce Commission as a factor in fixing rates, I would make the employer stand that loss also, with the idea of making him doubly careful and with the idea of preventing loss of life and limb, which is much more important than compensating for it after it has happened.

Mr. CHAMBERLAIN. Mr. President, in making the admission that in the final analysis the expense must come out of the consumer I did not mean to confess that in the first instance the expense would come out of the consumer; but the expense created under this act might be more than any company in a certain contingency could stand. It has to come from somewhere, and like the expense of operation in other cases it seems to me it would have to come out of the earnings, and that comes out of the consumer in the end.

In this connection I might say that the statistics gathered by the commission show in a general way that the railroad companies pay now about ten millions per annum under the liability laws, and practically only about five millions of that money goes to the employees. The balance is a great economic waste. It goes somewhere; it does not go to the employee.

The best computation we have been able to make is that under this bill the amount that the railroad companies will be compelled to pay will be about $15,000,000, and all of it goes to the employee. That is the purpose of this legislation. It is to stop that economic waste and see to it that the people who are injured shall have the benefit of it.

Mr. WILLIAMS. I am in perfect sympathy with that purpose and I think the bill is a very great improvement upon existing conditions. I hope the Senator does not misunderstand me. But while we are considering it I was thinking about making the bill better still.

Mr. CHAMBERLAIN. Mr. President, I have been drawn a little away from the orderly discussion of this object as I wanted to present it. I did not intend at this time to discuss the features of the bill, but simply to discuss it from the legal standpoint and leave to my fellow members of the committee or to some one else the provisions of the bill in detail. However, I may have something to say about that myself later on.

In Southern Railway Co. *v.* United States, supra, it was insisted inter alia that the safety-appliance acts of Congress should be pronounced invalid, as being in excess of the power of Congress under the commerce clause of the Constitution. The objection was overruled (164 Fed., 347), and the Supreme Court of the United States, Justice Van Devanter rendering the decision, said:

We then come to the question whether these acts are within the power of Congress under the commerce clause of the Constitution, considering that they are not confined to vehicles used in moving interstate traffic, but embrace vehicles used in moving intrastate traffic. The answer to this question depends upon another, which is, *Is there a real or substantial relation or connection between what is required by these acts in respect of vehicles used in moving intrastate traffic and the object which the acts obviously are designed to attain, namely, the safety of interstate commerce and of those who are employed in its movement? Or, stating it in another way, Is there such a close or direct relation or connection between the two classes of traffic, when moving over the same railroad, as to make it certain that the safety of the interstate traffic and of those who are employed in its movement will be promoted in a real or substantial sense by applying the requirements of these acts to vehicles used in moving the traffic which is intrastate as well as to those used in moving that which is interstate?* If the answer to this question, as doubly stated, be in the affirmative, then the principal question must be answered in the same way. And this is so, not because Congress possesses any power to regulate intrastate commerce as such, but because its power to regulate interstate commerce is plenary and competently may be exerted to secure the safety of the persons and property transported therein and of those who are employed in such transportation, no matter what may be the source of the dangers which threaten it. That is to say, it is no objection to such an exertion of this power that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce.

Speaking only of railroads which are highways of both interstate and intrastate commerce, these things are of common knowledge: Both classes of traffic are at times carried in the same car and when this is not the case the cars in which they are carried are frequently commingled in the same train and in the switching and other movements at terminals. Cars are seldom set apart for exclusive use in moving either class of traffic, but generally are used interchangeably in moving both; and the situation is much the same with trainmen, switchmen, and like employees, for they usually, if not necessarily, have to do with both classes of traffic. Besides, the several trains on the same railroad are not independent in point of movement and safety, but are interdependent, for whatever brings delay or disaster to one, or results in disabling one of its operatives, is calculated to impede the progress and imperil the safety of other trains. And so the absence of appropriate safety appliances from any part of any train is a menace not only to that train but to others.

This practical consideration makes it plain, as we think, that the question before stated must be answered in the affirmative.

The act of Congress approved June 11, 1906, entitled "An act relating to liability of common carriers engaged in commerce between the States and between the States and foreign nations to their employees," was not sustained by the court, but the power to regulate the relation of master and servant to the extent that regulations adopted by Congress on that subject are solely confined to interstate commerce was expressly recognized. Justice Moody, while dissenting from the conclusion reached by the court, concurred in the view of the majority as to the power of Congress, and further elaborated the subject in the following language:

It would seem, therefore, that when persons are employed in interstate or foreign commerce, as the employment is an essential part of that commerce its terms and conditions and the rights and duties which grow out of it are under the control of Congress subject only to the limits on the exercise of that control prescribed in the Constitution. (Employers' Liability cases, 207 U. S., 463.)

To meet the constitutional objection to the act of June 11, 1906, the act of April 22, 1908, was passed by Congress and the act amendatory thereof of April 5, 1910. The constitutionality of these acts was assailed on practically the same grounds as those urged against the act of June 11, 1906, and the cases all submitted and decided by the Supreme Court at the same time; and in one opinion, rendered January 15, 1912, the acts were sustained in their entirety in Mondou *v.* New York, New Haven & Hartford Railroad Co., supra. The power and authority of Congress, under the commerce clause, to regulate the relations of common carriers by railroad and their employees, while both are engaged in such commerce, was fully sustained in an exhaustive opinion pronounced by Justice Van Devanter. In the course of his opinion he said:

The clauses in the Constitution (Art. I, sec. 8, clauses 3 and 18) which confer upon Congress the power "to regulate commerce * * * among the several States" and "to make all laws which shall be necessary and proper" for the purpose have been considered by this court so often and in such varied connections that some propositions bearing upon the extent and nature of this power have come to be so firmly settled as no longer to be open to dispute, among them being these:

1. The term "commerce" comprehends more than the mere exchange of goods. It embraces commercial intercourse in all its branches, including transportation of passengers and property by common carriers, whether carried on by water or by land.

2. The phrase "among the several States" marks the distinction, for the purpose of governmental regulation, between commerce which concerns two or more States and commerce which is confined to a single State and does not affect other States, the power to regulate the former being conferred upon Congress and the regulation of the latter remaining with the States severally.

3. "To regulate," in the sense intended, is to foster, protect, control, and restrain, with appropriate regard for the welfare of those who are immediately concerned and of the public at large.

4. This power over commerce among the States, so conferred upon Congress, is complete in itself, extends incidentally to every instrument and agent by which such commerce is carried on, may be exerted to its utmost extent over every part of such commerce, and is subject to no limitations save such as are prescribed in the Constitution. But, of

course, it does not extend to any matter or thing which does not have a real or substantial relation to some part of such commerce.

5. Among the instruments and agents to which the power extends are the railroads over which transportation from one State to another is conducted, the engines and cars by which such transportation is effected, and all who are in anywise engaged in such transportation, whether as common carriers or as their employees.

6. The duties of common carriers in respect of the safety of their employees, while both are engaged in commerce among the States, and the liability of the former for injuries sustained by the latter, while both are so engaged, have a real or substantial relation to such commerce, and therefore are within the range of this power. Cooley *v.* Board of Wardens, 12 How., 299, 315–317; The Lottawanna, 21 Wall., 558, 577; Sherlock *v.* Alling, 93 U. S., 99, 103–105; Smith *v.* Alabama, 124 U. S., 465, 479; Nashville, etc., Railway Co. *v.* Alabama, 128 U. S., 96, 99; Peirce *v.* Van Dusen, 78 Fed., 693, 698–700; Baltimore & Ohio Railroad Co. *v.* Baugh, 149 U. S., 368, 378; Patterson *v.* Bark Eudora, 190 U. S., 169, 176; Johnson *v.* Southern Pacific Co., 196 U. S., 1; Schlemmer *v.* Buffalo, etc., Railway Co., 205 U. S., 1; Employers' Liability Cases, 207 U. S., 463, 495; Adair *v.* United States, 208 U. S., 161, 176–178; Baltimore & Ohio Railroad Co. *v.* Interstate Commerce Commission, 221 U. S., 612, 618; Southern Railway Co. *v.* United States, 222 U. S., 20.

He further held that—

In view of these settled propositions it does not admit of doubt that the answer to the first of the questions before stated must be that Congress in the exertion of its power over interstate commerce may regulate the relations of common carriers by railroad and their employees while both are engaged in such commerce, subject always to the limitations prescribed in the Constitution, and to the qualification that the particulars in which those relations are regulated must have a real or substantial connection with the interstate commerce in which the carriers and their employees are engaged.

In this opinion the court decided adversely to the contentions of the defendants that the act in question violated any of the provisions of the Constitution of the United States, and applying the law as there enunciated to the compensation act now under consideration Congress has plenary power over the subject attempted to be covered by the provisions thereof.

In the case of Adair *v.* United States (208 U. S., 161) Justice Harlan expressly recognized that the court in the employers' liability cases had sustained the power of Congress with respect to the relation of master and servant while both are engaged in interstate commerce, holding that—

In that case the court sustained the authority of Congress under this power to regulate interstate commerce and prescribe the rule of liability as between interstate carriers and its employees in such interstate commerce in cases of personal injuries received by employees while actually engaged in such commerce.

In the case of Atlantic Coast Line *v.* Riverside Mills (219 U. S., 201) Justice Lurton, speaking for the court, said:

This power to regulate is the right to prescribe the rules under which such commerce may be conducted. * * * It is a power which extends to the regulation of the appliances and machinery and agencies by which such commerce is conducted.

Thus in Johnson *v.* Southern Pacific Railway (196 U. S., 1) an act prescribing safety appliances was upheld, and in Interstate Commerce Commission *v.* Iowa Central Railway Co. (215 U. S., 452) it was held that the equipment of an interstate railway, including cars used for the transportation of its own fuel, was subject to the regulation of Congress. In Interstate Commerce Commission *v.* Chicago & Alton Railroad Co. (215 U. S., 479) it was held to extend to the distribution of coal cars to the shipper so as to prevent discrimination.

In the employers' liability cases (207 U. S., 463) power to pass an act which regulated the relation of master and servant so as to impose on the carrier while engaged in interstate commerce liability for the negligence of a fellow servant, for which at common law there was no liability, and depriving such carrier of the common-law defense of contributory negligence, save by way of reduction of damages, was upheld.

In Addyston Pipe Co. *v.* United States (175 U. S., 211) and Northern Securities Co. *v.* United States (193 U. S., 197) it was held that this power of regulation extended to and embraced contracts in restraint of trade between the States * * *.

If the regulating act be one directly applicable to such commerce, not obnoxious to any other provision of the Constitution, and reasonably adapted to the purpose by reason of legitimate relation between such commerce and the rule provided, the question of power is foreclosed.

The test of power—

Said Mr. Justice White, in the employers' liability cases heretofore referred to—

is not merely the matter regulated, but whether the regulation is directly one of interstate commerce or is embraced within the grant conferred on Congress to use all lawful means necessary and appropriate to the execution of the power to regulate commerce.

In Baltimore & Ohio Railroad *v.* Interstate Commerce Commission (221 U. S., 612) Mr. Justice Hughes said:

By virtue of its power to regulate interstate and foreign commerce Congress may enact laws for the safeguarding of the persons and property that are transported in that commerce and all of those who are employed in transporting them.

It will thus be seen from this brief reference to the decisions of the Supreme Court that the power and authority of Congress under the commerce clause is fully recognized as extending to the health, the lives, and the limbs, as well as to the property, of the citizen when these or any of them are in any way engaged in or affected by interstate transportation.

There can be no reason, either in law or morals, in this day and generation for recognizing the application of the commerce clause of the Constitution to property, to the vehicles and machinery, and to the appliances used in commerce between the States, and denying its application for the protection of the lives and limbs of the employees, who are as much, if not more, necessary to the conduct of the traffic than are the other agencies used therein. It has therefore been found by the courts to be necessary to extend the rule beyond any limits that might have been conceived of by the framers of the Constitution when that instrument was prepared.

Innumerable decisions might be cited to show that the commerce clause has been extended in its application to the persons, as well as to the things involved in interstate commerce; but these recent cases to which attention has been called are sufficient, it seems to me, to show the universal applicability of this clause to all of the instrumentalities and agencies of interstate commerce. But, conceding this to be true, are there any inhibitions against the power of Congress under the commerce clause in any other provision of the Constitution? Because if there are any restrictions upon its extension to the regulation of the relations between employer and employee, such restrictions to that extent limit or forbid such regulation.

Second. *Neither the fifth, the seventh, nor the fourteenth amendments limit or restrict the power of Congress to exercise plenary power over the subject under discussion.*

Does the fifth amendment, which forbids that any person shall be deprived of life, liberty, or property without due process of law, and the taking of private property for public use without just compensation, limit or restrict the power of Congress under the commerce clause? If it does, the act under consideration is void. I maintain that the act in question is not obnoxious to the fifth amendment, and in considering this question it is appropriate to consider the rights of both the employer and the employee as affected by the fifth amendment.

The act under consideration from and after the time of its taking effect undoubtedly affects the statutory as well as the common-law rights of the employee to the extent, first, that it takes away from him the right of action which he now has against his employer for damages for injuries occasioned by the negligence of the employer; and, second, it fixes the maximum amount of compensation that he shall receive for the classes of injuries mentioned in the act, as well as the amount recoverable by his representatives in case of death; in both of which cases the amount now recoverable is dependent upon the verdict of the jury, unless, as in some States, the maximum of recovery in case of death is fixed by statute.

This right of action, whether under statute or under the common law, is not a property or a vested right within the meaning of the fifth amendment to the Constitution. It is settled by a long line of authorities that there is no vested right under the Constitution in any common-law right of action or remedy. In Munn *v.* Illinois (94 U. S., 113), the court said:

But a mere common-law regulation of trade or business may be changed by statute. A person has no property, no vested interest, in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law can not be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed and to adapt it to the changes of time and circumstances.

To the same effect is the decision of the court in Campbell *v.* Holt (115 U. S., 628), where it was insisted that the right to defense is a vested right and a right of property which is protected by the provisions of the fifth amendment, and the court say:

It is to be observed that the words "vested right" is nowhere used in the Constitution, neither in the original instrument nor in any of the amendments to it.

We understand very well what is meant by a vested right to real estate, to personal property, or to incorporeal hereditaments. But when we get beyond this, although vested rights may exist, they are better described by some more exact term, as the phrase itself is not one found in the language of the Constitution.

Judge Cooley, Constitutional Limitations, page 438, says:

"Vested rights can not be taken away by legislative enactments, but a right can not be considered a vested right unless it is something more than such a mere expectation as may be based upon the anticipated continuance of the present general laws. The legislators may change such general laws constitutionally except as to a right of interest that may have already accrued or became perfected. * * * In organized society every man holds all he possesses and looks forward to all he hopes for through the aid and under the protection of the laws; but as changes of circumstances and of public opinion, as well as other reasons affecting the public policy, are all the while calling for changes in the laws, and as these changes must influence more or less the value and stability of private relations and strengthen or destroy well-founded hopes, and as the power to make very many of them could not be disputed without denying the right of the political community to prosper and advance, it is obvious that many rights, privileges, and exemptions that usually pertain to ownership under a particular state of law and many reasonable expectations can not be regarded as vested rights in any sense."

Some of the States have in their constitutions, in substance, the provision of Magna Charta: "Every man shall have a remedy for injury done him in person, property, or reputation." Nevertheless, the principle last above stated has been sustained in States having such a con-

stitutional provision. Instances are: Templeton *v.* Linn Co. (51 L. R. A., 730), in which the supreme court of Oregon said:

"The words, 'and every man shall have a remedy by due process of law for injury done him in person, property, or reputation,' are claimed to operate as a guaranty in favor of all persons who might be injured by a county's neglect, that the legislature should never so change the statute as to destroy the liability of such county. In other words, the constitution found a certain liability created by statute resting upon the several counties and tied the hands of the legislature so that such liability should endure as long as the constitution shall remain in force. As a proposition of constitutional law this contention seems startling, and although the constitutions of many of the States of the Union contain substantially the same provision as section 10, supra, no judicial authority was cited upon the argument in support of it, and I think it may be safely assumed that none exists. * * * At the time of the repeal the plaintiff had no cause of action against Linn County, and her sole cause of complaint is that the repeal of the statute before the injury cut off a means of action which she otherwise would have had against the county. * * * Vested rights are placed under constitutional protection and can not be destroyed by legislation. Not so with those expectancies and possibilities in which the party has no present interests."

Williams *v.* Galveston (90 S. W. Rep., 505, Tex. Civ. App.), in which the court said:

"The citizen has no property right in a rule at law; and while rights may accrue to him under the operation of a legal rule which becomes vested and can not be taken away from him by the change of the rule, he can not be heard to complain if, before such property rights become vested, the rule is so changed that no rights can accrue thereunder."

In the Territory of New Mexico a statute which limited the liability for personal injury was attacked as unconstitutional because it deprived an injured person of the right to compensation for an injury without due process of law, and the court in disposing of this contention said:

Appellant contends that it (the statute) is unconstitutional in that it deprives her of her property without due process of law. This contention is based upon the hypothesis that she has a cause of action against the appellee, which is property; and the act deprives her of it without the "judgment of her peers and the law of the land." This is petitio principii, in assuming that she has a cause of action. Conceding that a cause of action for personal injuries is property, the cause of action—i. e., the property—must exist before one can be deprived of it at all. A statute which abrogates a cause of action for a personal injury before such cause of action has arisen, or before the injury occurs, or requires certain things to be done by the injured party as conditions precedent to a cause of action, does not deprive the injured party of his property without due process of law. For, in view of such a statute, the party has or can have no cause of action until the conditions of the statute which give it have been performed. It is certainly within the power of a legislature to declare what facts, occurring within its jurisdiction, after the passage of the act, shall or shall not constitute a cause of action, though such facts may or may not, if occurring before the legislative enactment, have been actionable. In other words, a legislature may create a right of action which never existed before, or abolish one that had before existed, if, in doing so, it does not affect rights which vested prior thereto. A party injured after a legislature has taken away the right of action for personal injuries can no more complain of it than a party against whom a right of action is given for an injury resulting in death can of such a legislative enactment. For the one party is no more injuriously affected by such legislation than the other. In the one case, what was before actionable ceases to be so; in the other, what was not before actionable has become so. If, then, a legislature can abolish entirely what would otherwise be a ground of recovery, there can be no doubt that it can burden it with such conditions as it pleases. (Sawyer *v.* El Paso & N. E. Ry., 108 S. W., 719.)

A statute in Pennsylvania provided that—

when any person shall sustain personal injury or loss of life while lawfully engaged or employed on or about the roads, works, depots, and premises of a railroad company, or in or about any train or car therein or thereon, of which company such person is not an employee, the right of action and recovery in all such cases against the company shall be such only as would exist if such person were an employee, provided that this section shall not apply to passengers.

This statute was attacked as in conflict with the fourteenth amendment, in that it deprived the plaintiff of his remedy for injury occasioned by the negligence of the defendant and was a denial of due process of law. When the case came before the Supreme Court of the United States in Martin *v.* Pittsburg, etc., Ry Co. (203 U. S., 284) the court, through Justice White, said:

The contention that because in the cases referred to the operation of the State laws, which were sustained, was to augment the liability of a carrier, therefore the rulings are inapposite here, where the consequence of the application of the State statute may be to lessen the carrier's liability, rests upon a distinction without a difference. The result of the previous rulings was to recognize, in the absence of action by Congress, the power of the States to legislate, and, of course, this power involved the authority to regulate as the State might deem best for the public good, without reference to whether the effect of the legislation might be to limit or broaden the responsibility of the carrier. In other words, the assertion of Federal right is disposed of when we determine the question of power, and doing so does not involve considering the wisdom with which the lawful power may have been under stated conditions exerted.

And the views previously stated are adequate to dispose of the assertion that the Pennsylvania statute is void for repugnancy to the fourteenth amendment. If it be conceded, as contended, that the plaintiff in error could have recovered but for the statute, it does not follow that the Legislature of Pennsylvania in preventing a recovery took away a vested right or a right of property. As the accident from which the cause of action is asserted to have arisen occurred long after the passage of the statute, it is difficult to grasp the contention that the statute deprived the plaintiff in error of the rights just stated. Such a contention in reason must rest upon the proposition that the State of Pennsylvania was without power to legislate on the subject—a proposition which we have adversely disposed of. This must be, since it would clearly follow if the argument relied upon were maintained, that the State would be without power on the subject. For it can not be said that the State had authority in the premises if that authority did not even extend to prescribing a rule which would be applicable to conditions wholly arising in the future.

And again, in Louisville & Nashville R. R. Co. *v.* Mottley (219 U. S., 467), in disposing of the contention of the right to a remedy for a tort inflicted in the future, the court held that, even in the case of a contract right where the consideration had been fully paid, it was within the regulative power of Congress under the commerce clause, and held that even after the enactment of the act of June 29, 1906, known as the interstate commerce act, it was unlawful for a carrier to issue interstate transportation in pursuance of a prior existing contract to do so as compensation for injuries received, and, even though valid when made, such a contract can not now be enforced against the carrier by suit.

That is where a man and his wife were seriously injured in a railroad accident, and in settling the case the company agreed to give and the parties agreed to accept an annual pass during the rest of their lives as full compensation for the injury, but after the passage of the Sherman Act the Supreme Court held that that contract was revoked under the terms of the act, and that the railroad company had no power to issue passes to them even in the face of a contract which was in existence prior to the enactment of that law.

And in the case of Mondou *v.* New York, New Haven & Hartford Railroad Co., to which I have heretofore referred, the court reaffirmed the doctrine laid down in the case of Munn *v.* Illinois (94 U. S., 113), that a person has no property nor vested interest in any rule of the common law, and held—

The natural tendency of the changes described—

Referring to changes in the common-law defenses—

is to impel the carriers to avoid or prevent the negligent acts and omissions which are made the bases of the rights of recovery which the statute creates and defines; and, as whatever makes for that end tends to promote the safety of the employees and to advance the commerce in which they are engaged, we entertain no doubt that in making those changes Congress acted within the limits of the discretion confided to it by the Constitution. (Lottery Case, 188 U. S., 321, 353, 355; Atlantic Coast Line R. R. Co. *v.* Riverside Mills, 219 U. S., 186, 203.)

We are not unmindful that that end was being measurably attained through the remedial legislation of the several States, but that legislation has been far from uniform, and it undoubtedly rested with Congress to determine whether a national law, operating uniformly in all the States upon all carriers by railroad engaged in interstate commerce, would better subserve the needs of that commerce. (The Lottawanna, 21 Wall., 558, 581–582; Baltimore & Ohio R. R. *v.* Baugh, 149 U. S., 368, 378–379.)

These decisions, and others which might be cited, establish the doctrine that there is no property right involved in either the common law or statutory right of action for damages, or in the remedy, that is not subject to the regulative power of the commerce clause or which may not be taken away without making the act obnoxious to the due-process clause of either the fifth or the fourteenth amendments to the Constitution.

While the act under consideration cuts off the rights of the employee engaged in interstate commerce in so far as his right of action and his remedy is concerned, it also destroys the defenses, both at common law and under statutes, of the employer while engaged in interstate commerce, in that, first, it abolishes the defenses of assumption of risk, contributory negligence, and fault of the fellow servant; and, second, it imposes a fixed and compulsory liability upon the carrier while engaged in such commerce, without regard to fault or negligence, whether upon his own part or upon the part of the employee, or whether inherent in the business, for injuries received by the employee.

Is this obliteration of these defenses, whether by Congress or by State legislatures, and the imposition of liability without fault a violation of the due process clause of either the fifth or the fourteenth amendments? With reference to this it may be stated, as in the case of an employee, if these defenses are property or vested rights, or if the imposition of liability without fault is the taking of property without due process of law, then the act under consideration must be held as inhibited by these constitutional provisions, and therefore void and beyond the power of Congress. The authorities cited fully sustain the doctrine that these defenses do not constitute a vested right, nor are they property within the meaning of the fifth and fourteenth amendments; and Congress has the power to abolish or modify them, as well as to substitute others in their stead if in its wisdom it sees proper to do so.

But it is contended that imposing a liability upon the employer engaged in interstate commerce to pay an employee while engaged in such commerce, where there is no fault upon the part of the employer, even though there may be negligence and fault on the part of the employee, is the taking of private property without due process of law and without compensation. I

maintain that the doctrine is well established by many of the courts of last resort in many of the States of the Union and by the Supreme Court of the United States, where the question has been raised, that the imposition of liability without fault is not the taking of private property without compensation nor violative of the right of due process of law. Instances of statutes imposing liability without fault are not new in national or State legislation.

Sections 4585 and 4803, Revised Statutes of the United States, provide for the assessment and collection by the collectors of customs at the several ports of the United States from the master or owner of every vessel of the United States arriving from a foreign port, or of every registered vessel employed in the coasting trade, before such vessel should be admitted to entry, the sum of 40 cents per month for each and every seaman employed; the moneys so collected to be placed to the credit of a fund for the relief of sick and disabled seamen. The principle of these acts originated more than a hundred years ago, and its constitutionality has never been—so far as I have been able to ascertain—controverted or questioned.

It might be charged against these statutes that it was the taking of property without due process of law, but the principle involved would unquestionably be sustained on the theory that it was necessary to the protection of the public health and safety of those engaged in this particular hazardous employment.

State statutes imposing liability without fault have been almost universally upheld as not violative of any constitutional provision. Illustrations of this are to be found in those which impose upon common carriers liability for loss of goods intrusted to them for shipment, where the loss is not attributable in any sense to the negligence of the carrier; those which make the carrier liable for fires caused without negligence from sparks from the engine; those which levy an assessment upon banks which are without fault for the payment of the depositors of insolvent banks; those which impose upon an employer who is without fault liability to an employee for the negligent act of another employee who is guilty of negligence; those which impose upon the landlord who leases his property where intoxicating liquors are sold and injuries are suffered by those who become intoxicated, even where the lessee of the premises sold without the knowledge of the landlord; those which impose liability without fault upon carriers for injuries suffered by passengers, except where the injury is caused by the passenger's criminal negligence or by his violation of some express rule of the company actually brought to his attention; those which impose liability for the killing of stock trespassing upon the right of way of the carrier; and those imposing liability upon fire insurance agents, based upon the amount of insurance effected by them, for the benefit of a fund to care for and cure sick and injured firemen.

These statutes have been sustained by the courts of last resort as not obnoxious to the State constitutions, which follow closely the Federal Constitution, nor violative of either the fifth or the fourteenth amendments.

A law of Kansas imposed upon railroad companies liability for injury to one of their servants inflicted by the personal wrongful act of a fellow servant where the carrier was without fault or negligence. This statute was attacked on the ground that it was violative of the fourteenth amendment, but the court, in Missouri Pacific Ry. Co. *v.* Mackey (127 U. S., 205), in disposing of this contention, said:

The only question for our examination, as the law of 1874 is presented to us in this case, is whether it is in conflict with clauses of the fourteenth amendment. The supposed hardship and injustice consist in imputing liability to the company, where no personal wrong or negligence is chargeable to it or to its directors. But the same hardship and injustice, if there be any, exist when the company, without any wrong or negligence on its part, is charged for injuries to passengers. Whatever care and precaution may be taken in conducting its business or in selecting its servants, if injury happen to the passengers from the negligence or incompetency of the servants, responsibility therefor at once attaches to it. The utmost care on its part will not relieve it from liability, if the passenger injured be himself free from contributory negligence. The law of 1874 extends this doctrine and fixes a like liability upon railroad companies where injuries are subsequently suffered by employees, though it may be by the negligence or incompetency of a fellow servant in the same general employment and acting under the same immediate direction. That its passage was within the competency of the legislature we have no doubt.

In Bertholf *v.* O'Reilly (74 N. Y., 509), the constitutionality of a statute imposing liability upon a landlord who knowingly leases his premises for saloon purposes, for losses resulting from intoxication caused by the sale of liquor by his lessee, without fault upon the part of the landlord, Judge Andrews, in delivering the opinion of the court, said:

And the act of 1873 is not invalid because it creates a right of action and imposes a liability not known to the common law. There is not such limit to legislative power. The legislature may alter or repeal the common law. It may create new offenses, enlarge the scope of civil remedies, and fasten responsibility for injuries upon persons against whom the common law gives no remedy. We do not mean that the legislature may impose upon one man liability for an injury suffered by another with which he had no connection. But it may change the rule of the common law, which looks only to the proximate cause of the mischief, in attaching legal responsibility and allow a recovery to be had against those whose acts contributed, although remotely, to produce it. * * * The liability imposed upon the landlord for the acts of the tenant is not a new principle in legislation. His liability only arises when he has consented that the premises may be used as a place for the sale of liquors. He selects the tenant, and he may, without violating any constitutional provision, be made responsible for the tenant's acts connected with the use of the leased property.

A statute in Nebraska makes a railroad company liable in damages for injuries sustained by a passenger, regardless of the question of negligence upon the part of the company, except where the injury is caused by the passenger's criminal negligence or by his violation of some express rule of the company actually brought to his attention. It was objected to this statute that it violated the due process law clauses of the State and Federal constitutions, but the Supreme Court of Nebraska, in Chicago, Rock Island, etc., Railway Co. *v.* Zernecke (59 Nebr., 689), sustained it, and on appeal to the Supreme Court of the United States (183 U. S., 582) that court sustained the statute against this attack, and said:

In Omaha & R. V. R. Co. *v.* Chollette (33 Nebr., 143), the words of the statute exempting railroad companies from liability, "where the injury done arose from the criminal negligence of the persons injured," were defined to mean "gross negligence," "such negligence as would amount to a flagrant and reckless disregard" by the passenger of his own safety, and "amount to a willful indifference to the injury liable to follow." This definition was approved in subsequent cases. It was also approved in the case at bar, and the plaintiff in error, it was in effect declared, was precluded from any defense but that of negligence, as defined, or that the injury resulted from the violation of some rule of the company by the passenger brought to his actual notice, and the company, as we have said, was not permitted to introduce evidence that the derailment of its train was caused by the felonious act of a third person. The statute, thus interpreted and enforced, it is asserted, impairs the constitutional rights of plaintiff in error. The specific contention is that the company is deprived of its defense, and not only declared guilty of negligence and wrongdoing without a hearing, but adjudged to suffer without wrongdoing, indeed even for the crimes of others, which the company could not have foreseen or have prevented.

Thus described, the statute seems objectionable. Regarded as extending the rule of liability for injury to persons which the common law makes for the loss of or injury to things, the statute seems defensible. And it was upon this ground that the supreme court of the State defended and vindicated the statute. The court said:

"The legislation is justifiable under the police power of the State, so it has been held. It was enacted to make railroad companies insurers of the safe transportation of their passengers as they were of baggage and freight, and no good reason is suggested why a railroad company should be released from liability for injuries received by a passenger while being transported over its line, while the corporation must respond for any damages to his baggage or freight.

"Our jurisprudence affords examples of legal liability without fault and the deprivation of property without fault being attributable to its owner. The law of deodands was such an example. The personification of the ship in admiralty law is another. Other examples are afforded in the liability of the husband for the torts of the wife; the liability of a master for the acts of his servants."

This same statute was upheld by the Circuit Court of Appeals of the Eighth Circuit in Clark *v.* Russell (97 Fed., 900), the court saying:

A further contention of the plaintiffs in error is that the statute violates the fifth and fourteenth amendments of the Constitution of the United States, in that it deprives the railroad company of its property "without due process of law," and denies to it the equal protection of the laws. The fifth amendment has no application to the States and in no way affects their powers. In all jurisdictions inferior to the Supreme Court, we think it must be regarded as settled for the present that statutes imposing an additional or even absolute liability on railroads for injuries to passengers or property are not repugnant to the Constitution of the United States. A statute of Missouri made every railroad company operating a railroad in that State absolutely responsible in damages for property injured or destroyed by fire communicated by its locomotive engines, and declared a railroad company had an insurable interest in property along its route that authorized it to insure such property. The question whether this statute was repugnant to the Constitution of the United States came before the Supreme Court in the case of Railway Co. *v.* Mathews (165 U. S., 1). The contention of the railroad company in that case was exactly what the contention of the plaintiffs in error is in the case at bar. In the introduction to the opinion the court said:

"It has been strenuously argued in behalf of the plaintiff in error that this statute is an arbitrary, unreasonable, and unconstitutional exercise of legislative power, imposing an absolute and onerous liability for the consequences of doing a lawful act and of conducting a lawful business in a lawful and careful manner, and that the statute violates the Constitution of the United States by depriving the railroad company of its property without due process of law and by denying to it the equal protection of the laws."

After a learned and exhaustive review of all the cases, the court unanimously held the act constitutional, concluding their opinion with the declaration:

"The statute is not a penal one, imposing punishment for a violation of law, but it is purely remedial, making the party doing a lawful act for its own profit liable in damages to the innocent party injured thereby, and giving to that party the whole damages, measured by the injury suffered. (Railroad Co. *v.* Richardson, 91 U. S., 454, 472; Huntington *v.* Attrill, 146 U. S., 657.) The statute is a constitutional and valid exercise of the legislative power of the State, and applies to all railroad corporations alike. Consequently, it neither violates any contract between the State and the railroad company, nor deprives the company of its property without due process of law, nor yet denies to it the equal protection of the laws."

In their opinion the court cite numerous statutes which impose liability on railroad companies wholly independent of negligence on

their part, and show that the courts have uniformly maintained their validity. A statute of Massachusetts made the liability of a railroad company for the destruction of property by fire communicated from its locomotive engines absolute, and not dependent upon negligence on its part. The supreme judicial court of Massachusetts held this act valid upon grounds that have ever since been held to be sufficient to uphold such legislation. Chief Justice Shaw, delivering the judgment, said:

"We consider this to be a statute purely remedial and not penal. Railroad companies acquire large profits by their business. But their business is of such a nature as necessarily to expose the property of others to danger; and yet, on account of the great accommodation and advantage to the public, companies are authorized to maintain them, dangerous though they are; and so they can not be regarded as a nuisance. The manifest intent and design of this statute, we think, and its legal effect are, upon the considerations stated, to afford some indemnity against this risk to those who are exposed to it and to throw the responsibility upon those who are thus authorized to use a somewhat dangerous apparatus, and who realize a profit from it." (Hart *v.* Railroad Corp. (1847), 13 Metc. (Mass.), 99.)

Similar statutes, imposing a liability upon the railroad company wholly independent of negligence on its part, exist in Vermont, Maine, New Hampshire, Connecticut, Iowa, Missouri, Colorado, South Carolina, and probably other States, and their constitutionality has invariably been upheld. A Kansas statute made railroad companies doing business in that State liable for all damages done to an employee in consequence of the negligence of other employees. In Railway Co. *v.* Mackey (127 U. S., 205) the statute was assailed as unconstitutional, and the Supreme Court, in answer to that contention, said:

"The contention of the company, as we understand it, is that the law imposes upon railroad companies a liability not previously existing, in the enforcement of which their property may be taken, and thus authorizes, in such cases, the taking of property without due process of law, in violation of the fourteenth amendment. The plain answer to this contention is that the liability imposed by the law of 1874 arises only for injuries subsequently committed. It has no application to past injuries, and it can not be successfully contended that the State may not prescribe the liabilities under which corporations created by its laws shall conduct their business in the future where no limitation is placed upon its power in this respect by their charters. Legislation to this effect is found in the statute books of every State. The hardship or injustice of the law of Kansas of 1874, if there be any, must be relieved by legislative enactment. The only question for our examination, as the law of 1874 is presented to us in this case, is whether it is in conflict with clauses of the fourteenth amendment. The supposed hardship and injustice consist in imputing liability to the company where no personal wrong or negligence is chargeable to it or to its directors. But the same hardship and injustice, if there be any, exist when the company, without any wrong or negligence on its part, is charged for injuries to passengers. Whatever care and precaution may be taken in conducting its business or selecting its servants, if injury happen to the passengers from the negligence or incompetency of the servants, responsibility therefor at once attaches to it. The utmost care on its part will not relieve it from liability if the passenger injured be himself free from contributory negligence. The law of 1874 extends this doctrine and fixes a like liability upon railroad companies where injuries are subsequently suffered by employees, though it may be by the negligence or incompetency of a fellow servant in the same general employment and acting under the same immediate direction. That its passage was within the competency of the legislature we have no doubt."

The latest expression of that court upon the general question under consideration is found in the case of Railroad Co. *v.* Mathews (174 U. S., 96). In that case the court had under consideration a statute of Kansas relating to the liability of railroads for damages by fire, which provided that in all actions commenced under the act if the plaintiff recovered he should be allowed a reasonable attorney's fee, to become part of the judgment, and the court held the statute constitutional. (Clark *v.* Russell, 97 Fed., 900, 902, 904.)

In Minneapolis, etc., Ry. Co. *v.* Herrick (127 U. S., 210), a statute of Iowa which extended liability of the carrier for the willful wrongs, whether of omission or commission, of the agents, engineers, or other employees, was sustained against the attack that it was the taking of property without due process of law.

In the case of Noble State Bank *v.* Haskell, known as the Oklahoma Guaranty Law case (22 Okla., 48), and on appeal to the Supreme Court of the United States (219 U. S., 104), the latter court, overruling the contention that the act takes private property for a private use and creates a liability without fault, said:

The substance of the plaintiff's argument is that the assessment takes private property for private use without compensation. And while we should assume that the plaintiff would retain a reversionary interest in its contribution to the fund, so as to be entitled to a return of what remained of it if the purpose were given up (see Receiver of Danby Bank *v.* State Treasurer, 39 Vt., 92, 98), still there is no denying that by this law a portion of its property might be taken without return to pay debts of a failing rival in business. Nevertheless, notwithstanding the logical form of the objection, there are more powerful considerations on the other side. In the first place it is established by a series of cases that an ulterior public advantage may justify a comparatively insignificant taking of private property for what, in its immediate purpose, is a private use. (Clark *v.* Nash, 198 U. S., 361; Strickley *v.* Highland Boy Mining Co., 200 U. S., 361, 527; Offield *v.* New York, New Haven & Hartford R. R. Co., 203 U. S., 372; Bacon *v.* Walker, 204 U. S., 311, 315.) And in the next it would seem that there may be other cases besides the everyday one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume. (See Ohio Oil Co. *v.* Indiana, 177 U. S., 190.) At least, if we have a case within the reasonable exercise of the police power as above explained, no more need be said.

And, further:

It may be said in a general way that the police power extends to all the great public needs. (Canfield *v.* United States, 167 U. S., 518.) It may be put forth in aid of what is sanctioned by usage or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare. Among matters of that sort probably few would doubt that both usage and preponderant opinion give their sanction to enforcing the primary conditions of successful commerce. One of those conditions at the present time is the possibility of payment by checks drawn against bank deposits, to such an extent do checks replace currency in daily business. If, then, the legislature of the State thinks that the public welfare requires the measure under consideration, analogy and principle are in favor of the power to enact it. Even the primary object of the required assessment is not a private benefit, as it was in the cases above cited of a ditch for irrigation or a railway to a mine, but it is to make the currency of checks secure and by the same stroke to make safe the almost compulsory resort of depositors to banks as the only available means for keeping money on hand. The priority of claim given to depositors is incidental to the same object and is justified in the same way. The power to restrict liberty by fixing a minimum of capital required of those who would engage in banking is not denied. The power to restrict investments to securities regarded as relatively safe seems equally plain. It has been held, we do not doubt rightly, that inspections may be required and the cost thrown on the bank. (See Charlotte, Columbia & Augusta R. R. Co. *v.* Gibbes, 142 U. S., 386.) The power to compel beforehand cooperation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized if government is to do its proper work, unless we can say that the means have no reasonable relation to the end. (Gundling *v.* Chicago, 177 U. S., 183, 188.) So far is that from being the case that the device is a familiar one. It was adopted by some States the better part of a century ago and seems never to have been questioned until now. (Receiver of Danby Bank *v.* State Treasurer, 39 Vt., 92; People *v.* Walker, 17 N. Y., 502.) Recent cases going not less far are Lemieux *v.* Young (211 U. S., 489, 490); Kidd, Dater & Price Co. *v.* Musselman Grocer Co. (217 U. S., 461).

In Holden *v.* Hardy (169 U. S., 366) the court said:

An examination of both these classes of cases under the fourteenth amendment will demonstrate that, in passing upon the validity of State legislation under that amendment, this court has not failed to recognize the fact that the law is, to a certain extent, a progressive science; that in some of the States methods of procedure which at the time the Constitution was adopted were deemed essential to the protection and safety of the people, or to the liberty of the citizen, have been found to be no longer necessary; that restrictions which had formerly been laid upon the conduct of individuals, or of classes of individuals, had proved detrimental to their interests; while, upon the other hand, certain other classes of persons, particularly those engaged in dangerous or unhealthful employments, have been found to be in need of additional protection. Even before the adoption of the Constitution much had been done toward mitigating the severity of the common law, particularly in the administration of its criminal branch. The number of capital crimes, in this country at least, had been largely decreased. Trial by ordeal and by battle had never existed here, and had fallen into disuse in England. The earlier practice of the common law which denied the benefit of witnesses to a person accused of felony had been abolished by statute, though so far as it deprived him of the assistance of counsel and compulsory process for the attendance of his witnesses it had not been changed in England. But to the credit of her American colonies let it be said that so oppressive a doctrine had never obtained a foothold there.

The present century has originated legal reforms of no less importance. The whole fabric of special pleading, once thought to be necessary to the elimination of the real issue between the parties, has crumbled to pieces. The ancient tenures of real estate have been largely swept away, and land is now transferred almost as easily and cheaply as personal property. Married women have been emancipated from the control of their husbands and placed upon a practical equality with them with respect to the acquisition, possession, and transmission of property. Imprisonment for debt has been abolished. Exemptions from execution have been largely added to, and in most of the States homesteads are rendered incapable of seizure and sale upon forced process. Witnesses are no longer incompetent by reason of interest, even though they be parties to the litigation. Indictments have been simplified, and an indictment for the most serious of crimes is now the simplest of all. In several of the States grand juries, formerly the only safeguard against a malicious prosecution, have been largely abolished, and in others the rule of unanimity, so far as applied to civil cases, has given way to verdicts rendered by a three-fourths majority. This case does not call for an expression of opinion as to wisdom of these changes or their validity under the fourteenth amendment, although the substitution of prosecution by information in lieu of indictment was recognized as valid in Hurtado *v.* California (110 U. S., 516). They are mentioned only for the purpose of calling attention to the probability that other changes of no less importance may be made in the future, and that while the cardinal principles of justice are immutable the methods by which justice is administered are subject to constant fluctuation, and that the Constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land.

These cases fully sustain the doctrine that the imposition of liability without fault is not in violation of the due process clause or the taking of private property without compensation under the fifth and fourteenth amendments.

Third. Is there anything in the act under consideration which is violative of the seventh amendment to the Constitution, which preserves the right of trial by jury in controversies where the sum in dispute is in excess of $20? If so, Congress has not the authority to enact it. I maintain that the right of trial by jury is reserved in the act under consideration. Reference to sections 8, 9, and 14 of the act discloses that three methods are provided for the settlement of claims for compensation between the employer and the employee: First, they may settle by agreement, according to the limitations of amount and time as established thereby; second, they may organize and constitute a committee or committees for the purpose of settling disputes and awarding compensation in accordance with the limitations as to amount and time prescribed by the act; and, third, in

default of an agreement between the parties or the submission by them to a committee of arbitration, either of the parties may institute proceedings for the adjustment of the claim before an adjuster, who shall promptly make and render his findings, returning them with the pleadings and other papers to the clerk of the United States district court of the proper district, and at any time within 20 days after receiving a copy of the findings either party may file exceptions thereto, and the case shall be tried and determined by the court de novo, and either party shall have the right to a trial by jury as in cases at common law. It will thus be seen that the right to trial by jury is preserved to either of the parties to the controversy, and the objection that the act is violative of the seventh amendment to the Constitution is not tenable, even if it be conceded that these proceedings are suits at common law, in view of the fact that the common-law right of action, as well as the remedy, are practically abrogated by the court under the authority of the decisions to which attention has heretofore been called.

There is respectable authority to sustain the proposition that in measures of this kind, which are regulative in their character and are intended for the general welfare, the right of trial by jury might be taken away and still the act be not obnoxious to the seventh amendment. This objection was made to the workmen's compensation act of the State of Washington, and Judge Fullerton disposed of it adversely to the contention. In delivering the opinion of the court, he said:

The common-law system of making awards for personal injuries has no such inherent merit as to make a change undesirable. While courts have often said that the question of the amount of compensation to be awarded for a personal injury is one peculiarly within the province of the jury to determine, the remark has been induced rather because no better method for solving the problem is afforded by that system than because of the belief that no better method could be devised. No one knows better than judges of courts of nisi prius and of review that the common-law method of making such awards, even in those instances to which it is applicable, proves in practice most unsatisfactory. All judges have been witnesses to extravagant awards made for most trivial injuries and trivial awards made for injuries ruinous in their nature; and perhaps no verdicts of juries are interfered with so often by the courts as verdicts making awards in such cases. There is no standard of measurement that the court can submit to the jury by which they can determine the amount of the award. The test of reasonableness means but little to the ordinary juror. Unused as he is generally to witnessing the results of injuries, he is inclined to measure his verdict by the amount of disorder he observes, rather than by the actual amount of disablement the injury has caused. Nor is he aided in this respect by the testimony of medical experts. Conflicting as such testimony usually is, it tends rather to confuse than to enlighten him. Perhaps the whole difficulty lies in the fact that the question is too much one of opinion and not enough of fact. It must be remembered, also, that the remedy afforded by the common law, as we have elsewhere remarked, can be applied only in a limited number of cases of injury—cases where the injury is the result of negligence on the part of the employer not contributed to by the employee. For the greater number of injuries the common law affords no remedy at all. For this unscientific system it is proposed to substitute a system which will make an award in all cases of injury, regardless of the cause or manner of its infliction; limited in amount, it is true, but commensurate in some degree to the disability suffered. The desirability of this substitution is unquestioned, and we believe that the legislature had the power to make it without violating any principle of the fundamental law.

The objection may be answered also in another way. The Constitution does not undertake to define what shall constitute a cause of action, nor to prohibit the legislature from so doing. The right of trial by jury accorded by the Constitution, as applicable to civil cases, is incident only to causes of action recognized by law. The act here in question takes away the cause of action on the one hand and the ground of defense on the other and merges both in a statutory indemnity, fixed and certain. If the power to do away with a cause of action in any case exists at all in the exercise of the police power of the State, then the right of trial by jury is thereafter no longer involved in such cases. The right of jury trial being incidental to the right of action, to destroy the one is to leave the other nothing upon which to operate.

In the case of Capital Traction Co. *v.* Hoff (174 U. S., 1), the Supreme Court practically determined the question that statutes of this character are not obnoxious to the seventh amendment, and held that the right of trial by jury has been preserved; and the questions involved in such trial have been so well stated in the memorandum submitted by Messrs. Stetson, Sherman, Packer, and Moran, law members of the committee of the National Civic Federation, that I quote therefrom in support of the proposition which I am now urging upon the attention of the Senate:

Under such a law the right to trial by jury of all issues of fact would be preserved. The principal question of fact arising under that law would be:

1. Whether or not the injured person was in defendant's employ.
2. Whether or not he was of a class of employers to whom the law applied.
3. Whether or not the accident arose out of and in the course of the employment.
4. Whether or not the injury was due to an excepted cause.
5. Whether or not the injuries claimed for resulted from the accident or from an accident.
6. The amount of compensation.

The first five issues involve no constitutional question. The sixth, the amount of compensation, it is submitted, would be determinable by the jury according to the rules of the law of compensation, just as now the amount of damages is determined by the jury according to the rules of the law of tort. That the rules of compensation are so simple and certain as to leave little for the jury, and therefore to be conducive to prompt settlements, informal arbitrations, and other methods of avoiding jury trials, is an advantage and not an objection.

Under the existing law of negligence the jury has a wide discretion in determining the amount of damages and can add to them a solatium for pain and anguish and a further amount as a penalty. This flows from the nature of the liability which is for a wrong. But the compensation liability is not for a wrong. Over the facts by which the amount of the loss is to be measured the jurisdiction of the jury would remain unaltered, and the only change would be in the nature of the liability and not in the function of the jury in regard to such a liability. Therefore the contention that by fixing the measure of the liability the compensation law would be depriving the jury of its inalienable function amounts simply to a contention that a legal right or liability that once has been triable by a jury never can be abrogated or restricted, which we do not admit.

Neither does there seem to be conclusive force in the more specific objection that in case of fatal injuries, by definitely regulating the amount of compensation, a compensation law would deprive the jury of its constitutional functions. At the time of the adoption of the constitution there was no liability for damages for fatal accidents. Later a liability was imposed by statute, but at first a limit upon the amount of damages was generally fixed regardless of whether or not the actual damages exceeded that limit. Is there any constitutional principle that permits an arbitrary limitation upon the amount of damages that a jury may assess in such cases, and yet prohibits limitations upon the amount of compensation?

I come now to the decisions of the courts of last resort bearing upon State legislation having for its purpose the imposition of liability upon employers in favor of employees.

Mr. WILLIAMS. Mr. President, before the Senator comes to that——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Mississippi?

Mr. CHAMBERLAIN. I do.

Mr. WILLIAMS. I notice another attack has been made upon the bill, and I desire to ask a question, principally for information and for explanation, because I am very anxious that the first presentation of it shall cover some of these attacks against it. The attack is made that the employees' counsel fees are limited by the act, whereas the employers' counsel fees are not. In making the attack it is urged that this virtually permits the employer to have the best legal talent in the world and cuts the employee off from it. I suppose the provision of the bill to which reference is made in this attack is clause 5, on page 24, which reads as follows:

(5) Wherever counsel or agent for the employee has stipulated for a fee, the agreement for such fee to be valid shall be made in writing and filed with the adjuster or clerk of the court in which the case is pending, and the employee shall not be liable to pay any counsel fee in excess of the amount allowed by the adjuster or the court. In every case it shall be the duty of the adjuster or the court, as the case may be, regardless of any agreement, to fix the compensation, which shall not exceed a fair and reasonable sum for the services actually rendered.

Now, the question I want to ask the Senator from Oregon is this: Does he think or does he not think that it would be well to insert the word "employer" after the word "employee," in this clause, so that it will read:

Wherever counsel or agent for the employee or employer has stipulated for a fee, the agreement for such fee to be valid shall be made in writing and filed with the adjuster or clerk of the court in which the case is pending, and the employee or employer shall not be liable to pay any counsel fee in excess,

And so forth.

Then the adjuster would fix the fees in both cases and keep the transportation company from having the immense advantage of being able to pay an immensely superior lawyer's fee.

Mr. CHAMBERLAIN. Personally, I will say I do not see any objection to the amendment. As a matter of fact that provision was framed particularly to protect the employee against the exorbitant charges that he now suffers——

Mr. WILLIAMS. I understand.

Mr. CHAMBERLAIN. From 25 to 50 per cent of the amount recovered. Yet I believe this is the first time the question has been raised. As a matter of fact, I suppose the men who usually appear for the employers are employed on an annual salary, paid by the company. But I do not see any objection to inserting that language, I will say to the Senator.

Mr. WILLIAMS. I think as a rule that is true, and I do not myself see very much in it; but it is always well to disarm criticism and hostility by doing anything that is not harmful to the legislation.

Mr. SUTHERLAND. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Utah?

Mr. CHAMBERLAIN. I yield.

Mr. SUTHERLAND. It seems to me the suggestion made by the Senator from Mississippi would be rather impracticable, because the lawyers for the railroad companies, as has already been suggested, are employed on an annual salary, I think almost without exception. They are employed not only to attend to this class of cases, but to all the business of the carrier.

Mr. WILLIAMS. I understand that.

Mr. SUTHERLAND. And it would be almost an impossible thing to separate the charges which might be made by them for services of this character from the other services rendered.

Mr. WILLIAMS. Then I would suggest that the word "employer" be inserted with a provision that it shall not apply wherever the regular annually retained attorney of the road is engaged in the case.

Mr. OVERMAN. Would not this be the result, no matter how you fix it, along the line suggested? The railroad always have the best attorneys in the country they can get——

Mr. WILLIAMS. If they are permitted to pay the highest salary, of course.

Mr. OVERMAN. While the employee is not represented by such counsel.

Mr. CHAMBERLAIN. I am unwilling to concede that, because I do not believe my friend the Senator from North Carolina is employed by railroads, and——

Mr. OVERMAN. But I could not go into court for $10, whereas the railroads get the best lawyers they can get.

Mr. WILLIAMS. With an exception that when the regular counsel, counsel receiving an annual fee, is employed, this shall not apply. I think it would be a good thing to put such a provision into the bill for the purpose of minimizing as much as possible this advantage now enjoyed by the carrier.

Mr. CHAMBERLAIN. I should like to say in reply to the Senator that the pay of the employee's attorney comes out of the compensation that he may receive under the act, while the amount paid the railroad's attorney does not come out of the compensation of the employee, but is paid by the railroad company itself.

Mr. WILLIAMS. In the ultimate analysis they both come out of the railroad treasury.

Mr. CHAMBERLAIN. Yes.

Mr. WILLIAMS. They come from the same source exactly, and if you can put the parties upon an equal footing, or an approximately equal footing, or upon a footing upon which they would not be without this provision, I think it would be a good thing.

Mr. CHAMBERLAIN. I have no objection to it.

Mr. SMITH of Georgia. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Georgia?

Mr. CHAMBERLAIN. Certainly.

Mr. SMITH of Georgia. Would it not be better to provide, especially in view of the character of the compensation to be given for these injuries, that if the railroads fail to settle, in view of the act, and the employee is compelled to go into court, the compensation of the attorney for the plaintiff shall be in addition to the amount allowed and shall be paid by the railroad also?

Mr. CHAMBERLAIN. I would not assent to that.

Mr. WILLIAMS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Mississippi?

Mr. CHAMBERLAIN. I yield.

Mr. WILLIAMS. If the Senator from Oregon will pardon me, there is another reason in this case. It would be much fairer under present conditions to charge counsel fee, because the man is forced to employ counsel, but when you give him another remedy, and he goes into court of his own accord when he might have gone into the other tribunal, it would be rather unjust to make the railroad company pay his counsel fee.

Mr. SMITH of Georgia. Is not the Senator from Mississippi mistaken when he says this is an additional remedy?

Mr. CHAMBERLAIN. This is exclusive.

Mr. SMITH of Georgia. All other remedies are taken away by this act.

Mr. WILLIAMS. If he chooses to leave it to the adjuster, he is not compelled to go into court under this act.

Mr. CHAMBERLAIN. He can settle it without going into court at all.

Mr. WILLIAMS. This is an additional remedy.

Mr. CHAMBERLAIN. It is exclusive, and——

Mr. WILLIAMS. It is an alternative remedy.

Mr. SMITH of Georgia. Is not the hearing before the adjuster really going into court? Is not that another name for a master in chancery of the Federal court, and does not he proceed to hear it just like a judge?

Mr. CHAMBERLAIN. Practically.

Proceeding now with the discussion of this subject and to a consideration of the decisions by the courts of the States which have enacted compensatory legislation, I call attention to the fact that the justices of the supreme judicial court of Massachusetts, in a communication under date of July 27, 1911, addressed to the senate of the Commonwealth, under the peculiar laws and the constitution of that State, in answer to the questions proposed by that body with reference to a contemplated workmen's compensation act, expressed themselves as follows:

The first section of the act (Pt. I, sec. 1) provides that "In an action to recover damages for personal injury sustained by an employee in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense—

"1. That the employee was negligent;

"2. That the injury was caused by the negligence of a fellow employee;

"3. That the employee had assumed the risk of the injury."

This section deals with actions at common law. We construe clauses 1 and 2 in their reference to negligence as meaning contributory negligence or negligence on the part of a fellow servant which falls short of the serious and willful misconduct which, under Part II, section 2, will deprive an employee of compensation. So construed, we think that the section is constitutional. We neither express nor intimate any opinion whether it would be unconstitutional if otherwise construed. The rules of law relating to contributory negligence and assumption of the risk and the effect of negligence by a fellow servant were established by the courts, not by the constitution, and the legislature may change them or do away with them altogether as defenses (as it has to some extent in the employer's liability act) as in its wisdom in the exercise of powers intrusted to it by the constitution it deems will be best for the "good and welfare of this Commonwealth." (See Missouri Pacific Railway *v.* Mackey, 127 U. S., 205; Minnesota Iron Co. *v.* Kline, 199 U. S., 593.) The act expressly provides that it shall not apply to injuries sustained before it takes effect. If, therefore, a right of action which has accrued under existing laws for personal injuries constitutes a vested right or interest, there is nothing in the section which interferes with such rights or interests.

The State of Washington enacted a workmen's compensation law March 14, 1911, and later proceedings were instituted to test its constitutionality in the case of State of Washington ex rel. *v.* Clausen, decided September 27, 1911. The policy and purposes of the act are recited in the first section substantially as follows:

It recites that the common-law system governing remedies of workmen against employers for injuries received in hazardous employments are inconsistent with modern industrial conditions; that in practice such remedies have proven economically unwise and unfair; that their administration has produced the result that little of the cost thereof to the employer has reached the workmen, and that little only at a great expense to the public; that the remedy to the individual workman is uncertain, slow, and inadequate; that injuries in such employments, formerly occasional, have become frequent and inevitable; that the welfare of the State depends upon its industries, and even more upon the welfare of its wageworkers. And it thereupon declares that the State of Washington, exercising its sovereign powers, withdraws all phases of the premises from private controversies and provides sure and certain relief for workmen injured in extrahazardous work, and their families and dependents, regardless of questions of fault, to the exclusion of "every other remedy, proceeding, or compensation, except as otherwise provided in this act." It thereupon abolished civil actions and civil causes of action for personal injuries incurred in extrahazardous employments, and the jurisdiction of the courts thereon, except as in the act provided.

It is compulsory in form and does away with all common-law and statutory remedies and defenses.

The objections, amongst others, urged against this act were:

(1) That it violates section 2 of article 1 of the State constitution and the fourteenth amendment to the Constitution of the United States, which provide that no person shall be deprived of life, liberty, or property without due process of law.

(2) That it violates the provision of the fourteenth amendment to the Constitution of the United States, which provides for the equal protection of the law.

(3) That it violates section 21 of article 1 of the State constitution, which provides that the right of trial by jury shall remain inviolate.

Each of these objections was held untenable in a lengthy and able opinion pronounced by Judge Fullerton. In sustaining the policy of the law, he said:

That the statute here in question has the attribute of reasonableness, rather than that of capriciousness, seems incontrovertible. The evil it seeks to remedy is one that calls loudly for action. Accidents to workmen engaged in the industries enumerated in it are all but inevitable. It seems that no matter how carefully laws for the prevention of accidents in such industries may be framed, or how rigidly they may be enforced, there is an element of human equation that enters into the problem which can not be eliminated and which invariably causes personal injuries and consequent financial losses to workmen engaged therein. Heretofore these losses have been borne by the injured workmen themselves, by their dependents, or by the State at large. It was the belief of the legislature that they should be borne by the industries causing them, or, perhaps more accurately, by the consumers of the products of such industries. That the principle thus sought to be put into effect is economically, sociologically, and morally sound, we think must be conceded. It is so treated by the learned counsel who have filed briefs in support of the auditor's contention; it is so conceded by all modern statesmen, jurists, and economic writers who have voiced their opinion on the subject; and the principle has been enacted into law by nearly all of the civilized countries of Europe, by Australia, by New Zealand, by the Transvaal, by the principal Provinces of the Dominion of Canada, and in a partial form at least by one or more of South American Republics. Indeed, so universal is the sentiment that to assert to the contrary is to turn the face against the enlightened opinion of mankind. The common law does not purport to afford a remedy for the condition here found to exist. It affords relief to an injured workman in only a limited number of cases—cases where the injury is the result of fault on the part of the employer and there is want of fault on the part of the workman. For the greater number of

injuries traceable to the dangers incident to industry, no remedy at all is afforded. The act, therefore, having in its support these economic and moral considerations, is not unconstitutional for the reasons suggested upon this branch of the argument.

Mr. OVERMAN. I understand the committee have made a thorough examination of the English law upon this subject.

Mr. CHAMBERLAIN. Yes; the commission has.

Mr. OVERMAN. Do I understand you to say that the law works well in England?

Mr. CHAMBERLAIN. Fairly well, though there is a good deal of objection to it. They have an employers' liability act in addition to the compensation act.

Mr. OVERMAN. Why did you leave out the optional plan? In England they have an option. Why make it compulsory? There the employee not only can take advantage of this act, but he can go into court. Why not make it optional here as it is in England?

Mr. CHAMBERLAIN. That is what almost all the railroad people asked us to do—make it elective in form rather than compulsory. I believe the railroad counsel were a unit in asking that it be made so.

Mr. OVERMAN. Why not? What is the reason for not doing so?

Mr. CHAMBERLAIN. Because there ought to be an end to litigation, and the amounts to be paid to employees in case of accident or death ought to be determined before the accident.

Mr. SUTHERLAND. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Utah?

Mr. CHAMBERLAIN. I yield.

Mr. SUTHERLAND. So far as I know, the English act is the only one in Europe which permits any option. In England there are three laws under which an action for personal injury may be brought: First, it may be brought under the common law; second, it may be brought under the employers' liability statute; and, third, under the compensation law.

Now, the option is given, but in practical operation it amounts to nothing, because at the common law all of the common-law defenses are preserved in their utmost rigor, so that the employee who is injured finds it of no sort of advantage to resort to the common-law remedy. Under the employer's liability statute the amount of the recovery is limited strictly to an amount which in most cases is afforded by the compensation act. So the employee does not resort to the employer's liability act, because he could recover no more under that than under the compensation law.

Mr. OVERMAN. We do not necessarily have to fix that rule here.

Mr. SUTHERLAND. That is quite true. At the proper time I intend to discuss that feature of it, and I shall undertake to point out to the Senator some very substantial reasons why we ought not to permit the option.

Mr. OVERMAN. I knew the Senator was very well informed on the subject, and I wanted to hear from him on it.

Mr. REED. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Missouri?

Mr. CHAMBERLAIN. I yield.

Mr. REED. I desire to ask the Senator from Utah a question while he is on his feet. He says that in England three methods of procedure are preserved: One, the right to sue under the common law; second, the right to sue under the employer's liability act; and, third, under the compensation act; but that the right to sue under the common law amounts to nothing, because the common-law defenses are preserved. Does the Senator mean to say as broadly as he did that there are no recoveries under the common law? Are there not plenty of cases where there can be—and have there not always been—a recovery under the common law?

Mr. SUTHERLAND. Oh, yes; there can be a recovery, but what I mean to say is this: That if the action is brought at common law the injured employee must first of all prove the negligence of the master. He must disprove his own, the burden of proof at common law being upon him. Then it is subject also to the defense of fellow-servant fault, without any of the modifications we have seen fit to introduce in the statutes of some of the States; and also the defense of assumption of risk. When the action is brought at common law, all of those defenses are preserved——

Mr. REED. I understand.

Mr. SUTHERLAND. As I have already stated, in their utmost rigor. So that while theoretically he has the right to resort to the common law, practically he does not do it, because it is of no advantage. So he does not resort to the statutory remedy of the employers' liability, under which he must prove negligence and under which certain defenses are done away with, because when he sues under that statute he can recover generally only the same amount as under the compensation law. So there is no reason for him to do it.

The preservation of these three alternative remedies under the English law in practical operation is of no consequence whatever. That is what I mean to say.

Mr. REED. As I understand, in England the common-law right of action is preserved, along with the common-law defenses, and under that in case a man is injured without negligence or fault on his part contributing and where there is negligence on the part of the master, he recovers an unlimited amount; that is, there is no legal limitation. There is the limitation which a court might impose, provided the judgment was unconscionable. So that that right has been preserved.

I ask the Senator if he really means to say that there are not many cases arising at common law were, when the plaintiff is able to meet all the requirements of the common law, when he is without fault on his own part and the fault is clearly that of the master, he is allowed to recover damages within the discretion of the jury?

Mr. SUTHERLAND. I mean to say that since the amended compensation act was passed in 1906 it is a very rare thing for an injured employee to resort to either of the other remedies. He takes his compensation under this law.

Mr. REED. One of the objections——

Mr. SUTHERLAND. But I will say to the Senator, further, that if there was a general resort to these other remedies, I should consider it a very unwise provision.

Mr. REED. Without saying that I am opposed to this bill, because I am not prepared to say it, one thing that seems to me as an objection is this: In the matter of receiving compensation it puts the man who has been guilty of no negligence whatsoever, and who may have been injured by the grossest negligence on the part of the master, upon a level with the man who has himself been guilty of negligence which directly contributed to the injury, and limits, if I understand the bill correctly, the recovery in both cases to the same sum.

Is there not a real advantage, a real equity in the English system which permits that man whose hands are clean of all negligence, who has exercised the highest diligence, who has been in the pursuit of his vocation according to the strict rules of right and who has been injured through the gross negligence of his master—is there not equity and right in the English proposition which preserves to him his old common-law right to recover the full measure of his injuries?

Mr. SUTHERLAND. I hope the Senator will read the report of the committee upon that precise proposition.

Mr. REED. I will do so.

Mr. SUTHERLAND. I will not take the time to enter upon the discussion of it now. If the Senator has not done so, I invite his attention to the report upon that subject.

Mr. SMITH of Georgia. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Georgia?

Mr. CHAMBERLAIN. Certainly.

Mr. SMITH of Georgia. At the time I sought to interrupt the Senator from Oregon he had just said that the reason for not making this statute cumulative to the remedies already existing was the desire to terminate litigation. I wish to call the Senator's attention to the compensation that is given in at least one instance, and to what seems to me utterly inadequate compensation, and to ask if he thinks the desire to terminate litigation is a sufficient justification for such trifling compensation for such an injury?

Now, take the case of the loss of a foot at or above the ankle. Forty-eight months at $50 a month would be all that would be paid to a high-class engineer who was making $200 or $250 a month. His foot would be cut off about the ankle, and he would receive in monthly payments only one year's salary, nothing for disformity, and nothing beyond that, and that salary would be paid at the rate of $50 a month. I want to ask the Senator if he thinks that the object of terminating litigation is a sufficient reason for such trivial compensation for an injury of that character?

Mr. CHAMBERLAIN. The Senator will remember that in the first part of what I have had to say I showed that a very small proportion of the men who lose a foot and a very small proportion of the men who lose a leg, or even their limbs, are able to recover at all under the present system of law. Under this system they will get something.

Mr. SMITH of Georgia. Under the present statute if the injury was due partially to his own negligence he can recover. The present statute is broad enough to cover that. Our statutes passed in 1908 and 1910 provide for that.

The PRESIDENT pro tempore. The Senator will suspend for a moment. The hour of 4 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated.

The SECRETARY. A bill (S. 4239) to amend, revise, and codify the laws relating to the public printing and binding and the distribution of Government publications.

Mr. SMOOT. I ask unanimous consent that the unfinished business may be temporarily laid aside.

The PRESIDENT pro tempore. The Senator from Utah asks that the unfinished business be temporarily laid aside. It will be so ordered, without objection. The Senator from Oregon will proceed.

Mr. CHAMBERLAIN. There is not any question, Mr. President, but that if the present system remains there are employees of railroad companies who will recover large verdicts. There is not any doubt about that under the act of 1908. But it is also true that that act leaves the element of negligence to be considered in every case, and while the old common-law doctrine of contributory negligence is modified in a very great degree, still it is there. It is the purpose of this act to eliminate the consideration of negligence as an element of recovery, and while it is true, as I said, that a great many will not get as much under this compensation law as they get under the present law, there are over 75 per cent under this law who will get relief who do not get anything now.

Mr. SMITH of Georgia. Does the Senator think that 75 per cent of the engineers now injured can not recover under the present law? I do not mean this law, but under the present statute applicable to interstate transactions.

Mr. CHAMBERLAIN. That is, of those engaged in interstate commerce.

Mr. SMITH of Georgia. Yes.

Mr. CHAMBERLAIN. Probably I put it broader than I should have put it. I will say, in the States, except possibly in Georgia, 75 per cent of the engineers would not recover in a case of accident.

Mr. SMITH of Georgia. But this act applies only to interstate commerce. And it applies only to such matters as the present Federal statute applies to.

Mr. CHAMBERLAIN. That is true. I stated the proposition more broadly than I should.

Mr. SMITH of Georgia. The Federal statute provides for recovery for practically everybody, even though the negligence of the employee contributed to the injury. His negligence, unless it was the exclusive cause, would not deter a recovery.

Mr. SUTHERLAND. Will the Senator from Oregon permit me to ask the Senator from Georgia a question?

Mr. CHAMBERLAIN. I yield for that purpose.

Mr. SUTHERLAND. In the experience of the Senator from Georgia, what amount does a brakeman receive in the railroad service for the loss of a foot?

Mr. SMITH of Georgia. Five thousand dollars.

Mr. SUTHERLAND. How much of it goes to the lawyers?

Mr. SMITH of Georgia. Twenty-five per cent or one-third. Thirty per cent is about the average.

Mr. SUTHERLAND. In the West—in my own State and in most of the States of the Union, we pretty carefully gathered information on this point, which I have and which I will submit at the proper time—the ordinary charge is 50 per cent on the part of the lawyers.

Mr. SMITH of Georgia. There is no reason why this amount taken from the men should be given to the railroad companies.

Mr. CHAMBERLAIN. But we are proposing to give it to the men and not to the railroads.

Mr. SUTHERLAND. The railroads are not to get it all, for the railroads will pay out 25 per cent more than they are paying out to-day.

Mr. SMITH of Georgia. I will state frankly that my examination of the act has satisfied me that those figures could not be possibly sustained. I do not agree with the Senator about that.

Mr. SUTHERLAND. I am sorry the Senator from Georgia does not agree with me, but I will say to the Senator that these figures were gathered with a good deal of care.

Mr. SMITH of Georgia. Were they gathered under the operation of the present Federal statute? Has the present Federal statute been in operation long enough for that purpose, or were they gatherd under the old law, before the present employers' liability act?

Mr. SUTHERLAND. They were gathered during the last three years; a great many of them last year.

Mr. SMITH of Georgia. Very few cases were tried under it during the earlier part of the period of three years.

Mr. SUTHERLAND. It includes some of those cases; I do not know, of course, how many.

Mr. SMITH of Georgia. What I had in my mind was that if we should let this matter go over until fall and give the present law a little longer operation before we hasten through with a new law we would be in a better position to determine what ought to be done.

Mr. SUTHERLAND. This law should be passed, because it has behind it the serious desire of the vast majority of the railroad employees of this country. Committees of those organizations have been studying this question very carefully, and they desire to have the principle of this law established. I suggest to the Senator from Georgia that the wise thing to do would be to pass this law and let it go into operation, and if we find that in some respects the schedule with regard to the plan fixed is not high enough, with our experience we can lift it to the proper place.

Mr. SMITH of Georgia. I should like to ask the Senator if he thinks that a schedule for cutting off a foot of an engineer that pays him only $2,400 in payments of $50 a month is anything comparable to just compensation?

Mr. SUTHERLAND. O Mr. President, of course no man is going to sell his foot for that amount of money, but that is not the theory upon which the law ought to be drafted at all. The theory upon which these compensation laws are drafted is that the law takes care of the whole body of employees.

Mr. SMITH of Georgia. I was not suggesting that he sell his foot. I was suggesting the cold compensation for his financial loss.

Mr. SUTHERLAND. I am answering the Senator that this applies to the whole body of workmen, those who lose their feet through their own negligence and through the negligence of the employer and through nobody's negligence at all. The theory of it is to take care of the whole body of workmen during a period of readjustment. Of course it is not as much as a man who receives the highest verdict will receive, but upon the average it is more than the average man receives at the hands of a jury, as the statistics will absolutely demonstrate.

Mr. SMITH of Georgia. Do you propose to cut off the high-salaried man without regard to what he was earning and put the $2,400 man down to the estimate of the $100 man and limit him to only $2,400 in full payment when you destroy his capacity to follow his business?

Mr. SUTHERLAND. We propose, Mr. President, to fix, as is done in all these compensation laws, not only in the Old World, but those that have been adopted in the various States in the Union, a maximum and a minimum, the maximum being $100 and the minimum being $50. While the effect of that will be to reduce some men who receive more than $100 down to the $100 limit it will lift a very large number of other men up to the $50 limit. The Senator shakes his head. I know what I am talking about.

Mr. SMITH of Georgia. No; I think the Senator is mistaken.

Mr. SUTHERLAND. I am not mistaken.

Mr. SMITH of Georgia. We will discuss it later on. Of course, I do not want to interject a detailed discussion into the speech of the Senator from Oregon, but I can not accept that view as correct.

Mr. SUTHERLAND. The Senator is entirely welcome to his view of it, but I insist that I have a right to my view of it.

Mr. SMITH of Georgia. I am not objecting to the Senator having his view of it, but I do not wish the Senator to set up his view to me as though I was going to accept it as correct, when I am satisfied it is not correct.

Mr. SUTHERLAND. I am quite sure the Senator from Georgia will not accept any of these statements, as far as that is concerned.

Mr. SMITH of Georgia. I will accept any of them that I think are correct.

Mr. SUTHERLAND. The Senator will permit me to say to him, at any rate, that based upon the figures which we have gathered this will be the effect, that out of the total number of men who are injured in the railway service 50 per cent of them receive more than $125 a month and 10 per cent of them receive more than $100 a month, so that 15 per cent of them receive more than $100 a month—that is, of men who are injured. So the effect of this will be to bring down 15 per cent of the men to $100 as a maximum limit, but 29 per cent of the men who are injured receive less than $50 a month, so that while the 15 per cent will be brought down to the maximum the 29 per cent will be lifted up to $50.

Mr. SMITH of Georgia. You take the lowest man and cut his pay half in two when he is utterly disqualified from work, do you not? You do not pay the lowest man all that he loses.

When he is utterly disqualified you cut the highest half in two, and you cut the lowest half in two.

Mr. ASHURST. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Arizona?

Mr. CHAMBERLAIN. I yield.

Mr. ASHURST. I have listened with much profit and interest to the whole discussion of this bill by the distinguished Senators who have spoken upon the measure. I would, with the kind indulgence of the Senator from Oregon and the Senate, like to ask the reason why the bill, in addition to the things pointed out by the distinguished Senator from Georgia [Mr. SMITH], is exclusive as a remedy instead of cumulative.

Mr. CHAMBERLAIN. Mr. President, I desire to say in reference to that subject that it will be taken up a little later. As I said awhile ago, I prefer to discuss it now from the legal standpoint and leave that question to be considered apart. But if the Senator will read the report of the commission and the hearings upon which that report was based, I think he will learn at least the reasons which animated the commission in framing this bill as a compulsory one instead of making it an elective one.

Mr. ASHURST. I have read that, but fail to find therein sufficient reasons, to me at least, for making this remedy exclusive instead of cumulative. Therefore I asked the Senator the question.

Mr. CHAMBERLAIN. I will say that the States have adopted different views in reference to that, and their experience under the elective system and under the compulsory system has not been great enough for them to state the result, but the commission felt that the compulsory system was best, because it made the matter definite and certain and compelled all parties, both the railroad companies and the employees, to resort to the one forum for the application of a definite remedy. In other words, if it were an elective system the railroad companies in certain districts might elect to come under the operation of the law and the employees refuse, so that we might have a law attempted to be enforced in one section of the country entirely different from that chosen to be operated in another section. There ought to be uniformity and an end of the litigation which grows out of the present system and which would certainly not be lessened by the elective system if it were attempted to be put in force.

But, Mr. President, while I do not object to interruptions, I am anxious to get through the discussion which I had in mind, and if there are questions which Senators desire to ask I would be glad to have them propound them after I get through.

I will state that the act adopted by the Legislature of Washington was compulsory and exclusive, and it extended over a great many hazardous industries of the State.

The Legislature of Montana in 1909 passed an act to create a State accident insurance and total permanent disability fund for coal miners and employees at coal washeries, the constitutionality of which was successfully attacked in the case of Cunningham, State Auditor, *v.* Northwestern Improvement Co. The lower court sustained the act, but this decision was reversed by the supreme court of the State November 21, 1911. The objections urged against the act, amongst others, were:

(1) That it operates to deprive those subject to its terms of their right to trial by jury, guaranteed by both Federal and State constitutions.

(2) That it operates to take property without due process of law and violates the provisions of both Federal and State constitutions.

(3) That it denies to employers the equal protection of the laws.

Each of these objections, except the last, was disposed of in favor of the constitutionality of the act, but for the reason that all employers of a class were compelled to pay a tax—recoverable, if necessary, by action of law—into a common fund, whilst to the employee was left the right, at his election, to pursue his remedy under the law of liability or to participate in the common fund, the court held the statute unconstitutional as not affording the employer the equal protection of the laws. The court say:

The injured employees of one operator may all resort to the indemnity fund, while those of another may elect to appeal to the courts. The result is that the employer against whom an action is successfully prosecuted is compelled to pay twice. He has fully paid his assessments under the act, and is also obliged to pay damages. This fact is so palpable as to be needless of discussion. The act in this regard is not only inequitable and unjust, but clearly illegal and void, as not affording to such employer the equal protection of the laws. The Legislature of the State of Washington guarded against this contingency by abolishing all actions for negligence, chapter 74, Session Laws, Washington, 1911. The General Assembly of Maryland, in an act somewhat similar to ours (see Pub. Loc. Laws of Maryland, 1910, ch. 153, sec. 10), provided:

"If any suit or action be brought against any operator for or in respect of any injury or disability received by an employee while in the discharge of his duty or for death resulting therefrom * * * and said operator shall appear and defend such suit or action, and a judgment shall be rendered against him, he shall, after satisfying said judgment * * * be entitled thereafter to deduct from the payments required to be made by him * * * a sum equal to the amounts of said judgment and costs."

The manner in which the equal protection of the laws shall be afforded to the operator is, of course, for the legislative body to determine, but some method must assuredly be provided to protect him from double payments. The act in its present form is, in this regard, so repugnant to all ideas of equity and equality that it must, we think, appeal to every right-thinking person on the most cursory examination as unjust. It was to guard against such legislation as this, as we apprehend, that the framers of all American constitutions guaranteed to the citizen the equal protection of the laws.

In this connection I have also quoted the reasons of the court for holding that there ought to be a compulsory law not only in Montana but in every State in the Union. It is really a stronger argument in favor of the law than the argument of the court is in overruling the law. The necessity for a change in the present system is so forcefully stated by the court, notwithstanding the conclusion arrived at, that I quote it as showing the entire approval by it of a proper compensation law. The court say:

At the outset it may be stated that the act, viewed as a whole, presents certain fundamental propositions, novel in this jurisdiction, which, although they have lately been the subject of serious consideration by courts and students of present-day conditions, involving, as they do, grave questions of constitutional law as well as of economics, are yet so comparatively new in conception that their supposed basic principles have not been recognized as sound by some tribunals and law writers, and may be said not to have been accepted in their entirety by any court. It will not suffice to say that because the theory or design of the lawmaking power, as evidenced by the act, is one which is not only new in principle, but revolutionary of certain preconceived and deeply rooted notions of lawyers, therefore the act is unconstitutional. Nevertheless, it is the duty of courts to jealously guard the constitutional rights of the citizen.

It is matter of common knowledge among lawyers and laymen alike that our present system of compensation for injury or death of an employee caused by the actual or imputed negligence of his employer has given rise to conditions which seem to demand an abrogation of that system. This demand is so widespread and insistent that we shall do well to inquire into the reasons therefor.

In this State the affirmative defenses of contributory negligence and assumption of risk, including in the latter the negligence of a fellow servant, are still generally available to the employer. The result is that in many cases the maimed employee and in case of his death his dependents are obliged to bear the whole burden of misfortune. He or they may suffer the humiliation of becoming public charges, with the consequent additional expense to the taxpayer. The injury or death may have been the result of inevitable accident in the course of the employment, in which event the workman is the sole victim. Whatever may be the reason therefor, actions for damages for personal injury and death have increased enormously in number in the past few years. It is notorious that but a small proportion of the moneys forced from the employer in these cases finds it way into the pockets of the plaintiff. The remainder is frittered away in payment of counsel fees, witness fees, court costs, and other necessary expenses of litigation. The records of this court disclose that our best and most high-minded lawyers have, as was their duty, advocated the cause of the plaintiff in many of these cases; nevertheless, the fact remains that the solicitor of personal-injury cases is a hateful reality, and much unnecessary and ill-advised litigation results from his activities. These cases are prolific of perjury and subornation of false swearing. They also add a great weight to the burden of the taxpayer. Some plaintiffs have lost meritorious causes, and many defendants, especially public-service corporations, have been mulcted in heavy damages in actions where the great preponderance of the evidence was in their favor. Jurors in some communities are, unconsciously perhaps, prejudiced against corporations as such. In practical application our present system does not afford the equal protection of the laws to certain defendants. It is impossible not to recognize the fact that the defendant's ability to pay is often used as a basis for calculating the compensation due the plaintiff. Personal-injury cases breed class hatred, as between capital and labor, in its most virulent form.

The Legislature of Wisconsin in 1911 passed a workmen's compensation law, the constitutionality of which was assailed successfully in the lower court, but on appeal to the Supreme Court in the case of Borgnis et al. *v.* Falk Co., decided December 14, 1911, the decision of the lower court was reversed and the constitutionality of the act fully sustained:

It divides all private employers of labor into two classes: (1) Those who elect to come under the law, and (2) those who do not so elect. It takes away the defenses of assumption of risk and negligence of a coemployee from the second class (except that where there are less than four coemployees the latter defense is not disturbed), but leaves both defenses intact to the first class. It prescribes the manner in which an employer may elect to come under its terms, and how an employee may make his election, and when silence on the part of the employee will be considered an election; but it does not in terms compel either employer or employee to submit to its provisions.

In other words, by electing to come within the provisions of the act the employer might avail himself of the defenses above mentioned in an action for damages, and the right of election is left to the employee also to come within the provisions of the act, thus excluding him from the remedy by action for damages.

As in the preceding cases to which attention has been called, the court, as preliminary to a discussion of the law, states the reasons dictated by justice and public policy for the enactment of such a law, as follows:

It is matter of common knowledge that this law forms the legislative response to an emphatic, if not a peremptory, public demand. It was admitted by lawyers, as well as laymen, that the personal-injury action brought by the employee against his employer to recover damages

for injuries sustained by reason of the negligence of the employer had wholly failed to meet or remedy a great economic and social problem which modern industrialism has forced upon us, namely, the problem of who shall make pecuniary recompense for the toll of suffering and death which that industrialism levies and must continue to levy upon the civilized world. This problem is distinctly a modern problem. In the days of manual labor, the small shop, with few employees, and the stage-coach, there was no such problem or, if there was, it was almost negligible. Accidents there were in those days, and distressing ones; but they were relatively few, and the employee who exercised any reasonable degree of care was comparatively secure from injury. There was no army of injured and dying, with constantly swelling ranks marching with halting step and dimming eyes to the great hereafter. This is what we have with us now, thanks to the wonderful material progress of our age, and this is what we shall have with us for many a day to come. Legislate as we may in the line of stringent requirements for safety devices or the abolition of employers' common-law defenses, the army of the injured will still increase, and the price of our manufacturing greatness will still have to be paid in human blood and tears. To speak of the common-law personal-injury action as a remedy for this problem is to jest with serious subjects, to give a stone to one who asks for bread. The terrible economic waste, the overwhelming temptation to the commission of perjury, and the relatively small proportion of the sums recovered which comes to the injured parties in such actions, condemn them as wholly inadequate to meet the difficulty.

In approaching the consideration of the present law we must bear in mind the well-established principle that it must be sustained, unless it be clear beyond reasonable question that it violates some constitutional limitation or prohibition. That governments founded on written constitutions which are made difficult of amendment or change lose much in flexibility and adaptability to changed conditions there can be no doubt. Indeed that may be said to be one purpose of the written constitution. Doubtless they gain enough in stability and freedom from mere whimsical and sudden changes to more than make up for the loss in flexibility; but the loss still remains, whether for good or ill. A constitution is a very human document and must embody with greater or less fidelity the spirit of the time of its adoption. It will be framed to meet the problems and difficulties which face the men who make it, and it will generally crystallize with more or less fidelity the political, social, and economic propositions which are considered irrefutable, if not actually inspired, by the philosophers and legislators of the time; but the difficulty is that, while the Constitution is fixed or very hard to change, the conditions and problems surrounding the people, as well as their ideals, are constantly changing. The political or philosophical aphorism of one generation is doubted by the next, and entirely discarded by the third. The race moves forward constantly, and no Canute can stay its progress.

Constitutional commands and prohibitions, either distinctly laid down in express words or necessarily implied from general words, must be obeyed, and implicitly obeyed, so long as they remain unamended or unrepealed. Any other course on the part of either legislator or judge constitutes violation of his oath of office; but when there is no such express command or prohibition, but only general language, or a general policy drawn from the four corners of the instrument, what shall be said about this? By what standards is this general language or general policy to be interpreted and applied to present-day people and conditions? When an eighteenth-century constitution forms the charter of liberty of a twentieth-century government, must its general provisions be construed and interpreted by an eighteenth-century mind in the light of eighteenth-century conditions and ideals? Clearly not. This were to command the race to halt in its progress, to stretch the state upon a veritable bed of Procrustes.

Practically the same objections were made to the Wisconsin statute as were urged against the constitutionality of the statutes of Montana and Washington, and each of them was considered at length and held to be without merit.

In conclusion the court say:

We have now discussed all of the contentions made against the law which we deem entitled to detailed treatment, and we find no serious difficulty in sustaining its fundamental and essential provisions. As said in the beginning of this opinion, this law forms the answer of the legislature to a very widespread demand. It is a legislative attempt to reach, within constitutional lines, some fair solution of a serious problem which other nations, not restricted by written constitutional inhibitions, have solved, or partially solved, years ago. Doubtless the law will need and will receive changes and amendments as time shall test its provisions and demonstrate its weak points. It would be unreasonable to expect that a law covering so important a subject along lines not before attempted should be perfect, or very near perfect, upon its first enactment. If experience shall demonstrate that it is practicable and workable, and operates either wholly or in great measure to put an end to that great mass of personal-injury litigation between employer and employee, with its tremendous waste of money and its unsatisfactory results, which now burdens the courts, the long and painstaking labors of those legislators and citizens who collaborated in framing it will be fittingly rewarded by a result so greatly to be desired. That result will mean a distinct improvement in our social and economic conditions.

The Legislature of Ohio, by an act approved June 15, 1911, created a State insurance fund for the benefit of the injured and the dependents of killed employees. Its constitutionality was assailed in the case of the State ex rel *v.* Creamer, State Treasurer, on the grounds, amongst others, that it takes private property without due process of law, in contravention of both the Federal and State Constitutions, but the supreme court of the State, on February 6, 1912, overruled each of the objections in a lengthy opinion and sustained the constitutionality of the act as not being violative of either the Federal or the State constitution.

The Legislature of the State of New Jersey enacted a workmen's compensation law in 1911, elective in form, and I am advised that in a proceeding brought to test its constitutionality the lower court has sustained it in its entirety, though the question has not yet been determined by the supreme court of that State.

It remains now to consider the decision of the Court of Appeals of New York in the case of Ives *v.* South Buffalo Railway Co., decided March 24, 1911, involving the workmen's compensation law of that State enacted in 1910, providing for the compensation of workmen in certain dangerous employments. The supreme court of the State affirmed the constitutionality of the act, but this judgment was reversed by the court of appeals in a lengthy and learned opinion. It may be safely affirmed that this decision has done more to stay the progress of legislation along the lines of the enlightened thought of the country in other Commonwealths than any other decision of recent years, and this notwithstanding the fact that the case is referred to and the views of the New York court not concurred in in the decisions of the Supreme Courts of Washington, Ohio, and Wisconsin. The frame of mind in which the distinguished judge of the court of appeals who pronounced the opinion approached the discussion is disclosed by his statement made as he entered upon a discussion of the constitutional questions involved, as follows:

The statute, judged by our common-law standards, is plainly revolutionary. Its central and controlling feature is that every employer who is engaged in any of the classified industries shall be liable for any injury to a workman arising out of and in the course of the employment by "a necessary risk or danger of the employment or one inherent in the nature thereof; * * * provided that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and willful misconduct of the workman." This rule of liability, stated in another form, is that the employer is responsible to the employee for every accident in the course of the employment, whether the employer is at fault or not and whether the employee is at fault or not, except when the fault of the employee is so grave as to constitute serious and willful misconduct on his part. The radical character of this legislation is at once revealed by contrasting it with the rule of the common law, under which the employer is liable for injuries to his employee only when the employer is guilty of some act or acts of negligence which caused the occurrence out of which the injuries arise, and then only when the employee is shown to be free from any negligence which contributes to the occurrence. The several judicial and statutory modifications of this broad rule of the common law we shall further on have occasion to mention. Just now our purpose is to present in sharp juxtaposition the fundamentals of these two opposing rules, namely, that under the common law an employer is liable to his injured employee only when the employer is at fault and the employee is free from fault, while under the new statute the employer is liable, although not at fault, even when the employee is at fault, unless this latter fault amounts to serious and willful misconduct.

The objections urged against the act were, amongst others: (1) That it deprived parties of the right of trial by jury in violation of both the Federal and State Constitutions. (2) That it violated the fourteenth amendment of the Federal Constitution and section 6 of Article I of the State constitution, which guarantee all persons against the deprivation of life, liberty, or property without due process of law.

The Supreme Court of Washington disposed of this decision without endeavoring to reconcile it with its own, and admitted, frankly, that the two were in conflict, saying:

In the foregoing discussion we have not referred to the decision of the Court of Appeals of the State of New York in the case of Ives *v.* South Buffalo Ry. Co. (201 N. Y., 271; 94 N. E., 431), which holds the workmen's compensation act of that State to be in conflict with the due process of law clause of the State constitution and the fourteenth amendment to the Constitution of the United States. The case has, however, been the subject of extended consideration in the briefs of counsel, and it is urged upon us by counsel for the auditor as conclusive of the questions at bar. The act the court there had in review is dissimilar in many respects to the act before us and is perhaps less easily defended on economic grounds. The principle embodied in the statutes is, however, the same, and it must be conceded that the case is direct authority against the position we have here taken. We shall offer no criticism of the opinion. We will only say that, notwithstanding the decision comes from the highest court of the first State of the Union and is supported by a most persuasive argument, we have not been able to yield our consent to the view there taken.

The Supreme Court of Wisconsin, while contending that the statutes of New York and Wisconsin were materially different in that the former was elective and the latter compulsory and did not present the same questions as to the constitutional features involved, yet declined to express an opinion as to the decision.

The Supreme Court of Ohio, in the case to which I have referred, like the Supreme Court of Wisconsin, found a material difference in the statutes of New York and Ohio which justified a nonconcurrence with the decision in the Ives case and disposed of it by saying:

The case of Ives *v.* South Buffalo Ry. Co. (201 N. Y., 276) (relied on by some of counsel) involved a statute different in many essentials from the Ohio law. Its controlling feature was that every employer engaged in any of the classified industries should be liable to a workman for injury arising in the course of the work by a necessary risk inherent in the business, whether the employer was at fault or not and whether the employee was at fault or not, except when his fault was willful.

The court held the law invalid, as imposing the ordinary risks of a business (which under the common law the employee was held to assume) on the employer. The court states one of the premises on which it proceeds as follows:

"When our constitutions were adopted it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another."

But that rule was not of universal application. At common law one may sustain such relation to the inception of an undertaking that he will be held liable for negligence in the progress of the enterprise even though he have no part or connection with the negligent act itself which caused the injury. Such, for instance, as where the owner of property contracts with an independent contractor to do work which, though entirely lawful, yet has inherent probabilities of harm if negligently performed. The position in the line of causation which employers sustain in modern industrial pursuits is of course the basic fact on which employers' liability laws rest.

As to the right to abolish the defense of assumption of risk, it is enough to say here that the great weight of authority is against the New York position and the position of such of the counsel in this case as insist on that rule. Some of counsel appearing against the validity of this law concede the right to abolish the defenses referred to. The Supreme Courts of Massachusetts, Wisconsin, and Washington have recently held in cases sustaining the validity of statutes similar to the one here attacked that it is within the legislative power to abolish the defense referred to. (In re Opinion of Justices, 96 N. E. Rep., 308 (Mass.); Borgnis v. Falk Co., 133 N. W. Rep., 209 (Wis.); State, ex rel. v. Clausen, 117 Pac., 1101 (Wash.).)

The reasoning of the court in the Ives case is cogent but not convincing. The fundamental principle underlying it is that the legislature is without power to impose liability without fault, and that to do so would be the taking of property without due process of law, contrary to the fifth and fourteenth amendments. An examination of that decision will show that while the court undertakes to distinguish the case from the numerous cases decided by the courts of last resort in many of the States of the Union and by the Supreme Court of the United States sustaining statutes imposing liability without fault, it wholly fails to satisfactorily do so. It is safe to say that the opinion does not meet the approval of the profession generally. As an evidence of this fact, I submit that Mr. Ernst Freund, professor of law in the University of Chicago, in the hearings before the commission stated that an inquiry was instituted among teachers of constitutional law in the law schools of the principal American universities, and that only 2 of them were in accord with the decision of the court of appeals in the Ives case, while 15 united in the following statement of reasons why the views of the court should not prevail. That statement of these 15 is so cogent and forcible that I give it as a part of my address, with the names of the gentlemen who pronounced the opinion, and I think it is entitled to as much respect at the hands of the Senate as the decision of any court, because they are all eminent gentlemen and learned in the law. They say:

1. There is no controlling difference in constitutional principle between the abrogation of the fellow-servant doctrine and the liability of the employer for an accident which is due to a risk inherent to the trade. For where the employer has used all possible care in selecting and supervising his servant, the negligence of that servant resulting in injury to another servant is, as far as the employer is concerned, as much an accident as any other accident resulting from imperfections in his machinery or plant which the employer can by no possible care avoid. Conceding, as the court of appeals does, that the legislature may abrogate the defenses both of common employment and of ordinary contributory negligence, it is inconsistent to hold that the legislature can not create the liability which was proposed to be created by the act.

2. The decision takes an untenable view of the effect of the guaranty of due process. Constitutional limitations rest either upon explicit constitutional provisions or upon the established interpretation of the Constitution or upon the principles implied in the spirit and history of our institutions. The new principle of workmen's compensation is not opposed to any explicit provision nor to any previous judicial decision interpreting the Constitution. The case concededly presented a new problem. It is submitted that a court should not read into the fundamental law of the State any limitations that stand in the way of the progress of the law toward better social justice within the limits of established institutions. The Constitution commits the law-making and the law-changing power to the legislature and not to the people. The implied guaranties and the guaranty of due process should be confined to principles which the courts regard as essential to justice, to liberty, and to the institutions of property. No principle which we should be willing to see introduced by constitutional amendment should be held contrary to due process, for otherwise due process ceases to be the permanent and essential principle that it was intended to be. A court which condemns a rule of law as contrary to due process should not suggest a remedy by an appeal to the people, for such a suggestion creates the impression that the principle of due process is one susceptible of improvement. Due process of law should not mean one thing in the State constitution and another thing in the Federal Constitution, and it can not mean in the Federal Constitution either a variable principle or a principle that stands in the way of more perfect justice. To quote from the opinions of the Supreme Court:

"The Constitution of the United States, which is necessarily and to a large extent inflexible and exceedingly difficult of amendment, should not be so construed as to deprive the States of the power to so amend their laws as to make them conform to the wishes of the citizens as they may deem best for the public welfare without bringing them into conflict with the supreme law of the land. Of course, it is impossible to forecast the character or extent of these changes, but in view of the fact that from the day Magna Charta was signed to the present moment amendments to the structure of the law have been made with increasing frequency, it is impossible to suppose that they will not continue, and the law be forced to adapt itself to new conditions of society, and, particularly, to the new relations between employers and employees, as they arise. (Holden v. Hardy, 169 U. S., 366, 387.)

"There is nothing in Magna Charta, rightly construed as a broad charter of public right and law, which ought to exclude the best ideas of all systems and of every age; and as it was the characteristic principle of the common law to draw its inspiration from every fountain of justice, we are not to assume that the sources of its supply have been exhausted. On the contrary, we should expect that the new and various experiences of our situation and system will mold and shape it into new and not less useful forms. (Hurtado v. California, 110 U. S., 531.)"

Percy Bordwell, University of Iowa; Andrews A. Bruce, University of North Dakota; Ernst Freund, University of Chicago; E. A. Gilmore, University of Wisconsin; F. J. Goodnow, Columbia University; Frederick Green, University of Illinois; James Parker Hall, University of Chicago; Alfred Hayes, jr., Cornell University; C. H. Huberich, Leland Stanford Jr. University; W. J. Jones, University of California; Gidor Loeb, University of Missouri; Roscoe Pound, Harvard University; Henry Schofield, Northwestern University; H. M. Towner, University of Iowa; W. W. Willoughby, Johns Hopkins University.

Mr. Alfred P. Thom, general counsel for the Southern Railway Co., appeared before our commission, and he is one of the ablest lawyers in the country. He favored a law of this kind, but, like some of the Senators who have addressed the Senate, he rather favored an elective system, and gave his reasons for it. He discussed at length before the commission in a very able argument the decision in the Ives case, and I quote from him to show what his opinion was of this case. Mr. Thom said:

Congress has power to enact such legislation, if confined to the District of Columbia and the Territories and to interstate and foreign commerce, inasmuch as such legislation does not violate any rights of property of the employer protected by the fifth amendment.

I will say in general terms he favored the enactment of such a law, and in his mind there was no question but what Congress has absolute right and power to regulate the relation between master and servant where both are engaged in interstate commerce.

Those who question this proposition—

Says Mr. Thom—

Those who question this proposition base their objection on the assertion that such legislation involves the statutory imposition of liability without fault, and insist that a statutory imposition on a property owner of liability without fault is to take away his property without due process of law.

This is the fundamental and essential postulate that underlies the decision of the court of appeals of New York in the recent case of Ives v. South Buffalo Railway Co. (94 N. E., 431).

I ask your attention a moment to that decision. * * *

"* * * The new statute," the court says, "as we have observed, is totally at variance with the common-law theory of the employer's liability. Fault is no longer an element of the employee's right of action."

Again, the court says:

"When our constitutions were adopted it was the law of the land that no man who was without fault or negligence could be held liable in damages for injuries sustained by another. That is still the law, except as to the employers enumerated in the new statute, etc."

And again:

"If it is competent to impose upon an employer who has omitted no legal duty and has committed no wrong a liability based solely upon the legislative fiat that his business is inherently dangerous, it is equally competent to visit upon him a special tax for the support of hospitals and other charitable institutions, etc."

And again:

"We conclude, therefore, that in its basic and vital features, the right given to the employee by this statute does not preserve to the employer the 'due process of law' guaranteed by the constitutions, for it authorizes the taking of the employer's property without his consent and without his fault."

And he concludes:

* * * There are statements, many times reiterated in that decision, that the basis of it is that the taking of the employer's property to pay for an injury inflicted without the employer's fault is a taking of property contrary to the fifth and to the fourteenth amendments of the Constitution of the United States and to similar provisions in the constitution of New York. Now, if that postulate is unsound, the whole fabric of the New York decision falls to the ground. It rests on no other postulate. It is put upon no other basis. It stands on that one foundation—the constitutional principle that the taking of one man's property to pay for an injury received by his employee without his fault is the taking of his property without due process of law.

He then discussses at length decisions in conflict with that in the Ives case.

The decisions to which I have heretofore referred sustaining statutes imposing liability without fault show conclusively, it seems to me, the vice of the decision of the court of appeals in the case referred to.

It will thus be noticed that there is an entire lack of harmony in the character of the legislation as well as in judicial construction on the subject of workmen's compensation, the statutes of Montana, Wisconsin, and New Jersey giving to the employee the right to elect whether he will sue in damages or come within the provisions of the compensation acts, while those of Washington and New York, like the one under consideration, are compulsory, doing away entirely with the present-day rights and remedies for recovery of damages in case of injury. In some cases the common-law defenses are taken away from an employer who fails to submit to the provisions of the law, and in others, where the employee fails so to do, the employer is permitted to avail himself of these same defenses.

I think I have shown by the decisions of the courts of last resort that Congress has plenary power under the commerce clause of the Constitution to reasonably regulate the relations

between employers and employees while both are engaged in interstate commerce, and that there are no restrictions or limitations upon the exercise of that power in any other constitutional provision.

That the bill under consideration has no other purpose than the regulation of that relation and that it is a reasonable regulation I think must be conceded.

I therefore turn to a very brief discussion of the attitude of the employers and employees as disclosed at the hearings before the commission. It is proper to say that the gentlemen who appeared before the commission to represent the cause of the employees without exception displayed distinguished ability and evinced a profound knowledge of every phase of the questions involved. The arguments made were impressive and able, and it is no disparagement of the distinguished attorneys who appeared on behalf of the employers to say that these representatives of the employees equaled them in their ability to present their views clearly, logically, and forcefully. Nearly, if not all, of the employees of interstate carriers were represented at the hearings, and at each separate stage of the proceedings were advised as to the progress being made by the commission.

Following are the leading representatives of the different organizations of employees who from time to time appeared and discussed the measure.

W. G. Lee, president of the Brotherhood of Railroad Trainmen, representing 117,000 men. One of the Senators questioned whether the laboring people were represented. He represented 117,000 men. I assume that the men elected by the railroad employees to these highest places represent the sentiment of the employees in all of these bodies.

G. H. Sines, vice president of the same order.

A. B. Garretson, president of the Order of Railway Conductors, representing 48,000 men.

I am taking these figures as the men testified to them before the commission.

L. E. Sheppard, acting president of the same order.

W. E. Stone, president of the Brotherhood of Locomotive Engineers.

W. S. Carter, president of the Brotherhood of Locomotive Firemen and Enginemen.

H. E. Wills, assistant grand chief engineer of the Brotherhood of Locomotive Engineers and joint national legislative representative of the Order of Railway Conductors and of the Brotherhood of Railroad Trainmen and of the Brotherhood of Locomotive Engineers.

Arthur E. Holder, legislative committee, American Federation of Labor, representing 924,606 men.

Samuel Gompers, president of the same order.

As a matter of fact, the statistics from which I have quoted show that there are only about 1,600,000 men engaged in interstate commerce. So we see that practically all these men were represented, assuming that these persons did represent them, and I do not think that any of these gentlemen who appeared before the commission would have assumed to represent a body of men whom they did not represent, and nobody, so far as I have been able to learn, questioned their authority to appear before the commission for them.

Mr. WILLIAMS. In this connection, I want to say, if the Senator from Oregon will permit me, that as far as the State of Mississippi is concerned I have received letters from men who are not officers or officials of any of these organizations, but who are members of them; in other words, I have received letters from private soldiers in this army all over the State, and without exception every man who has written has asked me to vote for this bill.

Mr. CHAMBERLAIN. I think that might be said almost universally, Mr. President. I have in my possession here now copies of some 35 or 40 letters (I believe the Senator had them published as a Senate document) from local lodges expressing the hope that this bill would pass.

Mr. OVERMAN. If the Senator will permit me, I will say this demand is not universal.

Mr. CHAMBERLAIN. I did not say universal; I said almost universal.

Mr. OVERMAN. I want to say that I was appointed on the subcommittee with the Senator from Utah [Mr. SUTHERLAND] and others, and we took some testimony which showed that it was not by any means universal. Even these organizations did not represent a very large section of the country. It was their desire that this matter should be postponed 30 or 60 days at least, until the national organizations could meet. The national organizations of these laboring men have not met since this bill was introduced. All they asked for was that this matter should go over until their great councils should meet and the subject should be discussed among them, when we would know what were the views of the laboring men on the railroads.

Mr. SHIVELY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Indiana?

Mr. CHAMBERLAIN. Yes.

Mr. SHIVELY. If the Senator will permit me, I wish to ask him about these indorsements. Did the men who came before the committee have this particular bill before them, or were they indorsing the general principle of a compensation act?

Mr. CHAMBERLAIN. I want to say, in answer to the Senator from Indiana, that they not only were there when the commission decided upon the adoption of the general principles that they thought such a law ought to contain, but they were there when the tentative bill was drafted. They were also there when the bill was finally agreed upon by the commission, and it was discussed in every feature of it and at every meeting. This measure in all of its forms was submitted for discussion.

Mr. SHIVELY. The Senator means to say that that tentative bill was substantially the bill which is now before the Senate?

Mr. CHAMBERLAIN. Substantially the same bill.

Mr. SUTHERLAND. Mr. President, if the Senator will permit me, I will say that at the hearing at which the Senator from North Carolina [Mr. OVERMAN] was present the other day upon this identical bill two of the heads of these four great organizations of the country were present and indorsed this bill, and the legislative representative, who is here in Washington all the time representing those two and another, indorsed it in the most emphatic terms.

Mr. SHIVELY. That is a little suggestive. What made me curious was that there was no opposition developed among these men until the specific proposition was laid before them.

Mr. SUTHERLAND. No.

Mr. SHIVELY. I understood the Senator from North Carolina [Mr. OVERMAN] to say that opposition was developed and that it was at the time they had the specific proposition of this bill before them.

Mr. SUTHERLAND. There has been some opposition developed in three States, and, so far as I know, in three States only. Those are the States of North Carolina, Georgia, and Texas. How serious the objection is in Texas I do not know, but in Georgia and North Carolina a great many of the men have been objecting to this bill. I think when they have come to understand what it does their objections will disappear; but, of course, that is only my opinion. I may be mistaken about that.

Mr. SHIVELY. I can very well understand that these men might favor the general principle of a compensation act, whether it was cumulative or exclusive, and still not be in favor of this specific measure.

Mr. CHAMBERLAIN. Mr. President, I had not quite completed the list of those who appeared and the views of the representatives of the different organizations.

With the exception of Mr. Carter, all of these gentlemen favored the compulsory compensation principle and, generally, the bill as it is now reported to the Senate, except possibly they were of the opinion that a higher scale of compensation and a longer term of payments should be provided for. Mr. Carter opposed the measure on principle at first and preferred the employers' liability law and its extension beyond its present scope, both by Congress and the State legislatures, but has later gone on record as neither opposing nor approving the bill. I understand that was the position he took before the committee the other day, when I did not have an opportunity to meet with the committee.

Neither time nor space permits me to give even a summary of the arguments of these gentlemen, and I respectfully refer the Senate and the country to the report of the hearings, where these arguments are printed at length.

In addition to these, there were in attendance at at least a part of the hearings the following members of the trainmen, who represented the trainmen on the lines given, members of the Order of Railway Conductors, who represented the conductors on the lines given, and members of the Brotherhood of Locomotive Firemen and Enginemen, who represented the lines given.

These men appeared there, sat around the table, and listened to the discussion. They were invited by the chairman of our committee, after the discussions were had, to participate in the deliberations of the commission:

John L. Rowe, New York, New Haven & Hartford Railroad.

E. V. Kapp, Pennsylvania Railroad Lines East.

W. W. Jones, Pennsylvania Railroad.
C. M. Holiday, New York Central & Hudson River Railroad.
J. F. Shelton, Seaboard Air Line Railway.
W. J. Welsh, Delaware, Lackawanna & Western Railroad.
W. N. Doak, Norfolk & Western.
H. M. Cousins, Richmond, Fredericksburg & Potomac. Washington Southern Railroad.
J. R. Sharetts, Western Maryland Railroad.
J. C. Staples, West Jersey & Sea Shore Railroad.
T. J. Sproul, Pennsylvania Railroad.
Harry K. Cahre, Pennsylvania Railroad.
J. R. Cummings, Buffalo & Susquehanna Railway.
James Tracey, Pennsylvania Railroad.
Jos. A. Hughes, Pennsylvania Railroad.
T. E. Crosson, Pennsylvania Railroad.
J. H. Dalton, Lake Shore & Michigan Southern Railway.
R. H. Lanter, Atlantic Coast Line Railroad.
J. B. Dyer, chairman, Delaware & Hudson Co.

The following are chairmen of the Order of Railway Conductors:

J. Wall, New York, New Haven & Hartford Railroad.
S. C. Stambaugh, Buffalo & Susquehanna Railway.
James Dougherty, Pennsylvania Railroad.
J. T. Downey, Delaware, Lackawanna & Western Railroad.
J. D. Moon, Chesapeake & Ohio Railway.
R. W. Moore, Southern Railway.
M. C. Slattery, New York Central & Hudson River Railroad.
S. J. Brooks, Atlantic Coast Line Railroad.
W. L. Eisle, Philadelphia & Reading Railway.
W. J. Burke, Baltimore & Ohio Railroad.
B. L. Purdick, Long Island Railroad.
A. V. Newton, Lake Shore & Michigan Southern Railway.
J. B. Hendricks, Pennsylvania Railroad.
Oliver Irwin, Pennsylvania Railroad Lines West.
Brotherhood of Locomotive Firemen and Enginemen:
H. E. Core, Pennsylvania Railroad Lines East.
H. G. McComas, Pennsylvania Railroad Lines.

Mr. THORNTON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Oregon yield to the Senator from Louisiana?

Mr. CHAMBERLAIN. I yield to the Senator.

Mr. THORNTON. In reference to the question which has just been raised as to whether these employees knew what specific bill they wished to have passed, I will say to the Senator from Oregon that I have to-day received telegrams from two different divisions of the Brotherhood of Locomotive Engineers in my State. We all know what a powerful and intelligent body that is, and that they also receive a high rate of compensation. They both specifically refer to this particular bill and indorse it.

Mr. CHAMBERLAIN. They both indorse the bill?

Mr. THORNTON. Yes.

Mr. CHAMBERLAIN. One is from R. E. Owens, secretary and treasurer of Division 426, Brotherhood of Locomotive Engineers, dated at New Orleans, La., and the other is from Mr. P. S. Mulhearn, secretary treasurer Ouachita Division 326, Brotherhood of Locomotive Engineers.

Mr. THORNTON. I suggest that the Senator read them.

Mr. CHAMBERLAIN. I will read the telegrams, inasmuch as the Senator from Louisiana has been kind enough to pass them to me. They are as follows:

NEW ORLEANS, LA., *April 6, 1912.*

J. R. THORNTON,
United States Senator, Washington, D. C.:

We, the voters and members of Division 426, Brotherhood of Locomotive Engineers, do earnestly request that you vote for and use your influence for the passage of Senate bill 5382 and House bill 20487.

R. E. OWENS, *Secretary and Treasurer.*

—

MONROE, LA., *April 6, 1912.*

J. R. THORNTON,
United States Senate, Washington, D. C.:

I am instructed by Ouachita Division 326, Brotherhood of Locomotive Engineers, to ask you to support Senator SUTHERLAND'S bill (S. 5382). We consider this matter very important.

P. S. MULHEARN, *Secretary-Treasurer.*

As I said awhile ago, the gentlemen whose names I have read were given an opportunity to express their views before the commission upon the provisions of the pending bill. In this connection I think it proper to say that the utmost publicity possible was given by the commission of the hearings which were to be had from time to time. The Associated Press had its agents there, and the first tentative plan of the commission was published in full and sent by the Associated Press throughout the country. Not only that, but blank forms of inquiry were prepared by the commission and sent by its secretary to the heads of the labor organizations interested in this matter, and to the local lodges all over the country, so that I can not see how it is possible that any members of the different lodges did not know what was going on.

The railroads were represented before the commission by their general counsel and others. A committee of 21 railroad attorneys was formed, 7 from each section of the country, to consider and, if possible, to agree upon a compensation plan. Being unable to agree as to the principle involved or as to the form such legislation should take, these gentlemen presented their views individually. While many opposed the principle, others favored it, but all agreed that the amounts of compensation as finally determined upon by the commission and inserted in the bill were too high and would unreasonably increase the cost of railroad operation.

So that practically, stating the matter generally, the difference between the railroad people and their employees was simply a question of the amount of compensation provided for under the bill; the railroad employees, on the one hand, insisting that it was too low, while the railroad people were insisting that it was too high, and would greatly add to the expense of railroad operation.

All interests had an opportunity to express their views in reference to the measure under consideration, Mr. President, at every stage of its preparation, and if anyone interested in any phase of the question failed to approve or oppose it was his own fault, for, as I have already stated, the greatest publicity was given of the hearings before the commission and of the desire of every member thereof to hear from all on so important a subject.

The opportunity is now offered to Congress to enact what is generally conceded to be the greatest piece of constructive legislation that has been presented to it for many years. It ought to be passed at the present session, and with as little delay as possible; but whether Congress passes it or not, it is safe to predict that within the next few years there will not be a State where legislation having the same purpose in view will not find lodgment on the statute books.

It is pretty generally conceded by the employers in almost every industry that such legislation in some form or other is just, as an instrumentality to put an end to uncertainty and to fix the extent of liability for all classes of occupational injuries; and some employers, without any legislation, have voluntarily, adopted some form of compensation for injured employees. It is demanded by most of the employees in hazardous employments, in the hope that they may feel assured, in case of accident, that they will not become dependent, and that their families and dependents, in case death results from such accident, will not become the objects of public or private charity.

As the subject comes to be better understood it will eventually be demanded by both employers and employees, in order that the antagonisms which the present liability laws occasion may be alleviated by a statute which fixes the rights and responsibilities of both without regard to fault upon the part of either. It is demanded by justice, as well as by a sound public policy. Public policy demands that there be an end to expensive and vexatious litigation and is interested in preventing the enormous economic waste which the present system entails. And, finally, justice demands that those who risk their lives in hazardous employments and add to private and to national wealth millions of dollars each and every year shall not be compelled to bear the whole burden of occupational accidents; it demands, as a matter of right and not as a charity, that provision shall be made by the industries which occasion the injury or death, for the rapidly increasing army of cripples and dependents—an army which will not be diminished until every industrial enterprise understands that payment must be made, without regard to fault, for every injury to its employees—it demands in the particular case that this measure shall be speedily enacted into law and that the human instrumentalities of interstate commerce shall be put upon a higher plane than the inanimate agencies thereof, which are maintained and kept in repair at the expense of the industry as long as possible and then cast into the scrap heap, just as the unfortunate human agencies, maimed and crippled, helpless and hopeless, are now turned out upon the cold and unwilling charities of the world.

ALICE V. HOUGHTON.

Mr. OWEN. Mr. President——

Mr. MARTINE of New Jersey. Mr. President, I move to reconsider the vote by which the bill (S. 5137) for the relief of Alice V. Houghton was passed on Friday last. On that day, in executive session, I entered a request, as though in legislative session, to reconsider the vote by which the bill was passed, and I now desire to press that motion.

Mr. LODGE. Mr. President, I merely wish to call attention to the fact that the Senator from Oklahoma [Mr. OWEN] has given notice that he wished to speak to-day after the conclusion of the remarks of the Senator from Oregon [Mr. CHAMBERLAIN].

The PRESIDENT pro tempore. The Chair recognized the Senator from New Jersey because he understood the Senator simply desired to enter a motion.

Mr. MARTINE of New Jersey. I now wish to make the motion to reconsider the vote by which the bill for the relief of Alice V. Houghton was passed.

The PRESIDENT pro tempore. The Chair did not understand that the Senator now desired to have the bill taken up or he would have recognized the Senator from Oklahoma [Mr. OWEN], who first addressed the Chair. The Chair understood the Senator from New Jersey merely wished to enter the motion.

Mr. MARTINE of New Jersey. No; I entered the motion to reconsider on last Friday.

The PRESIDENT pro tempore. Under the circumstances the Chair feels constrained to recognize the Senator from Oklahoma.

Mr. MARTINE of New Jersey. Very well; I yield.

Mr. BRISTOW. Mr. President, if the Senator from Oklahoma will permit me, I think the Senator from New Jersey is mistaken in saying that he entered the motion to reconsider.

Mr. MARTINE of New Jersey. I entered——

Mr. BRISTOW. The Senator gave notice that he would enter a motion, and I myself objected to entering the motion at that time in the absence of the chairman of the committee. I certainly shall have to object to taking up the motion in the absence of the chairman of the committee.

Mr. MARTINE of New Jersey. I think the RECORD, if the Senator will pardon me, will show that I did enter a request to reconsider, and asked that it go over a legislative day.

The PRESIDENT pro tempore. The Chair is informed that the RECORD does not show that the motion was in fact entered; and the Chair suggests that the Senator now enter the motion, and then the Senator from Oklahoma can proceed.

Mr. MARTINE of New Jersey. Well, then, I now most respectfully enter the motion to reconsider the votes by which the bill was ordered to be engrossed for a third reading, read the third time, and passed.

The PRESIDENT pro tempore. The motion is now entered.

Mr. WILLIAMS subsequently said: Mr. President, a parliamentary inquiry. Has the motion made by the Senator from New Jersey been recognized by the Chair?

The PRESIDENT pro tempore. The motion has been entered by the Senator.

Mr. WILLIAMS. Does that save its place?

The PRESIDENT pro tempore. Yes; and the matter is in abeyance.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by A. C. Johnson, its assistant enrolling clerk, announced that the Speaker of the House has signed the enrolled joint resolution (S. J. Res. 96) to amend an act entitled "An act appropriating $350,000 for the purpose of maintaining and protecting against impending floods the levees on the Mississippi River," approved April 3, 1912, and it was thereupon signed by the President pro tempore.

POST ROADS AND RURAL-DELIVERY ROUTES.

Mr. OWEN. Mr. President, I ask that Senate bill 2935 be laid before the Senate.

The PRESIDENT pro tempore. The Chair lays before the Senate the bill referred to by the Senator from Oklahoma, the title of which will be stated.

The SECRETARY. A bill (S. 2935) to provide for the construction, maintenance, and improvement of post roads and rural-delivery routes through the cooperation and joint action of the National Government and the several States in which such post roads or rural-delivery routes may be established.

Mr. OWEN. Mr. President, Senate bill 2935, prepared by the Senator from Virginia [Mr. SWANSON], is drawn in the light of his experience as the chief executive of my old home Commonwealth of Virginia.

This bill provides for the appropriation of $20,000,000 annually for the construction, maintenance, and improvement of post roads and rural delivery routes through the cooperation and joint action of the National Government and the several States in which such roads may be established, the Nation and State contributing equally to the cost. The value of this proposal is that *the Federal Government would at once take the initiative* and make available to every State the expert knowledge gathered together by the Federal Government on the construction and maintenance of good roads.

This initiative is of supreme importance. No great public enterprise will receive proper attention unless some one is charged with the direct duty of attending to that business.

Experience has shown that the private individual will not take the initiative in building good roads, because the task is too great for him, and in like manner the county, except for the laws passed by the State, would not initiate good roads except in special instances. But with the Federal Government taking the initiative, inviting the State cooperation, every State would be strongly stimulated to improve the roads. This feature of this bill is of great value.

The good-roads department under this bill would speedily formulate and submit to the various States a method of cooperation which would result in coordinating the State and Federal activities in road building upon a uniform and judicious basis. I am sure that the people of my own State of Oklahoma would be glad to cooperate with the Federal Government in improving the highways and rural routes. In the constitution of Oklahoma we established a department of highways, and Hon. Sidney Suggs, of Ardmore, the strenuous and able head of this department, is actively organizing public opinion in support of this the next great step in the national development of the Republic.

Mr. President, nothing that I shall say will be either original or novel, but the facts and the reasons should be emphasized on the attention of the country. The improvement of the public roads of the United States is urgently necessary for a variety of reasons.

The national growth and prosperity must depend on good roads.

The development of the suburban schools, churches, mail delivery, the intelligence and social intercourse of the country people, the attractiveness, the value, the financial returns, and the physical productiveness of the farm depend upon good roads. Cheaper food products and cheaper manufactured products both depend upon good roads.

Inaccessible and muddy roads cost the Nation a thousand millions annually.

Justice to the farmer, who pays 60 per cent of the taxes and gets but little in return, demands it. The value of the public school, the press, the pulpit, the platform, and all the advantages of civilized life depend upon access, and access upon good roads. The extension of trade, the improvement of the opportunities to the citizen, the relief of the congestion of population in the cities depend upon good roads.

Good roads are absolutely necessary in peace and in war. They are the chief agency of a great industrial people for the free interchange of the products of labor.

THE CONSTITUTIONALITY OF FEDERAL AID TO GOOD ROADS.

It has been said that the United States has no constitutional right to contribute to the building of good roads. I emphatically deny it.

Under section 8, Article I, of the Constitution, Congress is expressly authorized *to establish post roads*, and is given power "to collect taxes," "to provide *for the common defense and general welfare* of the United States."

The perfection of the postal highways and of the Rural Free Delivery Service will extend post roads over every important road in the United States upon which any national attention need be given, and the right of the United States to provide for the common defense carries with it the right to establish national highways, as Rome did, for the movement of our national troops in time of war and for the "general welfare" and the movement of interstate commerce and transportation in time of peace.

The right to provide for the general welfare of the United States sufficiently covers national aid in establishing highways of stone as well as of steel rails throughout the United States.

Why, Mr. President, Congress authorized the Cumberland Road at the headwaters of the Potomac in 1811 at a cost of

$7,000,000, and in 11 years about this period 14 great highways were authorized to be built by Congress.

It was the generally acknowledged doctrine of our forefathers that the Government had this right, and from 1850 the Government granted aid to highways with steel rails from the Mississippi to the Pacific coast and subsidized the Union Pacific, the Central Pacific, the Northern Pacific, the Southern Pacific, and gave away 200,000,000 acres of the public domain in support of national highways.

These contributions would be worth approximately $2,000,000,000, which went to private persons and private corporations for the building of national highways.

There is no merit in the contention that the National Government may not contribute to the support of post roads within the States.

Down to the most recent days, since the War with Spain, there has been expended from our National Treasury for road building in—

Alaska	$1,925,000
Porto Rico	2,000,000
The Philippines	3,000,000
The Canal Zone	1,459,073
Total	8,384,073

THE URGENT NECESSITY FOR NATIONAL AID.

Mr. President, we have the biggest country, the finest land, the richest people—and the poorest roads on earth. There is a reason for this, and the reason is that our road-building system is based on the old localized English system in the days of the American Colonies, and has never been adequately improved to meet the advancing knowledge of civilization.

In many of our States we still keep up the destructive and wasteful system of financing road building by taxing adjoining property and administering the construction and maintenance by utterly unskilled, intensely localized management, which is very often too incompetent to merit consideration or defense. It is grossly unjust to tax the farmer to build and sustain the road which passes through his farm, when that road, in fact, is a highway used by tens of thousands who ought to contribute their proportionate part to the construction of the highway.

The National Government, which raises revenue by taxing every man, and the State government, which raises its revenues by taxing all the people, should cooperate with these taxes levied on all the people to construct these highways which are used by all the people just in proportion to the use of the roads. To compel the construction and maintenance of the main highways by the local citizen who has had no opportunity of being instructed in the construction or maintenance of roads is necessarily to place the highways under an administration not equipped to do this work under the safeguard of thoroughly scientific knowledge, which is essential to proper results. Millions have been squandered by this obsolete method, and the roads remain to-day as an overwhelming witness of the incompetence of past management. For example, under the present laws of Texas, in a State which spends more than $8,000,000 annually on road improvement, the county judge is the one absolute authority on road matters. Such a thing as a county engineer, except by special act of the legislature, seems to be unthought of.

In France, where they have the best roads in the world, at the head of the road system there is a magnificent technical school of roads and bridges, maintained at the expense of the National Government, from which graduates are chosen as highway engineers to build and maintain the roads of France. There is an immediate cooperation between the Republic, the departments, and the communes as completely as an organized army, directed by the most intelligent head possible to obtain.

At the head of the administrative organization is a director general of bridges and highways, under whom are the chief engineers, ordinary engineers, and subordinate engineers, the latter being equivalent in rank to noncommissioned officers in the army. The subdivisions are under the direction of principal conductors and ordinary conductors. Next in line come the foremen of construction gangs, the clerks employed at headquarters, and, finally, the patrolmen, each having from 4 to 7 kilometers of highway under his immediate supervision.

The great administrative machine working in complete harmony, with definite lines of responsibility clearly established, accomplishes results with military precision and regularity. In this great army of workers not the least important unit is the patrolman, who has charge of a single section of the road. He keeps the ditches open, carefully fills holes and ruts with broken stone, removes dust and deposits of sand and earth after heavy rains, removes the trees, shrubs, and bushes, and when ordinary work is impossible breaks stone and transports it to the point where it is likely to be needed. He brings all matters requiring attention to the notice of his chief.

Every detail requiring attention is carefully noted and reported to the central authorities, so that at any time the exact condition of every foot of road throughout France may be ascertained.

Here is a system, the best in the world, over which magnificent highways vast volumes of farm products find their way at a cost of from 7 cents to 11 cents a ton per mile. Over these roads motor cars can travel 50 miles an hour without danger. They are beautiful. They are lined on either side by ornamental and fruit trees. They are of great commercial value. They lower the cost of living, both to the town and the country, by furnishing the city with cheap food and furnishing the country with cheap freight in transporting their products to town and their materials back to the farm.

In France at the present time there are 23,656 miles of national routes, which cost $303,975,000 to build. There are 316,898 miles of local highways, built at a cost of $308,800,000, of which the State furnished $81,060,000 and the interested localities $227,740,000. The roads of France are classified into five different divisions:

First. The national routes, traversing the various departments and connecting important centers of population.

Second. The department routes, connecting the important centers of a single department and bisecting the national routes.

Third. Highways of general communication, little less important than the previous class.

Fourth. Highways of public interest, traversing a single canton and connecting remote villages with more important roads.

Fifth. Private roads.

In the German Empire a similar system prevails, and these great nations, including the other nations of Europe, for that matter, set an example to the people of the United States which they would do well to follow.

In England they have a much more localized system, and in consequence there is in England the most striking example of lack of uniformity of road work and of excessive expenditure in proportion to mileage.

The most perfect road system, however, is that of France, which has the *most highly centralized* management of all the road systems.

It is not my purpose, Mr. President, to go into detail with regard to the best methods of construction, but only to point out the extreme importance of *centralized initiative* and *centralized knowledge proceeding with efficiency upon a fixed basis.*

I do not regard Senate bill 2935, which I advocate, as necessarily an absolutely perfect bill, but I do regard it as a step of very great importance, and I do believe that out of this measure, if it be enacted into a law, we would enter upon a proper system.

I believe we should have *a legislative reference bureau* (for which I have heretofore contended), for the convenience of Congress in digesting and arranging data and making preliminary drafts of bills and which in this case might thoroughly work out a perfected plan suitable to the use of the United States under our particular form of government, providing a system for the most perfect cooperation between the National and State Governments for the development of good roads in this country.

THE COMMERCIAL VALUE OF GOOD ROADS.

Mr. Halbert P. Gillette, an engineer of ability, has with great pains estimated the cost of hauling agricultural products to and from the farm. (S. Doc. No. 204, 60th Cong., 2d sess., p. 56.)

The average haul in the United States is 12 miles of 2,000 pounds at a cost of 25 cents a ton, on an average of $3 a ton for delivering farm products from the farm to the railway.

In France the cost of hauling a ton a mile is 7 cents and in Germany and England from 9 cents to 12 cents. The direct loss on the tonnage actually hauled in the United States is perfectly enormous. The Interstate Commerce Commission reports show that the railroads handle upward of 900,000,000 tons of freight, of which 32 per cent, or approximately 275,000,000 tons, are the products of forest, field, and miscellany.

Estimating only 200,000,000 tons at a cost of $3 a ton, we have $600,000,000 in this item, of which over $400,000,000 is a flat loss, due to bad roads; but these figures are only a fraction of the haul. To this must be added the enormous tonnage hauled from farm to farm, from farm to village, from farm to town, from farm to canals, wharves, and docks for shipment by water. The unemployed land, the defectively developed land, the wasted products not hauled because of the expense and of impassable roads, the lack of intensive farming at any distance from cities because of the expensive hauling are grave factors of the huge loss due to bad roads. The loss by bad roads upon any reasonable basis would probably exceed $1,000,000,000 per annum, or the cost of conducting our National Government.

We have bad roads standing as a barrier, preventing the hauling of products from the farm, because the cost of hauling is too high and products are wasted on the farm.

Lands distant from market are not cultivated at all and farms reasonable near to the markets are not put into crops

which would be productive of large bulk, because of the ruinous expense of hauling such products, and for this reason there are huge areas uncultivated in the United States, estimated by the Department of Agriculture at over 400,000,000 acres. Improved roads would develop this vast domain and make *food products cheaper*. It would lead to intensive and more extended farming. Where the average value is $8.72 per acre of wheat, $7.03 an acre of corn, the value of vegetables in 1899 was $42 an acre and of small fruits $80 an acre.

The commercial value of good roads, therefore, would mean a saving of a thousand million dollars annually. It would mean bringing into cultivation vast areas of land now uncultivated. It would bring intensive farming on the lands which are now cultivated. It would mean very much cheaper food products. It would mean the improved financial, social, religious, and educational condition of the farmers.

It would mean a vast increase in the farming population drawn from the congested cities for the benefit of city and country alike.

IT WOULD INCREASE THE VALUE OF FARM LAND.

We have about 850,000,000 acres of farm land improved and unimproved in the United States.

The good roads will exercise a tremendous influence over increasing the value of farm lands accessible to good roads.

By "accessible" it must not be understood as being immediately on a perfected highway. It is an important fact that a team of horses *for two hours out of a day* can *exert about four times* their average tractive force without injury. For this reason they may pull a heavy load for 3 or 4 miles over a dirt road to a perfect highway without injury, and then carry the heavy load easily to market a long distance without harm, so that the farmers within 3 or 4 miles on either side of a good highway would be directly benefited by it; and with the King drag road leading off 4 or 5 miles on either side of a perfected highway all of the farmers of the country could be brought in touch with good roads at a minimum expense to the great increase of their farm-land values.

BAD ROADS MEANS LOSS OF POPULATION.

The sections of country *which have lost in population* by the last census are conspicuous for impassable roads. In 25 counties, for example, selected at random by the United States Office of Public Roads, the population between 1890 and 1900 fell away over 3,000 persons in each county where the roads showed an average of only 1½ per cent of improved roads, while in another 25 counties, in which there was an average of 40 per cent of improved roads, the population in each county had increased over 31,000

It is density of population and accessibility of land which increase the value of land.

GOOD ROADS MEAN BETTER SCHOOLS AND CHURCHES.

Improved roads mean improved schools and churches. Where the roads are very bad the children can not easily attend school, nor can the people easily attend the churches, but with good roads they could do so. In the States of Massachusetts, Rhode Island, Connecticut, Ohio, and Indiana, in which, in 1904, about 35 per cent of the roads were improved, 77 out of each 100 pupils enrolled attended the schools regularly; but in the five States of Alabama, Mississippi, Arkansas, Georgia, and South Dakota, which had, in 1904, only 1.5 per cent of good roads, only 59 out of each 100 pupils enrolled could attend public schools regularly. Thus good roads enable 30 per cent more children to attend school.

THE PRESENT CONDITION OF THE PUBLIC ROADS.

We have to-day 2,155,000 miles of public roads within the United States. Less than 180,000 miles are macadamized or improved with hard surfacing.

More than nine-tenths of the public roads and highways of the United States in the rainy season are almost unfit for use, and a large part in a very rainy season are utterly unfit for use and impassable, to the grave injury of the farmer and the *equal injury of the town people who depend upon him for regular supplies of food.*

In some of the States improved State methods are being put into force, but the department of good roads of the United States Government should be stimulated in the highest degree, so as to furnish the people of the United States with full information upon the important commercial, financial, educational, and social aspects of this great national problem. The department should be put in a position where it can stimulate public attention and bring all of the States into harmony with this great scientific problem. Road building and road maintenance is a great *science*. It has taken generations of men to learn the best methods of road building and maintenance, and the highest knowledge in the world in scientific road building should be placed at the disposal of the humblest citizens of this Republic so that he could be a direct beneficiary of the advancement of human knowledge in this respect.

THE RELATION OF PUBLIC ROADS TO THE FARMER.

Farm life should be made more attractive. No matter how fertile the land or how favorable the climate, if the farmer is imprisoned by bad roads, he can not enjoy fully farm life. He can not conveniently reach the school, the church, the town, or his friendly neighbors if the roads are very bad.

We can not expect the greatest social, moral, mental, and material development of the farmer if the roads are bad.

Only 8.2 per cent of the total road mileage of the United States is improved at the present time, yet we expended approximately $79,000,000 in work on roads in 1904. The expenditure has been entirely out of proportion to the results accomplished. The reason for this I have pointed out. It is due to the extreme localization, bad road laws, bad administration, and lack of coordination. We have little skilled supervision, with but few men with a knowledge of road building or of any profound interest in it. The laws must be changed, and they can only be changed and greatly improved by instructing the public mind and public men.

The profit of the farmer is represented by the difference between the cost of production and transportation and the selling price. If he can cut the transportation in half, he will materially benefit himself financially; and if the cost of transportation could be reduced $600,000,000, the farmer would easily be benefited to the extent of one-half of this saving, granting that the city inhabitants would benefit by the other half of the saving. We complain of the high cost of living, and do not sufficiently analyze the reasons for the high cost. Lower transportation means lower cost of living, both to the farmer and city resident.

We should perfect the national waterways likewise and control the railways to lower the cost of transportation.

The mean cost of carrying wheat from New York to Liverpool—*by water 3,100 miles*—is only 3.8 cents per bushel, while it costs the farmer on an average more than that to haul his wheat to the railway station.

The consular reports show that hauling in Germany, France, and England is frequently as low as 7 and 8 cents a ton a mile, and rarely higher than 13 cents.

The cost on fair earth roads is 25 cents a ton per mile; on earth roads containing ruts, 39 cents; on sandy roads when wet, 32 cents; on sandy roads when dry, 64 cents; on black gumbo when thoroughly wet passing is impossible. Steep grades on the roads is another serious tax on transportation, because "the chain is no stronger than the weakest link."

If the farmer has good roads, he can take to the town two or three times as much in a load as he does now. He could haul to town from a distance two or three times as great as he does now. He could haul to town products which now are prohibited by the expense of hauling. He could raise a larger variety of products suitable for marketing. He would be directly benefited by making the town, the people, and the school more accessible.

He would be benefited by making his neighbors easier of access, and in that way his social pleasure and personal happiness would be increased.

He would be able to deliver his farm products to the town every day in the year, and therefore would have a steady market throughout the year for his products, whereas he may be by muddy roads excluded for two and three months at a time from his market, and the town people in like manner may be deprived of vegetables, fowl, eggs, milk, and other farm products which are essential to their comfort.

In Bradley County, Tenn., bonds were issued for 160 miles of excellent macadam roads, and lands that were valueless before these roads were built now find ready purchasers at from $15 to $30 per acre.

EFFECT OF ROAD IMPROVEMENT ON TRAFFIC.

If the roads were improved, *traffic would not be congested* at one season and very limited at another season, because the transportation of the crops could be made at convenience and uniformly without the interruptions of bad weather. The railroads could, therefore, maintain a more regular service with a smaller equipment, fewer employees, and less cost of operation. This means cheaper freight rate for all the people and lower cost of living.

I have not taken into account the wear and tear on teams due to bad roads, the destruction of wagons and vehicles, the danger to life and limb from bad roads.

THE RELATION OF GOOD ROADS TO THE PUBLIC HEALTH.

If the roads are perfectly good, the physician or surgeon can with the modern motor car go to the aid of one in danger of death almost immediately, but when the roads are impassable death might ensue before relief could be obtained. If the

roads are wet and bad and children march to school with wet and muddy feet, their vitality is lowered and loss of life must ensue.

THE DIFFERENCE BETWEEN THE CITY AND THE COUNTRY.

Many men complain that there has been a steady movement from country to city. The reason is plain. The city is more attractive to live in because *it has perfect roads* of asphalt, macadam, and Belgian block, and concrete sidewalks. No person need to have his feet muddy in going from one point to another. In the city is concentrated many of the things that human beings desire, but if the country had good roads it would be a more desirable place to live in than the city. The countryman has good air, free from dust and smoke. He is away from the roaring noise of the city and the everlasting grind of the wheels of the street car. In the country he has his own fresh food, prepared by nature, at his hand; poultry, eggs, fresh milk, cream, butter, fresh vegetables of all kinds, and fresh fruits—peace, young animal life to interest and please him, and nature smiling back in his face and giving him 10,000 per cent for every seed he plants. With good roads he can come to the city when he likes and go back to his peaceful, pleasant home, satisfied.

City life enervates and weakens human beings, as a rule, because of the nervous strain of city life, while in the country a man grows strong, with steady nerves, good lungs, and brawny limbs. The conditions of country life should be made more attractive. The social intercourse and pleasure of country people, proper school facilities, and church advantages should be made available with good roads. From the country has sprung the greatest men of genius and patriotism. Nearly half of all of our people are engaged in agriculture, and they furnish half of the taxes and produce three-fourths of the wealth of the Nation. I am in favor, for their sakes, of stimulating the building of good roads, but let us remember that the building of good roads is just as important to the city man who lives on the produce of the country as it is to the countryman who raises that food supply. It is of equal importance and value to both the residents of the city and of the country. It is of equal importance to the professional man and to the laborer, to the farmer and the city merchant, to the producer and the consumer. It means lower cost of living to all. It means great commercial and financial advantage to all. It means greater pleasure and enjoyment of life to all.

Many of our Government expenditures are made without return, but here is a magnificent investment, which, if it were based upon the credit system, would pay 15 per cent on every dollar judiciously invested and would add to our national wealth more rapidly than any other national investment into which we could invest our national credit or our national energies. The experience of other States has shown the importance of the State taking the initiative and guiding the activities of the counties and in this way getting greater results. This has been fully explained by the Senator from Virginia as the experience in that State.

AN AVENUE TO EMPLOY THE UNEMPLOYED.

If we had this system established we could give employment to the unemployed at rates that would not attract men already engaged but would attract men out of work and in need. There are hundreds of thousands of men of this class available.

Mr. President, this bill ought to be immediately reported and passed. I remind Republicans that public sentiment has so far crystallized that in their national platform of 1908 they cordially indorsed aid to good roads in the following language:

> We recognize the social and economic advantages of good country roads, maintained more and more largely at public expense and less and less at the expense of the abutting property owner. In this work we commend the growing practice of the National Agricultural Department by experiment and otherwise to make clear to the public the best methods of road construction.

And I remind my brother Democrats that in our last platform we had the following plank.

POST ROADS.

> We favor Federal aid to State and local authorities in the construction and maintenance of post roads.

Let us fulfill in good faith our party pledges.

THE VALUE OF INTENSIVE FARMING—"BACK TO THE LAND."

"Gentlemen, in 40 years we shall have over 200,000,000 people, and this estimate does not fully take into account the geometric progression which immigration makes probable under the enormous growth of seagoing vessels of mammoth size.

"Our breadstuff exports in 25 years has decreased 24 per cent, notwithstanding large areas of new lands producing wheat and corn.

"Our home demand for wheat in a quarter of a century has grown 80 per cent more than the supply of wheat.

"The object contemplated by the National Farm Land Congress is to develop farm lands, encourage home building on the farm, increase the productiveness of our farm land, make our farms more accessible by the building of good roads and improved national and local highways, and make our farms a potential factor in promoting the wealth, the health, the beauty, and happiness of the Nation. Nothing could be of greater national importance.

"With these objects I find myself deeply in sympathy. One of my earliest recollections was of the intensive farming of a piece of land in Lynchburg, Va., of about 2½ acres, surrounded by a high brick wall; the inclosed land was divided up into a dozen or more plots of ground, with graveled walks lined in certain parts of the garden with dwarf box and with flowers.

"Some of the squares were used for vegetables, Irish and sweet potatoes, beets, parsnips, salsify, okra, radishes, onions, lettuce, cabbage, mustard, asparagus, tomatoes, several kinds of sweet corn, the watermelon, cantaloupe, and sweet pumpkin for cooking, rhubarb, and other succulents. Other beds against the brick wall had beds of strawberries, raspberries, blackberries, currants, gooseberries, and various vines.

"Even in the winter this land furnished the table with vegetables stored in sand pits, and with fruits preserved and canned, and with pickles, marmalades, and other things edible.

"I remember sweet herbs in this garden—of thyme, sage, etc. I recall with affection certain arbors devoted to the grape, which, in their season, had a special charm for me. Around the edge of these squares were many beautiful varieties of fruit—of peaches, of pears, the sweet Sickle, the Royal Bartlett, the Damson, the plum, the cherry, the apple. The yellow June apples in that garden were sweet enough to tempt, and often did tempt, a small boy about my size to risk an appearance before the Throne of Grace without any other preparation than an incredible number of June apples eaten in reckless disregard of consequences.

"I have never seen anywhere a more beautiful variety of hyacinths and tulips than grew in this garden, with all the old-fashioned English flowers—the jonquil, the narcissus, the crocus, the lilies of the valley, the phlox, the snapdragon, and many others; the Easter lily, the tiger lily, and a great variety of roses.

"I remember the yellow and red honeysuckle, covering a trellised summerhouse, mingling its fragrance with the pleasant odors of the climbing rose which helped to cover it.

"As I used to enter this charming spot of land from the dining-room door, I recall passing between two trees of crepe myrtle and, a few steps farther on, by two large shrubs of the euonymus. There were several large box trees in the garden, whose thick cover afforded a hiding place for many birds, whose twilight repose I used to disturb for my amusement by shaking the trees.

"There was in this garden a large clump of cane which furnished the boys of the place with convenient fishing rods, and everywhere throughout this 2 acres was manifest the highest intelligence, the finest taste, and unceasing industry.

"The guardian spirit of this garden was my mother, under whose hand everything which grew out of the ground always flourished. I have always thought that the ministering angels who supervise the growth of plants must have specially loved the gracious spirit of my mother, for her plants lived, no matter what happened to the gardens of other people. I shall never be satisfied until I am able to own and to enjoy such a garden as she had, and with which she made my boyhood days happy. Adjacent to the garden was a big smokehouse where we put up our own meat, and a yard where the chickens and ducks flourished and helped to feed the family.

"I may be forgiven these personal reminiscences when I point to the fact that this two acres and a half of land furnished a very large household with the greatest abundance of food in the form of vegetables, fruits, berries, grapes, throughout the year, as well as with an abundance of beautiful flowers. It was intensive farming. Every foot of the ground was kept thoroughly manured, the plants were transplanted from time to time where their nature required it, and the life habits of every plant were studied and thoroughly understood.

"In contrast to the productive power of this two and one-half acres, I have seen, in Indian Territory, a poor farmer trying to cultivate enormous areas of land with a single team, and with the invariable result that his crop was so poor as to afford him and his family not even the necessaries of life, much less its conveniences or the luxury of fruits and flowers. Such a farmer, with bad and muddy roads to travel, is practically isolated from the market, from the school, from the church, and from other conveniences and pleasures of civilized life, and can not conveniently or cheaply deliver to market even those things which he does raise.

"The man who works more land than he can cultivate thoroughly well wastes his time; he does more: He makes life unhappy for himself, for the faithful woman who loves him, and

for the little children who look to him for guidance. He is not as useful nor as happy a citizen as he would be if he concentrated himself on 40 acres, cultivated a garden, kept a few cows for milk and butter, raised chickens and other fowls and domestic animals out of which the profits of the farm arise.

COMPARISON WITH ENGLAND, GERMANY, AND FRANCE.

"In England, Germany, France, Belgium, and Holland the people obtain much higher results than in the United States. The average wheat production of Great Britain is over 32 bushels to the acre, and in the United States only a little over 13 bushels to the acre.

"I spent the summer in Germany and France, and there I saw that every foot of the ground was thoroughly cultivated. It was divided up into very small tracts, and off at a distance would look like strips of carpet laid upon the rolling fields. There was constant rotation of crops; they were busily engaged in fertilizing with manures, making the ground richer. The farm roads were in splendid condition, and thousands of miles of surveyed, carefully leveled and graded turnpikes afforded the farmer cheap transportation, so that a single team might move 4 or 5 tons with less difficulty than half a ton could be moved by the same team on some of the terrible roads in the United States. What an object lesson to the people of the United States are these splendid roads, which increase the value of the farm, bring the farmer nearer to every convenience of civilized life, make his products more valuable, and make the conditions of life much more attractive.

"Along these roads I observed miles of fruit trees, the cherry, the apple, the pear, and every one of them marked with a number indicating ownership.

"I think I never saw a house so poor that it did not have its vegetable garden and its garden of flowers.

"In coming from Fifty-seventh Street down to the Auditorium, on the Illinois Central, the back lots of the American homes, seen from the cars, shabby, dirty, and unkempt, are absolutely distressing and shocking to those who have positive views in regard to making land either useful or beautiful.

"Every such back lot in Germany and France and England or Belgium or Holland would be a valuable vegetable garden ornamented with flowers. We can be engaged in no better business than in leading our people back to the use, and the perfect use, of our most precious heritage—the land. Let us get back to the land.

THE VALUE OF THE FARM AS A NATIONAL RESOURCE.

"Our farms produced last year eight thousand millions of created wealth. Our cotton crop alone furnished enough export cotton to give us a balance of trade in our favor. The output of the American farm, by proper cultivation, could, however, be immediately doubled, and by reclaiming waste places with proper cultivation, could easily produce over twenty billions of wealth per annum—a sum about equal to the total accumulation of a century in the banking resources in all of our 25,000 banks.

"The work of such men as Luther Burbank, of Santa Rosa, Cal., in improving plant life has a value of which our people generally have had an adequate conception.

"In Oklahoma a new plant has been developed from the common seeding Bermuda, called the "Hardy Bermuda," which has great national value. It has been developed by careful selection of plants which have withstood severe freezing. The plant has as good nutritive quality as timothy; it comes up early in the spring; it has a root over a foot deep; it grows almost as thick as the hair on the head; it grows luxuriantly in the face of dry weather; will successfully stand the most extreme drouth; is not killed by many days of overflow; will grow on alkali spots and in the sand. It will produce a very large amount of food to the acre, and is an excellent grazing grass. It is impossible to exaggerate the value of a plant of this character, which will convert land heretofore unproductive into productive areas of great value. Our people must have food, and this plant will produce great food supplies from land heretofore producing nothing. We must emphasize making our lands more productive by using proper suitable plant life and concentrating labor on the land.

IMPROVEMENT OF THE NATIONAL HEALTH.

"The annual death rate of New Zealand is nine to a thousand, and of the various Australian States, ten to a thousand. In the United States it is over sixteen to a thousand—60 per cent more than in Australia. If our people can be led back to the farm, where they can get plenty of fresh air, fresh vegetables, milk and butter, and chickens, we will save these lives which now amount to over a half million beings per annum in excess of what it ought to be.

"The tables of mortality show that this high death rate is very largely due to the bad housing, bad food, and bad sanitary conditions of the very poor in our congested cities.

"In the fight on tuberculosis abundant fresh air has been demonstrated to be essential to a recovery. Abundant fresh air is essential to keep people well who are not now sick, and is all the more important when they become afflicted with the extremely dangerous tubercle bacillus. Let us encourage our people to get back to the land, and we shall greatly improve the national health.

IMPROVEMENT IN SELF-RELIANCE AND OTHER MORAL QUALITIES.

"In cultivating the land, all of the moral qualities are stimulated, independence, self-reliance, initiative, courage, honesty of mind. In working on the land, a man is able to provide his own comfort; he can build his own house with his own hands; he can supply every article of food he needs, and create a surplus sufficient to buy other things. He receives nothing for which he does not give an equivalent; he promotes his own comfort, his own self-respect, and his own dignity. The greatest men of the Nation have come from the farm. The man on the farm, who is cultivating a small piece of land of his own, need have no fear of being suddenly discharged by his employer and left with a family on his hands to feed, and no means to buy food or pay rent until he finds another job. On the farm there is no danger in losing his job.

"This gives a man courage, self-reliance, and those moral qualities which go to make up good citizenship. Without the private virtue of the individual citizen our Republic can not rise to its great and honorable destiny. Let us get back to the land. Let us improve the roads that lead to the farm and from the farm and give the farm greater attractiveness because of its accessibility to the towns and cities.

THE VALUE OF SMALL HOLDINGS.

"The French Revolution was due to the abuse of the unrestricted land holdings of the nobility, from which vast incomes were derived, thus leading to a great extravagance of the landholding class in the face of the extreme poverty and misery of the unemployed landless masses. The landholders were so rich they did not need to use the land in full, but devoted very large areas to game preserves, while the poorer French people, who had also been brought into the world by the hand of the Omnipotent, were denied access to the land by the landlords, who preferred to see their estates used in large part for purposes of amusement, as hunting parks. The French law, of course, sustained the French landlord until the corrupt extravagance of the landholding class and the abject hunger and misery of the multitudes led to the overthrow of the laws which permitted this condition, and the bloody French Revolution followed.

"The revolution resulted in the subdivision of France into small landholdings, which, under the laws of inheritance, was still further subdivided.

"The result of this subdivision has been intensive cultivation and great agricultural wealth from the soil of France, making it one of the richest nations in the world. The reverse of this policy is seen in Spain and Mexico, where huge estates have been permitted to exist, with the unavoidable result that the productive capacity of the land has not been developed, and where the extremes of great wealth and abject poverty are in more marked contrast than in any other civilized country.

"The United States should pursue a policy of small landholdings, and the State of Oklahoma has led the way by passing laws imposing a progressive tax on large holdings of land, for the purpose of stimulating actual home building, of promoting the greatest productive capacity of the land, and for the abatement of the nuisance and danger of large landed monopoly.

"The smaller subdivision of land will lead, therefore, directly to its intensive cultivation, and just in degree as the lands are thoroughly well cultivated, just in that degree will the value of farm lands increase, and with the increase in the value of farm lands, and the growth of their productions, just in that degree will city property and suburban property increase in value.

"Likewise, this will lead to the building of good roads, and to the increase of the liberty, of the independence, and of the personal happiness of all of our people, both on the farm and in the cities. Our cities are sadly congested and millions of people could be led to the farm, both to their own welfare and to the advantage of the Nation. The pimp, the cadet, the white woman slave would be more useful and happier as an honest plowman, gardener, and milkmaid.

"THERE IS A CHARM ABOUT THE FARM.

"Under proper conditions nothing can be more beautiful or more attractive than the farm life. In times past with bad roads and muddy weather, and fields too big for the farmer to cultivate successfully, men have often worked themselves down, have grown weary, have made themselves poor, by ill-directed effort, and have made themselves, their wives, and children sorrowful and miserable in consequence. Under such conditions the farm has often been like a prison instead of being a place

of liberty, prosperity, and happiness. The boys and girls have too often been glad to leave the farm to get away from its dull routine and solitude. But the time has come when there should be a complete reversal of all this. We have learned how to avoid these things and the valuable lesson should be universally taught and made a common heritage.

"Let the man—if he have too much land—sow his excess in grass, in hardy Bermuda; let him confine himself to what he can thoroughly cultivate; use only plant life suitable to the seasons, as kaffir corn and milo maize for dry weather, and learn how to do the work well; let him surround himself with a beautiful garden; let the women and children be taught to love these things and the farm will become a lovely home.

"It's a good thing to keep the children on the farm, away from the temptations and evil suggestions that surround them on every hand in the city. In the light of modern invention, with our wonderful modern transportation, with electric railroads running everywhere, with rural mail delivery, with cheap power, heat, and light, with improving values in farm products, with cheapening goods of every description, every family man should have a piece of land, if it is only 10 acres, or 1 acre, upon which he might surround himself with the fragrance and the blossom and the fruit of plant life, where he might raise healthy, happy children. What can be more beautiful, or more valuable than a well-kept vegetable garden, filled with all kinds of foods of every flavor—filled with berries and grapes, and trees bearing fruits and nuts, and ornamented with the endless procession of flowers each advancing season affords?

"What more attractive than to be surrounded by the young and cheerful life of the farm—young chickens, ducks, turkeys, calves, lambs, pigs, colts, and last but not least, the opportunity to have a few good dogs, whose love and companionship is not the least of the attractions of the farm.

"'Back to the farm' should be the bugle call to the youth of our land.

"Back to the farm, where peace and quiet and sound, refreshing sleep follows happy labor, where we can hear the birds, singing their songs of thanksgiving in the early morning among blossoming trees, where homely joys can give a life of happiness, where men and women grow sound of heart and strong of limb and nerve.

"Back to the farm, with the friendly brute for neighbor,
Where honest content will make amends for every city glamour.

"I should like to see an agricultural school of practical instruction and of plant and seed distribution in every agricultural county in the United States, where the care of cattle and horses and sheep and swine and domestic fowl and the economies of farm life and its productive capacity should be properly taught; where the great lesson might be taught and emphasized by the Government—both National and State—that there is *no* profession more honorable than farming, and that no occupation is of such *vital importance* to the wealth and health of the Nation.

"I rejoice at an opportunity of giving expression before the National Farm Land Congress of the deep interest which I feel in this matter, and I trust that this congress may be the beginning of an organization which will emphasize in the most powerful manner the importance of the farm to our national wealth and to our national health and happiness.

"This congress should, above all things, emphasize the great importance of good roads to and from the farms of the country. It should encourage State and National aid to good roads, so as to bring to the expenditure on road building the greatest degree of intelligence and efficiency and concentrated effort. This is, perhaps, the most important factor of all in making the farm more desirable to the people, in making the farm more attractive, in making it more remunerative, and giving to it those elements which are necessary and essential to peace of mind and to the prosperity and happiness of the farmer."

ALLOTTEES OF THE FIVE CIVILIZED TRIBES.

Mr. OWEN. I ask unanimous consent to call up a local bill, which is not objected to by anyone and which is important to my State. It is the bill (S. 4948) to amend an act approved May 27, 1908, entitled "An act for the removal of restrictions from part of the lands of allottees of the Five Civilized Tribes, and for other purposes."

The PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

Mr. BRISTOW. I should like to inquire of the Senator from Oklahoma if that is not the bill to which my colleague objected?

Mr. OWEN. His colleague agrees to the bill, I will say to the Senator from Kansas. He objected to it the other day, but has withdrawn his objection upon explanation.

Mr. SMOOT. I will say to the Senator from Kansas that I spoke to the senior Senator from Kansas, and he told me he had withdrawn his objection. Therefore I interpose no objection.

By unanimous consent the Senate, as in Committee of the Whole, proceeded to consider the bill.

The PRESIDENT pro tempore. The bill has already been read, the Chair is informed.

The bill proposes to amend section 9 of the act referred to so as to read as follows:

SEC. 9. That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: *Provided further*, That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March 4, 1906, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section 1 hereof, for the use and support of such issue during their life or lives, until April 26, 1931; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April 26, 1931, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions: *Provided further*, That the provisions of section 23 of the act of April 26, 1906, as amended by this act, are hereby made applicable to all wills executed under this section. This section shall apply to the lands of all deceased allottees who died prior to the passage of this act.

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

Mr. WILLIAMS. Before the bill passes I should like some information about it. Who is in charge of the bill?

Mr. OWEN. I have charge of it.

Mr. WILLIAMS. Is it the bill which affects the rights of the Mississippi Choctaws to some extent?

Mr. OWEN. In no way.

Mr. WILLIAMS. In no way?

Mr. OWEN. In no way.

The PRESIDENT pro tempore. The question is, Shall the bill pass?

The bill was passed.

ALICE V. HOUGHTON—RECALL OF BILL.

Mr. MARTINE of New Jersey. I move that the Senate recall from the House of Representatives the bill (S. 5137) for the relief of Alice V. Houghton.

The PRESIDENT pro tempore. The Senator from New Jersey moves to recall from the House a bill, a motion for the reconsideration of the passage of which has already been entered.

Mr. BRISTOW. I hope the Senator will not ask action on that motion this evening. The chairman of the committee is not present, and he stated to me this afternoon that he did not want it taken up in his absence.

Mr. MARTINE of New Jersey. My only thought in pressing it was that I did not want to lose my position or status in this matter. I want the bill to come to the Senate, that we may act upon it again.

Mr. BRISTOW. As I understand, the Senator has given notice that he will ask that it be reconsidered, which preserves his right to bring it up at any time.

Mr. MARTINE of New Jersey. All right. That is perfectly satisfactory to me, with that understanding.

The PRESIDENT pro tempore. The Senator, then, withdraws his motion?

Mr. MARTINE of New Jersey. I withdraw it.

Mr. WILLIAMS. What was the understanding?

The PRESIDENT pro tempore. The Senator from New Jersey has entered a motion to reconsider the vote by which the bill passed the Senate; the bill has gone to the House, and the Senator has now made a motion to recall the bill in order that the Senate may consider the motion to reconsider.

Mr. WILLIAMS. If the motion to recall the bill is postponed what assurance is there that the House will not in the meantime act upon it?

Mr. BRISTOW. I do not know.

Mr. WILLIAMS. It seems to me it would be better to act now upon the motion to recall.

The PRESIDENT pro tempore. Action upon the motion to recall will not in any way act upon the motion to reconsider.

Mr. WILLIAMS. No.

Mr. SMOOT. Perhaps it would be just as well to vote upon that in the first place.

Mr. WILLIAMS. The motion to reconsider will still be pending, and can be acted upon later; but there is danger in postponing action upon the motion to recall, because the House may concur in the Senate's action, and if so, the bill would go to the President at once.

Mr. SMOOT. There is no danger of that.

Mr. WILLIAMS. There may or may not be, but it is better not to take the chance.

Mr. SMOOT. The bill was referred to the Committee on Claims in the House, and the Senator knows that it can not be acted upon anyhow before Wednesday.

Mr. WILLIAMS. Then, why object to this motion?

Mr. SMOOT. The chairman of the committee is not here.

Mr. WILLIAMS. Oh, well.

Mr. SMOOT. I do not think there ought to be any action taken in his absence.

Mr. WILLIAMS. I do not see that that has anything to do with it. It seems to me if the Senate really desires to recall the bill, there is very little excuse for running the risk of the House concurring in the action of the Senate and the bill becoming a law before we get a chance to consider it at all. I would not be discourteous, of course, to the chairman of the committee, but there is no discourtesy involved, because the main motion—the motion to reconsider—is in abeyance.

Mr. MARTINE of New Jersey. I do not now ask action on the motion to reconsider.

Mr. WILLIAMS. The chairman will be back before we will consider that. I would not consider that motion in his absence, but the motion to recall, which is merely preliminary to the motion to reconsider, I think we had better act upon now.

Mr. SMOOT. As far as the Senate is concerned, I do not know how it would vote upon this question.

Mr. WILLIAMS. I do not, either.

Mr. SMOOT. There is not a quorum here to-night. Senators have left.

Mr. WILLIAMS. We could soon get a quorum if necessary.

Mr. SMOOT. I do not know.

Mr. WILLIAMS. But I do not think that is necessary, and I do not see the use of making a fight upon the simple motion to recall a bill preliminary to a motion to reconsider it. I do not see what is under the objection.

Mr. SMOOT. There is nothing under the objection other than——

Mr. WILLIAMS. There is nothing over it.

Mr. SMOOT. Other than that I believe that action of this kind should not be taken while the chairman is absent, especially in view of the fact that he requested that no action be taken in his absence.

Mr. WILLIAMS. That means action upon the bill. It does not mean action between the two Houses in order to get the bill back into the possession of the Senate. All this motion does is to seek to get the bill back into the possession of the Senate; and if the bill comes back into the possession of the Senate, the question remains what the Senate will do with the motion to reconsider. I would not have a thing done by the Senate in the absence of the chairman except to get the bill back into its possession.

The PRESIDENT pro tempore. Senators will indulge the Chair. The Chair will have read the rule with reference to the matter. There seems to be a requirement under the rule. The Secretary will read the second paragraph of Rule XIII.

The Secretary read as follows:

2. When a bill, resolution, report, amendment, order, or message, upon which a vote has been taken, shall have gone out of the possession of the Senate and been communicated to the House of Representatives, the motion to reconsider shall be accompanied by a motion to request the House to return the same, which last motion shall be acted upon immediately and without debate, and if determined in the negative shall be a final disposition of the motion to reconsider.

Mr. WILLIAMS. It seems there is no right even to debate it, and the motion must be put to the Senate.

Mr. MARTINE of New Jersey. I most respectfully press my motion.

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

The PRESIDENT pro tempore. The Senator from Kansas 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	Crane	McCumber	Shively
Bourne	Cullom	Martine, N. J.	Smith, Ariz.
Brandegee	Cummins	Myers	Smith, Ga.
Bristow	du Pont	Nelson	Smith, Mich.
Brown	Fall	Owen	Smoot
Burnham	Gallinger	Page	Stephenson
Burton	Johnson, Me.	Percy	Swanson
Catron	Johnston, Ala.	Poindexter	Warren
Chamberlain	Kern	Pomerene	Williams
Chilton	Lea	Reed	

Mr. BRYAN. I wish to announce that my colleague [Mr. FLETCHER] is necessarily absent.

Mr. SWANSON. I desire to state that my colleague [Mr. MARTIN] is detained from the Chamber on account of serious illness in his family.

Mr. WARREN. I desire to state that my colleague [Mr. CLARK] is out of town.

The PRESIDENT pro tempore. Upon the call of the roll 39 Senators have responded to their names. A quorum of the Senate is not present.

Mr. GALLINGER. I move that the Senate adjourn.

Mr. WILLIAMS. I move that the Sergeant at Arms be directed to request the presence of absent Senators.

Mr. GALLINGER. I think my motion takes precedence.

The PRESIDENT pro tempore. The Senator from Mississippi moves that the Sergeant at Arms be directed to request the attendance of absent Senators. The Senator from New Hampshire moves that the Senate adjourn, which motion takes precedence of the motion of the Senator from Mississippi. The question is on agreeing to the motion of the Senator from New Hampshire that the Senate adjourn. [Putting the question.] The Chair is in doubt, and will ask Senators to indicate their votes by raising their hands. [After a count.] Upon the motion to adjourn the ayes are 20, the noes 18.

So the motion to adjourn was agreed to, and (at 5 o'clock and 28 minutes p. m.) the Senate adjourned until to-morrow, Tuesday, April 9, 1912, at 2 o'clock p. m.

HOUSE OF REPRESENTATIVES.

MONDAY, *April 8, 1912.*

The House met at 12 o'clock noon.

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

Eternal God, our heavenly Father, we thank Thee for the beautiful and inspiring custom which obtains throughout the length and breadth of Christendom in celebrating at this season of the year the resurrection of the Christ, which proves the power of life over death, deepens our faith and confidence in Thee our Father, kindles our hopes and aspirations anew, strengthens our convictions, and makes the whole world akin. Grant that we may be inspired by the uplifting services to better lives, purer motives, nobler endeavors. In the spirit of the Lord Jesus Christ. Amen.

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

ORDER OF BUSINESS.

Mr. JOHNSON of Kentucky. Mr. Speaker, when the House adjourned on Saturday the Indian appropriation bill was under consideration. The committee is anxious to proceed with that to-day, and that they may do so I ask unanimous consent that next Thursday be substituted for to-day for District business.

The SPEAKER. This being District day, and the Committee on Indian Affairs being anxious to finish the Indian appropriation bill, the gentleman from Kentucky, chairman of the District Committee, asks unanimous consent that Thursday next be substituted for to-day. Is there objection?

There was no objection.

LEAVE OF ABSENCE.

By unanimous consent, leave of absence was granted to the following:

To Mr. ADAMSON, for 10 days, on account of illness in his family.

To Mr. RUCKER of Colorado, indefinitely, on account of illness.

WITHDRAWAL OF PAPERS.

Mr. SMITH of New York, by unanimous consent, was given leave to withdraw from the files of the House, without leaving copies, papers in the case of H. R. 23919, in favor of William P. Wheeler, Sixty-first Congress, second session, no adverse report having been made thereon.

THE LATE SENATOR ROBERT L. TAYLOR.

Mr. SIMS. Mr. Speaker, I ask unanimous consent to place in the RECORD as a part of my remarks, a part of the funeral oration of Rev. W. S. Neighbors, D. D., president of Sullins College, Bristol, Tenn., delivered at the obsequies of the late Senator ROBERT L. TAYLOR, at the Auditorium at Knoxville, Tenn., on the 5th day of April, 1912. Dr. Neighbors spoke most feelingly, as he had had that intimate acquaintance and close fellowship with Senator TAYLOR that enabled him to know and to keenly appreciate the deepest sentiments as well as the outward life of the lamented Senator.

At the close of this great funeral oration there was not a tearless eye in that vast throng of Tenneseeans who had gathered there to pay this last sad tribute to the distinguished dead.

The SPEAKER. The gentleman from Tennessee asks unanimous consent to insert in the RECORD the part of the funeral oration of Rev. Dr. Neighbors, of Tennessee, delivered at the

obsequies of the late Senator ROBERT L. TAYLOR. Is there objection?

There was no objection.

The oration referred to is as follows:

Of the public life of Senator TAYLOR I shall not try to speak except incidentally. I am in no wise furnished for such a duty, and besides the Nation has spoken. Almost every State in the Union has spoken. Every railroad station from Washington to Nashville and back to Knoxville has spoken. Every great daily newspaper has spoken, and most wisely, of Senator TAYLOR's public career.

I wish I were fully able to unfold to you the secrets of Senator TAYLOR's marvelous power over men. When, years ago, I knew him less intimately than when he died, if I had been asked for these wonderful secrets I would have given them without hesitation and perhaps quite dogmatically.

First of all, I would have said that the secret of his power over men was his unbounded friendship for all sorts and conditions of humanity, reaching its climax in that proverb, "He who would have friends must show himself friendly." I still hold to this as a general proposition, but what is friendship? It is not a baseless fabric. It must be founded on something that makes it secure.

In the second place, I would have, years ago, told you that the secret of this man's power was in the beautiful songs and stories that he sang and told all over his native State—songs and stories that touched every chord in every human heart. But then songs and stories are not in themselves complete. There must be something back of them to give them point and pathos and pungency and power. I might have sung all of his songs and told all of his stories to all of his audiences and yet have won no heart.

In the third place, I would have said that the secret of his power over men was due to the simple way in which he uttered his thoughts. I still hold to that as a reasonably true proposition, but what is simplicity? It is not shallowness—the mere play upon the surface of things. It is not a natural or a common product, belonging to men in general. Only the greatest men can be simple; only the great men are capable of going to the very heart of things, bringing up the hidden depths and making them transparent.

Fourth, I made the statement years ago that his power with an audience was due to the fact that his soul was full of music; that in every other human being there are musical chords slumbering in the hidden recesses of their nature, waiting only for the touch of a master hand to respond; and that Senator TAYLOR's was that master hand. But what made it a master hand? I used to have little enough musical sense to believe that if a score of persons were playing upon the same kind of instruments, all tuned alike and playing the same piece, that there would be the same results; but I very recently learned that that is not true. Some time ago I saw that tested in my own school. A number were playing upon pianos, all tuned alike. The players were playing the same piece, and yet as I walked through the campus I could easily pick out some players from others. Somehow or other there was something within their very souls going into their instruments and bringing forth strains of music that were mellow, full of pathos and sentiment, winning all hearts who heard them that day.

Senator TAYLOR had that indescribable combination of rare gifts and graces that made him a master before all sorts and conditions of humanity. If I had to state any one thing as the great secret of his great power, I would say it was his great heart, a heart that overflowed all bounds and actuated every movement of his life and made him absolutely invincible before humanity. I have said it before and I say it again; if Senator TAYLOR had moved to any other State in this Union and they had given him his citizenship, in 15 minutes after he arrived he could have run for the highest honor in the gift of that State, and under all reasonable conditions would have won out over any man pitted against him.

Some have been so ungrateful or unthoughtful as to hint that Senator TAYLOR was not a deep nor a strong man in the affairs of state.

I am sure that those who knew him best never made such a statement. He was always deep enough to get to the bottom of things, and that is deep enough. He was always strong enough to tear down the fortifications of all of his opponents and carry the day, and that was strong enough.

I have seen him when whole multitudes came floating into port upon the tears that flowed down his manly cheeks. I have seen him with a mere wave of the hand silence or stir the crowds, just as he willed. I have seen the mere cut or twinkle of his eye change the whole atmosphere of the listening throngs. I have seen the pucker of his lips make his hearers laugh or cry.

But it is of the humbler things in his life that I wish to speak to-day. He was a complete exception to the old rule, "A prophet is not without honor save in his own country." He was most highly honored at home. The people believed in him and followed him. Again and again I have seen him step off of the train at his home town after weeks of absence, and his way was literally blocked by people of all grades and distinctions; even the negroes and the little children followed him. Anxious though he was to get home, the crowds about him often exacted a speech before they would let him go. I have seen his family play a trick on the town people and send a closed carriage to some secret place and notify him to get off on the opposite side, slip to his carriage, and steal away home.

His relation to negroes was remarkable. In his dealings with them there was that same open and frank and tender interest. With him there was no ax to grind. He simply cared for them, and they responded graciously to his great spirit. In some of his great lectures where he mentioned the names of "Rastus" and "Ephraham," you may have thought those were fancies, but they were the real names of the real negroes that belonged to the Senator's father before the war. In one of his lectures he tells at length the story of Uncle Rufus and how he had come to his home from time to time, and how that one afternoon he stayed with him in his yard and talked of the days before the war, till in memory the boy was again upon the old negro's back, riding along the banks of the beautiful Watauga. But, as he tells it, when the evening shadows were lengthening Uncle Rufus grew serious and said:

"Bob, my boy, I'se not gwine to be he'ah much longer. I'se already had two visions of the chariot of de Lord, and when it comes de third time I'se a gwine to step in and go home"; and, sure enough, in just a few days after that afternoon the chariot of the Lord descended for the third time and Uncle Rufus went home. He tells you this in one of his lectures, but there is another part of that story his personal modesty would not allow him to tell. I tell it to you to-day. When the old darkey died "BOB" TAYLOR bought his shroud and casket and chartered a whole train to take the darkies and all of the white people who wished to go back to Happy Valley, the burying ground of the Taylor family. As they put the remains of the old darkey away close beside his master Senator TAYLOR stood at his grave and wept, as on another day he had stood at his father's grave and wept.

Here is another story setting forth his tender relationship to his father's old darkies: Returning from one of his lecture tours, he said to me, "I have had the greatest trip of my life this time. Over in Arkansas I found that I had a few days to spare between my lecture engagements and I found that I was within a few miles of some of my father's old darkies who moved away to that State after the war, whom I had not seen for 30 years. I gave De Long Rice, my manager, the dodge and went to spend the time with these old negroes. When I got into the community and told them that I was 'BOB' TAYLOR, they gathered around me in a circle and looked me in the face and cried out in unison: 'Is dat you, BOB?' I said, 'Yes; this is BOB.' They fell back and laughed. They gathered around me again and more excitingly said: 'Is dat you, BOB?' and I said 'This is BOB TAYLOR.' Then they cried and said: 'BOB, we are mighty glad to see you. We haven't seed you since you's a boy back at the old home.' One of them said: 'BOB, my son Jim's been gone for three years but if anybody was to ask me which I'd rudder see, BOB TAYLOR or my son Jim, I swear 'fore de Lord I could not tell.'"

HIS LIFE IN HIS HOME.

If you never knew Senator TAYLOR in his home, much of the best and most remarkable in him you never knew. No one set of words can adequately describe him here. He was the liveliest of the lively, the greatest of the great, the saddest of the sad, and the sickest of the sick, according to the conditions that obtained at home.

If every member of his family was happy and strong he was the jolliest boy there—into every kind of mischief and playing every kind of prank—a perfect child among the children, but if any member of his family was sick, the whole scene was changed. He was the sickest of the sick. I have seen the dear, sensitive soul walk the floor in agony, face all pinched and drawn, over the sufferings of any member of his household. I have seen him again, when the doctor had announced that the patient was out of danger, stir the whole household with laughter, almost before the tears of grief were gone from his face.

Happy Valley, the home of his childhood, and Robin's Roost, the home of his later years, were not poetic fancies with him. They were to him the best of all he held sacred and dear. As a statesman he held lofty aspirations, but these things were mere visions and dreams and their attainment only the paradise of fools, as compared to his home. Only a few weeks ago it was my pleasure to spend a day with him in Sullivan County. I was sent for to dedicate a schoolhouse. Senator TAYLOR was sent for to make the occasion a great, good day for those honest sons of toil. He made it. There were no Republicans there that day; whatever they were elsewhere and on other days, they were all blended into a great brotherhood that day. The Senator reached his climax when he urged the boys to stay on the farm, build up good homes, and be true to "Sallie and the children."

To him the church was a very sacred place. It was verily the house of God and never a place for merriment or even light things with him. He was never quite willing to give any of his lectures in a church, though they were as pure as the snow. "No, no," he would say, "Let me speak in a warehouse or a barn or out under the spreading oaks, but not there. That is the house of God."

When home from his public duties you could count on him being at church every Sunday and was always reverent and responsive. The hardest time I ever had with him as his pastor was to control him in his gifts to charity. I have held for years that this thing of charity is often a very doubtful proposition; that the only charity worth the name is to help people to help themselves, but Senator TAYLOR's heart frequently got the upper hand of his head and the upper hand of me. His great, tender soul made him so acute to the sufferings of others that it seemed he could hear a little child's cry of want clear across the city, and the murmur of hunger stirred him so completely that he would give all he had and ask no questions. I used to almost wish I could send him away from home at Christmas time. I found that designing people, the professional tramps and beggars, had found out his nature and were preying upon him. He would not stop at buying apples by the barrel for the poor and to make them happy, but would buy whole wagonloads and give them out to all grades and distinctions of human beings, white or black; it made no difference with him.

Senator TAYLOR had a large religious nature, and the last time I ever talked with him on the subject of religion was here in Knoxville just in front of Church Street Church. He and I had driven over here to hear Bishop Hendrix preach. When we got here love feast was going on. The doors were closed and locked. A large crowd on the outside was trying to get in. He turned to me and with a pathetic expression on his face said: "Neighbors, that reminds me of the final judgment, with many getting there too late and finding the door locked. I hope when my little day is done I will not get there too late and somehow through God's infinite mercy He will let me in."

A friend of his and mine said to me just a few days ago: "Senator TAYLOR was in my home recently. My children gathered about him and asked him to sing for them. He sang several little songs that amused them very much, but finally he said, 'Children, I want to sing you one more song.' He then beautifully and tenderly sang 'Jesus, Lover of My Soul, Let Me to Thy Bosom Fly.'"

Friends, as I hasten to a close, Senator TAYLOR would not allow me to pronounce him faultless if he could speak. He would say in his own inimitable way, "Neighbors, you know me. You know I am just a human being, with limitations like other men, full of mistakes and blunders." But I would be compelled to say, "Yes; Senator TAYLOR, I know that and I will be true to your wishes; but you must allow me to say another thing upon my own responsibility—this: It was never any part of your program to wrong any human being or harm anything God has ever made. Senator, as I have seen and known you, allow me to say most gently, your great nature was too large to be little and too good to be mean."

When Dickens was bringing out Old Curiosity Shop by chapters, the readers appealed to him, "Do not let little Nell die. It's a life so beautiful," but Dickens replied, "I have to let her die. I can't help it. She must die to complete the story and her life work."

When Senator TAYLOR was reported seriously ill hearts from all over Tennessee and this Nation went up, "Oh, God, don't let him die," but God had to let him die—die to complete his life story—die to bury out of sight all little human defects and blemishes and lift him into that sublimer light and life, where men are blended into such a brotherhood as to remember only what is good and true.

And this his epitaph shall be,
When ended are his days:
None knew him but to love him.
None named him but to praise.

FLOOD ON THE OHIO RIVER.

Mr. FOWLER. Mr. Speaker, I would be glad to have the joint resolution which I send to the desk read for information.

The SPEAKER. The gentleman from Illinois asks to have a joint resolution which he presents read for information.

Mr. STEPHENS of Texas. I will yield for that purpose only if it is short.

The Clerk read as follows:

House joint resolution 291.

Resolved, etc., That the sum of $25,000 be, and the same is hereby, appropriated, cut of any money in the Treasury not otherwise appropriated, to be used and expended under the direction of the Secretary of War for the purpose of strengthening and maintaining the levee at Shawneetown, Ill., against impending floods.

Mr. FOWLER. Mr. Speaker, I ask unanimous consent for the present consideration of the resolution, because of the emergency which exists at Shawneetown at the present time.

Mr. STEPHENS of Texas. Mr. Speaker, I can not yield for that purpose.

The SPEAKER. The gentleman from Texas objects.

Mr. STEPHENS of Texas. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the Indian appropriation bill.

The SPEAKER. The gentleman from Texas moves that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the Indian appropriation bill.

Mr. FINLEY. Will the gentleman from Texas indulge me just a moment? I would like to know if this proposed appropriation by the gentleman from Illinois [Mr. FOWLER] is not for a point north of Cairo, where the previous appropriation applied. I think it is a matter that ought to be considered here and now.

Mr. STEPHENS of Texas. Mr. Speaker, three days ago this House appropriated $350,000 for this very purpose.

Mr. FINLEY. No; this is for a point north of Cairo, where the other appropriation applied.

Mr. RUSSELL. Mr. Speaker, I want to say in reply to what the gentleman from Texas has said that that appropriation of $350,000 was for the use of the Mississippi River Commission, that has no jurisdiction over the Ohio River. The $350,000 applied exclusively to the Mississippi River.

Mr. STEPHENS of Texas. What is the sum asked for by this resolution?

Mr. FOWLER. Twenty-five thousand dollars.

Mr. STEPHENS of Texas. Can not this appropriation or a part of this $350,000 be used on the Ohio River?

Mr. RUSSELL. It can not. It is for the Mississippi River Commission, and they have no jurisdiction over the Ohio River.

Mr. STEPHENS of Texas. This is for the same object as the other appropriation.

Mr. FINLEY. No; it is a different locality, and information has been received that the flood has reached this point and some relief is absolutely necessary.

Mr. STEPHENS of Texas. Mr. Speaker, I will consent to yield for its consideration.

Mr. FITZGERALD and Mr. MANN reserved the right to object.

Mr. MANN. Mr. Speaker, I would like to ask in reference to the Senate joint resolution which was passed on Friday last appropriating $10,000 for Mound City.

Mr. FOWLER. That is 60 miles below Shawneetown.

Mr. MANN. I understand; but the gentleman's resolution would not cover that.

Mr. FOWLER. No, sir.

Mr. MANN. Well, I think if one is considered we ought to consider both at the same time.

The SPEAKER. What resolution is the gentleman from Illinois speaking of?

Mr. MANN. Senate joint resolution 96, appropriating $10,000 for the purpose of maintaining and protecting against floods on the levee at Mound City, Ill.

The SPEAKER. The Chair has that resolution before him. The gentleman from Illinois asks unanimous consent for the present consideration of the resolution which the Clerk has just read.

Mr. FITZGERALD. Mr. Speaker, reserving the right to object, I desire to call the attention of the House to this situation. Last week $350,000 was appropriated for the purpose of strengthening and protecting the levees of the Mississippi River under the Mississippi River Commission. There is on the Speaker's table a joint resolution passed by the Senate appropriating $10,000 to protect a levee at Mound City, on the Ohio River. That resolution was passed in the Senate upon a statement made by a Member of the Senate similar to the statement made by the gentleman from Illinois, based upon no investigation by anyone connected with the Federal Government, but upon the strength of a telegram which had been received by a Senator. I desire to call the attention of the House to what the telegram states:

MOUND CITY, ILL., *April 4, 1912.*

Senator SHELBY M. CULLOM, *Washington, D. C.:*

At a citizens' meeting held to-night it was decided to ask you to secure for the city of Mound City, Ill., the sum of $10,000 from appropriation recently made, to aid us in our flood-stricken condition. Water at top of 4 miles of levee all around city; no money in treasury. Financial aid necessary at once to save us from inundation. Can you not have same wired to city treasurer here?

M. F. BROWNER, *Mayor.*
DANIEL HOGAN.
W. A. WALL, *County Judge.*
F. J. KUNY,
President Mound City Commercial Club.

In other words, Mound City desires the Federal Government to put $10,000 in the city treasury to pay its citizens to do the work on its levees to protect the city. What the situation is here I do not know, but there are more than 2,000 miles of river protected by such levees, and if the Federal Government, upon telegrams from persons in various localities that a condition exists such as described in this telegram, is to allow the appropriation of money to prevent the levee being broken here, the Federal Treasury will be unable to meet the demands upon it.

Mr. JAMES. Will the gentleman yield?

Mr. FITZGERALD. Certainly.

Mr. JAMES. I want to state to the gentleman that I think he misunderstands the real situation at Mound City. I do not believe that they want the money to put in the treasury to pay their own people to do the work on the levees, because all up and down the Ohio River, as well as the Mississippi River, those people have been making donations and hundreds and thousands of citizens have been working night and day without a dollar of pay.

I do not believe that the State of Illinois, the State of Kentucky, the State of Missouri, or any other State would have to pay men to protect their own property or that of their neighbors by hiring them out of money furnished by the Federal Government. They will do all possible in their power without price, but they need assistance.

Mr. FITZGERALD. Mr. Speaker, I may have a misunderstanding of what is desired there, but I read correctly the message sent by the mayor of the city, and it is to have $10,000 wired to the city treasurer of Mound City, and for what purpose, if not to pay for the services of those who are to do the work?

Mr. MANN. Mr. Speaker, will the gentleman from New York yield?

Mr. FITZGERALD. Mr. Speaker, I will ask the gentleman to wait a minute. There has been a request from certain sections for aid in the way of food and shelter for those who have been made destitute as a result of the flood. Some resolutions were introduced for the purpose of providing relief, one by the gentleman from Kentucky [Mr. JAMES], and the other by the gentleman from Missouri [Mr. RUSSELL]. Those gentlemen and others have had conferences with the President of the United States, and the President has directed the Quartermaster General and the Commissary General of the Army to furnish throughout that section rations and tents wherever necessary temporarily to provide for those made destitute. I have been in communication with the President about the matter, and I shall ask the Clerk to read a letter sent to me by the President on the 5th of this month to show exactly what the situation is.

The SPEAKER. The Clerk will read the letter.

The Clerk read as follows:

THE WHITE HOUSE,
Washington, April 5, 1912.

Hon. JOHN J. FITZGERALD,
Chairman Committee on Appropriations,
House of Representatives.

MY DEAR MR. FITZGERALD: As I told you yesterday, by direction of the Secretary of War, two officers of the Quartermaster Department have been sent to that part of the Mississippi Valley where floods are reported. We have had telegraphic communication from them, but they have not yet succeeded in reaching Hickman and New Madrid, though they have opened communication with the mayor of the latter town. This is owing to interruption in the railroad traffic and the necessity for proceeding part way by boat.

I write to say that I do not think it wise to make any appropriation for the purpose of buying food and other supplies until these officers reach the ground and give us some idea of the amount needed and the extent of the suffering and destitution.

Meantime, before any appropriation is made, the Secretary of War will not hesitate to use of the Army supplies whatever is immediately needed, and I have no doubt that he has near at hand a sufficient amount to relieve such suffering as can be relieved in that way. I shall advise you to-morrow of any further information that we have received.

I inclose a copy of a telegram from Capt. Hegeman for your information.

Sincerely, yours, WM. H. TAFT.

Mr. FITZGERALD. Mr. Speaker, so far as taking care of those made destitute and temporarily in need of food and shelter is concerned, everything is now being done that can be done, but if at every place along the river which is threatened by the flood some one is to telegraph to a Member of Congress asking that ten or twenty-five thousand dollars be made available to protect the work at that particular place, then every Member of Congress representing a district bordering upon those rivers would be compelled to ask similar relief for the threatened places in his district.

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

Mr. FITZGERALD. Yes.

Mr. JAMES. Mr. Speaker, the letter just read from the President to the gentleman from New York is in reference to the situation on the Mississippi River. This question that is now up for consideration is upon the Ohio River. The letter from the President deals with a situation relative to food for the people. The resolution under consideration deals with the question of strengthening the levee itself. I think a mistake was made the other day when the $350,000 was made immediately available for the purpose of strengthening the levees of the Mississippi River, that the resolution appropriating that sum did not provide also for strengthening the levees along the rivers tributary to that river, because no one could argue that the Government ought to protect the levees of the Mississippi River and deny protection to the people who are behind the levees of the Ohio River. That is the situation exactly as it is presented here. I agree with the gentleman from New York that ordinarily it is not good policy to appropriate money upon telegrams, but I do say that the Ohio River ought to have an amount of money, so far as it may be necessary, expended to protect the people along that river as the Mississippi River, and I represent a district that is skirted by both rivers.

Mr. FITZGERALD. Mr. Speaker, the appropriation made for the Mississippi River was made upon a report furnished by the Chief of Engineers, upon information obtained in a proper way, giving some idea of the situation.

Mr. JAMES. That is exactly true, but at that time the Ohio River had not gotten to that stage where it was thought there would be danger of overflows.

Mr. FITZGERALD. People in sections along the Ohio River would never have dreamed of applying to the Congress for relief to aid them in this way if it had not been for the passage of the other resolution.

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

Mr. FITZGERALD. Certainly.

Mr. MANN. Mr. Speaker, the gentleman referred to the telegram from the officials of Mound City, and stated, as the telegram does, that they desired the money wired to the city treasurer. But the gentleman notices that the resolution which was passed by the Senate, and which is now on the Speaker's table, provides that the money shall be—

Expended under the direction of the Secretary of War in maintaining and protecting against impending floods the levee at Mound City, Ill.

Mr. FITZGERALD. I understand that.

Mr. MANN. It is not proposed by either of the resolutions, as I understand it, to contribute any money to the municipality.

Mr. JAMES. Oh, not at all.

Mr. MANN. But to authorize the Secretary of War to expend money for the protection of levees on the Ohio River in the same manner as Congress, under suspension of the rules in the House the other day, provided for the protection of levees on the Mississippi River. The gentleman says we get information by wire. That is true. Unfortunately the floods do not wait. They are there; and the only way we can get information appropriately and in time is by wire. Is not the gentleman from New York willing to let the House vote on a proposition of this sort?

Mr. FITZGERALD. Not with the information I have about Mound City. The Chief of Engineers states that the water at Mound City is all backwater. There is no current whatever. There are three levees there, one above the city, which it was never proposed an attempt should be made to protect sufficiently to withstand the floods, because it covers a section which is undeveloped, low swamp land that could not be protected. Another levee is below the city, protecting lands taken over by a company for irrigation purposes. The company, some years ago, refused to permit anybody to go in there to do any work at all, but finally granted a right of way to the Big Four Railroad, if I be not mistaken, upon condition that it should build a levee. The other levee is around the city, and in the opinion of the Chief of Engineers it is ample to withhold the waters that are backed up there.

If these resolutions pass, whenever any Member of Congress shall receive a telegram from anybody anywhere in these threatened cities it would be impossible to refuse the appropriation, whether it would be needed or not, and there would be a flood of requests here that would make the flood in the Mississippi River look insignificant.

Mr. MANN. If the gentleman will yield——

Mr. FITZGERALD. I do.

Mr. MANN. After all the Secretary of War will not expend any more money there than necessary for the protection of the levee, and in a case like this where there is imminent danger of a great disaster, ought not we to be willing to authorize the expenditure of money by the Secretary of War instead of requiring a report by him in advance and take his judgment to that extent?

Mr. FITZGERALD. I think not. I think we should act upon some information. These floods at these places are not of this unexpected character that the gentleman would have the House to believe.

Mr. MANN. I think this flood probably is the worst they have had; certainly by long odds worse than any since I have been a Member of the House.

Mr. FITZGERALD. It has been known for weeks it was coming; preparations have been made for its coming, and yet in some of the flooded sections it was necessary to use force to drive the people from their homes. They understand the conditions much better than we do. I do not believe that we would be justified in making these appropriations in this way, putting every Member of the House who has a district bordering on the Mississippi River in a position where he would be coerced into introducing a similar resolution without knowledge or information as to the necessity. Now, the truth is, since Saturday the flood has been subsiding to some extent.

Mr. CANNON. Will the gentleman yield?

Mr. FITZGERALD. I yield to the gentleman.

Mr. CANNON. I will be glad to make just a short statement. The United States, under the guise or the name of promoting navigation, have for a quarter of a century contributed to the levee system on that great river. I said the other day, and I repeat it now, that the levee system, in my judgment, is of much greater importance than the navigation. The substance is what we are after. The other day before any levee had broken, in anticipation of the flood, we appropriated $350,000 to strengthen the levees and meet emergencies on the Mississippi River in the present emergency arising from the great flood, perfectly proper. We helped to make those levees. That was in anticipation—we did not wait for telegrams, did not wait for the water to get up so that it would break any levee. I voted for it, and I stand ready to vote something for it again if it is necessary. Now, what is the situation? The Ohio River, a great tributary of the Mississippi; Cairo, at the junction of the two rivers; Mound City, 4 miles from the Mississippi; and on the Ohio, a little higher up, Shawneetown—and I want to say here and now at Shawneetown the levees were largely constructed by the United States under authority of a provision which was contained in a river and harbor appropriation bill. Ice piers have been builded along the Ohio River by authority of a provision carried in the river and harbor appropriation bill. I want to say, further, I believe there may be an immediate occasion, not to appropriate to Mound City, not to appropriate to Shawneetown, not to appropriate for any other specific place, but general in its terms, guarded as the $350,000 appropriation was guarded on the Mississippi, where we made an appropriation a week or 10 days ago, to be expended under the direction of the Secretary of War, within his discretion, acting through his officers, to lend a helping hand. What for? Not to feed the people. The President is feeding the hungry people, jumping the authority on assurances that that appropriation will be reimbursed; but an appropriation, general in its terms, to protect the levees on the Ohio River and like unto which Mound City and Shawneetown are examples.

Mr. FITZGERALD. Let me suggest this to the gentleman from Illinois. I will not object to a joint resolution which will make available the appropriation made the other day to the service on rivers tributary to the Mississippi River. That takes care of the entire situation——

Mr. CANNON. I am perfectly willing——

Mr. FITZGERALD. And will relieve this House——

Mr. CANNON. I am perfectly willing for that, because if the $350,000 appropriation, in the chapter of accidents in the providence of God, does not prove sufficient we can appropriate an additional amount. If a joint resolution can be prepared, or, say, we take up the Senate joint resolution and amend it by striking out all after the enacting clause and inserting the provision that the gentleman suggests——

Mr. FITZGERALD. Let me suggest to the gentleman from Illinois that if his colleague will withdraw this resolution, I shall have prepared an amendment to the one that is on the

Speaker's table, and then he can come in and ask to have it taken up, the amendment adopted, and sent back. It can be done in a few minutes.

Mr. WICKLIFFE. Will the gentleman yield?

The SPEAKER. Does the gentleman yield?

Mr. FITZGERALD. I do.

Mr. WICKLIFFE. I want to ask if it is not contemplated that this shall be taken out of the amount already appropriated.

Mr. FITZGERALD. It would make that appropriation available.

Mr. WICKLIFFE. Why could not that be done by a separate measure?

Mr. FITZGERALD. It would not be a bad situation there, then, if additional money was required.

Mr. WICKLIFFE. It is quite apparent to the gentleman that every bit of that money will be needed. I am perfectly willing to vote for any measure of relief for the people of whom you speak, but I think you ought to grant that by separate appropriation and not take it out of what is already appropriated.

Mr. FITZGERALD. The gentleman from Louisiana knows the recommendation of the Chief of Engineers was for $250,000 and Congress appropriated $350,000.

Mr. WICKLIFFE. The recommendation was for more. The President recommended $500,000 himself.

Mr. CANNON. Will the gentlemen allow me a suggestion? It is perfectly safe to authorize the Secretary to utilize the $350,000 and to use it on the other tributaries in the discretion of the President, because there is no doubt but that that appropriation will be reenforced by an additional appropriation the moment that it appears to be necessary.

Mr. WICKLIFFE. That might be, Mr. Speaker.

Mr. FOWLER. Mr. Speaker, I will be glad to make a statement of the conditions at Shawneetown.

Mr. Speaker, on last Thursday I returned from my district. Shawneetown lies about 20 miles above my home. I had information then with reference to the floods at that place, and I was reliably informed by citizens of that town that there was a condition prevailing there that was likely at any moment to destroy the lives and property of the citizens of that city.

Mr. Speaker, the levee is so built that the northeastern portion thereof comes directly in contact with the great flood current of the river during high water. A few years ago during a stage of flood and overflow an immense body of water swept down against that portion of the levee, cut an awful gap in it, and swept through the city, without giving any warning, like a mighty hurricane, destroying all life and property in its wild and furious course. As a result of that dreadful catastrophe more than 25 unsuspecting men, women, and children found watery graves. That condition exists there to-day, and these people are in imminent danger not only of losing their property, but of losing their lives also.

It was well said by my colleague from Illinois [Mr. CANNON] that this levee was constructed under the supervision largely of the War Department. It was repaired when it broke a few years ago by specific appropriation by Congress. Now, in order that it may be protected and that there may not be a repetition of the dreadful disaster which occurred a few years ago I am requested by the people of Shawneetown to ask Congress to appropriate a small sum to relieve the situation, make more certain the city's defense, and provide against the destruction of their lives and property.

Mr. DYER. Will the gentleman yield for a question?

Mr. FOWLER. In just one moment. Mr. Speaker, I have been informed by the Weather Bureau within the last hour that the river is still rising at that point. I am also informed by that bureau that it will be at an acute and dangerous stage for the next 8 or 10 days to come. At any time during this period, Mr. Speaker, the levee might break and then destruction would follow in its wake. Now I yield to the gentleman from Missouri [Mr. DYER].

Mr. DYER. Mr. Speaker, I would like to know from the gentleman from Illinois if the suggestion made here by the chairman of the Committee on Appropriations [Mr. FITZGERALD] to make available this fund already appropriated of $350,000 to the river as well as its tributaries will not cover the situation so far as his resolution is concerned?

Mr. FOWLER. I am not wholly prepared to say that it would. If an appropriation can be made available for the purpose of reaching the situation that exists there to-day, I will not only be glad to have it done, but I will be satisfied for the time being at least. But I would like to have an assurance, Mr. Speaker, that the money can be made available at once, because I understand that a pressing necessity exists now, and not at some time in the future. We need it now.

Mr. MANN. Mr. Speaker, will my colleague yield?

Mr. FOWLER. Yes, sir.

Mr. MANN. I would like to suggest that I have drafted a provision which, if agreed to, could be inserted in the Senate joint resolution now pending, as a substitute. It reads like this:

> That the appropriation made by the act entitled "An act appropriating $350,000 for the purpose of maintaining and protecting against impending floods the levees on the Mississippi River," approved April 3, 1912, is hereby made available for the purpose of maintaining and protecting against impending floods the levees on rivers tributary to the Mississippi River.

Would that be satisfactory? If it should turn out that they would need more money, that would be provided hereafter.

Mr. FITZGERALD. I do not think there would be any difficulty in regard to that.

Mr. FOWLER. Mr. Speaker, I presume that might relieve the situation for the present. I do not know, personally, how much is needed, but the people of Shawneetown say that $25,000 will be needed. If that sum can be appropriated to relieve the situation, Mr. Speaker, I will be perfectly satisfied with it.

Mr. WICKLIFFE. Will the gentleman yield?

The SPEAKER. Does the gentleman from Illinois [Mr. FOWLER] yield to the gentleman from Louisiana [Mr. WICKLIFFE]?

Mr. FOWLER. Yes, sir.

Mr. WICKLIFFE. There is a precedent for your action to-day. As I understand it, there was a special appropriation made in 1882—two of them, in fact—for the relief of sufferers from the flood, and for that reason the gentleman's measure, as he has it, has a precedent for action by this House.

I want to see the gentleman from Illinois [Mr. FOWLER] get the relief he desires, and I am heartily in favor of his measure, but I do not think it ought to come out of this money that has already been appropriated for the purpose of the prevention of floods by this river or the prevention of crevasses and for protection, and not for the purpose of reparation. I am heartily in favor of relief being granted, but I do not think that it ought to be done by diverting money that has already been appropriated and which, in my judgment, will all be necessary for the specific purpose for which it was appropriated.

There is nothing here from the engineers to show that any part of this appropriation of $350,000 will not be necessary for application to the specific purposes for which it was appropriated. I think certainly the engineers ought to be consulted before we should go to diverting to some other channels this fund that has already been appropriated for another purpose.

Mr. CANNON. Will the gentleman yield there?

Mr. WICKLIFFE. As I say, I wish to be understood as not in any way opposing the suggestion of the gentleman from Illinois [Mr. FOWLER], and not in any manner wanting to refrain from giving relief to these people. I am heartily in favor of it, but I think that relief should be given by a specific appropriation. Do not give it by diverting funds that are already appropriated, every cent of which is necessary for the purpose expressed.

Now, you propose to divert that fund in the absence of any information from the engineers showing that they do not need it all. I hope the House will take that view of the matter and grant the relief desired in a different avenue from that now proposed for diverting this fund.

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

Mr. WICKLIFFE. Yes.

Mr. CANNON. If the gentleman will allow me, I want to say to the gentleman from Louisiana that by unanimous consent, on a bare suggestion, the $350,000 was appropriated. Now, when the representatives of the tributaries of the Mississippi River come in asking that a small relief be given them and that this fund be utilized, if the fund needs reenforcement the same wise and generous treatment will be accorded.

Mr. WICKLIFFE. That is all right; but I say do it by increasing the amount of the fund already appropriated and not by deducting from that fund that has already been appropriated. Now, I am meeting the gentleman's proposition, and showing how certainly it can be done without danger.

Mr. CANNON. Precisely; and this can be done by unanimous consent.

Mr. WICKLIFFE. You may have unanimous consent to it, provided nothing is diverted from the $350,000 that has already been appropriated. I am heartily in favor of a further appropriation for the purpose proposed by the gentleman from Illinois.

Mr. CANNON. The gentleman no doubt stands alone of all the Mississippi River Members in his objection.

Mr. WICKLIFFE. I do not wish, Mr. Speaker, to be put in the attitude of objecting. I do not object. I am simply asking that this amount be given in the regular way and not be given

by diverting what has already been given to the engineers to another purpose.

Now, Mr. Speaker, I would like to ask anyone in this House if there is any expression from the engineers with reference to this subject? Will the chairman of the Committee on Appropriations give me his attention? Have the engineers stated that any part of this fund now proposed to be taken could be taken from the appropriation of $350,000 without in any way jeopardizing the success of the engineers' efforts in holding the levees?

Mr. FOWLER. Mr. Speaker, I will yield to enable the gentleman from New York [Mr. FITZGERALD] to answer, but after that I can not yield further.

The SPEAKER. The gentleman from Illinois [Mr. FOWLER] has the floor.

Mr. FITZGERALD. Mr. Speaker, I have not made any inquiry as to that. What I did ask of the Chief of Engineers was information regarding the situation in Mound City. A telegram was sent to the Army engineer at Cincinnati on Saturday morning, and up to within an hour or so ago no word had been obtained from him.

Mr. WICKLIFFE. Now, does not the gentleman think that in the absence of word from the engineers it would be a very dangerous thing for a Representative to admit——

Mr. FITZGERALD. I think not——

Mr. WICKLIFFE. That any part of this fund could be safely diverted?

Mr. FITZGERALD. I think not. I think if the gentleman from Louisiana and others understood that he and they could get through the House, by unanimous consent, a resolution appropriating $350,000 for that purpose; if the situation demanded additional money the same thing would happen again. I think it is hardly fair that in the preparation of that resolution the tributaries of the Mississippi should have been omitted. That omission was probably inadvertence in that it failed to include the tributaries of the Mississippi River in the relief proposed.

Mr. WICKLIFFE. But the gentleman is incorrect there. The territory of the Mississippi River Commission was covered in that appropriation bill. Now, the gentleman is seeking to enlarge that scope, but without giving one cent more money. If you will give an additional amount of money for that proposed enlarged territory, I am perfectly willing. I simply do not want to take this fund that has already been appropriated, which the engineers have not told Congress will not be necessary, and divert it without their knowledge and without adding more to it. The solution of the question is to add more to it.

Mr. FOWLER. Mr. Speaker——

The SPEAKER. The gentleman from Illinois [Mr. FOWLER] has the floor.

Mr. SISSON. I am trying to get the gentleman from Illinois [Mr. FOWLER] to yield to me.

The SPEAKER. Does the gentleman from Illinois [Mr. FOWLER] yield to the gentleman from Mississippi [Mr. SISSON]?

Mr. FOWLER. I will in a few minutes. Mr. Speaker, I did not expect to get into a controversy with gentlemen from the Mississippi River districts when I introduced this resolution. I was only trying to protect the people of my district, because I felt that I knew more about its wants than any other Member of this House. At least, I ought to know, because it is my duty to keep in close touch with the immediate wants of my constituency. I do not know whether the amount appropriated a few days ago for the relief of the people on the Mississippi River is in excess of what is really needed or not, but I do say that the amount provided for in my joint resolution is not too much to repair and strengthen the levee at Shawneetown, Ill. It is to be expended under the direction of the War Department and need not be wasted nor one dollar of it expended for any useless purpose.

Now, Mr. Speaker, with the consent of my colleague from Illinois, Mr. MANN, I will yield to the distinguished gentleman from Mississippi [Mr. SISSON]. [Applause.]

Mr. SISSON. Mr. Speaker, I hope the gentleman from Louisiana [Mr. WICKLIFFE] will not object to this amendment to the resolution.

Mr. WICKLIFFE. Will the gentleman yield just for one question?

Mr. SISSON. Yes.

Mr. WICKLIFFE. Let me say that I have not as yet objected; but I want to impress upon the House the fact that no part of this money ought to be diverted from the specific fund without the consent of the engineers or their recommendation. I am heartily in favor of adding more to it. I have not objected yet, and if the gentleman will give me the assurance, and if the chairman of the Committee on Appropriations will join in it, that when further money is needed it will be forthcoming, so far as gentlemen here are concerned, I am willing to yield the point.

Mr. SISSON. I believe I have the permission of the gentleman from Illinois [Mr. FOWLER]——

Mr. FOWLER. Yes.

Mr. SISSON. As far as I am personally concerned, as long as the fund asked for is for the purpose of protecting the levees of the Mississippi River and its tributaries, I shall have no objection to the proper amount of money being appropriated by Congress. [Applause.] But here is my objection to the resolution of the gentleman from Illinois [Mr. FOWLER]. If you make a specific appropriation for a specific town, then every town and village from New Orleans to the sources of the Mississippi, Missouri, and Ohio will appeal to its individual Congressman to get a specific appropriation to protect the levees in front of that town.

Mr. WICKLIFFE. Right on that point——

Mr. SISSON. Mr. Speaker, I decline to yield.

The SPEAKER. The gentleman from Mississippi declines to yield.

Mr. SISSON. Practically every dollar's worth of property that I have in this world is behind the Mississippi levees, and the very money that the gentleman wants diverted for his place is money that has been appropriated to protect the property that I own in the Yazoo and Mississippi Valleys; but I am unwilling that that river shall receive special appropriations that the tributaries do not receive. [Applause.] I am more than willing to leave this matter to the sound discretion of the engineers in charge of the respective rivers, in the belief that they will expend it where it is needed and where it will do the most good. If we need more than $350,000, Congress can appropriate it; but let us not vote more than $350,000 now. Let us vote for the amendment of the gentleman from Illinois [Mr. MANN], and that may be able to save the entire situation.

Mr. WICKLIFFE. I would like to state, and this may possibly settle the matter, that I am assured by those with whom I have talked that when further appropriations are necessary for the Mississippi River Commission this House will grant them; and in view of that understanding I will withdraw any objection that I might otherwise make.

The SPEAKER. The gentleman from Illinois [Mr. FOWLER]——

Mr. MANN. Pending the request of my colleague from Illinois, I ask unanimous consent that the Speaker lay before the House Senate joint resolution 96. When that has been done I shall move to strike out all after the enacting clause and insert the amendment which I have proposed.

The SPEAKER. The Chair lays before the House Senate joint resolution 96, which the Clerk will report.

The Clerk read as follows:

Senate joint resolution 96.

Resolved, etc., That the sum of $10,000 be, and the same is hereby, appropriated, out of any money in the Treasury not otherwise appropriated, to be expended under the direction of the Secretary of War in maintaining and protecting against impending floods the levee at Mound City, Ill.

Mr. MANN. Mr. Speaker, I move to strike out all after the enacting clause and insert as a substitute the amendment which I send to the Clerk's desk.

The Clerk read as follows:

Strike out all after the enacting clause and insert: "That the appropriation made by the act entitled 'An act appropriating $350,000 for the purpose of protecting against impending floods the levees on the Mississippi River,' approved April 3, 1912, is hereby made available for the purpose of maintaining and protecting against impending floods the levees on rivers tributary to the Mississippi River."

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

The amended joint resolution was ordered to be read a third time, was read the third time, and passed.

On motion of Mr. FOWLER, a motion to reconsider the vote whereby the joint resolution was passed was laid on the table.

Mr. MANN. Mr. Speaker, I ask that the title may be amended so as to read: "To amend an act entitled 'An act appropriating $350,000 for the purpose of maintaining and protecting against impending floods the levees on the Mississippi River,' approved April 3, 1912."

The SPEAKER. Without objection, the title will be so amended.

There was no objection.

Mr. FOWLER. Mr. Speaker, in view of the action just taken by the House I withdraw my request for unanimous consent to consider my joint resolution.

The SPEAKER. The gentleman from Illinois withdraws his resolution.

Mr. FOWLER. Not the resolution, but I withdraw the request for present consideration.

The SPEAKER. That withdraws the resolution. The gentleman can offer it again if he wishes.

INDIAN APPROPRIATION BILL.

Mr. STEPHENS of Texas. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 20728, the Indian appropriation bill.

The motion was agreed to.

Accordingly the House resolved itself into Committee of the Whole House on the state of the Union, with Mr. BARNHART in the chair.

The CHAIRMAN. The House is now in Committee of the Whole House on the state of the Union for the further consideration of the Indian appropriation bill. The regular order of procedure is that the gentleman from Oklahoma may continue his argument on the point of order raised by the gentleman from Minnesota [Mr. MILLER]. Before recognizing the gentleman from Oklahoma the Chair desires to inquire of the chairman of the committee and the gentleman from South Dakota [Mr. BURKE] whether or not they can agree on any time for debate on the point of order. It is the purpose of the Chair to give full and free discussion, but he is anxious to close up the matter.

Mr. STEPHENS of Texas. Mr. Chairman, I ask unanimous consent that all debate on the point of order and on the pending paragraph be concluded in 30 minutes.

Mr. MANN. Mr. Chairman, the gentleman from Oklahoma [Mr. FERRIS] discussed the point of order for a few moments, but has been discussing the merits of the proposition, which is all right. I think there is no one else who desires to be heard on the point of order, but if the point of order should be overruled some gentlemen may desire to be heard further. I hope the gentleman will not make the request at this time.

Mr. FERRIS. The House is aware that there was a good deal of matter came into the debate outside of and independent of the pending point of order. I believe the status of the matter tersely stated is that those favorable to the point of order have consumed 1 hour and 30 minutes, while those opposed to the point of order have consumed about 30 minutes. I may not be absolutely correct, but that is in round numbers correct. Of course gentlemen recognize the desire to get on with the bill, and I have made up my mind that I would try and conclude what I had to say in a short time. That would make on this side about one hour all told. The gentleman from Oklahoma [Mr. CARTER] desires to be heard for about 20 minutes, and the gentleman from Kansas [Mr. JACKSON] for five minutes. I thought, as I say, I would conclude my remarks in a few minutes, which would take up the time asked for by the gentleman from Texas [Mr. STEPHENS]. Of course, if considerable more time is desired on the other side the request of the gentlemen ought to be modified.

Mr. MANN. The gentleman will remember that when we agreed upon the time for general debate the gentleman from South Dakota said that he desired time to discuss this at considerable length. Now, I suggest to the gentleman that this is probably the last hotly disputed item in the bill.

Mr. FERRIS. If the gentleman will pardon me it is not. The gentleman from South Dakota will offer an amendment, which will require time for discussion and which will go very largely into this same matter.

Mr. MANN. I understand it relates to the same matter.

Mr. BURKE of South Dakota. Mr. Chairman, I want to state that I do not desire to be heard on the point of order. I understand the gentleman from Oklahoma [Mr. FERRIS] desires to talk for 5 or 10 minutes, and the other gentleman from Oklahoma [Mr. CARTER] desires to talk for 20 minutes, and I understand the gentleman from Kansas wants a few minutes. Now the gentleman from Oklahoma [Mr. FERRIS], when he took his seat on Saturday, was discussing the merits of the paragraph to which the point of order has been made. If that point of order should be overruled, I shall then make a motion to strike out the paragraph.

Following the disposition of that motion I shall offer as an amendment an item proposing to appropriate $100,000 for the district agents, and I want to say whatever I may have to say upon both propositions at that time, so that if the gentlemen will go on now with the 30 or 35 minutes that they desire to occupy, I will say that I shall not take any time on the point of order and will accept the ruling of the Chair, so far as I am concerned, without saying anything.

Mr. FERRIS. That is satisfactory.

Mr. STEPHENS of Texas. Then, Mr. Chairman, with the understanding that there is to be no discussion on the proposition, I shall withdraw my request.

Mr. MURDOCK. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. MURDOCK. Is not the time to be used in discussing the point of order wholly within the discretion of the Chair?

The CHAIRMAN. The Chair understands that it is wholly within the discretion of the Chair, but the Chair sought to get an expression of those interested of how much time they might want, because he did not want to arbitrarily suppress debate.

Mr. CARTER. Mr. Chairman, if the gentleman from Oklahoma [Mr. FERRIS] desires only five minutes, and the gentleman from Kansas [Mr. JACKSON] only five minutes——

Mr. MURDOCK. Mr. Chairman, I shall want five minutes upon the merits of the proposition.

Mr. CARTER. I am speaking now about the point of order.

Mr. MURDOCK. I do not desire anything on the point of order.

Mr. CARTER. Then, Mr. Chairman, I can conclude what I have to say upon the point of order in 15 minutes, so that the whole time would amount to only 25 minutes.

Mr. MANN. That will be satisfactory.

Mr. FERRIS. Mr. Chairman, on Saturday last, as the committee will recall, the gentleman from Minnesota [Mr. MILLER] presented both facts, law, and argument at great length. Most of his remarks were devoted to the facts, and in my reply to him on Saturday a great portion of my remarks related to the facts rather than to the particular point of order under discussion. I had expected, under the excitement of the moment, to go more into the facts on Saturday than I did, or probably will do now, knowing as I do that later this same question will perhaps be brought up by an amendment which the gentleman from South Dakota will offer. What I want to say now will be directed to the point of order.

It will be recalled, I think, that on Saturday the gentleman from Minnesota [Mr. MILLER] quite at length presented to the Chair and to the committee a recent decision by the Chairman of the Committee of the Whole House on the state of the Union, the gentleman from Virginia [Mr. SAUNDERS], when the Army appropriation bill was under consideration. The provision of the bill under discussion at that time reduced the number of regiments of the United States Army from 15 to 10.

A point of order was made against the provision of the bill, and the question was debated whether or not that provision brought itself within the Holman rule. As I understood from the presentation of the gentleman from Minnesota [Mr. MILLER], I was of the opinion that the Chair had sustained the point of order, but on looking at the decision I find that the Chair overruled the point of order, and I desire to read fragments of that decision for the benefit of the Chair.

I quote now from the decision of the Chair:

> The precedents say in this connection that the amendment, being in itself a complete piece of legislation, must operate, ex proprio vigore, to effect a reduction of expenditures. The reduction must appear as a necessary result; that is, it must be apparent to the Chair that the amendment will operate of its own force to effect a reduction. (Manual and Digest, p. 409, Hinds, vol. 4, p. 595.) But it is not necessary for this conclusion of reduction to be established with the rigor and severity of a mathematical demonstration. It is enough if the amendment, in the opinion of the Chair, will fairly operate by its own force to retrench expenditures in one of the three ways indicated. This result must be a necessary result, not a conjectural result or a problematical result. It is true that, having reference to the difference of minds, one chairman might hold that retrenchment would be the necessary result of an amendment, while another chairman, or the committee on appeal, might be of a different opinion; but this is inevitable. The law is clear, for instance, that at times a court upon the facts can hold, as a matter of law, that there was no negligence. Still, upon the same facts one court will derive this conclusion, while another court, on appeal, will reach a different conclusion.

Passing from that, I desire to read another portion of the decision, which refers particularly to the Holman rule:

> The Chair does not undertake to fix in terms the amount of reduction that this amendment will carry, but that a reduction will follow seems to be a fair and necessary conclusion from its provisions.

Let me now read the concluding paragraph of the chairman, wherein he overruled the point of order; and I contend that the case is fairly in line with this, and was cited by the gentleman from Minnesota on Saturday in support of his own position:

> This ruling of the Chair does not take from the committee a particle of authority. In the first instance, the Chair must be satisfied that the necessary effect of an amendment offered under the Holman rule will be a retrenchment of expenditures, in conformity with the rule, but from this ruling of the Chair holding the amendment to be in order an appeal may be taken, and the committee, in the exercise of its authority of ultimate interpretation, can reverse the Chair, if it is in error, and fix the interpretation which the committee in its wisdom thinks the rule should carry.

The holding of the Chair at that time was that all that was necessary for the Chair to have in his mind or before him were facts which would cause a retrenchment of expenditures, and I call the Chair's attention to the fact that the entire speech of the gentleman from Minnesota [Mr. MILLER] was a lament over the fact that this did cut down the number of officers and did retrench expenditures too much, and that this did reduce expenses to an extent which he thought was perilous. If the gentleman was proceeding in a court of law his whole statement would be subject to demurrer. He has conceded the very set of facts that the Holman rule seeks to correct, to wit, the reduction of officers that are not needed, and the Holman rule gives us an avenue to cut them down and reduce expenditures on appropriation bills. An analysis of his argument must make it exceedingly easy for the Chair to conclude it is a retrenchment and a reduction, hence clearly within the Holman rule.

I revert now from that decision to the rule itself. As to the provision in this bill, there is no question as to its germaneness. No one will assert that it is not germane. No one, I think, can consistently contend that the Chair has not sufficient information before him that it does reduce the expenditures.

Mr. BURKE of South Dakota. Mr. Chairman, does the gentleman contend that the rule applies where the reduction is a saving of expenditures to some one other than the United States?

I intend to get to that and hope to fully cover it. I think none will gainsay or seriously contend for the benefit of the Chair that this does not eliminate certain officers of the United States, that this does not in itself save from $800,000 to $900,000 annually. Now, as to the question of whether or not these are Government officers I desire to be heard on that for a moment, and I think when I am through the Chair will agree with me that there can be no longer any doubt about it. These officers are employed by whom? There can be but one undisputed answer, the Federal Government. Do they consult the Indians? The answer is, They do not. These officers are discharged by whom? By the Federal Government and it alone. The Indians are not consulted with reference to their employment or discharge. They are paid by the Government, warrants issued by the Federal Treasury over which the Indian has no control and is not consulted nor his consent necessary or even sought. His funds are used and deposited without his assent or suggestion. It seems to me nothing can be so clear as to determine the character of these officers as to the fact that they are employed by the Federal Government; they are discharged by the Federal Government; they are paid by warrant from the Federal Treasury, and, Mr. Chairman, it ought to be said that nearly everyone of them are under the Civil Service. Can there be found anywhere so clearly defined a method to determine that they are Government officers? It was contended at some length by the gentleman from Minnesota [Mr. MILLER] that these were not Government officers, but they were Indian officers or officers for the benefit of the Indian Service. Such a theory in the light of the uncontroverted facts are not tenable, are not convincing nor sound. The fact that they are officers in the Indian department render them none the less officers. Most of their salary comes out of the United States Treasury and not from Indian funds.

Mr. MILLER. If the gentleman will permit, I desire to state to him that my point was not that these were not Government officers, but that the fund was not a Government fund, that the moneys to be paid out were not Government moneys but Indian moneys——

Mr. FERRIS. I understand. That is true but partially, as most of their salary is appropriated for out of the Treasury and not out of Indian funds.

Mr. MILLER (continuing). So there is no retrenchment of Government funds.

Mr. FERRIS. I think I recall the gentleman's contention, and if I have misstated it he can correct me, or the House will know. Mr. Chairman, this amendment, in effect, following the decision of Mr. SAUNDERS, of Virginia, on the Army appropriation bill on February 9, shows there can be but one result, and that is that this does two things: First, it reduces the expenditures of the Government; second, it reduces the number of officers of the Government. It accomplishes precisely what the Holman rule was intended to accomplish. Now, that part of the gentleman's argument could, I think, be conceded, that it changed existing law; about that there is no contention. It does change existing law not only in one place, but in a number of places, but of course the Chair will well remember, and has the rule before him, that it is permissible to change existing law where a retrenchment and saving is sought; and the distinction that the gentleman seeks to make between the Indian fund and Government fund is a twilight zone so obscure that no one can find it. The Indian moneys go into the Federal Treasury and are merged there. They are under the full control of the United States for all purposes. They can be expended for their benefit or in their behalf, and the Federal Government has complete control over the entire property—can expend it where it will or withhold it where it will. We are fortunate and the Chair must be fortunate and the House is fortunate in finding such a recent case cited by the advocates of this point of order which so well explains the rule. The gentleman from Virginia [Mr. SAUNDERS], in making his decision—and it is at great length; it is found on page 1999 of the RECORD, February 9—goes into the proposition and makes it clear that an amendment on its face need not show a reduction, but it was sufficient that the Chair had before him facts and figures which themselves made him know in his own mind that there was a reduction and a saving. I revert to the statement of the gentleman from Minnesota, who stated it more eloquently than I can hope to do, that this amendment if adopted would reduce the number of officers; that this amendment would cut down the expenditures of the Government. I can not conceive of a more wholesome rule than the Holman rule; I can not conceive of a more just rule than the Holman rule. I can not think of an instance where the Holman rule could be so well applied and where it could accomplish so much. I hope the Chair will find the provision is in order on this bill and overrule the point of order now pending.

Mr. JACKSON. Mr. Chairman, it seems to me that the vital question on this point of order is the point last touched upon by the gentleman from Oklahoma [Mr. FERRIS]; that is, whether or not the Holman rule applies to trust funds held in the Treasury of the United States or other funds which are being administered by the Government of the United States. Not much discussion until that of this morning and a few minutes occupied by the gentleman from Minnesota [Mr. MILLER] has been devoted to the question of order. The remarks, especially to the newer members of the committee and the newer Members of the House, have been, of course, very interesting and instructive, but they have not, with these exceptions, touched upon the real question as to the point of order. Now, it is conceded, Mr. Chairman, that this amendment does repeal existing law.

It is placed in the bill upon the recommendation of the committee. Therefore we find ourselves controlled entirely by the very last sentence of the rule, which reads:

> The amendment, being germane to the subject matter of the bill, shall retrench expenditures.

Now, the language is broad. It does not say, as was argued by the gentleman from Minnesota [Mr. MILLER], that they must be expenditures coming finally and eventually out of the Treasury of the United States, but the word "expenditures" is used in its broadest sense. If there be any limitation at all upon the meaning of that word, it would be the same limitation which is imposed upon the earlier use of the word in the same section and the interpretation upon that use of the word, which is as to the expenditures covered by the bill.

Now, will anyone contend for a moment that if we do change the law by the adoption of this amendment that we do not reduce the expenditures covered by this Indian appropriation bill?

Mr. MILLER. Will the gentleman kindly point out in just what respect?

Mr. JACKSON. I do not care to yield at this time.

Mr. MILLER. I do not care for the gentleman to yield, but we all ought to know.

Mr. JACKSON. I will do so, but as to his suggestion I think he and I agree exactly upon it.

According to the decision cited by the gentleman from Minnesota [Mr. MILLER] and the gentleman from Oklahoma [Mr. FERRIS], we are not compelled to put our fingers upon the provision which reduces the expenditures covered by this bill. But leaving that consideration aside for a moment, let me call the attention of the Chair and of the gentleman from Minnesota [Mr. MILLER], at his suggestion, that on Saturday evening, in answer to my direct question, the gentleman admitted, as he must admit, that if this amendment is written into the law this provision of the appropriation act of the last Congress will be repealed. And the provision reads as follows:

> That contracts for professional legal services of attorneys may be made by the tribes for a stipulated amount for any period, in no case exceeding one year in duration, with $5,000 the annual amount, with necessary expenses to be approved and paid under such direction of the Secretary of the Interior, but such contracts for legal services shall not be of any validity until approved by the President.

The gentleman admits that by the passage of this amendment that provision of the law falls. Therefore I say there is no escape from the conclusion that if Congress never appropriates

another dollar the funds under the control of the Government will be retrenched at least $5,000.

Mr. MILLER. Does not the provision assume that Congress will appropriate?

Mr. JACKSON. The gentleman argued just the other day that because of this law the Indian tribe would be left without legal counsel and Congress would be called on to appropriate money or else these tribes would be entirely without legal services.

Now, then, you can not assume that Congress is going to be more expensive than some other body. You can not assume that Congress is adopting the rule for the purpose of appropriating, but when a law that authorizes a fixed expenditure is stricken down it will be assumed that Congress will not legislate in the future to make the expenditures more than they are at the present time. The assumption is that Congress wants to discontinue that appropriation. But, Mr. Chairman, just a word now on whether the Holman rule applies on expenditures belonging to the trust funds of the Government. It has not been mentioned so far in the debate that the Kerr decision which has been referred to so many times here in the ruling on this question in this session of Congress was a decision on the Indian appropriation bill. It is cited in Hinds on page 410; and while that decision is not decisive at this point, it seems to me it does furnish considerable elucidation of the proposition involved. The amendment in that year proposed to change the control of the Indian affairs from the Department of the Interior to the War Department. Speaker Kerr rested his decision upon the very proposition that the provision did not show upon its face that it would reduce expenditures. The expenditures covered by that provision were both the tribal funds and the Government funds, and it seems to me to be plain that if the very originators of this rule in the first discussions did not rely upon the fact that Indian funds were to be saved and retrenched as the reason for the maintenance of the point of order, it ought to have some weight with the Chair in passing upon this point of order at the present time. So it seems the precedents, including the Kerr decision and the decisions cited here by these other gentlemen, point to the fact that when we come to consider the tribal funds that are in the hands of the Government we must apply the same rule to their expenditure as we do the expenditure of other Government money.

What else, Mr. Chairman, are they but Government moneys? Is there a dollar in the Treasury of the United States belonging to these tribes that the United States is not responsible for? Does any gentleman contend here that if by any circumstance or accident or dishonesty the Government should lose these funds that belong to the Five Civilized Tribes the people of the United States would not be taxed to replace those funds? So eventually this question depends upon the honest administration of this fund by the Government of the United States as it has agreed to do under the treaty.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from Kansas [Mr. JACKSON] yield to his colleague [Mr. CAMPBELL]?

Mr. JACKSON. Yes.

Mr. CAMPBELL. Does the gentleman contend that this fund held by the Government in a fiduciary capacity is really money belong to the Treasury of the United States and for which the Government is responsible except as a trustee?

Mr. JACKSON. Why, Mr. Chairman, I think my statement was clear. The fact that it is money held under a fiduciary capacity makes the Government responsible for its faithful administration. What else does it mean?

Mr. CAMPBELL. But the conclusion reached by the gentleman was that therefore it was money belonging to the United States and must be appropriated as other money in the Treasury of the United States is appropriated.

Mr. JACKSON. I think that is what it means in the final analysis, so that I say that when the point of order is based upon the fact that these moneys do not come out of the revenues in the Treasury of the United States there is nothing to it, because eventually they do come out of the revenues of the United States. Why, here in the hearings the commissioner, in justifying his appropriation this year, sets down the money received from the grazing leases and the sales of lands and deducts it from the appropriation made by the Government of the United States. Now, if any of those moneys are lost, if any of them are loosely administered, then it is self-evident that the appropriation must be larger my reason of the amount lost or misapplied.

I do not care to argue now on the merits of that proposition, but wish merely to call the attention of the Chair to the fact that the commissioner to the Five Civilized Tribes in his justification shows conclusively that out of the money derived from leases over $28,000 was turned over to the officers of the Government for their compensation.

Now, is it asking for too much; is it asking for anything other than what is fair and safe under the law, as I observe it, in the appropriation of our funds, that we ask that the tribal funds expended be appropriated by the Congress of the United States?

Mr. CARTER. Mr. Chairman, on Saturday the committee was regaled in a very entertaining manner by the gentleman from Minnesota [Mr. MILLER] on behalf of the point of order which he made against the paragraph under consideration. As I remember now, the reasons he gave for subjecting this item to a point of order were threefold:

First. That the restriction changed existing law;

Second. That this item dealt with a trust fund, and that trust funds did not come within the purview of the Holman rule; and

Third. That it would not be ex proprio vigore a retrenchment.

To the first point, to wit, that the amendment changes existing law, we do not except, but claim that the change effects a retrenchment of such a nature as falls plainly within the Holman rule.

To the second point, to wit, that trust funds do not come within the scope of the Holman rule, we most seriously object; and I want the Chair's undivided attention now, because I am discussing the only point submitted by the gentleman which should really be given serious consideration; and we claim that this is nothing more than imaginary assumption on the part of the gentleman, illogical and far-fetched, and it is certainly not borne out by any language of the rule or any of the decisions thereon.

Let us see to what dangerous extremities such logic as this may lead us. He would exempt these funds from the Holman rule. Bear in mind, Mr. Chairman, that the funds dealt with by this paragraph are Indian funds, administered by the Federal Government in the capacity of guardian to ward. If we follow the gentleman's contention to the logical conclusion, we bring ourselves in the last analysis to the dangerous and untenable grounds of asserting the right of the guardian to administer the funds of a ward more loosely, more recklessly, and with less accountability than if they were his own individual funds. As a conclusion of either law or equity this seems to me so absolutely absurd and ridiculous that I can not believe that the gentleman from Minnesota, good lawyer that he is, expected the Chair to take the suggestion seriously.

But the gentleman asseverates we can only construe this proviso as a retrenchment by the rankest kind of supposition and hypothesis, and that the Holman rule does not justify any such hypothetical construction, yet before the gentleman had finished his remarks we heard him attempt vigorously to apply his point of order to the salfsame paragraph on the hypothesis that the Federal departments might be more economical than Congress.

I stand with the gentleman, Mr. Chairman, in his first statement that the rule does not justify hypothetical construction. It certainly does not justify any such visionary and romantic argument as that Congress or any other parliamentary body may be more extravagant than the Federal departments.

"But," says the gentleman, "this is not by its own force a retrenchment," and he cited from the decision of the Chair already quoted from by the gentleman from Oklahoma [Mr. FERRIS] on behalf of his contention. There are some things in that decision which both the gentleman from Minnesota [Mr. MILLER] and the gentleman from Oklahoma [Mr. FERRIS] seem to have overlooked, and that is the purpose and intent of the Chairman to give to the Holman rule the most liberal construction. For instance, on page 1999 of the CONGRESSIONAL RECORD of this session you will find that the Chair used this language:

> The purpose of the Holman rule is most beneficent and proper, and it should have a liberal construction in the interest of retrenchment.

Later on in the same column we find this statement by the Chair:

> We are certain to give a liberal construction to the rule as held in the interest of retrenchment. * * * It is enough if the amendment, in the opinion of the Chair, will fairly operate by its own force to retrench expenditures in any of the three ways indicated.

In conclusion, the Chair used this language:

> In the words of the Speaker, Mr. KERR, it (the Holman rule) is a beneficent rule. It should be construed to secure beneficent results.

And that is exactly how we propose to apply it in this instance.

The gentleman says this is, in fact, not a retrenchment, and yet all of us who were here late Saturday afternoon well remember how he told us, with tears in his voice, of the havoc and disorganization that this restriction would bring down upon the heads of the Indian service in Oklahoma—and why? For the reason that it took away certain appropriations, and the gentleman was so specific in his citations of these appropriations

that I want to call the attention of the Chair to each item. He told us that the language in this bill repealed the following even dozen appropriations:

The appropriation for tribal officials.
The appropriation for claims against the tribes.
The appropriation for collection of tribal moneys.
The appropriation for mining trustees.
The appropriation for tribal councils.
The appropriation for sale of lands.
The appropriation for equalization of allotments.
The appropriation for certain clerk fees.
The appropriation for sale of town lots.
The appropriation for the sale of tribal buildings.
The appropriation for the expenses of depositing money in banks.
The appropriation for tribal attorneys.

As a matter of fact, there was expended from the tribal funds last year about $670,000. This amendment restricts the expenditure of those funds to schools alone, and by the most liberal construction of the law not over about $300,000 could be used for schools, so this amendment actually retrenches the expenditures of these funds more than 50 per cent.

Now, in conclusion, I have just this to say upon the point of order: This item deals simply with funds and expenditure of funds in the Federal Treasury for which the Federal Government is responsible in the capacity of guardian to ward. It either increases expenditures or decreases expenditures, or it does absolutely nothing. It is not claimed in any seriousness that it increases expenditures. Therefore, if it does not decrease expenditures, it does nothing. It does not change existing law, and in that case the point of order is not well taken. If, on the other hand, it decreases expenditures, it comes clearly within the scope of the Holman rule, and the point of order must, in that event, be overruled.

The CHAIRMAN (Mr. BARNHART). It has been both a pleasure and a profit to the Chair to give the advocates and opponents of the point of order at issue unlimited time and scope for the presentation of arguments, and they have shown a familiarity with the question and a tendency to frankness and fairness which entitles them to special commendation. The Chair considers these evidences of careful research and skillful preparation of facts as conclusive assurance of wholesome legislative endeavor, and hopes he may have as much concern for good government in his ruling as the Members have indicated in their active solicitude for right legislation in this matter. [Applause.]

The so-called Holman rule is, in the opinion of the Chair, peculiarly suited to the pending point of order in that it furnishes an opportunity to exercise his judgment in behalf of emergent needs or demands like the controverted provision in this bill whereby a saving in Government expenditures is unquestionably implied and expressed. This rule, which is No. 21, sets forth in the second paragraph as follows:

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress. Nor shall any provision in any such bill or amendment thereto changing existing law be in order, except such as being germane to the subject matter of the bill shall retrench expenditures by the reduction of the number and salary of the officers of the United States, by the reduction of the compensation of any person paid out of the Treasury of the United States, or by the reduction of amounts of money covered by the bill: *Provided*, That it shall be in order further to amend such bill upon the report of the committee or any joint commission authorized by law or the House Members of any such commission having jurisdiction of the subject matter of such amendment, which amendment being germane to the subject matter of the bill shall retrench expenditures.

The Chair hears no specific question raised against the position of the proponents of the bill that the paragraph which the point of order seeks to eliminate is both theoretically and practically germane. The contenders that the point of order should be sustained only insist that the limit of expenditures therein contemplated does not pertain to the United States revenues proper and therefore the Holman rule exception or exceptions do not apply. But it has been shown, and not disputed, that most of the officials who would be affected by this legislation are under United States civil-service regulations and are thereby manifestly recognized as Government officials or employees. And if they are so considered and are regulated and paid the same as other Government officials, the common sense conclusion is that they should be considered as such; and if they are within the list of "officers of the United States," either technically or practically, the reduction of their number and of the amounts paid to them as salaries and expenses, wherein the Government is responsible, would bring the provision of the bill for their curtailment purely within the concept of the Holman rule. On the other hand, if it be that they are in no way a part of the Government service; that the United States does not consider them within its service as officials and employees; and if the proposed reduction in expenditures can not properly be considered retrenchment of expenditures for the Government, then the course for the Chair would be clearly blazed by the facts.

But most of these premises are matters of doubt. The rule plainly sets forth that no provision in any appropriation bill or amendment thereto changing existing law shall be in order except where the said change shall retrench expenditures.

The gentleman from Minnesota [Mr. MILLER] contends, with unchallenged argument, that the enactment into law of the provision in the bill here in dispute would curtail the scope of service now given to the Indians by the Government, in substance, strip the Indians of official guardianship that would be detrimental to their welfare and their communities' well-being. And the gentleman from Oklahoma [Mr. FERRIS] admits that curtailment of officers is the intent of the provision, and declares it to be a complete indictment of the position of the gentleman from Minnesota that the Holman rule can not here apply, although reducing the number of officers and reducing expenditures is precisely what the Holman rule specifies as permissible new legislation in an appropriation bill.

Another contention of the gentleman from Minnesota [Mr. MILLER] and others is that the officers and expenditures to be reduced by the provision of the bill are not United States officers nor United States expenditures, but Indian guardianship officers and expenditures. Of course the Chair is fully advised that, technically speaking, the money to pay the expenditures which it is sought to limit by the provision of the bill now in consideration is a trust fund to which the Government has no right or title except to hold and expend as directed by law. But here the question of Government authority in so-called fiduciary capacity involves Government liability and responsibility, and it requires more judicial acumen than the Chair possesses to decide that those employed by the Government, obligated by the Government, and paid out of Government trust funds are any the less officers of the United States than if they were employed by the same general agency to perform service in some other branch of Government responsibility.

And so, through the fog of contention, which is well founded in many respects on both sides of this complex parliamentary situation, the Chair sees one undisputed fact standing out clearly, and that is the intent of the Holman rule to enable the Congress to discharge useless officers and reduce expenditures, including salaries, by the broadest possible privilege. Hence, when the Government employs these Indian officers, has power to discharge them, pays them through one of the regularly constituted Government bureaus, and recognizes and regulates them in all ways as Government officials, in the opinion of the Chair they are in fact such and thereby subject to regulation by Congress.

The Chair, clothed as he is with this temporary authority, is not disposed to be a revolutionist and overthrow the opinions and practices of his illustrious predecessors, but he would have it understood that as a layman rather than an expert, the line of demarcation between the Government acting as trustee for the people as a whole, or for any particular class, is so indistinct that it is not visible in a matter-of-fact discrimination. Therefore, on the wholesome theory that technical error on the side of right is never actually wrong, and that economy in behalf of the Indian wards of the Government is an obligation as sacred and binding as safeguarding the expenditure of the whole people's revenues, the point of order is overruled. [Applause.]

Mr. BURKE of South Dakota. Mr. Chairman, I move to strike out the second proviso.

Mr. MANN. I ask to have the amendment reported.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

On page 25, strike out all of lines 21, 22, 23, and 24.

Mr. BURKE of South Dakota. Mr. Chairman, I ask unanimous consent that I may address the committee for 30 minutes.

The CHAIRMAN. The gentleman from South Dakota asks unanimous consent that he may address the House for 30 minutes.

Mr. STEPHENS of Texas. Let me ask the gentleman if it would be agreeable to have one hour's debate, the time to be equally divided?

Mr. BURKE of South Dakota. Mr. Chairman, I understand there are several Members who desire to be heard briefly on both sides of the House. I would like to have this understanding, which I think would be in the interest of saving time.

After this motion to strike out the proviso is disposed of I shall offer an amendment proposing to add $100,000 to the bill for the employment of district agents in the Five Civilized Tribes. If I get the 30 minutes' time that I have asked for, I shall discuss incidentally that feature of the question and will not discuss it after I offer the amendment. I think, perhaps, so far as this side is concerned, we could agree that the discussion should all be in advance of that amendment.

Mr. MANN. Would it not be practicable for the gentleman to offer his amendment in lieu of the matter which the gentleman desires to strike out, so that it would all be pending?

Mr. BURKE of South Dakota. Yes. Mr. Chairman, I move to strike out that portion of the bill which has been reported by the Clerk and insert in lieu thereof the matter I send to the Clerk's desk.

The CHAIRMAN. The Clerk will report.

The Clerk read as follows:

On page 25 strike out all of lines 20, 21, 22, 23, and 24, and insert in lieu thereof the following:

"For salaries and expenses of district agents for the Five Civilized Tribes in Oklahoma and other employees connected with the work of such agents, $100,000."

Mr. FERRIS. Mr. Chairman, I want to make an inquiry of the gentleman. There may be gentlemen on the floor of this House that would desire to support one proposition and perhaps not support the other.

Mr. BURKE of South Dakota. We can have a separate vote on the proposition.

Mr. MANN. Mr. Chairman, I ask unanimous consent that both amendments offered by the gentleman from South Dakota, one to strike out and the other to insert as a new paragraph, may be considered as pending to be voted upon separately at the conclusion of the debate.

Mr. FERRIS. I think the procedure suggested by the gentleman from Illinois is the one that should be adopted; that is, that we can have a separate vote on the amendment.

Mr. MANN. That will bring a separate vote instead of one vote to strike out and insert. The gentleman from South Dakota makes a motion to strike out and another motion to insert as a new paragraph. I ask unanimous consent that that may be done and that each amendment may be voted upon at the close of the debate.

Mr. STEPHENS of Texas. I ask unanimous consent that all debate on the proposition shall be confined to one hour.

The CHAIRMAN. Will the gentleman from Texas withhold his request until this is disposed of? The gentleman from Illinois asks unanimous consent that both propositions of the gentleman from South Dakota be considered pending as separate amendments, and that they be voted upon separately at the end of the debate. Is there objection?

There was no objection.

Mr. BURKE of South Dakota. Now, Mr. Chairman, I ask unanimous consent that I may address the committee for 30 minutes.

Mr. MANN. How much time is desired on that side?

Mr. BURKE of South Dakota. I am unable to state. I think it would be better to allow the debate to run for a while. I know that there are gentlemen on the other side who favor one part of my amendment and who want to be heard upon it.

Mr. FERRIS. Mr. Chairman, will the gentleman from South Dakota yield?

Mr. BURKE of South Dakota. Yes.

Mr. FERRIS. It will be remembered that in the colloquy between this side of the House and the gentleman's side of the House the gentleman from South Dakota suggested that he be given plenty of latitude, so far as time was concerned, and that is in the mind of everyone. I wondered, however, how many long speeches were expected to be made on the gentleman's side. We are now operating under the five-minute rule, and I do not think the House will indulge each one of us in taking that length of time. If there are many long speeches, I think we had better proceed, after the gentleman makes his speech, under the five-minute rule.

Mr. BURKE of South Dakota. Mr. Chairman, I will suggest to the gentleman that this is a very important subject. The gentleman from Kansas [Mr. CAMPBELL] has been on the Committee on Indian Affairs for many years, and I know that he desires to be heard upon the question, and I think the House will be interested in hearing what he may have to say. I do not desire to occupy the major part of the time to the prejudice of other members of the committee. I understand there are gentlemen upon the Democratic side of the House who desire to be heard, and I know there are one or two other members of the committee upon this side who desire to be heard, but I do not think at any great length. The gentleman from Oklahoma [Mr. McGUIRE], I believe, desires time. If the gentlemen on that side do not wish to take time, perhaps they will allow us to use more than they do; but my opinion is they will conclude before we get through that they will use as much time as we consume.

Mr. FERRIS. Mr. Chairman, while that side of the House has used more time than we have in the former debate, yet if we can get through upon this side, we are willing to let them use the time again. This is a hotly contested question, and we will want to be heard. Gentlemen must know that there is a great deal of pressure brought to bear by the leaders of the House that we get through with this bill as quickly as possible, and I desired only to know how many long speeches would be made upon that side of the House.

Mr. CAMPBELL. Mr. Chairman, I think I can get through in 30 minutes with what I desire to present to the House.

Mr. FERRIS. Mr. Chairman, I ask unanimous consent that debate on this item proceed until 4 o'clock, at which time we shall take a vote on the pending amendments and all amendments to the paragraph.

Mr. MANN. Mr. Chairman, the gentleman from South Dakota wants half an hour and the gentleman from Kansas [Mr. CAMPBELL] wants half an hour, and I understand that the gentleman from Kansas [Mr. MURDOCK] desires some time.

Mr. FERRIS. If we should consume a longer time than after 4 o'clock upon this item, we would have to abandon all hope of trying to get through with the bill to-day, and the necessity is quite great that we get through the bill to-day.

Mr. MANN. We set aside Thursday in place of to-day to be used for District day. What is coming up that is so important to-morrow?

Mr. BURLESON. The Post Office appropriation bill.

Mr. FERRIS. The gentleman from Illinois heard the debate here in reference to the Post Office appropriation bill and other matters.

Mr. MANN. The Post Office appropriation bill would have to skip Thursday.

Mr. FERRIS. Does not the gentleman think we could all curtail our time a little and get through by 4 o'clock? This is a matter which is in our own State, and we have five Members from that State. We ought to have as much latitude granted to us as to gentlemen who reside in other States.

Mr. MANN. Here is a case where we are discussing matters actually in the bill. This relates to a subject matter before the House, something not always usual in debate. It seems to me that gentlemen ought to have as much time as they think they need to present their side of the matter.

Mr. FERRIS. Two hours and seven minutes is pretty good time on one amendment, I think.

Mr. BURKE of South Dakota. The gentleman from Oklahoma will remember that he talked on Saturday for about 30 minutes.

Mr. FERRIS. I did.

Mr. BURKE of South Dakota. And he talked almost entirely upon the merits of the proposition, while the gentleman from Minnesota [Mr. MILLER] was simply discussing the law. The gentleman from Oklahoma read to the House a statement of the amount of moneys that were expended in connection with the administration in the Five Civilized Tribes. His whole argument was along the line of details connected with the administration of affairs down there. There was no opportunity to reply to that, and certainly in presenting two propositions here I ought to have 30 minutes——

Mr. MANN. Is there any other item in the bill which will be hotly contested?

Mr. CARTER. Yes; there is one other item; the Virginia item.

Mr. BURLESON. I do not think that will take 10 minutes.

Mr. MANN. I ask unanimous consent, Mr. Chairman, that debate on this amendment run until 20 minutes past 4 o'clock, the time to be equally divided, to be controlled by the gentleman from Texas and the gentleman from South Dakota.

Mr. FOSTER. Mr. Chairman, reserving the right to object, is it the intention of the gentleman from Illinois to insist that the committee shall rise about 5 o'clock?

Mr. MANN. I shall not insist upon that.

Mr. FOSTER. So that we can get through with the bill to-night.

Mr. MANN. If there is any likelihood of getting through with the bill, I am willing to sit until 6 o'clock.

Mr. BURKE of South Dakota. I will say that this side is as anxious to get through with the bill as gentlemen on the other side.

Mr. STEPHENS of Texas. We are very anxious to close it up to-night.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent that all debate on the pending paragraph close at 20 minutes after 4 o'clock.

Mr. MURDOCK. Mr. Chairman, reserving the right to object, I would like to ask the gentleman from Illinois if that includes both the motions?

Mr. MANN. Both amendments.

Mr. MURDOCK. And at 4.20 this afternoon there will be a vote upon those, and the five-minute rule is abrogated after the debate on these two motions?

Mr. GRAHAM. If I understand, both propositions are to be discussed as one and at the end of the debate they are to be voted upon separately.

Mr. MANN. That is already the order of the committee.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none. The time is to be controlled by the gentleman from Texas [Mr. STEPHENS] and the gentleman from South Dakota [Mr. BURKE].

Mr. BURKE of South Dakota. Mr. Chairman, it is going to be rather difficult in the limited time for me to cover the questions involved in the amendment which I have offered. It will be necessary first to make a very brief statement of what comprises the Five Civilized Tribes. Prior to 1893 there were in the Indian Territory the five tribes, namely, the Cherokees, Creeks, Seminoles, Choctaws, and Chickasaws. They each had their own system of government. They selected their own administrative officers, they had their own councils or legislatures, if that is the proper term for them. They had their own courts, and the United States directly did not exercise any supervision whatsoever over their affairs. The territory comprising the Five Civilized Tribes in area is as large as the State of Indiana, embracing about 19,000,000 acres. The Indians owned absolutely the fee to all of that great territory, except that they could not dispose of same without the consent of the United States. In 1893 it was brought to the attention of Congress that there existed a condition of affairs in the Five Civilized Tribes that needed attention, and Congress created what was known as the Dawes Commission. The Dawes Commission went to the Indian Territory, and they submitted in due course of affairs reports to Congress. In the report submitted November, 1894, the commission reported finding a deplorable state of affairs and a general prevalence of misrule. In the report of the commission dated November 18, 1895, the commission said:

> There is no alternative left to the United States but to assume the responsibility for future conditions in this Territory. It has created the forms of government which have brought about these results, and the continuance rests on its authority. * * * The commission is compelled by the evidence forced upon it during its examination into the administration of the so-called governments of this Territory to report that these governments in all their branches are wholly corrupt, irresponsible, and unworthy to be longer trusted with the care and control of money and other property of Indian citizens, much less their lives, which they scarcely pretend to protect.

For several years these Indians declined to negotiate or consider any agreement looking to a division of their lands, but finally, in 1897, a treaty was entered into between the United States and the Seminoles, which was followed, as I recall, by the so-called Atoka agreement of 1898 with the Choctaw and Chickasaw Indians, which was ratified and became the law of the land, and later separate agreements with the Creeks and Cherokees were entered into and ratified. The United States undertook and agreed to make a roll of the persons entitled to membership in the Five Civilized Tribes and to allot the land to the members thereof. The commission began operations, and I do not think I overstate it when I say that almost everybody down in that section of the country, as well as many others throughout the United States, claimed the right of enrollment by reason of Indian blood or by reason of intermarriage or some other grounds that entitled them to recognition as members of one or the other of the five nations.

As I have just stated, following the agreements with the Five Civilized Tribes the Dawes Commission began the making of the rolls. There were many complex and complicated questions involved, and the work necessitated the examination of old tribal rolls and the delving into family records covering a period of 75 years. There was much litigation over the matter, and the work of settling the enrollment was greatly handicapped and delayed by such litigation. There was also congressional legislation affecting the subject of enrollment, with the result that, while it was originally supposed the matter could be disposed of very promptly, it took many years to complete the work, and it is true that there has been some dissatisfaction on the part of the Indians because the work has not been completed sooner, but, Mr. Chairman, there is no gentleman in this House, whether he comes from Oklahoma or elsewhere, who will contend that any of the delay in settling the affairs of the Five Civilized Tribes has been due in any manner to any negligence on the part of the United States or the officials who have been in charge of the work. Suit after suit has been brought in the courts, cases taken to the Supreme Court, involving the question of enrollment and the right to participate in the distribution of the tribal properties. Something has been said about a large attorney fee having been paid to certain attorneys for services rendered to the Indians under a contract. It is true that a fee was paid to one firm of attorneys in Oklahoma of $750,000, but it was paid as the result of legislation enacted by Congress which created a citizenship court, and the fee was determined by that court by Congress referring the matter thereto after the Secretary of the Interior had refused to approve a contract allowing a fee of more than $250,000, so that if there is any blame attached in connection with that affair Congress is responsible; but in any event the Indians did not suffer thereby, as the fee was paid for a service which resulted in striking from the rolls 3,000 or 4,000 persons who had been, it was alleged, improperly enrolled, and had they not been stricken therefrom they would have participated in the distribution of the estate.

Mr. Chairman, that question has nothing to do with the issues involved at this time, and I am not going to take up the time of the committee in discussing it. Mr. Chairman, in view of my very limited time, I will be obliged to come at once to a discussion of the merits of the proviso which my amendment proposes to strike out, and will therefore not discuss further the history of the Dawes Commission and the commissioner who succeeded that commission, covering the lapse of time since the commission was first created.

It was stated on the floor on Saturday by the gentleman from Oklahoma [Mr. FERRIS], in substance, that there is a force of people employed with the organization that is engaged in closing up and administering the affairs of these nations that is unnecessary and greater than is required, and that it involves an expenditure of money that is extravagant; that there are a large number of persons on the pay roll who ought not to be continued any longer. The gentleman is not specific in stating in what respect there is extravagance or what number of persons are employed whose services can or ought to be dispensed with.

Mr. Chairman, the Committee on Indian Affairs is now constituted, so far as the majority of the committee is concerned, as a new committee with the exception of its distinguished chairman, Mr. STEPHENS of Texas, and I think it will be admitted that the members of the majority of the committee are not in a position to be familiar with the details as to what has transpired in the way of legislation pertaining to the Five Civilized Tribes, or how much money is necessary to be expended for a proper administration of their affairs, as would be the case if they had served on the committee for some years.

Mr. FERRIS. Will the gentleman yield?

Mr. BURKE of South Dakota. I trust the gentleman will not take up my time. I am not going to discredit the gentleman's ability to obtain knowledge, but I am going to show that the gentleman has not very much knowledge about this subject. These gentlemen, as I have stated, being new upon the committee, could hardly, it seems to me, advise the House very intelligently as to the details of this proposition without having had hearings upon the question. The gentleman from Oklahoma says that we did have hearings, and he refers to the printed hearings showing that the Commissioner of Indian Affairs was before the subcommittee, and by reference to the hearings it will be disclosed that no other person or official connected with the Indian Service appeared before the committee to discuss the affairs of the Five Civilized Tribes, and I do not think the gentleman will contend that anyone who had any information on the subject from any department appeared, except the commissioner, Mr. Valentine, and he showed himself clearly disqualified to give any information of any value, and I call attention to his statement before the subcommittee, when asked in relation to the matter, he said: "I can only speak in this matter for the Indian Office, as these affairs are not directly under me. They are carried on by the personal representatives of the Secretary of the Interior, who reports simply through my office to the Secretary." And he went on further and said that he had no direct knowledge of the subject, and it is apparent that he was unable to give the committee any information. I want to call the particular attention of this committee to the fact that the commissioner in charge of affairs in Oklahoma, who has been in charge for a number of years, and a man who knows every detail pertaining to what has transpired for many years relative to the affairs of the Five Civilized Tribes, was not invited to appear before the committee, and did not, as a matter of fact, appear or give the committee any information whatsoever. My colleague on the committee from Minnesota, Mr. MILLER, calls to my attention that the commissioner was here at the time and available, and that is a fact, but

for some reason the majority of the committee did not want any information, and the only reason that they could have had for not having the commissioner before the committee was that they knew that the facts would not sustain them in what is attempted by the proviso which has been made a part of this bill.

I want to ask the House if the question involved the expenditure of money in connection with the construction of the Panama Canal and the matter was being considered in a committee if Col. Goethals would not be summoned from Panama in order that he might advise the committee, but certainly if he was in the city the committee would not assume to act without consulting him and would not call some official from some bureau or department who had no direct knowledge of the subject.

The report of the majority of the committee accompanying this bill asserts that by reason of there being a union agent at Muskogee as well as the Commissioner to the Five Civilized Tribes that there is a great duplication of work and, therefore, unnecessary expense is incurred, and the gentleman from Oklahoma mentioned this fact in his remarks on Saturday. I want to say there is nothing whatever to sustain the report of the committee or the statement of the gentleman in this respect, and for the purpose of disproving that there is any foundation for the statement I want to read a letter received recently from the Acting Secretary of the Interior, in which he refers to a report made by an inspector who went to Muskogee for the express purpose of inquiring and investigating this very question, and I may say that the investigation was made by Maj. James H. McLaughlin, who is probably the oldest and best-posted official in the Indian Service, having had more than 40 years of active experience in dealing with the Indian directly and with tribal affairs, and his report, therefore, can be accepted as conclusive on this question. The letter from the Acting Secretary of the Interior containing a reference to the report of Mr. McLaughlin is as follows:

DEPARTMENT OF THE INTERIOR,
Washington, March 9, 1912.

Hon. CHARLES H. BURKE,
House of Representatives.

SIR: The department is in receipt of your letter dated February 27, stating it has been asserted that there is a great duplication of work in connection with the Commissioner to the Five Civilized Tribes and the union agent, and requesting to be informed whether there has been any investigation by this department to ascertain whether or not there is any duplication of work and, if so, that a copy or extract of any report may be furnished your office touching this question.

Replying thereto, you are advised that it appears from the records of the department that Inspector James McLaughlin, in compliance with instructions, submitted a report under date of June 4, 1910, wherein he stated that he had spent three weeks inspecting and investigating affairs in Oklahoma in connection with the offices of the Commissioner to the Five Civilized Tribes and the superintendent, union agency, and reported that he found said offices well organized and the number of clerks employed appeared necessary and rendered satisfactory service. In connection therewith he further stated:

"I have inspected the different branches or divisions of both offices above mentioned and find that the work of the commissioner is confined to undivided property of these tribes up to and including allotment, while the Union Agency has supervision of the affairs of the individual Indian after allotment.

"I find no duplication of work in these offices, except that communications between the superintendent of Union Agency and the Indian Office pass through the office of the commissioner to the Five Civilized Tribes for his indorsement; but no additional records are kept other than the mere noting, for reference, of the dates of such communications passing through the commissioner's office. The utmost harmony appears to exist between the two offices, and considering the peculiar complicated conditions of affairs here and the many conflicting interests involved, together with the fact that there are about one-third of all the Indians in the United States enrolled as members of the Five Civilized Tribes, it seems to me of the greatest importance, in the interest of all concerned and for good administration, that the presence and service here of a representative of the Secretary's office be continued even after the present offices may be consolidated."

He concluded his report with the statement that—

"There were no complaints offered against any officers or employees of the department, and in my judgment matters are being attended to and the work in hand pertaining to the winding up of tribal affairs of the Five Tribes is being expedited as rapidly and properly as the complicated existing conditions will permit."

Very respectfully,
SAMUEL ADAMS,
Acting Secretary.

The gentleman from Oklahoma stated on Saturday—and I think has repeated the statement to-day—that during the fiscal year 1911 there was expended in connection with the affairs of the Five Civilized Tribes direct $1,308,000, or thereabouts, and he gives the impression that this large amount was expended largely for expenses. I was somewhat surprised he would make the statement as to the amount, as he was aware that the Commissioner of Indian Affairs had corrected the statement, reducing it to $1,177,000, and I do not think the gentleman is fair in wanting to convey the impression that for whatever purpose the money was used it is greater than $1,177,000. At the time I called his attention to a corrected statement furnished by the Commissioner of Indian Affairs, and read to him or allowed him to read the letter transmitting the statement, and for the information of the House I will read the letter, which is as follows.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 14, 1912.

Hon. CHARLES H. BURKE,
House of Representatives.

SIR:

* * * * * * *

Regarding the statement of expenditures for the Five Civilized Tribes during the fiscal year 1911, furnished you informally January 25, 1912, it is found on further investigation that the sum of $130,847.60 under the heading "Per capita payments" should be eliminated from that statement, as that amount was part of the sum paid in the equalization of allotments and is included in said statement under the heading "Support and civilization." A corrected analysis of expenditures for the fiscal year 1911 is transmitted herewith, as requested by you informally this morning, for the information of the committee.

Respectfully,
C. F. HAUKE,
Second Assistant Commissioner.

Statement showing total amount of moneys used during the fiscal year 1911 for the Five Civilized Tribes for all purposes, including tribal funds.

	Equalization payment.	Salaries.	Attorney fees.	Support and civilization.	Total.
All tribes, from appropriations	[1] $12,543.26	$276,781.40	.....	$140,106.37	$429,431.03
All tribes, from miscellaneous receipts	.....	13,803.38	.....	68,057.04	81,860.42
Choctaw tribal funds	98,135.67	101,773.59	$25,132.09	88,917.69	313,959.04
Chickasaw tribal funds	32,711.93	42,787.99	6,382.62	33,749.50	115,632.04
Creek tribal funds	.....	42,396.84	10,523.80	39,419.98	101,340.62
Cherokee tribal funds	86,183.00	12,324.94	6,789.76	11,041.12	116,338.82
Seminole tribal funds	.....	10,578.87	.....	8,692.20	19,271.07
Total	229573.86	500,447.01	57,828.27	389,983.90	1,177,833.04

[1] "Equalizing allotments, Chickasaw Freedmen, Five Civilized Tribes," 1911 appropriation act.

The gentleman endeavored to impress upon the House that with the exception of about $200,000 the $1,308,000, as stated by him, was all expended for administration and that not a dollar of benefit went to the Indians except about $400,000 collected for the tribe. Now, if I am not quoting him correctly as to his statement——

Mr. FERRIS. I do not want to interrupt the gentleman, but I will say that I stated this: That out of the $1,308,000, as furnished us in the subcommittee, later amended by the figures that you secured, amounting to $1,177,000, only about $200,000 ever reached the Indians' pocketbooks if the gentleman is correct, and only $130,000 if my figures are correct.

Mr. BURKE of South Dakota. And you make that statement now?

Mr. FERRIS. I make that statement now.

Mr. BURKE of South Dakota. Analyze this statement and see how much there is in the gentleman's contention. I wish to say that I have here a statement that was within a few days officially transmitted by the Secretary of the Interior to the Committee on Indian Affairs of the Senate, and it is a full and complete statement of all expenditures and disbursements made on account of the Five Civilized Tribes, covering four fiscal years. I will give to the House the benefit of these figures, not only for the fiscal year 1911, but for four years beginning with 1908. The statement follows:

Financial statement of all expenditures and disbursements made on account of the Five Civilized Tribes, covering the fiscal years 1908, 1909, 1910, and 1911 (from July 1, 1907, to June 30, 1911).

	1908	1909	1910	1911
EXPENDITURES FOR ADMINISTRATION.				
Congressional appropriations: "Administration, Five Tribes"—				
By Commissioner Five Tribes	$162,540.05	$139,608.64	$134,721.76	$85,510.87
By Union Agency	123,613.38	142,804.25	138,554.55	145,706.78
By claims through Indian Office	5,667.93	8,039.63	7,536.75	9,284.98
Total	291,821.36	290,452.52	280,813.06	240,502.63
Other appropriations by Congress—				
For district agents [1]	.....	93,799.91	80,377.10	89,479.06
For industrial work (expert farmers) [2]	.....	.....	129.40	8,404.08
For pay of Indian police [2]	8,093.33	7,786.66	8,857.31	8,500.94
For rent of buildings [2]	5,100.00	5,160.00	6,596.16	7,916.16
Total	13,193.33	106,746.57	95,959.97	114,300.24
Total from congressional appropriations	305,014.69	397,199.09	376,773.03	354,802.87

[1] District agency service was first organized, commencing July 1, 1908. Increase explained by addition of force of expert farmers for industrial and agricultural work among and protecting interests of the full-blood and restricted Indians.

[2] Expended from general appropriations for Indian service.

Financial statement of all expenditures and disbursements made on account of the Five Civilized Tribes, etc.—Continued.

	1908	1909	1910	1911
EXPENDITURES FOR ADMINISTRATION—continued.				
Tribal funds:				
Salaries and expenses Government employees on account tribal collections and investigation of and payment of outstanding tribal claims, authorized by sec. 11, act Apr. 26, 1906	[1] $10,397.59	[2] $3[illegible],233.79	[3] $14,112.67	[4] $5[illegible],803.15
Supervisor of Mines, formerly United States mine inspector for Indian Territory, retained during 1908 and 1909, after statehood, at request of tribes		3,338.08	2,271.25	
Paid from miscellaneous receipts, not congressional or tribal funds, being fees charged for certified copies of records, etc., and expenses of preparation paid from such proceeds, as authorized by sec. 8, act of Apr. 26, 1906	9,998.75	12,827.66	12,521.14	17,985.40
SCHOOLS.				
Cost of support of schools, Five Civilized Tribes:				
Paid from congressional funds	286,668.52	238,696.34	106,861.97	62,147.13
Paid from surplus court fees	41,911.86	3,796.00	14,086.83	63,875.02
Paid from tribal funds	414,724.13	339,506.56	291,116.98	245,487.64
Total	743,304.51	581,998.90	412,065.78	371,509.79
DISBURSEMENTS FOR SPECIAL AND OTHER PURPOSES.				
Congressional appropriations (other appropriations by Congress):				
For care of insane, $35,000, appropriated by act approved Mar. 1, 1907	29,338.73	502.09		
Suppression of smallpox, by act approved Mar. 1, 1907, $10,000	1,079.71			
Copying allotment records for State of Oklahoma, authorized by act of May 27, 1908, appropriating $15,000		14,655.05		
Equalizing Chickasaw freedmen allotments, authorized by act of Apr. 4, 1910				12,543.26
Tribal funds:				
Salaries and expenses—				
Tribal officers	69,775.90	62,049.35	59,039.95	40,279.13
Tribal attorneys	27,538.51	66,405.03	40,467.67	54,130.82
Tribal councils	41,388.75	36,085.93	5,408.20	1,464.80
Payment of old outstanding warrants and claims, authorized by act of June 21, 1906, sec 11	78,073.53	138,028.11	284.58	
Court costs, litigation, etc., authorized by act of Apr. 26, 1901, sec. 18	10,044.34	8,747.41	6,791.30	4,580.64
Special damages to Indians for improvements on town sites, authorized by acts of July 1, 1902, and June 30, 1909	1,012.61	344.10	217.88	174.63
Paid Indians for improvements on segregated coal land, authorized by Choctaw-Chickasaw agreement, July 1, 1902, sec. 58	198,452.70	65,329.10	6,635.75	405.03
Per capita payments [5]	114,150.60	479,092.40	74,749.65	12,260.43
Expense of making per capita payments, required by acts of June 28, 1908, and May 28, 1904		5,443.88		
Explorations and drilling coal lands, authorized by act June 21, 1906, appropriating $50,000, reimbursable from tribal funds	30,681.42	17,972.05	595.86	
Cost of reestimating 1,279,000 acres of Choctaw timberlands, authorized by general deficiency act Mar. 4, 1911, appropriating $30,000				29,824.28
Rent of storerooms for tribal records turned over to department from tribes, as required by law		550.00	362.30	
Surveying and appraising town sites on coal lands, authorized by act May 27, 1908, sec. 7		8,112.28	2,454.42	7,779.07

[1] Expended in collecting $771,611.81, costing 5¼+ per cent.
[2] Expended in collecting $510,340.57, costing 7½+ per cent.
[3] Expended in collecting $526,122.80, costing 8½+ per cent.
[4] Expended in collecting $2,053,796.96, costing 4⅛− per cent. (Including cost of advertising and sale 630,237 acres unallotted lands, aggregating $4,212,788, of which was collected $1,572,966.22. Tribal expenses authorized act Mar. 3, 1911, and includes $3,408 paid tribal representatives attending sales.)
[5] These payments embrace a per capita payment to each of the following: $20 and $28 to Seminoles; $20 to Choctaws and Chickasaws. Also remnants of previous payments of various amounts to loyal Creeks and to Cherokees on account of outlet payment, and remnants to Delawares of $102.55 each and Choctaws and Chickasaws of $35 and $40 each.

Financial statement of all expenditures and disbursements made on account of the Five Civilized Tribes, etc.—Continued.

	1908	1909	1910	1911
DISBURSEMENTS FOR SPECIAL AND OTHER PURPOSES—continued.				
Tribal funds—Continued.				
Construction of sidewalks around tribal capitol buildings		$1,299.52	$7,122.31	
Equalization of allotments, payment authorized by acts Apr. 26, 1906, and Mar. 3, 1909			211,913.50	217,140.60
Claim of Sam Brown (Creek), authorized by act May 27, 1908		7,388.94		
Payment to Cherokee intermarried whites, authorized by act May 27, 1908			69,051.21	
Public-road damages, authorized by act Apr. 26, 1906, sec. 24		2.50	30.00	
Taxes on town lots declared forfeited				313.41
Refunds on account of erroneous collections	$576.07	7,061.82	1,447.19	9,201.61
Refunds on account of reappraisement of town lots, authorized by act May 29, 1908		21,920.12		
Preparing roll of deceased Seminole Indians and ascertaining and locating heirs upon request of tribe			2,258.16	

By referring to the disbursements for the year 1911, I want to call attention to the fact that only a little over $400,000 of moneys appropriated by Congress and tribal moneys were expended for administration purposes; $217,030.60 was paid in equalizing allotments and went directly to the Indians. The statement also shows that there was a per capita payment to the Indians of $12,543.26, and that there was paid out for education $371,509.79. You will notice that the proviso does not propose to discontinue the expenditure of money for education. In other words, no exception is taken to the expenditure of $371,509.79. Of the amount expended from appropriations by Congress, $29,824.28 was expended in appraising the timber lands belonging to the Indians, and was from an appropriation of $30,000 carried in the deficiency bill for 1911, and came from the Appropriation Committee, the Indian Committee having nothing to do with it. It is not an annual charge. The timber land belonging to the Choctaw and Chickasaw Nations comprise 1,279,000 acres and was appraised at $3,500,000, adding over $1,000,000 to former appraisement. The whole amount of tribal funds expended by the commissioner and the union agent during 1911, as shown by the statement, is $55,803.15, which was expended in collecting approximately $480,000, thereby adding that amount to the tribal revenues; $111,000 of the amount so collected was rent of unallotted lands and rents collected for the surface of the segregated coal and asphalt lands, and the amount would not have been collected if it had not been for this expenditure. The expenditure was also used in the investigation of various claims, and covered the cost of advertising the sale of 949,180 acres of land which sold for the aggregate amount of $6,250,831.68, part of the expenditure being to pay the expenses of a representative of the tribe who was present and representing the Indians at each sale. The expenditure of the $55,803.15 was specifically authorized by Congress. The $17,985.40 expended, as shown by the statement, was not spent from either congressional appropriation or tribal funds, but was realized from fees charged for certified copies of records, and expended from such proceeds for the purpose of preparing such records and certified copies, and is authorized by the law to be so expended. In other words, not one dollar was expended without authority of law, and every expenditure had to be approved by the Secretary of the Interior and audited through the Treasury. The moneys expended for salaries and expenses of tribal officers can not be charged, and should not be, to the expense of administration, and it can not be claimed that the Government does more than to supervise such expenditures.

Mr. CARTER. Mr. Chairman, will the gentleman yield for just a short question?

The CHAIRMAN. Does the gentleman from South Dakota yield to the gentleman from Oklahoma?

Mr. BURKE of South Dakota. Yes.

Mr. CARTER. I wanted to ask the gentleman if it is not a fact that no tribal funds can be paid out except upon approval by the President.

Mr. BURKE of South Dakota. All tribal acts appropriating money under the law must be approved by the President. The Government supervises the expenditures. In 1906, and if I am not correct in the date the gentleman from Oklahoma will cor-

rect me, Congress provided, and I think in accordance with an agreement made with the tribes, that expenditures thereafter should only be made upon acts submitted to the President of the United States for his approval and that the Government should supervise the payment and that all tribal warrants would have to be submitted to the commissioner and the department for approval. The statement has been made that there was no great amount of expense connected with the Five Tribes when they were under their own government. My recollection, Mr. Chairman, is that there was such a condition of grafting and extravagance that it became necessary to put some restriction upon it and that after the Government took charge of the fiscal affairs of the tribes it was found that there were outstanding tribal warrants amounting to hundreds of thousands of dollars—something like $800,000—issued by the Cherokee Nation alone. When the Gore committee was in Oklahoma, in August, 1910, we discovered that there had been a duplication of warrants issued by some of the nations aggregating a very large amount and that it was almost impossible to determine how much had been issued in warrants that were fraudulent and without any consideration. In other words, until the Federal Government stepped in and exercised control of their fiscal affairs the conditions were intolerable.

The statement that I have submitted and to which I have referred shows that there was expended during 1911 for salaries and expenses of the tribal officers $40,279.13. This was to pay the salaries and expenses of a governor, or principal chief, in each of the five tribes; a secretary to the governor; two coal commissioners in the Choctaw and Chickasaw Nations, which represent the tribes to see that royalties are collected; and of the other different tribal officers who are employed in connection with the tribal government, and is not an expenditure of the United States at all. It was guaranteed by the Government, as the gentleman will admit, that these tribal governments should be continued until the tribal properties were disposed of and the proceeds distributed, and tribal governments could not be maintained without having certain officials and incurring some expense, and, considering the number of persons comprising the Five Civilized Tribes and the great value of their estate, I do not consider the amount expended as excessive. I understand one of the duties of the governors is to execute deeds for lands that are disposed of.

The statement will show that there was paid out to attorneys during the fiscal year of tribal moneys $54,130.82. This amount was paid to attorneys under contract and included salaries and expenses. When the so-called Gore committee was in Oklahoma investigating Indian contracts it carefully inquired into each contract made with the several tribes, and I want to quote briefly what the report says regarding these contracts:

The tribes mentioned in the contracts referred to have large and valuable property, and there are many questions constantly arising relative to their affairs which require the services of attorneys, and in the opinion of the committee, notwithstanding the obligation of the Government to administer their affairs and finally dispose of their estates, they should be permitted to have the aid of counsel of their own selection.

The committee found that the contracts under which there was expended for salaries and expenses $54,130 were all reputable attorneys, and that the services were necessary and were being performed, with the exception of one contract, and after the report of the committee was made public that contract was discontinued, reducing the annual expense about $13,000. The committee concluded its report with a statement that these contracts, except one, were proper and necessary for the protection of the property and the rights of those comprising the Five Tribes.

Mr. MURDOCK. Mr. Chairman, will the gentleman yield for a question?

The CHAIRMAN. Does the gentleman from South Dakota yield to the gentleman from Kansas?

Mr. BURKE of South Dakota. Certainly.

Mr. MURDOCK. The gentleman says that within the last year an expenditure of $54,000 was made to attorneys?

Mr. BURKE of South Dakota. Yes, sir.

Mr. MURDOCK. Did Congress pass upon that $54,000?

Mr. BURKE of South Dakota. Congress only passed upon it in this way. I have not the time to quote the law, but it provided that contracts might be made subject to approval by the Secretary of the Interior or the President. As a result of our investigation of Indian contracts we incorporated in the Indian appropriation bill, approved March 3, 1911, the following provision:

That tribal contracts which are necessary to the administration of the affairs of the Choctaw and Chickasaw Tribes of Indians may be made by the Secretary of the Interior: *Provided*, That contracts for professional legal services of attorneys may be made by the tribes for a stipulated amount and period, in no case exceeding one year in duration and $5,000 per annum in amount, with reasonable and necessary expenses to be approved and paid under the direction of the Secretary of the Interior, but such contracts for legal services shall not be of any validity until approved by the President.

Of course, since that law was enacted no contract could be made at an annual compensation greater than $5,000, with reasonable and necessary expenses, and I believe there are now contracts with each of the five tribes, all with reputable lawyers. It is absolutely necessary that they have attorneys, as they have much litigation. The attorney for the Cherokee Nation has appeared for his tribe in a number of cases in the Supreme Court of the United States, and attorneys for other nations have also appeared in that court representing their respective nations. This is not an expenditure that is a charge upon the Treasury of the United States.

Mr. MURDOCK. That comes out of the tribal funds and is approved by the Secretary of the Interior.

Mr. BURKE of South Dakota. Yes; that comes out of the tribal fund and is approved by the Secretary of the Interior and the President of the United States.

Mr. MURDOCK. There is no specific appropriation?

Mr. BURKE of South Dakota. No; there is no specific appropriation.

Mr. McGUIRE of Oklahoma. The gentleman stated that there was one contract that the committee thought provided for an exorbitant fee for salary. What contract was that?

Mr. BURKE of South Dakota. The gentleman can refer to the report of the Gore investigating committee, and he will find what contract is referred to. It is a fact that there was one of those contracts——

Mr. McGUIRE of Oklahoma. That contract has been discontinued.

Mr. BURKE of South Dakota. That contract has been discontinued.

Mr. McGUIRE of Oklahoma. And that contract was for $12,000 a year.

Mr. BURKE of South Dakota. Yes. It also provided for expenses.

Mr. McGUIRE of Oklahoma. And the committee regarded it as exorbitant and recommended that it be discontinued, and it has been discontinued.

Mr. BURKE of South Dakota. Yes. Now, my time is running and I must conclude what I have to say. My contention is that these Indians are entitled to have attorneys; that there are people in Oklahoma—and I do not mean all of the people are that way—who would like to take away from these Indians every vestige of protection that they have and leave them to their tender mercies, and this, in my opinion, is responsible for the proviso which proposes to discontinue expenditures, but I do not mean by this to imply that the gentlemen from Oklahoma are intentionally actuated by any such motive or purpose, and the same is true with reference to the elimination of the appropriation that has heretofore been carried to provide for employment of certain district agents, and a part of my amendment is to restore that item and provide an appropriation for the district agents.

Before I discuss that part of the amendment I want to say a word about what was accomplished during 1911 by the Commissioner to the Five Civilized Tribes and the Union agent and how much benefit was derived from the money expended. My friend from Oklahoma, Mr. FERRIS, has stated that only about $400,000 went to the Indians. At this point I want to say that the Commissioner to the Five Civilized Tribes is the agent of the Government who is discharging the trust of settling the affairs of the several nations and that his office deals only with the tribes and has nothing to do with individual Indians other than to inspect and generally supervise the work of the Union Agency and see that instructions of the department are carried out. The Union agent supervises the affairs of the individual Indians and the district agents work under him. During the fiscal year 1911 there was collected for the tribes from all sources $480,830.74, which went into the Treasury to their credit. There was received from tribal sales of unallotted lands sold during the year $1,572,966.22 in cash.

Since November, 1910, there has been sold 16,425 tracts of land aggregating 949,180 acres, sold for $6,250,831.68, of which there was paid in cash one-fourth. These lands sold at an average price of $6.58 per acre. They were sold at auction, terms one-fourth cash, one-fourth payable in one year, and the balance in two years, with 6 per cent interest. At the solicitation of Oklahoma Members of Congress the department has authorized extensions of payments as investigation warrants and this has required a large amount of correspondence and detail, as can be imagined.

There are yet remaining to be sold 11,115 tracts, aggregating 817,228 acres, and also 1,279,000 acres of timberlands, which tim-

berlands have been appraised at $3,500,000. The unallotted lands are intermingled with allotted lands, scattered throughout the territory comprising the Five Tribes, and the work of separating same, tabulating descriptions, preparing maps showing the location of each tract, printing lists with descriptions for each sale, replying to letters of inquiry, furnishing desired information, selling lands at aucton, recording sales, issuing receipts to purchasers for 25 per cent paid at the time of sale, and thereafter opening ledger accounts for each tract and purchaser, receiving remittances as due, together with computing interest thereon, issuing certificates of purchase after approval of each sale, and finally preparing deeds to purchasers, having same approved by the proper tribal officers and the department, and recording and delivering same is all of an exacting character, and must also be finally noted on all of the various township allotment plats and checked to insure accuracy and prevent confusion thereafter in land titles.

The Union agent has supervision of the affairs of the restricted individual Indians, and they number about 35,000. To give some idea of the amount of business transacted by his office, I will say that during the fiscal year ended June 30, 1911, the agency received $2,698,376 and disbursed $2,273,546. It received 73,433 letters and 49,904 vouchers, circulars, and so forth. It mailed out 151,936 letters and about 47,940 vouchers. There were 1,378 individual Indian leases filed—1,110 oil and gas and 268 agricultural and miscellaneous—during the year, against 1,661 the previous year. There were on June 30, 1911, 8,596 individual Indian accounts on the books of the agency, of which there are at present deposited in 52 national banks 3,637 accounts, aggregating $1,170,259.72. The amount of rent and royalty on oil and gas during the year paid to Union agent for individual Indians and handled through the agency amounted to $1,365,826.52. There were 1,162 separate matters requiring field investigation in connection with oil and gas leases. It is estimated the number of oil wells drilled in the lands of the individual Indians of the Five Tribes during the year aggregated 3,640, and the oil marketed aggregated 41,053,000 barrels, of which about 19,000,000 barrels was from lands of Indians under departmental leases, the royalty on which aggregated about $833,000. The price of oil June 30, 1911, was 48 cents, which has since advanced to 60 cents at the present time. There were 1,393 applications for removal of restrictions on alienation of restricted Indian allotments during the year.

Since May 27, 1908, restrictions have been removed from such class to the extent of 131,937 acres conditionally, the money realized therefrom being handled and disbursed to Indians for improvements under supervision of the agency from time to time; and restrictions from 93,573 acres were unconditionally removed, whereby Indians were permitted to dispose of same without supervision, making a total of 225,510 acres of land allotted to restricted Indians, alienated since May 27, 1908, the date of the restrictions act. Three hundred and sixty-eight petitions for approval of deeds executed by full-blood heirs of deceased allottees who had died prior to May 27 were made during the year, and there was collected as additional consideration to amount approved by probate courts, $66,284.52, making a total of 718 such deeds approved by the department since May 27, 1908, and a total additional amount realized of $94,938.28. In addition thereto 871 tracts of land sold belonging to individual Indians, aggregating 67,790.47 acres, consideration $674,730.71. Land sold for $74,498.79 above the appraised price. During the last four months of the fiscal year 88 houses and 22 barns were built for Indians.

I wish to call particular attention to the large amount of business done by the union agent, and that it involves oil and gas leases and the supervision of the expenditure of a large amount of money belonging to these incompetent Indians, which may suggest that possibly there is some motive in trying to withdraw the protecting hand of the Government from supervising their affairs other than their best interests. There are 16 district agents who work under the union agent, and each have under their supervision about 6,000 citizens, over 2,000 being within the restricted class.

Mr. FERRIS. Will the gentleman yield?

Mr. BURKE of South Dakota. I have very little time.

Mr. FERRIS. The gentleman is aware that we appropriate $150,000 for that agency, and that that will employ 60 people at $2,500 a year.

Mr. BURKE of South Dakota. The gentleman from Minnesota [Mr. MILLER] has shown to the gentleman from Oklahoma [Mr. FERRIS] that under the law which was passed in 1911 the proceeds from the sale of these tribal unallotted lands may be deposited in the banks of Oklahoma, and that there is to-day deposited in 94 banks $2,500,000, which is drawing from 4 to 6 per cent interest. There is also on deposit something like $1,500,000 belonging to individual Indians in 52 banks, supervised by the union agency and to some extent under the supervision of these district agents.

Now, does the gentleman think they can continue that sort of business and take away these representatives of the Government and leave it to you people in Oklahoma to see that the Indian funds are not dissipated? You might as well take the bars from the Treasury of the United States and withdraw the guards, open the vaults, and say to the people of Washington "Look out for the funds of the United States that are on deposit in the Treasury."

Mr. FERRIS. If the gentleman will allow me to answer the question which he has asked, the district agent has no more to do with the bank deposits than a prairie dog has to do with the solar system. The district agents do not even come within gunshot of it. That is not a part of their duties at all, and never was.

Mr. BURKE of South Dakota. The gentleman is mistaken there, as in many other particulars, for the district agents certainly do furnish the union agent with information relative to the banks that may apply for Indian funds and are used from time to time to get information in connection with banks where individual funds are deposited whenever the union agent may desire it.

I find that I have used more time than I intended and I must omit discussing some questions that I had intended to talk about; but I want to summarize what I have stated and will say that as a result of the moneys expended during 1911 there was received for the Indians—the tribes as a whole and individual Indians—the following amounts:

Tribal collections	$480,830.74
Received from tribal sales	1,572,966.22
Individual collections	1,365,826.52
Individual land sales	674,730.71
Total	4,094,354.19

There has been allotted to the Indians of the Five Civilized Tribes 15,945,260.12 acres, at a cost per capita of $27.58 to each of the 101,227 citizens allotted, which is much less than the average cost of making allotments.

The annual tribal income from all sources belonging to the tribes from interest account, rental account, and royalties will now aggregate about $600,000. This has nothing to do with moneys collected and received on account of individual Indians. The gentlemen from Oklahoma object to the United States taking from the moneys received the cost of collection. I may say, Mr. Chairman, that I had something to do with the provision referred to by the gentleman from Minnesota that authorizes the expense of selling the lands being deducted from the proceeds, and it was my purpose that so long as there was no obligation resting on the United States to perform that service without charge that the cost of the collection and sale should be deducted from the proceeds. I may say that I insisted just as strongly on paying every dollar of the expense of administration when there is an obligation resting upon the United States to do so.

Mr. Chairman, I think it will be admitted that the value of the property of the Five Civilized Tribes is not less than $30,000,000. While it has been estimated all the way from $20,000,000 to $4,000,000,000, I do not think any gentleman will question but that $30,000,000 is a conservative and reasonable estimate of the value of this estate. This is a big proposition, but so is the construction of the Panama Canal. The gentleman from Oklahoma [Mr. FERRIS] makes much of the statement that there are 211 employees under one roof. There are more than 211 employees in the Census Office, more than that in the Post Office, more than that in the Treasury Department, more than that in the War Department. The question I want some gentleman to point out to me is, What particular number of that number can be discontinued without injury to the service? There is not a suggestion that all of them are not needed, but simply because we have 211 employees it is too many.

Mr. CARTER. Will the gentleman yield?

Mr. BURKE of South Dakota. My time is very short.

Mr. CARTER. I want to ask the gentleman how he can determine that unless the expenditures are brought before Congress and Congress is given some supervision of the matter?

Mr. BURKE of South Dakota. Before enacting such drastic legislation as you propose, my position is that there ought to be an opportunity so that these estimates can be submitted, so that Congress, if it is going to pass upon it, can pass upon it intelligently and not do it arbitrarily and absolutely stop the wheels of administering the affairs of the Five Civilized Tribes. I had supposed that these gentlemen were anxious to close up the affairs, and yet right on the eve of the time when the balance of the property is to be disposed of and the final distribution made

they propose this proposition that will be such a handicap that the final settlement will be deferred for a considerable time, and I want to serve notice upon them that they will be responsible for the delay.

Mr. Chairman, I have talked longer than I ought to have talked, but before concluding I must refer briefly to another subject, and that is in regard to these district agents. These district agents that I propose to reinstate are paid for by the appropriation made by the Government, an appropriation provided for first in 1908, and they have to do with these restricted Indians, about 35,000 in number, the real Indians, that belong to the Five Civilized Tribes. They supervise their affairs. They advise them in relation to the expenditure of their money. The gentleman from Oklahoma [Mr. DAVENPORT] made the statement before the subcommittee that he does not propose to have any representative of the Federal Government in his State dictating as to where an Indian shall buy this or buy that.

Mr. DAVENPORT. I said so far as I could prevent it.

Mr. BURKE of South Dakota. I accept the qualification. Mr. Chairman, that condition prevails in every part of the United States where there are Indians. Our white friends in Oklahoma are protesting against the fact that the Federal Government is in some way preventing them from getting what the Indian possesses.

That is the proposition. The gentleman said—and I think I asked him the question if he had a ward and the ward wanted to buy a horse and he as his guardian thought he would let him have the horse, or if he wanted to buy a suit of clothes and he thought he ought to have a suit of clothes—that he would give him the money and he would say, "Go and buy where you choose." My position is that these restricted Indians, with these great sums of money, should be guarded, should be protected. Pass the proposition that is pending before this House to-day and it will be followed, my friends, by a chapter of infamy in Indian history that has never yet been approached during the history of this Government, and Congress will be responsible. I want to say that wherever there has been scandal in connection with the administration of Indian affairs, in most instances you will find that the fault primarily lies with the Congress itself. I say let us not make it possible for scandal to happen in Oklahoma in connection with the Five Civilized Tribes. Does any gentleman question any act that has ever been performed by the present administration? Is there any suggestion of malfeasance? Is there any suggestion of fraud? Is there any suggestion that the Indian has not gotten his due? On the contrary, it is an administration that I think can not be criticized or questioned by any man.

Mr. CARTER. Mr. Chairman, the gentleman is very much mistaken about that.

Mr. BURKE of South Dakota. Mr. Chairman, I have not the time to yield.

Mr. MANN. When the gentleman is telling the truth it hurts.

Mr. BURKE of South Dakota. The present commissioner of the Five Tribes is a man of the highest character, possessed of great business and executive ability, and has been in charge of the affairs since the Dawes Commission was discontinued; he has been connected with the Indian service in the field and employed in responsible positions for the past 29 years, and since 1898 has represented the Secretary of the Interior in the Five Tribes, and during his whole service not one word or suggestion has ever been uttered against his personal character or against his administration. What I have said of the commissioner I can say of the union agent. He is a most faithful and painstaking official and has also been in the Indian service in different capacities in the field for the past 18 years and in the Five Tribes since 1899, and is devoted to his work and particularly solicitous about the welfare of the restricted and full-blood Indians under his care. I am going to give you something now that will make you think for a moment what is back of this attempt to change conditions in Oklahoma—ostensibly done in the interest of economy, ostensibly to stop extravagance, based upon general charges; but let us see what we find down in Oklahoma. When this item of doing away with the district agents was decided by the subcommittee the friends of our distinguished friends from Oklahoma got busy and sent the news to their State and it got into the papers, and under date of February 24 this dispatch from Washington was published:

WASHINGTON, *February 24.*

When Representative SCOTT FERRIS termed Oklahoma's 16 district Indian agents "political smellers, misfits, without authority, and men who should hunt for another job," he sounded their official death knell, it is believed.

When the Indian appropriation bill goes to Congress from the House Indian Affairs Committee no funds will be provided for the perpetuation of these jobs. Representative FERRIS estimates that the elimination of the officials from Uncle Sam's pay roll will help the Treasury Department $100,000 and at the same time greatly please people all over the State, who cordially dislike the activities of these men.

The Indian appropriation bill, on which the members of the subcommittee, including Representative FERRIS, have been working for several weeks, has just been completed and it is in the nature of a bombshell for the Indian Office of the Department of Interior and its hangers-on who have been holding down soft berths in the service.

Representative FERRIS, in urging the discontinuation of the district Indian agents, gave 10 reasons why their offices should be abolished, and his cohorts on the Indian Affairs Committee agreed.

AGENTS NOT NEEDED.

He said: "There no longer exists any necessity for them, since conditions in the new State are thoroughly settled. They have no final or complete jurisdiction or power to do any single act. Our courts are equal in integrity with the courts of any State. The Five Tribe Indians are superior in intelligence to any Indians in the United States, and district agents are not maintained in any other tribe. They merely add one link to the now too long circuit of red tape in the transaction of Indian business. They inflict minute and troublesome supervision over competent Indians who are rendered more dependent than independent as a result thereof.

"District agents were discontinued two years ago on the west side of the State, where the incompetent Indians live. There is no reason for their continuance on the east side.

"Our State resents the reflection on our State of forcing supervision on us that does not prevail in any other State. Oklahoma is no longer an orphan.

"These agents are not selected by reason of any knowledge of law or Indians, merely political smelling agents.

"They are misfits without authority or power to do anything, and ought to hunt another job."

CARTER ADDS STINGER.

The chief cause of concern to the Indian Office, however, is Representative CARTER'S accepted amendment, which has the hearty sanction of every member of the Oklahoma delegation, Republicans and Democrats alike, forcing the Indian Office to make specific requests for funds in carrying on its activities each year. This forces publicity as to just what channels the funds of the Indians are directed, something which heretofore has been impossible to get without great difficulty.

This plan also means the abolishment of one of the high-salaried positions of officials for the Five Civilized Tribes. It is declared by friends of economy that the work of J. G. Wright, commisioner of the Five Tribes, and Dana H. Kelsey, superintendent of the Union Agency, overlaps, and that when this is definitely shown one of the positions will be cut off and the work of supervision of the Five Tribes will be placed in fewer hands. A number of lesser employees in the Indian service in Oklahoma also will have to go, it is declared.

It is declared that a great amount of Indian money is spent in unnecessary salaries and positions in the Indian service, and the Republicans are thus able to strengthen their political machine.

Then, I find that that article was reproduced and sent generally throughout the State of Oklahoma in a letter, and I have several of them here, but I am going to read only one of them, because they are all alike. It was a letter sent out in the interest of these dear, poor, suffering Indians upon the stationery of the Ardmore Commercial Club, and is as follows:

ARDMORE COMMERCIAL CLUB,
Ardmore, Okla., February 5, 1912.

DEAR SIR: Inclosed find clipping from yesterday's Oklahoman. If you are of the same opinion as our congressional delegation seems to be, write three letters at once—one to Congressmen CHARLES D. CARTER and SCOTT FERRIS, thanking them and telling them the sentiment in this respect in your community, and one to Senator OWEN, urging that he sees to it that the action of the House of Representatives be sustained in the Senate. Speak to others and have them to do likewise. No time should be lost.

Yours, truly, C. E. FRALEY.

Mr. Chairman, it will be recalled that we had before us not very long ago a bill for the sale of the segregated lands, which bill provided for the sale of the surface. When that bill was brought into the House it contained a provision that the McAlester Country Club have the privilege of purchasing the land that it occupied at the appraised valuation—about 160 acres. These guardians of the people, the gentlemen from Oklahoma, overlooked the fact that nearly $100,000 in rentals were being received annually from people who were occupying the segregated lands, many of them with valuable improvements, and yet there was no suggestion that they have the privilege of buying the land upon which they had lived for many years by paying the appraised price. However, in the case of the McAlester Country Club they were more solicitous. Evidently they are influenced and concerned more by following the suggestions of commercial and country clubs than they are in looking after the interests of the Indians and the common people of Oklahoma.

I want to quote, now, two or three newspaper articles—and I have them here in large numbers—from the papers of both parties, published in Oklahoma. Speaking of the proposed discontinuance of the district agent, the Vinita Weekly Journal, of Vinita, Okla., March 1, 1912—I do not know its politics—said:

DISTRICT INDIAN AGENTS.

According to press reports sent out from Washington, there seems to be a disposition on the part of Congress to discontinue the district agents of the Five Civilized Tribes. Should this be done, the field will then be open and very inviting for the grafter and those who prey upon the defenseless Indian. They would soon be without allotments, and every vestige of support would be wrested from them.

The full bloods, who have depended upon the protection of the Government and are now well along in years, would become objects of charity, and their last days would be robbed of that quiet, peaceful ending in life, and their children would grow up to be blind and dependent upon, in many instances, a guardian who has assumed to care

for them from a charitable standpoint, when back of it all it is for their own benefit.

While the present probate judges of the various counties are doing all in their power to protect these minors, we learn from the judges that the assistance along this line that the district agent and his help gives can not be overestimated.

The district agent and the county judge have acted in absolute harmony, and the best of feeling prevails, and to discontinue this work means for the Government at this time to withdraw its support from those whose unbounded duty it should be to protect. And were Congress as familiar with conditions as the writer of this article, instead of withholding this appropriation they would increase it, that the district agent might more successfully prosecute his work and defend the defenseless and the full blood who so fully confide in the work and protection that the district agent affords them.

Mr. DAVENPORT. Mr. Chairman, will the gentleman yield there? I want to say to him that the Vinita Weekly Journal is a Republican paper.

Mr. BURKE of South Dakota. Mr. Chairman, if the gentleman wants it from Democratic papers, I can accommodate him. I refer him to the Vinita Chieftain of February 27, 1912, which I understand is a Democratic paper, and it says:

The proposition to discontinue the local Indian agencies in eastern Oklahoma is, in the opinion of the Chieftain, premature and ill advised. This view may be at variance with the sentiment of those who are anxious to terminate the rule of the Interior Department over the Indians of Oklahoma, but a close study of the situation and a familiar knowledge of the condition of the full-blood Indians of eastern Oklahoma leads us to believe these agencies should remain for the present. Our full-blood Indians are the most helpless class of citizens in Oklahoma, and the most prone to waste their substance and neglect their opportunities. Maj. Cusey, the local agent at Vinita, is doing a good work among the full-blood Indians of this section. They trust him and their confidence is not misplaced. His advice and supervision is saving them money and putting many of them on the road to self-support. These people are not able to take their place in the rough-and-tumble struggle of the business and industrial world just yet, and would be an easy prey to the grafters and land sharks.

I will also quote from the McAlester News-Capital of February 28. I presume the gentleman will say it is a Republican paper, although I can hardly see what difference it makes as to the politics of a newspaper in discussing a question of this kind:

[From the McAlester (Okla.) News-Capital.]

The News-Capital has been investigating as to who are chiefly interested in the abolition of the district Indian agent system, and it hasn't found a grafter yet who was not whooping it for abolition, although many other people have been misled into joining them. If some of the Indian agents have been recreant, those abuses should be corrected; but we insist that the probate machinery of the State courts is not able to handle the amount of minor Indian land now in eastern Oklahoma.

The following from the Nowata Daily Advertiser of February 26:

[From the Nowata (Okla.) Daily Advertiser, Monday, Feb. 26, 1912.]

The existence of the Indian agency is purely a business proposition with the Government. It was needed when it was created, and is needed now more than it was needed when created. For now, the whites, aggressive and awake to every opportunity and ready to take every advantage presented them, have full knowledge of the Indian's childlike qualities when it comes to considering the value of a dollar, and it would be but a few months until every Indian would be shorn of his properties.

The Indian agency is of the ounce-of-prevention sort, and were they wiped out of existence, regardless of harping to the contrary, the pound of cure resulting would cost the people a pretty penny.

I have a number of other clippings from newspapers in Oklahoma, both Democratic and Republican. I also have a statement from William H. Murray, a prominent Democratic citizen of Oklahoma, president of the constitutional convention. It seems that the gentleman from Oklahoma [Mr. FERRIS] sent him a telegram, as he did to many others, with reference to discontinuing the district agents, and Mr. Murray answered him as follows:

Abolition of district agents would be a fatal mistake so long as department supervises sale of Indian lands. District agents, who can get information first hand, should be continued. They protect both Indian and white purchasers. Moreover, transfers are made quicker and more certain than if directly made through Washington office, which naturally thinks us all grafters. District agents can discern the honest purchaser. Robbing of either Indian or white man is wrong.

I have letters from 40 probate or county judges in Oklahoma, from all of the tribal officers, a number of district judges, a number of district attorneys, and many other State officials, and from the very best people in Oklahoma, all protesting against what they believe to be a mistake, namely, to take from these Indians the protection afforded them by the district agents.

I have been compelled in a hurried way to go over this matter in a somewhat disconnected manner, and I know I have not made myself as clear as I would like to have done, but in the limited time at my disposal it has been impossible. As I have said, these people, if they are to be left a prey to these people whom the gentleman from Minnesota referred to as rapacious, Heaven knows it will not be long until they are without anything. The Supreme Court, in a recent decision, in an opinion by Mr. Justice Hughes, decided that the courts had jurisdiction where the United States had brought 30,000 suits against persons who had acquired lands from Indians fraudulently. In a test suit when a demurrer had been interposed on the ground that the United States did not have authority to bring the suit, in the opinion the court, speaking of one of the Five Civilized Tribes, said:

If these Indians may be divested of their land, they will be thrown back upon the United States, and upon the United States a pauperized, discontented, and possibly belligerent people.

I appeal, Mr. Chairman, to this House that this proposition has had absolutely no consideration, so far as the committee is concerned. There were no hearings except that the Commissioner of Indian Affairs, who knew nothing whatever about it, appeared before the subcommittee, and I say that before we take this drastic and radical step to stop the wheels of administration of the affairs of the Five Tribes and take away from the helpless and restricted Indians the protection afforded through the district agents, we ought to hesitate and at least wait until the next session of Congress. I thank the committee. [Applause.]

Mr. STEPHENS of Texas. Mr. Chairman, I yield to the gentleman from Kansas [Mr. JACKSON] five minutes.

Mr. BURKE of South Dakota. Mr. Chairman, if the gentleman will pardon me, how much time have I consumed?

The CHAIRMAN. Forty-five minutes.

Mr. BURKE of South Dakota. How much time have I left?

The CHAIRMAN. The gentleman has 27 minutes remaining.

Mr. JACKSON. Mr. Chairman, I hardly know what I can say in five minutes to interest the committee upon so large a question. I find myself a little bit in a mixed situation. If there is any one thing more than another in the House that I have noticed since I have been here, it is the fact that the committees of the House, in my judgment, are inclined to tyrannize over the rest of the House. My brief experience in legislative bodies has been to the effect that this is not a good thing; and so I find myself here to-day confronted with the proposition as to whether I shall agree with the committee, a majority of which belongs to the opposite political party, or whether I shall go with the minority, of my own party; whether I shall be a regular by staying by the minority of the committee or be more regular by staying with the majority of the committee. And I want to say that it is with considerable hesitation that I have come to the conclusion that it is my duty in this matter to stand with the majority of the committee and seemingly to oppose the opinion of the minority of the committee. I have great regard for the minority members of the committee. Especially do I want to say that I have a high regard for our leader, the ranking member on that committee. I think that I violate no confidence and am guilty of no reflection upon the other members of the committee, the distinguished chairman, or the other distinguished gentleman, at present the Vice President of the United States, who was for many years the chairman of this committee, when I say that in my judgment there is no other man in the United States who possesses more knowledge of the needs and necessities of these Indian people of the United States or is more faithful to their interests, who has better judgment, as a rule, in acting for their interests, than the leader of the minority side of our committee, the gentleman from South Dakota [Mr. BURKE]. And so I say I hesitate very much to disagree with him upon this question, but it does seem to me that, taking it from all sides, all the facts that have been produced in the committee, and even the judgment of the gentleman from South Dakota himself, that these two measures, the abolition of the drawing and the using of tribal funds without an appropriation by Congress, and the other one the abolition of these district agents, ought to be carried through at this session of Congress. Now, I have spoken of the gentleman from South Dakota and his opinion. I have the same high regard for the present Secretary of the Interior and of the Commissioner of the Indian Office; but I do not feel upon this measure of the abolition of the expenditures of the tribal funds that we are really acting in opposition to the judgment of those gentlemen.

It is the general opinion of all persons who have anything to do with the management of affairs in Oklahoma that there must be a change of the official organization there and a cutting down of expenditures.

Mr. Valentine, the Commissioner of Indian Affairs, discussed the general situation at length at the hearings before the committee. Among other things, he said (p. 293):

Commissioner VALENTINE. The present system is this: This district agent reports to the Union Agency; the Union agent approves it for the Five Civilized Tribes; then it comes to our office. Another sort of an approval takes place there; then it goes to the office of the Secretary of the Interior for action.

The CHAIRMAN. Then, in your view, there is no way to prevent duplication of this work? It goes from the district agent to the Union Agency, from there to your department, and from your department to the Secretary of the Interior.

Commissioner VALENTINE. I think some of that machinery could be cut out.

The CHAIRMAN. Well, which would you cut out?

Commissioner VALENTINE. I think you could cut out all of it and confine it to the Union Agency.

The CHAIRMAN. I think so, too.

The gentleman from Oklahoma, BIRD S. MCGUIRE, who is also an authority on matters connected with Oklahoma Indian affairs and who is now apparently against these provisions of this bill, in the hearings said (p. 320):

I would cut out the Dawes Commission. I would have one head of that institution, the Five Tribes. It had always been so until the creation of the Dawes Commission, which was created for a special purpose, and that purpose has long since gone by. I would now concentrate all under one head, one agency, making it either a superintendency or an agency. I would put in charge there some good, strong executive man. You can get them for just what you are paying Mr. Wright or Mr. Ryan. You can get good men, good executive, men, who will take that position and run things in a businesslike way for just what either one of them is getting. In the next appropriation bill I would reduce the expenses to at least $150,000.

The committee has not gone as far as Mr. MCGUIRE advised. It has cut the appropriation to $150,000. It has not abolished Mr. Wright's office—and he is the successor of the Dawes Commission—but has allowed about $39,000 for his use.

If the provision preventing the use of tribal funds is adopted, he will be prevented from increasing that sum by $36,580, the amount proposed to be used, based on last year's estimate, from the tribal funds unless Congress shall specifically authorize it.

I can imagine no cruder or more reprehensible manner of administering public funds than that of allowing public officials to collect and disburse the public money without appropriation by legislative action. Think of allowing a guardian to so administer the funds of his ward. It has led to extravagant administration in this matter, and it will always do so.

The Indian funds are public funds. Otherwise what right has the Government to administer them? The makers of the Constitution understood this principle of honest government administration when they wrote into the Constitution:

No money shall be drawn from the Treasury but in consequence of appropriations made by law.

Shall the public funds of our white citizens be administered under the Constitution and the funds of our Indian citizens administered outside of its provisions?

Here are some statements of the commissioner from the hearings on this question (pp. 306 and 314):

Mr. CARTER. Thirty-six thousand, then. At that you are spending a very large per capita for that number and, in addition, you use a large amount from the tribal funds?

Commissioner VALENTINE. Yes; and I think that amount should be materially reduced; I would chop it out completely.

Mr. CARTER. Eliminating the consideration of the schools, do you not realize that since Congress is responsible for the administration of this money, Congress and this committee should have something to say about how it is to be spent?

Commissioner VALENTINE. Absolutely; that is why I ask you to let it go one year more, with a provision requiring the strictest kind of accounting for every cent of this money.

Mr. FERRIS. Suppose that amendment was so modified by a proviso that it should not apply to schools; what would you then say to it?

Commissioner VALENTINE. I would want to refresh my mind as to the other items which are separate.

Mr. FERRIS. I thought you were just about to say that if the schools can be taken care of it would remove your objections.

Commissioner VALENTINE. I think it would, largely, but I want to be fair to the other items.

Mr. FERRIS. Surely, the other would not be in danger.

Commissioner VALENTINE. I do not recall what that money is used for. I will look it over and be glad to give you anything on that point.

On the other question, that of the district agents, it appears that the work done by these agents can be as well attended to by others in the Indian service and at less expense to the Government, and less delay and annoyance to the Indians. As it has been in the past the work of these agents is a duplication of the work of other officers. The restricted Indian and his estate is officered to the point where patience as well as supervision ceases to be a virtue.

It seems to be conceded that the annual expense of the administration of the Five Tribes is about $850,000. The entire annual income of their property does not exceed $1,500,000.

It is urged that the district agents are necessary to attend to probate matters. Whatever may have been the condition in the past, it is evident from the report of the Indian officers themselves that in the future the interests of minor and dependent Indian heirs must depend on the courts of Oklahoma and the laws of that State. The Government, after it intrusts the State to look after these matters can not continue to give the State government the same minute supervision it has given to the tribal government of the Indians.

I read into the record abstracts from the report of officials of the Indian Office, showing the condition in Oklahoma is satisfactory to the Indians' interests. Commissioner J. George Wright, in his report of June 30, 1911, says, on page 42:

Owing to the large number of restricted Indians and the extent of territory, together with the fact that the probate conditions were not satisfactory, a separate district agency was created of McCurtain County, and every effort made to relieve the situation. The State commission of charities and corrections likewise had employees upon this work and with the perfect accord in which the two offices worked made the result inevitable, namely, a revolution in probate matters. The county judge resigned and his successor was immediately appointed.

On page 49 of the same report Supt. Dana H. Kelsey, in referring to the improved conditions, says:

This has been made possible by the fact that the county courts with few exceptions have heartily cooperated with the district agents in their efforts to protect the Indian minor. In fairness to the courts, it should be stated that the volume of probate business of this character pending in each court is so great that it is a physical impossibility for them to give it the attention it should have. Considering these conditions, great credit is due the county judges for the manner in which they have handled this business. While it is true that in some counties there has been a disposition to take advantage of the crowded condition of the docket, yet, viewed as a whole, the condition of the probate business in eastern Oklahoma is much improved.

While it has not been possible to do with the limited force and the large volume of work required of the district agents as much as desired during the past year, plans are under way, with the detail of a number of special probate assistants in the different counties, to make a systematic checking and investigation of all Indian probate cases in those counties, and as rapidly as possible extend the work. With the hearty cooperation and the excellent efforts of the county judges in a number of counties where the special probate checking is now under way and the assistance of the tribal attorneys a much greater amount of probate work and the incident good results that follow will be done during the coming year.

And, again on page 78, Mr. Kelsey says:

In this connection it should again be mentioned that, in addition to the assistance of nearly all of the county judges, with whom the district agents are most closely in contact, the cooperation of many other county and State officials is a matter which deserves especial mention, as results have been accomplished in many cases by reason thereof which would not otherwise have been possible. Invaluable assistance has been rendered in the matter of the estates of minor Indians by Miss Kate Barnard, commissioner of charities and corrections of the State of Oklahoma, and her general attorney, Dr. J. H. Stolper.

I shall therefore support the recommendations of the committee.

Mr. STEPHENS of Texas. Will the gentleman from South Dakota go ahead?

Mr. BURKE of South Dakota. I have used 45 minutes, and I think the gentleman ought to consume more than 5 minutes.

Mr. STEPHENS of Texas. Mr. Chairman, I yield to the gentleman from Oklahoma [Mr. DAVENPORT] five minutes.

Mr. DAVENPORT. Mr. Chairman, it is my purpose at this time to speak of the Five Civilized Tribes of Indians in Oklahoma and to review their history to some extent, beginning with their early life and their relation to the Government of the United States.

The tribes now known as the Five Civilized Tribes of Indians are the Cherokees, Choctaws, Chickasaws, Creeks (or Muskogee), and Seminoles, located in the eastern part of the State of Oklahoma, which was formerly known as the Indian Territory. The term "civilized" has been applied to these five tribes for almost a century, and when the word "civilized" is applied to Indian tribes it always relates to the Five Civilized Tribes of Indians which I have just mentioned. It has never been applied to an Indian reservation, and never will be.

We are dealing to-day with a civilized people and not a savage race. We shall see before I conclude the true meaning of the word "civilized."

I first want to speak of the Indian as being the first human settler found upon the North American Continent. He is the pioneer settler of this country, and when the white man, in his great desire to explore new fields and discover new continents, landed on the shores of the North American Continent, afterwards to become this splendid land of ours, it was the Indian whom he first met. At that time not in a civilized state, but the Indian in his primitive and savage state. The explorers were received by the Indian in a friendly way and assisted them in landing and welcomed them. It was the North American Indian who was then occupying the wilderness, soon to become the greatest country in the world, which afterwards became the home of the most powerful nation on earth, and has been peopled by the most hospitable, energetic, and homogeneous nation ever known to mankind.

Soon after the landing on the North American Continent by the pioneer Pilgrims they began to try to teach the Indian the white man's language and customs and to ingratiate themselves into the confidence of the red man, in whose midst they had settled. Shortly thereafter another band of emigrants came to the New World, and after forming settlement it soon became apparent to the Indian that his neighbor was seeking to encroach upon his untrammeled and unlimited hunting grounds. This bold encroachment of the unknown white man upon the Indian was more than the Indian would bear, and soon trouble arose, and, as is always the case of the strong against the weak, after many hard-fought battles and untold and unbearable hardships the Indian was forced to abandon his location and seek new hunting grounds in the wilderness farther back from the shores, thereby leaving the home of his

original settlement and the home dear to his savage breast and go to unknown and unsettled lands and again establish his cabin and home, where he could again live in peace and pursue his native sports unmolested by the white man.

We find that this condition did not remain long, for hardly had the Indian settled in his new location when new emigrants from the Old World would land and push forward into the interior of the country, and would soon be encroaching upon the settlements of the Indian, and again trouble arose. The Indian objected to the white settlers coming into his settlements, which would bring about nothing but disputes and trouble between the two races, but, as before, the white settler being the dominant race, would force the Indian farther back into the interior and would by force and acquisition assume ownership of the lands which had been occupied by the Indian. Again the Indian was driven from his settlement by the white race and pushed farther back into the interior, and where he had to build new settlements, undergoing hardships and sufferings incident to the pioneer life and the establishment of new homes.

Thus you will find that the North American Continent was settled by the pioneer, and the Indian was driven from place to place, always protesting against the invasion of his white brother and demanding his rights as a native; but the Great White Father had not yet thrown his protecting wings over poor Lo, the weak and defenseless Indian, nor had it been discovered by the early settlers the great importance of a Government that was to be established becoming the guardian of the Indian. I ask why? Was it because no definite property rights had been established that needed the guardianship of those of to-day who are or would be protectors of the Indian ward as long as his money and property last, or was it because no occasion had yet arisen to justify the act? Be that as it may, the Indian did not receive any protection from the colonist settlers nor did the Government then established try to give aid or exercise guardianship over the Indian or his property. However, time went on until the colonist became involved in a controversy, which afterwards grew into a conflict with the mother country, growing out of the passage of a stamp act and a tea party held by the colonists, which is commonly known in American history as the Boston tea party, the result of which was a war between the colonies and the mother country.

After war was declared and during the war for the first time do we find the colonies recognizing the property rights of the Indians and soliciting their aid in the war, and we find on September 17, 1778, the United States of North America entering into a confederation or treaty with the Delaware Tribe of Indians, and your attention is invited to the first article of that treaty, which is as follows:

> That all offenses or acts of hostilities by one or either of the contracting parties against the other be mutually forgiven and buried into the depths of oblivion, never more to be had in remembrance.

From this article we find the United States of North America willing, if the Indian was willing, to bury all past differences and to assume not only a friendly relation to the Delaware Tribe of Indians but to recognize them as a power or government sufficiently strong to treat with as an independent power. In the making of treaties with independent powers by a government it is perhaps always well that we look at the motive prompting that action, and when we examine further into the treaty mentioned we find that in the third article the motive prompting this agreement, upon the part of the United States of North America, was to secure the aid of the Delaware Indians in helping them fight the War of the Revolution, and to secure passage over the Delaware Indians' lands to certain forts which the King of England and certain adherents had on the Lakes. Certainly a laudable undertaking by the United States, and one that should honestly and sincerely be carried out. It was a question of self-preservation and triumph of independence and liberty to the United States.

The Delaware Indians, as history shows us, entered into this agreement, and to the best of their ability carried out the provisions, by not only giving to the United States passage over their territory to the forts of the King of England which were located on the Lakes, but many brave and gallant warriors assisted in fighting that war, which gave to the United States liberty and independence.

We also find further in that treaty, as we find in many subsequent treaties, that the Delaware Indians should have the right to form a State and have representation in Congress, providing that the provision with reference to having the Delegate in Congress met with the approval of Congress. This provision was never carried out, as it seems that it never met with the approval of Congress.

A further investigation shows that the United States of America recognized a treaty-making power with the Cherokee Tribe of Indians, who are one of the members of the Five Civilized Tribes with which we are dealing; and on November 28, 1785, the United States entered into an agreement with the Cherokees, which agreement settled the boundary of the territory that was owned by the Cherokee Tribe, and the Cherokees agreed to restore to the United States all prisoners that had been taken by them, and the United States agreed to restore all prisoners of the Cherokee Tribe taken by them. Article 3 of that treaty bound the Cherokees to acknowledge protection of the United States, and article 5 specifically provided that no citizen of the United States should settle on the Indians' lands owned by the Cherokees and which was described within the boundaries of the territory belonging to the said Indians. This is the first treaty that we find where the Government of the United States recognizes the Cherokees, which is one of the members of the Five Civilized Tribes of Indians, as having treaty-making power.

On January 3, 1786, we also find that the United States entered into a treaty with the Choctaw Tribe of Indians, which is also one of the Five Civilized Tribes with which we are dealing, and also in the same year we find them treating with the Chickasaws. In 1790 we find them treating with the Creeks as an individual tribe having treaty-making power. In all of those treaties you will find that the territory belonging to the Indian tribes is specifically laid out by metes and bounds, so that they had separate and distinct landed territories where no other tribe could encroach upon their lands within the described bounds without the consent of the tribe. Each of the tribes which are now known as the Five Civilized Tribes exercised their own local self-government, and each were separate and distinct in their government.

Treaty after treaty was made with these tribes relating to their governmental affairs and to their property interests in the various parts of the United States, in each of which treaties the rights of the Five Civilized Tribes were recognized not only as to property rights, but as to possessing treaty-making power, and the guaranty of the United States protecting them against foreign powers was extended.

The Five Civilized Tribes under those conditions built up a stable government, establishing an executive, a legislative, and a judicial division of their government. They also established a system of free schools, in order to educate the younger generation, to fit and prepare them for the duties of citizens in their government.

At various times after November 28, 1785, treaties were made between the Government of the United States and the members of the Five Civilized Tribes, relating to the property and rights of said tribes, all of which tribes were then living east of the Mississippi River. On December 29, 1835, at New Echota, in the State of Georgia, a treaty was entered into by and between the representatives of the United States, on behalf of the United States, and the representatives of the Cherokee Tribe of Indians, on behalf of the Cherokee Tribe, in which treaty the said Cherokee Tribe of Indians sold and relinquished its title to all lands owned and controlled by the said tribe east of the Mississippi River, the consideration for said sale by the said Cherokee Tribe of Indians to the United States Government being $5,000,000 in money and 7,000,000 acres of land, the 7,000,000 acres of land being a portion of what is now occupied by the Cherokee Tribe of Indians in the State of Oklahoma, which was prior to statehood known as the Cherokee Nation.

After the treaty of 1835 at New Echota the said Cherokee Tribe of Indians moved to their new location west of the Mississippi River. Similar treaties to the one made with the Cherokee Tribe were made between the Government of the United States and the four other tribes included in the Five Civilized Tribes, namely, Choctaws, Chickasaws, Creeks, and Seminoles.

After the making of these treaties all the tribes moved to their new location west of the Mississippi River and established their own governments, and continued under their own tribal governments for many years.

On August 7, 1856, the Creek and Seminole Indians entered into an agreement with the United States whereby the boundaries of the Seminole and Creek lands west of the Mississippi River were defined.

Each of the tribes in their new location established a government, republican in form, having their own code of laws, their own courts, their own legislature, and their own executive department, constituting a complete form of government. They also established a system of free schools and academies for the purpose of educating their people and teaching them to become useful men and women. Their governments prospered, were stable in form, and their laws were rigidly enforced. When the tribes were moved west of the Mississippi River there were and are now many of their members who were men highly educated and of means, having been prosperous in their

professional and business life in the old nation east of the Mississippi River. After coming to their new location other treaties of minor importance were made with the individual tribes, embracing the Five Civilized Tribes, for a release or sale of a portion of their lands, but there was still retained a large portion by each tribe, which was valuable land, and many of them engaged in farming and stock raising, as well as other pursuits usually followed by a civilized people.

As many of the members of the Cherokee Tribe and of the other tribes embracing the Five Civilized Tribes were slave owners before they moved west of the Mississippi River, when they emigrated many of these slave owners moved their slaves with them to their new home and new location, and continued to own their slaves up to the time of the beginning of the Civil War, when a great portion of the slaves were released and emancipated by their owners, and in February, 1863, the legislators of the Cherokee Nation passed an act abolishing slavery forever within the Cherokee Nation.

When the lands west of the Mississippi River were patented to the members of the Five Civilized Tribes it was provided the lands of each of these tribes should be held in common by the individual tribe, each tribe holding the land separate and apart from the other tribe; and it was further provided that they should not have any right to sell the lands to any individual or to anyone save and except the Government of the United States, without the consent of the Government of the United States, and when an individual member of the said tribes died all his right in the common property died with him. You may examine all the treaties made prior to the breaking out of the Civil War, and in all of them you will find that the Government of the United States had recognized the Five Civilized Tribes as governments competent to make treaties, and the United States also pledged the tribe the protection of the United States Government, but at no time will you find in any treaty where it is provided or required that there should be any guardianship exercised over the Indians other than that his property should be retained in common and that their tribal relations should continue. You will also find in all of these treaties prior to the Civil War a disposition on the part of the representatives of the Government of the United States to be fair with the Indian and to protect his property as against the interest of the other nations of the world, and you will find that in none of the treaties up to the time of the Civil War had the representatives of the Government of the United States ever attempted to prohibit or prevent the members of either of the Five Civilized Tribes from owning slaves, buying, or selling them. They were treated on an equal footing with other slave owners throughout the United States, and when the War of the Rebellion broke out, so far as the right of a member of either of the Five Civilized Tribes was concerned, they stood on the same level with all other citizens of the United States who dealt in slaves.

This fact is mentioned, Mr. Chairman, in order to call your attention to what I believe to be the greatest injustice and grossest outrage ever perpetrated upon the tribes by the Government of the United States.

By the treaty-making power of the United States Government, and shortly after the close of the Civil War, treaties were forced upon these poor, weak, and defenseless Indians. Under the provisions of the said treaties the tribes were required to give their slaves an interest in the common property of the said tribes and, in some instances, both money as well as land. I feel that all who thoroughly understand the situation will blush with shame when they refer to these treaties. Before calling your attention to the provisions of the treaty, I desire to say, Mr. Chairman, that when the war broke out it is true that the Indians living in the section of the country they did, the members of the different tribes divided, some joining the Union Army and some joining the Confederate Army, and served with distinction throughout the entire war. A distinguished member of the Indian tribe who joined the Confederate forces was Gen. Stan Watie, a full-blood Cherokee Indian, and may it be said to his credit that there was never a braver or more gallant commander in the army. His name will ever live in the memory of his people and in the history of his country as a gallant soldier.

After the close of the unfortunate war and during the reconstruction period conditions in the Five Civilized Tribes in the Indian Territory were such that it became necessary, or at least seemingly so, that the Government of the United States enter into a further treaty with the individual tribes in their tribal capacity as to the further management of their property and the maintaining of their respective governments in the Indian Territory. The slaves who had been owned by the members of the Five Civilized Tribes had been emancipated and given their citizenship, the same as the other slaves who had been owned throughout the slave States. Some of these slaves belonging to the members of the Five Civilized Tribes had remained in the Cherokee and other nations of the Five Civilized Tribes, and some had enlisted in the Union Army and were scattered throughout the different States of the Union at the close of the war.

I now want to call your attention to the provisions in the treaty between the United States and the Cherokee Tribe of Indians, as well as the treaties between the United States and the other tribes embracing the Five Civilized Tribes, wherein it was provided to give to their ex-slaves, in order to be permitted to reorganize their former governments, holding the same together, and maintain their property rights, an interest in their lands and moneys. In calling your attention to this treaty, I do so in order that the facts may be submitted to a candid and thinking people, and let them see whether or not an injustice, if not a crime, was or was not done these tribes.

Article 9 of the treaty between the United States and the Cherokee Tribe of Indians made July 19, 1866, among other things, provides as follows:

> * * * They further agree that all freedmen who have been liberated by voluntary act of their former owners or by law, as well as all free colored persons who were in the country at the commencement of the rebellion and are now residents therein or who may return within six months, and their descendants, shall have all the rights of native Cherokees: *Provided*, That owners of slaves so emancipated in the Cherokee Nation shall never receive any compensation or pay for the slaves so emancipated.

April 28, 1866, a treaty was made between the Choctaw and Chickasaw Tribes of Indians and the Government of the United States, and in article 4 of said treaty the following provision is made:

> * * * That while the said freedmen now in the Choctaw and Chickasaw Nations remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families. In cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant, it being understood that in the event of the making of the laws, rules, and regulations aforesaid, the 40 acres aforesaid shall stand in place of the land cultivated as last aforesaid.

June 14, 1866, a treaty was made between the Government of the United States and the Creek (Muskogee) Tribe of Indians, and in article 2 of said treaty, among other things, the following is provided:

> * * * And inasmuch as there are among the Creeks many persons of African descent, who have no interest in the soil, it is stipulated that hereafter these persons lawfully residing in said Creek country under their laws and usages, or who have been thus residing in said country and may return within one year from the ratification of this treaty, and their descendants, and such other of the same race as may be permitted by the laws of the said nation to settle within the limits of the jurisdiction of the Creek Nation as citizens (thereof), shall have and enjoy all the rights and privileges of native citizens, including an equal interest in the soil and national funds. * * *

May 21, 1866, a treaty was made between the Government of the United States and the Seminole Tribe of Indians, and article 2 of said treaty, among other things, provided as follows:

> * * * And inasmuch as there are among the Seminoles many persons of African descent and blood who have no interest or property in the soil and no recognized civil rights, it is stipulated that hereafter these persons and their descendants, and such other of the same race as shall be permitted by said nation to settle there, shall have and enjoy all the rights of native citizens, and the laws of said nation shall be equally binding upon all persons of whatever race or color who may be adopted as citizens or members of said tribe.

I have set out the provisions of the treaties between the United States Government and each of the Five Civilized Tribes, which requires each of these tribes to give to their emancipated slaves in the Choctaw and Chickasaw Nations a portion of their property; in the Cherokee, Creek, and Seminole Nations they require them to give their ex-slaves an equal interest in their lands as well as their money. These treaties were forced upon the respective tribes in order that they might reestablish themselves in an organized government of their own, and were forced upon these tribes by a Republican administration.

Shortly after the close of the Civil War, and in these treaties, we find for the first time an effort on behalf of that Republican administration to force the emancipated slaves upon the tribes and give to their ex-slaves an interest in their property. I know not under what theory the administration of 1866 undertook to justify this kind of bold, high-handed tyranny, if not to say robbery. Why it was that they desired to heap this outrage upon the members of the Five Civilized Tribes and force them to take the negroes in their tribes and give them an equal interest in their lands and moneys because some few members of the tribes were slave owners is beyond my comprehension.

No one seems to know why it was done, and no administration can justify the act. At the time the treaties were ratified the enormity and magnitude of the outrage could not be estimated. No one then could realize the value of the property of

the Five Civilized Tribes nor tell what the forced division would amount to in dollars and cents. The properties of each of the Five Tribes were held in common by the individual tribe and, as stated herein, could not be disposed of without the consent of the Government of the United States, nor could any individual member sell his interest in the common property. Therefore, Mr. Chairman, when the treaties were made the only thing that we can do is to reach a conclusion by the circumstances and conditions that existed at that time, and, judging by those circumstances and conditions, we are led to believe that this injustice was forced upon these tribes because some few of their members had taken part in that unfortunate war and enlisted on the side of the Confederacy, but I take the position that the gravity of the offense is not justified, if it be true that these negroes were forced upon the members of the Five Civilized Tribes because some few of the tribal members had joined the Confederacy, and that the entire tribe should not be held responsible for the acts of some few of its members.

Passing from the question for the present, Mr. Chairman, of the provisions in the treaties with reference to making the ex-slaves in the different nations heirs to a portion of the estates of the Indians, I will show you later the value of the property in the said nations and the number of negroes who were enrolled in each of the Five Civilized Tribes, and to whom land and money have been and will be distributed.

The Government of the United States was not satisfied with the provisions in the treaties forcing the negroes on the Indian, but in the latter part of the sixties they passed an act through Congress, without the consent of the Five Civilized Tribes, giving to the railroad company 100 feet of land on either side of its right of way through the entire Indian Territory and 200 additional feet at water stations and towns along the road. This quantity of land was taken from the tribal property for the benefit of the railroad company without any consent whatever on the part of the tribes.

There was also another provision in that act of Congress passed in the latter part of the sixties which provided in substance that the railroad company first to construct its road through the Indian Territory shall have, in addition to the 100 feet on either side of its right of way and additional 200 feet at water stations and towns, each alternate section for 10 miles on either side of its track through the said Indian Territory, provided the land should cease to be Indian land and the tribal governments become extinct. Under this provision what is now known as the Missouri, Kansas & Texas Railway Co. has been suing in the different courts of the United States trying to recover many thousands of dollars or secure the land. This act of Congress was passed and the right of way granted, and the provision made for the alternate sections, without the consent or knowledge of either of the members of the Five Civilized Tribes, thus making another chapter in the history of the protecting Government, shameful to look upon and unjust to the Indian. This provision was also passed by a Republican Congress under the guise of protection, which was willing to cede to the railway corporation a very great portion of the Indian lands and moneys.

Of course, Mr. Chairman, the importance and magnitude of this grant to the railroad company was not and could not at that time be realized, for the reason that the lands through which the track run were sparsely settled and 100 feet on either side did not appear to be a very large quantity of land; but in after years, when the tribe increased in population and the white settlers began to come in, by permission of the tribal governments and the United States the railroad company which had constructed its track through the Indian Territory began to take possession of its 100 feet and 200 feet additional at water stations and towns, and the land became very valuable for town-site purposes; and it was then the magnitude of the attempted grant by Congress to the railroad company without the consent of the Indian was realized.

This condition existed for many years, and in the early part of the seventies the tribal population had begun to rapidly increase and emigration of the white people, or United States citizens, also begun to rapidly increase, and as the tribal governments had no jurisdiction to regulate the behavior or settle property disputes between the Indians and United States citizens, it became necessary to have some forum in which to adjust their differences, and by different acts of Congress the United States courts at Fort Smith, Ark., Paris, Tex., and Fort Scott, Kans., were given jurisdiction over capital offenses and other felonies committed in the Indian Territory as well as jurisdiction over controversies between United States citizens and the members of respective tribes. As the courts were located a great distance from the Indian Territory, and as the population continued to increase, it soon became necessary that a different form of government should be instituted nearer the people, and in March, 1889, by an act of Congress a United States court was established at Muskogee, Ind. T.—now Oklahoma—having limited jurisdiction. An amended act was passed by Congress May 2, 1890, increasing the jurisdiction of the United States in the Indian Territory and establishing the Territory of Oklahoma, and providing that the United States courts in the Indian Territory should be held in Muskogee, McAlester, and Ardmore, Ind. T. These courts were established and still the population continued to increase, and in March, 1895, by an act of Congress jurisdiction of all offenses in the Indian Territory was taken away from the courts at Fort Smith, Ark., Fort Scott, Kans., and Paris, Tex., and given to the United States courts then established in the Indian Territory.

In the meantime the Indian population had been steadily increasing, and conditions had arisen by which it seemed apparent that a change of government was necessary whereby all citizens should be subject to the same government and the same courts, and that the respective tribes should take their lands in severalty; and in 1893 Congress provided for a commission, which afterwards became commonly known as the Dawes Commission, to proceed to the Indian Territory and try to negotiate a treaty with the respective tribes.

This commission continued to work in the Indian Territory until each of the Five Tribes had entered into an agreement with the Government of the United States, agreeing to allot their lands among the members of their tribe and to abandon their tribal relations and become subject to the laws of the United States. The treaties with each of the respective tribes was different in form to meet the conditions that existed in each of the separate tribes, but all aiming at the same object, viz, to allot their lands and abandon the tribal relations. The Government of the United States, through its representatives, agreed with these tribes to make a correct roll of the citizens of each of the Five Civilized Tribes entitled to receive an allotment of land and participate in the funds. Rolls were made under the provisions of the various acts of Congress relating thereto.

The rolls of the Five Civilized Tribes were finally closed on March 4, 1907, and approved by the Secretary of the Interior on that date—that is, the Secretary of the Interior was restricted by legislation and prohibited from placing the name of anyone on either of the rolls of the Five Civilized Tribes after March 4, 1907.

In this connection, Mr. Chairman, for fear the matter may slip my mind, I want to say that on the closing days of the making of the roll which closed on March 4, 1907, the Government of the United States, through its representatives, again was not unmindful of the interest of the freedmen or the negroes who had been slaves in the Cherokee Nation, and in considering the names sent in from the Dawes Commission to the Secretary for enrollment, there appeared as applicants for enrollment, as freedmen, on the Cherokee tribal rolls a certain negro family, known as the Riley family. This Riley family of negroes had been living in the Cherokee Nation for a number of years, claiming rights under article 9 of the treaty of 1866, made between the Cherokee Tribe of Indians and the Government of the United States, to be freedmen citizens of the Cherokee Nation—that is, negroes who had been slaves of the Cherokees, but who had been liberated by the voluntary act of their owners or by law, and had either remained in the Cherokee Nation during the war or had returned to the nation within six months after the ratification of the treaty of 1866.

The Commission to the Five Civilized Tribes had taken testimony of witnesses in the Cherokee Nation, and also the testimony of witnesses who had resided in Kansas near Girard, and who had known the Riley negroes in Kansas for some time after the ratification of the treaty of 1866. The testimony was voluminous, and had been such that the commission had found on two different occasions that the Riley negroes were not entitled to enrollment as freedmen citizens of the Cherokee Nation. This case reached the Department of the Interior some time during the day of the 3d of March, 1907, which fell on Sunday, and the day preceding the day under the law the rolls had to close, the closing day being March 4, 1907. It was my misfortune, as it would seem, Mr. Chairman, to be representing the Cherokee Tribe of Indians as one of its attorneys of record in the city of Washington, D. C., on that date. I knew that the Commission to the Five Civilized Tribes had decided adversely to this Riley family of negroes, but I further knew that the Riley negroes had filed on certain lands in the Cherokee Nation, a great portion of which was in the new oil field, known as the Alluwe oil field, located in the Cherokee Nation, Ind. T., but now what is a part of Nowata and Rogers Counties, Okla. I further knew, Mr. Chairman, that a great effort was being made to secure the enrollment of these

Riley negroes, but knowing, as I did, that the preceding week of March 4, 1907, the Interior Department had affirmed the decision of the Commission to the Five Civilized Tribes denying the enrollment of a number of freedmen, or negroes, claiming to be entitled to enrollment who had made as strong a case as the Riley negroes, I felt, judging the future by the past, that we had a right to believe these Riley negroes would not be enrolled, but to my surprise when the department passed upon these cases, 20 minutes after 10 o'clock on the evening of March 4, 1907, just 1 hour and 40 minutes before the rolls must close, the decision of the Commission to the Five Civilized Tribes had been reversed and the Riley negroes had been placed upon the rolls of the Cherokee Tribe of Indians, to the number of 93, in keeping with the provisions of article 9 of the treaty of 1866, thus adding 93 more names that would share in the lands and moneys of the Cherokee Tribe of Indians.

This, too, was done during a Republican administration, and the Cherokee Tribe of Indians, of whom you hear so much talk about being incompetent to manage their own affairs, had to bear the burden imposed upon the tribe by his would-be guardian, and give up to these negroes this great quantity of valuable oil land and money.

These incidents are cited for the purpose of reviewing the history and policy of the Government of the United States toward the Five Civilized Tribes of Indians, and for the further purpose of showing that while a great desire is manifested by the representatives of the Government to protect the Indians as against speculators and men who would deprive the Indian of his property, and for the purpose of showing that in past treaties and legislation, if viewed from an unbiased standpoint, every time the question came up for either treaty or legislation or interpretation of a treaty or a law the negro freedman, the ex-slave of the Indian, received the benefit of the doubt and the question was decided against the Indian.

I now want to call the attention of the House to the number of acres of lands that were to be allotted that each of the Five Civilized Tribes owned, the number of allottees to participate in the allotments, giving them by blood, and the number of freedmen and number of intermarried white citizens who were, under the law, entitled to enrollment:

The Cherokee Tribe of Indians at the time they began to take their allotments owned 4,420,067.73 acres of land, and from this amount of land there were reserved from allotments by reason of certain legislation enacted by Congress, heretofore mentioned, with reference to giving right of ways to railroads through the Indian Territory, town-site purposes, and cemeteries, schools, and churches, 22,880 acres of land, leaving subject to allotment 4,397,187.73 acres of land.

This amount of land left for allotment purposes in the Cherokee Nation was to be allotted to the citizens who had been enrolled on the Cherokee rolls and comprised the following: Cherokees by blood, 36,304; adopted Delawares, 197; intermarried white citizens, 286; Cherokee freedmen or negroes, of which I have heretofore spoken, 4,911, making a total entitled to participate in the allotment of 41,698. It is estimated that an allotment of land at the time the allotment was made was reasonably worth the sum of $1,500. The number of freedmen or negroes mentioned above each received an allotment of land in the Cherokee Nation worth $1,500, making a total valuation of land received by the freedmen, or negroes, who were forced upon the Cherokees by reason of the unjust provision of the treaty of 1866, of $7,336,500. Mr. Chairman, what would any gentleman upon the floor of this House say if our Government should to-day say that any class of people in the United States should be required to divide their property in the same way as the representatives of the Government of the United States required the Cherokee Indians to divide with their ex-slaves or negro freedmen? Not only did these negroes or ex-slaves receive this amount of land, but they also received at different times per capita payments of money the tribe had deposited in the Treasury of the United States, and will also, when the tribal affairs are finally wound up, receive their pro rata share of the funds undisturbed.

The Creek Tribe of Indians, at the time they began making their allotments, owned 3,079,094.61 acres of land, from which was reserved from allotment for railroad rights of way, town-site, church, school, and cemetery purposes 16,018.53 acres, leaving subject to allotment 3,063,076.08 acres of land. The number of citizens upon the Creek rolls entitled to receive allotments were: Creeks by blood, 11,909; freedmen or negroes, 6,807; making a total of 18,716 citizens regularly enrolled entitled to participate in the allotments. A reasonable estimate of the value of each allotment at that time was $2,000. Each of these freedmen or negroes received an allotment valued at $2,000, or a total of $13,614,000, to say nothing of the money they have received from different sources or per capita payments.

The Choctaw Tribe of Indians, at the time they began to take their allotments, owned 6,953,048.12 acres of land, from which was reserved for railroad rights of way, segregated land, and other purposes 46,253.06 acres of land, leaving to be allotted 6,490,515.06 acres. The number of citizens who were entitled to receive allotment were: Choctaws by blood, 19,189; negroes or freedmen, 5,994. The treaty of 1866 only required them to give their freedmen, or ex-slaves, 40 acres of land. The reasonable valuation at the time the alloting began of 40 acres of land in the Choctaw Nation was $1,000, which makes a total value of $5,994,000 given to these ex-slaves or freedmen.

The Chickasaw Tribe of Indians owned the following number of acres of land at the time they began making their allotments, 4,707,904.28, from which was reserved for various purposes 45,074.89 acres, leaving subject to allotment 4,662,829.39 acres to be allotted to the citizens of the Chickasaw Nation. There were 6,337 Chickasaws by blood, and 4,607 freedmen or negroes, making a total of 10,944 citizens entitled to participate in the lands. The Chickasaws, like the Choctaws, were only required to give to the freedmen, or ex-slaves, 40 acres of land. This 40 acres of land at the time of the beginning of allotment was reasonably worth $1,000, making a total of $4,607,000.

The Seminole Tribe of Indians owned, at the time they began making their allotments, 365,851.67 acres of land; from this amount there was reserved for town sites, watersheds, railroad rights of way, schools, churches, and cemeteries 2,500.88 acres, leaving a balance to be allotted of 363,263.67 acres. The number of citizens entitled to receive allotments were: Seminoles by blood, 2,138; freedmen or negroes, 986. The Seminoles, like the Cherokees and Creeks, by reason of their treaty of 1866, which was forced upon them by the Government of the United States, were compelled to give to their ex-slaves equal rights, and each allotment in the Seminole Nation, at the time the selections were made, was reasonably worth $1,500, making a total of $1,479,000 these freedmen or negroes received from the distribution made of land in the Seminole Nation, and no mention is made of the amount of money they have received from the invested funds of the Seminoles, of which there were several million dollars distributed and several million yet to be distributed.

Mr. Chairman, the attention of the House is carefully invited to the figures given with reference to the Five Civilized Tribes, for the reason they will show that by reason of the terms of the treaties of 1866 made with these weak and defenseless tribes of Indians, the wards of the Government were required to take into their estates their ex-slaves, who had been emancipated, and to give each of these freedmen or ex-slaves in the Choctaw and Chickasaw Nation 40 acres of land and in the Cherokee, Creek, and Seminole Tribes an equal right to share in the lands and moneys. It will show that by the unjust provisions of the treaties of 1866 the land value alone amounts to over $33,000,000, and for what? No consideration whatever. The negroes never paid anything for the land and the tribes were required to part with this enormous amount of property and money without any just compensation, and under such conditions and circumstances that no intelligent man can justify the acts of the representatives of the Government of the United States at that time.

In my opinion, the Government of the United States should repay to the respective tribes the value of the lands that were given to these negroes, who were ex-slaves, and that the funds should be paid into the Treasury of the United States to the credit of the respective tribes, and when final disposition of the affairs of the respective tribes are made the money paid per capita to the members of the said tribes. If we want to be generous and to deal with the Five Civilized Tribes fairly, as the representatives of the Government of the United States, I say why do not the representatives of this Government try to correct this grave wrong which has been perpetrated upon these tribes of Indians, wards of the Government? Has anyone ever heard of a recommendation being made by the Department of the Interior or any other branch of the Government desiring to control the property and money of these respective tribes to compensate them for this gross outrage? If the representatives of the Government want to deal fairly with these tribes, I suggest that they commence to correct the great wrongs that have been perpetrated and not continue to try to hold these Indians in their clutches until their landed interest and funds have been exhausted.

I want to speak generally for a minute regarding the bill under consideration, and in a general way with reference to the treaties of the different tribes throughout the United States.

The North American Indians located in the various States of the Union have made cession after cession of land to the

United States by solemn treaties and agreements, which cessions aggregate hundreds of millions of acres.

In consideration of these cessions of land, as provided in the several treaties and agreements, the United States has solemnly obligated itself to make certain payments of money to the tribes, to carry out certain other obligations, and to perform certain duties of administration; and, with perhaps only two exceptions, these treaties and agreements do not provide that either the tribes of Indians or the individual citizens thereof shall pay the Government of the United States for the performance of these duties which were undertaken as a consideration for the only thing which the Indians had—land—or that the money to be expended in the administration of Indian affairs generally shall be reimbursed from the proceeds of the sale of their lands or from their moneys held in trust by the Government.

Notwithstanding these incontrovertible facts, in the bill now under consideration, H. R. 20728, a bill making appropriations for the current and contingent expenses of the Bureau of Indian Affairs, for fulfilling treaty stipulations with various Indian tribes, and for other purposes, for the fiscal year ending June 30, 1913, there is found, on page 2, lines 15 to 19, inclusive, an appropriation of $215,000 for the survey, resurvey, classification, and appraisement of lands to be allotted in severalty under the provisions of the Dawes Act, which is to be—

repaid proportionately out of any Indian moneys held in trust or otherwise by the United States and available by law for such reimbursable purposes and to remain available until expended.

This same provision of law is found in every Indian appropriation act passed by the Congress since the act of February 8, 1891 (24 Stat., 388), and, being generally applicable to all Indian tribes and reservations, is, so far as is known or can be ascertained, without justification, without foundation in law or equity, and without the consent of the Indians.

On page 12 of this bill, lines 10 to 16, inclusive, is found an appropriation of $18,000 for the reclamation or maintenance charged on Yuma allotments—

to be reimbursed from the sale of surplus lands or from other funds that may be available, in accordance with the provisions of the act of March 3, 1911.

The act of March 3, 1911, referred to in the bill under consideration, is also an Indian appropriation act, and this act contains a similar provision for the reimbursement of $18,000.

There does not appear to be any agreement with the Yuma Indians with respect to the reimbursement of moneys expended by the Government in behalf of the administration of their affairs.

On page 16 of this bill, lines 21 to 25, inclusive, is found an appropriation of $15,000 for extending the construction and maintaining the Milk River irrigation system on the Fort Belknap Reservation, in Montana, "reimbursable in accordance with the provisions of act of April 4, 1910."

The act of April 4, 1910, referred to is an Indian appropriation act made in the same manner, and there does not appear to be any agreement with the Fort Belknap Indians to reimburse the Government for the expenditure of this money.

On page 17 of this bill, lines 1 to 7, inclusive, is found an appropriation of $200,000 for continuing the construction of irrigation systems to irrigate the allotted lands of the Indians of the Flathead Reservation, in Montana, and the unallotted irrigable lands to be disposed of "under authority of law," "reimbursable in accordance with the provisions of the act of April 4, 1910," which provision does not appear to be based on any agreement or treaty with these Indians.

There is also found on page 17 of this bill, lines 12 to 17, inclusive, an appropriation of $100,000 for irrigation on the lands of the Indians of the Blackfeet Indian Reservation, in Montana, "reimbursable in accordance with the provisions of the act of March 1, 1907," which contains a similar provision. So far as known or can be ascertained there is no warrant or authority of law for charging either the Flathead or the Blackfeet Indians with the cost of this administration of their affairs by the Government.

On page 28 of this bill, lines 8 to 26, inclusive, there is found an appropriation of not to exceed $155,000 for continuing the construction of an irrigation system within the Klamath Indian Reservation, in the State of Oregon, and it is provided "that the entire cost of the project shall be repaid into the Treasury of the United States from the proceeds for the sale of timber or lands on the Klamath Indian Reservation."

So far as can be ascertained, there is no agreement or treaty with these Indians providing that the proceeds of the sale of timber or the proceeds of the sale of their lands shall be used for any such purpose.

On page 33 of this bill, lines 1 to 5, inclusive, is found an appropriation of $75,000 for an irrigation system for the Utes, in Utah, reimbursable under the provisions of the act of June 21, 1906.

So far as can be ascertained, they did not agree or stipulate that their moneys should be expended for this purpose.

On page 34 of this bill, lines 4 to 7, inclusive, there is found an appropriation of $15,000 for an irrigation system on land allotted to Yakima Indians in the State of Washington "reimbursable in accordance with the provisions of the act of March 1, 1907."

On page 35 of this bill, lines 10 to 15, inclusive, is found an appropriation of $50,000 for an irrigation system within the diminished Shoshone or Wind River Reservation, in Wyoming, "reimbursable in accordance with the provisions of the act of March 3, 1905."

So far as is known or can be ascertained, there is no agreement or provision for the use of the moneys of these Indians for any such purpose without their consent.

The aggregate amount of these so-called reimbursable appropriations in this bill is the sum of $843,000, all of which is without authority and without consent of the Indians and in many instances, it is believed, without even their knowledge. I am against such action and will oppose the use of the Indians' money to provide a position for some political hanger-on who has no interest in the Indians' welfare except as far as his salary goes.

Reference is also made to House Document No. 208, Sixty-second Congress, which is a letter from the Secretary of the Interior to the Speaker of the House of Representatives, setting forth the fiscal affairs of Indian tribes for the fiscal year of 1911.

This report shows that during that year there was disbursed for salaries of employees $1,799,022.23; for support and civilization, $3,402,660.49; and that the receipts during that year were $10,384,131.18. In some instances the report shows that the expenses were much greater than the receipts and that the balance of the expenses were withdrawn from the general funds of the Indians.

I tried to get a complete report, but failed. Why, I do not know. And because I could not get a detailed statement I want to insert in the RECORD the figures taken from the report of the Secretary of the Interior under the provisions of the act of March 3, 1911, known as House Document No. 208, as to the Five Civilized Tribes. Speaking of the disbursements with reference to the individual tribes, under the title "Salary of employees," he says of the Choctaws there was expended $70,577.07; Chickasaws, $29,254.33; Creeks, $39,329.47; Cherokees, $25,206.35; Seminoles, $10,525.33.

Under the caption "Compensation of counsel and attorneys' fees": Choctaws, $25,132.09; Chickasaws, $6,382.62; Creeks, $19,523.80; Cherokees, $6,789.76. There was nothing in the Seminole Nation.

Now, we come to the next most important item, namely, "For support and civilization"—the supporting and civilizing of a civilized people:

Choctaws, $260,805.39; Chickasaws, $106,762.20; Creeks, $58,148.84; Cherokees, $106,132.79; Seminoles, $17,645.53.

I can not give any further explanation with reference to details, nor have I been able to get any further information. I asked for it the latter part of last month from the department, and up to this day I have not had any information as to what portion of that money was spent from the Government fund and what portion was spent from the tribal fund. Therefore the report must stand as it is, unexplained, and the layman must draw his own conclusions as to the funds used to pay the amount.

No one can examine the report of the Secretary of the Interior, contained in House Document No. 208, without blushing with shame or being overcome with laughter. You can read this report over and over, but no living man can tell from the report what employees are paid or for what purpose in either of the Five Civilized Tribes, nor can you tell from the report from what funds they were paid. It does not state whether it is money used belonging to the Government or to the respective tribes. Neither can you tell whether it is money appropriated by Congress or whether it was paid out by the Secretary of the Interior under that same discretion we hear so much about in all Indian legislation. Evidently it was paid under the Secretary's discretion.

I want to call the attention of the House to the amount expended, as shown by the Secretary's report, in the Five Civilized Tribes for support and civilization. The total amount claimed to have been paid was $549,494.75. Quite a handsome sum, and if properly expended would go a long way toward educating, supporting, and civilizing a civilized people, the class of people we are dealing with here.

It is indeed quite a handsome sum for a guardian to expend upon his uncivilized ward, and especially in view of the fact that the guardian has for more than a century recognized his ward

as competent to make treaties and to contract with him, by which the ward parted with valuable property, landed interests, and exchanged with the guardian other lands and moneys. Mr. Chairman, it is absurd to entertain such a proposition. Why is it that the facts were not stated? The people should know, and can only know by the facts being stated. Every honest, fair-minded, intelligent, thinking man who knows anything about the Five Civilized Tribes of Indians knows that not a dollar was expended last year in civilizing these Indians, and it is an insult to the intelligence of the Indian to send such statements to the public. It may sound well for the yellow journals or dime novels, but the statement is untrue, and I take this opportunity to say so. These Indians have been civilized for many years, are highly educated, law-abiding, God loving, God serving, and are as capable of managing their own affairs as many of the representatives of the Government who are sent down there to manage their affairs for them. Money may have been spent by the honorable Secretary of the Interior, but not for support and civilization. Why this term was used he alone can tell, and he alone will have to explain. For more than 100 years the Five Civilized Tribes of Indians have maintained themselves, not receiving a dollar from the Government of the United States except from their own funds and property. They have been self-supporting, and the history of our Government will show this statement to be correct. Yet we are confronted with the report showing large sums of money for civilization of a civilized people. If I may venture a prediction, you will find that the representatives of this great Government of ours will continue to try to civilize these Indians just as long as they have any land and money, and as soon as both are exhausted their great anxiety to civilize the Indian will cease.

The Indians in the Five Civilized Tribes are anxious to be placed upon the plane of the citizens of any other State, and are anxious to be recognized as having sufficient intelligence to manage their own affairs, just the same as any other United States citizen. All of these Indians are United States citizens, and citizens of the State of Oklahoma, with full power of citizenship save and except to handle their own money and landed interests. They are elected and fill some of the highest offices of the State. They are legal voters, members of our juries, and in every way exercise the full functions of the American citizen except as herein stated—when it comes to handling their money and lands. Many of these Indians who are officeholders, lawyers, business men, and professional men in the State of Oklahoma can not sell an acre of their land unless the restrictions are removed by the honorable Secretary of the Interior under existing laws. I insist that the time has come when this condition should cease and American manhood should govern the representatives of the American Government, and these United States citizens, though Indian by blood, should be given all the rights of the true meaning of American citizenship.

Now, Mr. Chairman, I want to say a few words in opposition to the motion of the gentleman from South Dakota to strike out the paragraph in the pending bill. This motion should not be granted, and I am confident that the gentleman from South Dakota will not seriously urge that this motion be sustained, but will strongly urge the amendment following this paragraph if his motion to strike out the paragraph is not sustained. Instead of striking out this paragraph, if it were permissible at this time, I would amend the same by inserting, in line 23, on page 25, after the comma, following the word "schools," the following:

> The equalization of allotments, per capita payments, and the salaries and necessary expenses of the chiefs, governors, assistant chiefs, secretaries, interpreters, and mining trustees of the said tribes of Indians, and the attorneys of said tribes employed under contracts approved by the President of the United States under existing laws. The necessary expenses of the tribal officers herein named to be paid upon itemized vouchers presented to the proper disbursing officer of the Government.

So that the paragraph would provide for the paying of tribal officers from the funds of the respective tribes without specific appropriation for the length of time mentioned in this bill. It is necessary that these tribal officers be retained for a time, at least until the tribal affairs have been closed, as there must be some officers to execute the deeds of conveyance and other deeds necessary to be executed in order to properly convey the title in the respective tribes to the property remaining unsold or unallotted.

As to the amendment offered by the gentleman from South Dakota, providing for the appropriation of $100,000 to pay a class of employees in Oklahoma, I want to register my protest against the amendment.

I have no fight to make on any individual Indian agent in that country, or upon any district agents, but I do say that there has come a time when there ought to be some reduction of force in that country, and I believe the $150,000 carried in that bill is sufficient to maintain that force and efficiently manage the business of the Five Civilized Tribes. The gentleman from South Dakota [Mr. BURKE] has spoken of a number of accounts necessary to keep the funds in the banks down there. The deposits are negotiated from the head office in Muskogee. But show me a banking institution anywhere in the world that handles the same amount of money that has as many employees as that institution at the Union Agency, at Muskogee, Okla. You can take any corporation in the world, any banking institution in the United States, and you can manage it, with more accounts, and they will be efficiently managed, and it will not require one-fourth of the help that is being used in the agency at Muskogee. I say to you, it is not necessary to keep all those officers in that country.

It is urged by the Department of the Interior that the appropriation of $100,000 is necessary to properly and satisfactorily handle the Indian affairs in the Five Civilized Tribes in Oklahoma. There are now, in round numbers, about 101,000 Indians in Oklahoma. The State of Oklahoma has a population of about 1,600,000 inhabitants, 101,000 of whom are Indians. It is a very small per cent of them that are restricted—that is, Indians that can not sell their property without the consent of the Secretary of the Interior. Many of them are intelligent, upright business men and women, fully competent to manage their own affairs, highly educated, and do not need the assistance of a Government officer to look after their affairs. Anyone familiar with the conditions in the Five Civilized Tribes knows that these Indians do not need the daily assistance of a Government officer. There are about 15,000 or 16,000 full-blood Indians in the entire Five Civilized Tribes.

When the act of Congress of May 27, 1908, was passed there was a provision authorizing the Secretary of the Interior to designate parties in different parts of the Five Civilized Tribes to assist in winding up the affairs of the Five Civilized Tribes and protect the property of the Indians. Four years have passed, all of the property in the Cherokee Nation has been allotted and sold, save and except an orphan school, the capitol building and grounds, the Cherokee Advocate Publishing Co. and grounds, and the jail site, thus leaving only four pieces of property in the Cherokee Nation to be disposed of.

Some of the fractional tracts of land in the Cherokee Nation were sold on credit and some of the back payments yet remain to be paid, but the work in the Cherokee Nation is practically closed, and there is no necessity whatever for the great number of Government officers in the said nation as heretofore.

The Creek Tribe of Indians have no surplus lands and necessarily do not need as large a quota of officers as have heretofore been used. Neither does the Seminole Tribe. In the Cherokee and Creek Tribes all the patents to their lands have been issued and delivered to all of the Indian citizens, save and except a few citizens who have opposed allotments from the start and refused to receive their patents.

A different condition exists in the Seminole Nation, and I regret to say that the Interior Department has refused to deliver the patents to any of the Seminole Indian citizens, notwithstanding the patents have been signed by the governor of the said nation and the Secretary of the Interior for more than four years. However, the patents are being held by the Secretary of the Interior, and he refuses to deliver the same. The question may be asked, Why does the Secretary do this? The answer is found in his contention that if the patents were delivered it might in some way injure certain suits that have been brought against purchasers in the Seminole Nation. I say that, under existing laws, it would in no way whatever strengthen the title to any purchase that might have been made in violation of law, nor would it aid anyone that has been sued in his defense. The truth is it is materially damaging the landowners and farmers who desire to purchase farms in that nation. The Indian allottee who desires to sell a portion of his allotment can not get as great a sum for his land as he could should he be in a position to give a clear title. On the other hand, the purchaser who desires to buy a tract of land to make a permanent home for himself and family, upon which he might spend the remainder of his days, will not go into that country and purchase land where the title is not clear. Thus, you will see, it not only injures the Indian but also the honest farmer who desires to purchase a home. Yet you hear the cry from the Interior Department that they are trying to protect the interest of the Indian. Each step taken by the Interior Department is taken with a view of perpetuating their hold upon the Indian tribes and continuing their offices in the respective nation, for which the appropriation contained in the amendment offered by the gentleman from South Dakota is asked.

Certainly after more than four years, and with the affairs of the Indian tribes practically closed, there is no necessity for any great quota of officers, and my contention is that the $150,000 for the work of the Union Agency at Muskogee is

amply sufficient to employ a sufficient number of parties to perform the duties required in winding up the affairs of the said tribes. There is no necessity at this day and age to continue a bunch of officers scattered over the country for political purposes as in the past.

Not all of the district Indian agents have been actively engaged in politics, but some of them who have heretofore resided and been located at Westville and Vinita, Okla., just prior to election have spent a great part of their time in political work, and have not always had a high regard for the kind of political work they performed. I am opposed to the appropriation, and insist that it is unnecessary, and the amount should not be appropriated. In the remarks made by the gentleman from South Dakota, he stated something with reference to a statement I should have made before the committee as to how I would permit a ward to spend his money. I stated in substance that I would have the ward select what he would need, and then I would present the matter to our probate court, and get the court to approve the transaction. I say now, that one of the serious objections that has been lodged against the district agents scattered over the country is that in making purchases for the Indian, which purchases are paid for out of the Indian's own money, they have not always gone to the store where the articles could be purchased the cheapest, but they have had certain stores with whom the Indian had to trade, and certain men with whom the Indian is required to purchase his horses and mules, and I have grown tired and extremely disgusted with receiving letters regularly from the different business men through the district complaining of this kind of procedure and asking why it was that the Indian was engineered to certain business houses and required to purchase their goods. I could not answer further than to say that I supposed it was because the Indian agent exercising jurisdiction over the Indian deemed it best to send the Indian to purchase his goods from some Republican who was engaged in business near the agent's office.

And I am not the only one that has received these kind of complaints; there are other Members whose districts border on the Indian Territory line receiving the same complaints. I am not objecting to the expenditure of the Indian funds nor where the money is spent, provided it is spent for the best interest of the Indian, but I do not believe that there should be a monopoly and the Indian required to go to certain specified places. I believe he should be permitted to spend his money where it would do him the most good.

It is not a question with me of the men who are appointed as agents in Oklahoma as much as it is the system they use after they are appointed. We certainly have reached the place where we can begin to retrench and cut down the expenditures and where the Indian citizenship can be placed upon a higher plain than being governed by a set of district Indian agents who are forced upon them for no other purpose than to hold a job.

It has developed during the discussion of this bill that many suits have been brought, about four years ago, to settle these land titles, and now, after waiting four years, no definite settlement has been reached.

The gentleman from Kansas [Mr. CAMPBELL] called the attention of the House to what would seem a very flagrant outrage upon the interest of an allottee in the State of Oklahoma in one of the counties of the State by the county court, and stated that this transaction occurred in 1907. If so, this occurred before statehood and while we had only the United States courts in the Indian Territory part of Oklahoma, but I will be fair with the gentleman and concede that he is honestly mistaken, because the truth is that the affair mentioned occurred after statehood and under the very nose and observation of the district Indian agents, and the occurrence is one of the best reasons presented for not continuing these agents throughout the district, because that up to the present the conditions have not changed in the least. Perhaps, in some instances, the agents have been of some benefit to the Indian citizen, but taking them as a whole they have been a far greater drawback to the Indian than the good they have done, considering the expense.

I have been unable to arrive at an accurate detailed statement of the expenses of these agents. In making an effort to secure an accurate statement from the Indian superintendent at the Union Agency, Muskogee, Okla., he advised that the expenses for the current fiscal year averaged for each district Indian agent $6,250. He further states that in some instances special probate work has been done and is being done, so that the expenses in the different districts vary a great deal. This is as nearly an accurate statement as I have been able to get as to the expenditure of any of the Indian funds or the funds appropriated by Congress. They always ring in something that is special, and state that the figures vary generally, without giving any further information.

There is absolutely no reason why this appropriation of $100,000 should be added at this time. The general appropriation included in this bill for the Five Civilized Tribes is amply sufficient to carry on this work, and besides there is a very large appropriation made for special agents. If it becomes necessary, let some of these special agents be assigned to the Five Civilized Tribes.

We had up for discussion the other day a provision making appropriation for the Indian police. I opposed that provision, as Oklahoma has ample protection for its citizens, and these Indian police were not needed. I oppose this $100,000 appropriation on the same ground. Oklahoma has a complete State organization, and the offices are filled by as competent officers as any State in the Union, by men of high integrity, educated, and who desire to see the law enforced as rigidly as any living man. We also have a department of charities and corrections, which is doing excellent work in our State, and daily looking after the interest of the citizens in the State, and this department is assisting the county courts to perform their probate work, and is doing as valuable service as the Government officers in Oklahoma.

There has, perhaps, been some unfair dealings with the estates of the Indians, but this condition not only exists in the Five Civilized Tribes, but exists in any State in the Union where estates are to be adjusted by the courts and the landed interests are to be sold through the courts or partitioned. But it would seem that because we are in Oklahoma and in an Indian country all the controversies arising out of landed estates are charged up to the incompetency of the Indian. It is untrue and should not be so construed.

The Indian citizen in Oklahoma should be placed on an equal plane with the citizens of that State or any other State, and the courts in Oklahoma and its officers are as well qualified and competent to take care of its citizens as any Government officers sent down there by the Interior Department, and I respectfully submit that the amendment providing for $100,000 should be defeated.

Mr. STEPHENS of Texas. Mr. Chairman, will the gentleman from South Dakota use some of his time?

Mr. BURKE of South Dakota. How much time has the gentleman on the other side used?

The CHAIRMAN. The gentleman from Texas has used 15 minutes and has 57 minutes left.

Mr. BURKE of South Dakota. Inasmuch as the gentleman has 57 minutes left and I have only 20 minutes, I think the gentleman from Texas ought to give some of his time.

Mr. STEPHENS of Texas. I yield 20 minutes to the gentleman from Oklahoma [Mr. CARTER].

Mr. CARTER. Mr. Chairman, an Irishman fresh from the Emerald Isle landed in one of the new towns in western Oklahoma during a campaign on the cow law—a proposition to determine whether old Bossy should be kept in the pen or left to browse upon the public domain. Pat had never heard of such an election, but finally one day he ran into the corner drug store and said to his friend, the drug clerk, "Begorrah, I'm beginning to understand this bloody cow law at last." "What do you know about the cow law?" said the druggist. "I know this," says Pat, "I can always tell which man owns the cow be the end of the argymint he takes."

In this instance I own the cow. I am one of the Five Civilized Tribes, and if the gentleman from South Dakota [Mr. BURKE] is correct in his estimate of the value of the property of the Choctaw and Chickasaw Tribes, I and each of my family would be entitled to about $1,200 to $1,500 from this estate.

The gentleman from South Dakota [Mr. BURKE] made one statement which I do not think I can afford to let go unchallenged. The gentleman may not have intentionally attempted to implicate anyone of wrongdoing, but by inference he certainly left that impression. The gentlemen in a colloquy between himself, myself, and another gentleman, said that this restriction, defended by myself and the gentleman from Oklahoma [Mr. FERRIS] would take from the Five Civilized Tribes every vestige of protection they now have and that Members of the House might draw their own conclusions as to why we favor it.

Mr. Chairman, I yield neither to the gentleman from South Dakota nor to any other man on the face of the earth in my loyalty to the Indian people and their interests. I yield to no man in fidelity to my own race of people, and no man is willing to make a greater sacrifice than I in order that the helpless Indian may be protected in every possible way, so that they may in the end be merged into this great American citizenship and take care of themselves, as I verily believe they eventually will.

Recurring to the paragraph under consideration, I venture the assertion that never were trust funds handled by such devious and irregular course as is pursued in the administration of the funds of the Five Civilized Tribes of Oklahoma by this Government.

Here we are administering in a fiduciary capacity upon an estate worth many millions of dollars, paying salaries and expenses, buying, selling, bartering, exchanging, and receiving royalties, rents, and sales moneys, running up to the million-dollar mark on both sides of the ledger every year, for all of which the responsibility rests solely upon this Congress, and yet we do not take the precaution to put the slightest restriction upon our disbursing agent.

The purpose of this amendment is simply to bring the expenditure of these tribal funds under the same careful rules and regulations as are required with the funds of the Federal Government. To require regular submission to the proper committee of estimates necessary to cover the expenses of administration, so that this committee may pass upon the justice of these estimates and recommend the necessary appropriation to Congress before the money is spent.

If you will run back over the Indian appropriation bills for the past few years, the items for the Five Civilized Tribes in Oklahoma are sure to arrest your attention, for you will immediately notice that this is the one lone State in which there seems to have been a gradual decrease, year by year, in the expenses of administering the affairs of Indian tribes. To the uninitiated it might look as though at last some progress were actually being made toward a real settlement of at least a portion of Indian affairs. But if you will investigate more closely into these conditions you will find that as we blew out the candle at one end we simply lit the other and started it burning in full blast, for as the regular appropriations of funds from the Federal Treasury have been cut down just in that proportion has the use of tribal funds been correspondingly increased.

Mr. MURDOCK. Will the gentleman yield?

The CHAIRMAN. Does the gentleman from Oklahoma yield to the gentleman from Kansas?

Mr. CARTER. Yes.

Mr. MURDOCK. Now, if any expenditure is made in the Indian Territory after this last proviso has become a law, does Congress then pass upon the expenditures made—that is, the expenditures in the year ending June 30, 1913?

Mr. CARTER. That is the only object of the proviso—to bring these expenditures to Congress for appropriation.

Mr. BURKE of South Dakota. You can not spend a dollar.

Mr. MURDOCK. I wish the gentleman from Oklahoma would answer that question. Would we provide for it in a general deficiency bill?

Mr. CARTER. Let me say this: Under the present law the Secretary and the Comptroller of the Treasury have ruled—erroneously, I think—that they have plenary power to go into these tribal funds and expend them without any restriction whatever, except as regards schools, and even that is a very limited restriction.

Mr. COOPER. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from Oklahoma yield to the gentleman from Wisconsin?

Mr. CARTER. I will be glad to yield to the gentleman.

Mr. COOPER. Do I understand the gentleman from Oklahoma to say that there are officials who have authority without restriction to use the funds of these tribes?

Mr. CARTER. Mr. Chairman, that is absolutely true, and the only thing we seek to do by this amendment is to stop that practice. That is absolutely the only purpose of this amendment.

Mr. COOPER. Does the gentleman mean that the officials in the office at Muskogee use those funds to suit themselves, without any limitation?

Mr. CARTER. Oh, they are limited by the Secretary of the Interior, but not by Congress.

Mr. COOPER. Has the Secretary of the Interior the authority under existing law to use those tribal funds absolutely in his discretion?

Mr. CARTER. He claims to have the right, and he exercises the right; so that answers the gentleman's question completely.

Mr. COOPER. Then I am free to say that I do not think any man, any executive officer, should have unlimited control over Government funds or trust funds.

Mr. CARTER. Yes, Mr. Chairman; and every fair-minded Member of this House thinks the same way; and thinking that, they can not possibly be consistent and still vote against this restriction.

Mr. JACKSON. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from Oklahoma yield to the gentleman from Kansas?

Mr. CARTER. Yes.

Mr. JACKSON. The gentleman had in mind the funds collected and used by the Commissioner to the Five Civilized Tribes, Mr. J. George Wright, and Assistant Commissioner Ryan as having been applied to the payment of their salaries as an illustration of what the gentleman from Wisconsin asked about.

Mr. CARTER. I have not the figures at hand, but——

Mr. COOPER. The gentleman can approximate the amount.

Mr. CARTER. There was paid out last year $660,000 under the supervision of the Indian Office from the funds of the Five Civilized Tribes in Oklahoma, about all of which Congress knows nothing on the face of the earth. The Commissioner of Indian Affairs first stated that there had been paid out some $900,000 of these funds; but he afterwards corrected that statement, at the suggestion, I understand, of my friend from South Dakota [Mr. BURKE], and reported the amount as only $660,000.

Mr. BURKE of South Dakota. Does the gentleman seriously make that statement?

Mr. CARTER. Yes, sir; I have the authority of the gentleman from South Dakota for making it.

Mr. BURKE of South Dakota. The amount of tribal moneys expended out of the tribal trust funds to tribal officials was only $56,000, and then $17,000. Not one dollar of it went to Commissioner Wright or any Union agent.

Mr. CARTER. Oh, Mr. Chairman, I said not one word about the money going to Commissioner Wright. I said that $660,000 had been expended of the tribal funds without any authority, and I got my information from the gentleman from South Dakota himself.

Mr. BURKE of South Dakota. "The gentleman from South Dakota" never gave the gentleman that information.

Mr. CARTER. Will the gentleman state whether or not $660,000 was expended out of those tribal funds?

Mr. BURKE of South Dakota. It was not.

Mr. CARTER. Mr. Chairman, I find that there was $1,177,000 used of all funds last year, according to the most recent report of the commissioner, and of that amount Congress appropriated $277,000. I think that with the exception of a few small items, if you will deduct $277,000, the amount appropriated by Congress, from the total amount consumed, you will get a fair estimate of the amount expended from the tribal funds.

Mr. BURKE of South Dakota. The congressional appropriation was over $360,000. Why can not the gentleman state the figures correctly?

Mr. CARTER. I understood the gentleman in his remarks to-day to say $277,000.

Mr. BURKE of South Dakota. No; I did not say so.

Mr. CARTER. How much does the gentleman say?

Mr. BURKE of South Dakota. I say $370,000.

Mr. CARTER. Very well; we will accept that statement; and that will leave considerably more than $660,000 expended from tribal funds.

Now, Mr. Chairman, there has developed right here in this debate a situation which ought to convince this committee of the necessity of Congress taking direct supervision of these funds. The three or four different Members who have attempted to give the expenditures of these funds for the last year all seem to differ. The gentleman from Oklahoma [Mr. FERRIS] makes one statement, $900,000; the gentleman from South Dakota [Mr. BURKE] makes an entirely different statement, and I myself seem to labor under a different impression from both the other gentlemen. All three of us are members of the Indian Committee and have, I assume, done our utmost to get the proper information. As a matter of fact, Mr. Chairman, the Commissioner of Indian Affairs, the principal officer charged with the responsibility of administering these funds, has made several different and distinct statements as to the amount expended out of the tribal funds for the last fiscal year. I called attention to these discrepancies before the Indian Committee, and offered these errors in the commissioner's statement as sufficient reasons why Congress should take immediate supervision over the expenditure of these funds.

Certain members of the Indian Committee took exception to what I had to say and indirectly accused me of making charges against the commissioner. I deny that I made any such charge. The fact remains, however, Mr. Chairman, that the commissioner did make several gross errors in his statements about these funds. But it is only human to err. It is but natural that such mistakes should be made by any man given such unbridled use of trust funds. So, without any reflection on the gentlemen who have given these conflicting statements, I still

insist that these discrepancies in the commissioner's statements, these conflicting ideas in the minds of members of the Indian Committee, should be sufficient evidence to convince the most skeptical of the necessity of Congress taking supervision of these funds, as it does with the funds of the Federal Government, and all other funds for which it is responsible.

Mr. BURKE of South Dakota. Will the gentleman yield?

Mr. CARTER. Certainly.

Mr. BURKE of South Dakota. Does the gentleman say that the $217,000 spent by way of equalization is an expenditure not authorized by Congress?

Mr. CARTER. Mr. Chairman, it does not matter whether the expenditures are authorized or not; that has nothing to do with the case. It is not material whether the money was spent for a good or bad purpose. It does not matter whether it was spent for salaries, for per capita payments to Indians, for equalization payments, for expenses or what not. The point is that the money is spent in a loose, haphazard manner, without any safe check by Congress.

Since Congress is solely responsible for the administration of these funds, does the gentleman think there is any valid reason why Congress should not take some kind of supervision over them? Would any man attempt to justify the contention that trust funds might be handled more loosely than one's own individual funds? Is it not the duty of every member of this committee and of this House, no matter what his other views may be, to see to it that no such charges of loose administration and wanton extravagance might be brought to our door in the future?

Congress is to-day facing a responsibility which it can no longer evade or put aside. It is no defense to say that this Congress did not pass nor construe the law under which these abuses have grown up, for we well know that Congress has the power to change the law whenever it desires to do so. Then, suffice it to say, that since Congress has this day been served with ample notice of the condition of the funds of our helpless wards, henceforth and forevermore the responsibility rests solely upon the shoulders of the Members of this House.

I have no desire to cut off any necessary expense, but I do say there should be some system in handling these tribal funds, and that since Congress is responsible for administration, not one single penny should be expended without specific appropriation by Congress.

Mr. BURKE of South Dakota. And yet the proviso which the gentleman is in favor of excepts the amount which may be expended for education, and $371,000 was expended last year for that.

Mr. CARTER. O Mr. Chairman, the amount used for schools is the one single amount that is limited by law.

Mr. BURKE of South Dakota. You think there is a difference between them?

Mr. CARTER. Certainly.

Mr. BURKE of South Dakota. There is not a particle of difference.

Mr. CARTER. But there certainly is such difference and the department recognizes it and so construes it.

Mr. BURKE of South Dakota. Not a particle of difference.

Mr. CARTER. O Mr. Chairman, the gentleman is clearly mistaken about that. I ask him to simply refer to section 10 of the act of April 26, 1906, and he will find that it specifically provides that there shall not be spent for the schools of any of the respective tribes more than was spent in the year preceding the passage of the law, and that is the only restriction upon these funds, which the gentleman should know if he does not know.

Mr. COOPER. I should like to ask the gentleman from Oklahoma another question, because this statement is one of the most significant that I have ever heard in debate recently in this House. As far as the expenditure of funds is concerned, does the gentleman know of any other executive officer in this Government who can without limitation draw on the funds in the United States Treasury, or any funds, without authority of Congress?

Mr. CARTER. I never heard of any such outrageous handling of any kind of trust funds in my life.

Mr. CAMPBELL. Has the gentleman heard of the Reclamation Service?

Mr. CARTER. I am not familiar with the Reclamation Service. If it is conducted in that way, it should not be.

Mr. CAMPBELL. Well, it is.

Mr. CARTER. It does not matter. It should not be.

Mr. CAMPBELL. And the Forestry Service.

Mr. CARTER. The gentleman from South Dakota [Mr. BURKE] speaks very confidently of the Five Civilized Tribes being on the verge of a final settlement of their affairs. My friends, we have heard that seductive statement on the east side of Oklahoma for the last 18 years, and yet we seem to get no nearer the coveted final settlement. The gentleman from South Dakota ought to know that our affairs can not be finally settled up until all moneys are collected, and that will not come about for several years yet, for the proceeds of the sales of lands already disposed of will not all fall due for two or three years, and we will never get a settlement of our tribal affairs until the departments are jarred loose from the free and untrammeled use of these funds. It is but natural that we should not get a settlement under present conditions, when we have a horde of officials, honest though they may be, given absolute and free access to the funds of the tribe.

Mr. BURKE of South Dakota. Will the gentleman yield?

Mr. CARTER. Yes.

Mr. BURKE of South Dakota. The gentleman does not wish to tell the House that expenditures have not decreased in the Five Civilized Tribes?

Mr. CARTER. That certainly is my belief.

Mr. BURKE of South Dakota. The gentleman knows that they have substantially decreased, notwithstanding we are carrying $100,000 for district agents.

Mr. CARTER. I am speaking of appropriations.

Mr. BURKE of South Dakota. Expenditures. I call the gentleman's attention to the statement which will appear in the RECORD in my remarks.

Mr. CARTER. Well, before you took supervision of our affairs it did not cost $1,300,000 to administer them.

Mr. BURKE of South Dakota. Heaven knows how much it did cost.

Mr. CARTER. Heaven knows how much it costs now. It never cost any such amount as that to manage the affairs of the Five Civilized Tribes. That would be a physical and financial impossibility, because the tribes did not have that much annual income.

Gentlemen on that side of the aisle rail at this amendment because, as they say, it will disorganize the Indian service; because, as they say, the service will not be able to do sufficient work, for the reason that it will not in the future have sufficient funds if this restriction is retained in the bill. The man that makes such a statement as that assumes that Congress will not do its plain duty, and makes the charge that this Congress has not the energy nor the ability to make the appropriation necessary for such service.

I want to say, Mr. Chairman, that I proposed this amendment to the subcommittee considering the Indian appropriation bill more than six weeks ago, and during all that time the honorable Commissioner of Indian Affairs has not furnished the committee with any estimate as to the amount that should be appropriated if this amendment was retained in the bill. And why? Ah, there is the rub. If these estimates had been furnished our committee, all necessary amounts would have been placed in the bill and that would have deprived the gentleman from South Dakota [Mr. BURKE] and the gentleman from Minnesota [Mr. MILLER] of the last vestige of misleading argument at their command. That would have deprived these distinguished gentlemen of parading before this House this very statement about disorganizing the Indian service.

The gentlemen are unduly alarmed when they think that this Congress will adjourn without making these appropriations if the departments of this Government do their duty. The gentlemen have not yet gotten away from Washington for this session of Congress and may not get away until far into the dog days. It should only take a few short hours' committee work, and less time on the floor of this House to put through an appropriation for all the items necessary to this service, and Congress will have ample time to do it and will do it. Then the result of this restriction will be not to impede the administration of Indian affairs in Oklahoma, but to facilitate and improve such administration and prevent a repetition of the wanton extravagance that seems to have been so freely indulged in during the recent past.

Now, with regard to the district-agent amendment I have only time to remind this committee that Oklahoma has been a State for almost five years and she is as fully equipped to protect and care for her minors as the average State in this Union. Our courts are vested with full jurisdiction of probate matters and the judges have the right to appoint attorneys for incompetents. Furthermore, Mr. Chairman, we have in Oklahoma a State board of charities and corrections, presided over most efficiently and courageously by that fearless defender of the weak and helpless—Miss Katie Barnard. There has been created in her department a special bureau for this very purpose—the care of Indian minors—with an attorney at its head, equally capable and enthusiastic, in the person of Dr. J. H. Stolper, and I would

like to see the color of the grafter's eye that puts any shady deal across the plate when these two crusaders are on watch.

The CHAIRMAN. The time of the gentleman from Oklahoma has expired.

Mr. BURKE of South Dakota. Mr. Chairman, I now yield five minutes to the gentleman from Illinois [Mr. GRAHAM].

Mr. FERRIS. Mr. Chairman, I will also yield five minutes to the gentleman. How much time have we remaining on this side?

The CHAIRMAN. The gentleman has 37 minutes. The gentleman from Illinois is recognized for 10 minutes.

Mr. GRAHAM. Mr. Chairman, getting time from both sides, I suppose I owe a divided allegiance in this matter. That is exactly the situation, for I am on both sides of the pending propositions. It seems to me, Mr. Chairman, that the mere reading of the proviso in question is a sufficient argument in its favor:

Provided further, That during the fiscal year ending June 30, 1913, no money shall be expended from the tribal funds belonging to the Five Civilized Tribes, except for schools, without specific appropriation by Congress.

The inference which it is necessary to draw from the language is that heretofore these moneys have not been specifically appropriated by Congress. That is certainly a very bad business method. It seems to me that such discretion should not be lodged in the hands of any man unless he be an angel, and there are very few of them in the Indian service. It seems to me, however, that the phrase "except for schools" should also be stricken out, and that all these moneys should be specifically appropriated.

I think, therefore, that the mere reading of that proviso is sufficient argument in its favor, and I shall vote for it. At the same time, what little experience I have had in these matters convinces me that the 16 district agents are among the most useful men to the real Indians that there are in the service. This question involves only the real Indians, not the "near Indians," not those who are practically white men and who are capable of attending to their own affairs.

There are down there about 40,000 real Indians, and they represent property assets of about $40,000,000. My understanding of the situation is that these 16 district agents have been giving real attention to the rights of those real Indians, and that if they are removed those real Indians will be a prey to white men and "near Indians," who desire the possession of their property. I have in my hand a statement from a citizen of that State in which he says that in the county court of Seminole County there are now over 1,400 probate cases involving the rights of real Indians. The custom down there has been for some white man, in case of the death of an Indian who has property, to go to those who would inherit his property, and through them apply to be appointed guardian. For a consideration the natural guardian gives to this white man the right to qualify as the guardian. As soon as he does that he advertises his ward's real estate for sale, and it is sold, very often for a sum of money that would not be more than its rental value for one year. I have an instance before me of an Indian boy whose guardian had rented two allotments belonging to the boy for $79 a year, and of the $79 only $17 went to the child and the rest of it for expenses, $27 of that amount going to some man who went on the request of the guardian simply to look at the land and nothing more.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

Mr. GRAHAM. I could not very well; I have not the time.

Mr. CARTER. Just for a question.

Mr. GRAHAM. Will the gentleman get me more time?

Mr. CARTER. I shall do my best.

Mr. GRAHAM. That is not enough. I have in my hand the opinion of the Supreme Court of the United States, filed on the first day of this month, in the case of Heckman and Owen *v.* The United States, involving this very question and these very lands. I read from a statement in the opinion of the court by Mr. Justice Hughes:

The Government states in its brief that between July 14, 1908, and October 12, 1909, the United States brought 301 bills in equity against some 16,000 defendants to cancel some 30,000 conveyances of allotted lands, made by as many or more grantors, members of the Five Civilized Tribes, upon the ground that the conveyances were in violation of existing restrictions upon the power of alienation.

The court in this case decides that the case was well taken, upholds the petition of the attorney for the Government, and cancels the conveyance. That case stands upon the same footing practically with 30,000 other cases of similar character. Now, where there are 40,000 real Indians and 30,000 conveyances have been made, which should not have been made, according to the Supreme Court of the United States, is that not sufficient evidence to prove that those Indians need somebody to stand between them and the would-be grantees who want possession of their allotments?

Mr. CARTER. Mr. Chairman, will the gentleman yield there? We will get him some more time.

Mr. GRAHAM. Mr. Chairman, I repeat, that under these circumstances somebody is needed to look after the rights of not the "near Indians," but the real Indians; that 40,000 Indians, 30,000 of whom have made conveyances which the Supreme Court has declared to be void. My understanding of the situation is that these 16 district agents have been doing that kind of work, have been in touch with the probate courts, have been watching the proceedings in those courts, and representing those Indians and preventing them from losing or sacrificing their rights. If that be so, I say it would be a very unwise act of Congress, by cutting off an appropriation from which they get their salaries, to deprive the real Indians of the services of those 16 men who are doing real work for the real Indians.

So, while the proviso recommended by the majority of the committee may be a wise one, and I shall vote for it providing that no moneys of any considerable amount should be taken out of the tribal funds without appropriation of Congress, yet, on the other hand, I say that these 16 district agents are the saviors of the real Indians, standing between them and those who would deprive them of their inheritances, deprive them of what the Supreme Court says is theirs and ought to be theirs under the law.

Therefore, Mr. Chairman, it was exceedingly apropos that both sides should yield me time.

Mr. FERRIS. Mr. Chairman, will the gentleman yield?

Mr. GRAHAM. Yes.

Mr. FERRIS. I know how fair-minded the gentleman is on matters of this kind, and I know that he desires to be fair-minded at this time. These Indian agents, if they perform any service at all, perform it in connection with the probate courts. These 30,000 suits to which the gentleman referred are suits brought by the Department of Justice, for which we appropriate $50,000 each year from the Appropriation Committee, and have done so for four years. They have made an estimate for it again this year. These suits are handled exclusively by the Department of Justice.

Mr. GRAHAM. I was aware of that and I mentioned the fact that there were 30,000 suits pending merely to illustrate the other fact that there must have been 30,000 instances in which the grafters were after these real Indians to get their lands away.

Mr. CARTER. Will the gentleman allow me to state that two such suits were brought to cancel conveyances which I myself gave, and that a majority are those kinds of cases?

Mr. GRAHAM. Then the whole 30,000 are not like the ones decided by the court.

Mr. CARTER. Certainly not, but nobody knows how many of them are; probably a couple of thousand of them are meritorious suits.

Mr. GRAHAM. I do not refer to you, my friend, as an Indian, and if I had my way you would not appear on the books as an Indian at all. There are now men classified as Indians who are little more Indian than I am, and their presence among the real Indians is a serious trouble and that trouble will never be removed——

Mr. CARTER. Perhaps the gentleman would like to have me removed from the rolls in order that he might take my place.

Mr. GRAHAM. I have no desire to go on the rolls, but if I did I would think I had as much right there as some gentlemen who are on the rolls now.

Mr. FERRIS. Mr. Chairman, I yield the gentleman two minutes more.

Mr. GRAHAM. There is but little more I want to say. I think I have made my position clear on the matter. I am as convinced as I can be that Mr. Valentine, Commissioner of Indian Affairs, was correct when testifying in this matter before the Committee on Investigation of the Interior Department that if these 16 Indian agents were removed there would be 16 White Earths down in Oklahoma. He qualified that by saying 8 White Earths, because each agent represents 2,500 Indians, so 2 agents would represent about as many Indians as there are in the White Earth Reservation in Minnesota, and what he meant was this, that if those agents are removed then the real Indians and their property are liable to become the prey of every designing knave down in that country who wishes to get the Indians' property, and the result will be 8 White Earths down in Oklahoma and that means an unbearable condition, a condition that is a stench in the nostrils of every honest American citizen. [Applause.]

Mr. STEPHENS of Texas. Will the gentleman from South Dakota use the rest of his time?

Mr. BURKE of South Dakota. I only have 22 minutes remaining, which I am going to divide up between two speakers only, and I believe I have the closing, and I would prefer the gentleman should use some of his time, unless he is to have only one speaker.

Mr. STEPHENS of Texas. Mr. Chairman, I yield to the gentleman from Kansas [Mr. MURDOCK] five minutes.

Mr. MURDOCK. Mr. Chairman, this second—that is, the last—proviso in this paragraph appeals to me because it is, to my mind, a rather momentous chapter in the story of the American Indian. Some 20 or 30 years before the Civil War several of the southern Indian tribes, afterwards known as the Five Civilized Tribes, were transported to the Indian Territory, and under a treaty made with the white men it was literally prescribed that as long as grass grows and water runs these Indians were to hold this new, duly described land. Now, it happened that I lived in my youth next to the Indian Territory, where I could observe, in a way, its development. Some 25 years ago a citizen of my city, a man by the name of Payne, whose memory is much revered in Oklahoma, a man who for a period served, by the way, as one of the Capitol police at this end of the Capitol, started an agitation for the opening of a tract of non-Indian land in the center of all the rest of the Indians' reserve, namely, Oklahoma, and finally David Payne, pioneer, a man of much repute and worth, succeeded in opening Oklahoma to settlement. We all knew in that day in my part of the country that here was the beginning of the end of the American Indian; that here was the entering wedge. For we knew that you could not put a white population in the center of the Indian country without dissipating finally the last resting place of the red man. And so it proved. Only a few years after the opening of Oklahoma the people of the country began to realize the dreadful state of affairs that obtained in the Five Civilized Tribes. Crime was rampant. Congress appointed the Dawes Commission. I remember the members of the commission well; I interviewed them as a young newspaper reporter. They were five grave, august eastern statesmen. They took a very cursory view of the condition in the Indian Territory and promptly impeached it. There followed their recommendation an appraisement of the Indians' lands and allotment. The more recent history the gentleman from South Dakota has given to you, and correctly. Now, as revealed in this proviso, we come to another chapter, almost the last—the proposition that Congress shall surrender the control over the expenditure of money in the conduct of the affairs of these Five Civilized Tribes.

So far as the mixed blood is concerned I have little sympathy for him. I believe him as capable in the management of his affairs, almost in every instance, as I am in managing mine, but as a westerner who has watched the migration of the Indian and his gradual disappearance, I do have concern for the full blood, and I do not believe that this Government, in its right of rigid control and audit of expenditures, should take its protecting arm away from him. Now, the way to keep that protecting arm over the American Indian as we find him in the Five Civilized Tribes as a full blood is to retain this last proviso. That proviso means that no expenditures shall be made for these Five Civilized Tribes unless this Congress, not the Secretary of the Interior, not some impossible, ridiculous, tribal council, not some special agent in Oklahoma, but this Congress, acting through the House and the Senate, shall specifically appropriate for all the expenditures in the tribes. [Applause.]

Mr. COOPER. Mr. Chairman——

The CHAIRMAN. For what purpose does the gentleman from Wisconsin rise?

Mr. COOPER. I wanted to address myself to the question before the House for three or four minutes.

Mr. FERRIS. We have not very much time. How much time does the gentleman desire?

Mr. COOPER. Not more than two or three minutes.

Mr. FERRIS. I will say that every bit of the time has been promised, and numerous requests have been turned down.

Mr. STEPHENS of Texas. Will the gentleman from South Dakota [Mr. BURKE] use some of his time?

Mr. BURKE of South Dakota. Mr. Chairman, I yield 10 minutes to the gentleman from Oklahoma [Mr. MCGUIRE].

Mr. MCGUIRE of Oklahoma. Mr. Chairman, I shall address myself principally to the proposition to discontinue the employment of what is known here as "district agents." But before I enter upon that feature of the discussion I will say that I am a little bit afraid that the House has some misunderstanding about the so-called enormous expense of the agency at Muskogee, which controls the Five Civilized Tribes, half the area of the State of Oklahoma, and about one-half of all the Indian business of the United States. When you come to understand, gentlemen, that right here in a section of country as big as the average State of the Union is nearly half of all the Indian business of the United States, and employs only 216, and does involve but a small portion of expenditure outside of these reservations in connection with the Indian business, you will see that it may not necessarily be such extravagant administration. The statement was made here the other day that the expenses of the commission at Muskogee had increased over what they were in the time of the Dawes Commission; that the first appropriation for the Dawes Commission was $16,000, whereas to-day it was $150,000. Gentlemen, that may be misleading. In fact, it is misleading. Why, I can remember the day when Sitting Bull was costing the Government nothing except to guard the frontier. There were no Indian minors there to supervise, and consequently no expenditures. I can remember distinctly when the expenses in connection with the Five Civilized Tribes were comparatively little. When was that? When they held their land in common, when there was absolutely nothing to do by that Indian agency save and except to pay these annuities twice a year. Oh, how things have changed, gentlemen. There is not one single acre of land in Oklahoma to-day, save and except the reserves, that is not embodied in an Indian allotment—that is, so far as it may concern the Indians. That which is the case with the Five Civilized Tribes is absolutely the case with every Indian tribe in the State of Oklahoma.

Take the Pawnee Tribe, for instance, in my own county. A few years ago an agent and two clerks could transact their business. Why? Because they held their land in common, and all they had to do was to keep an account with the Government of the United States. Ah, but the country was open to settlement, and some gentlemen say then certainly the expenditures ought to decrease. Is that true? Every Pawnee took an allotment. Then followed the local government; then followed 50 guardianship cases in my county, and a number of those guardians appointed by reason of political favoritism. Some left the country, some settled their accounts squarely and honestly, others met with misfortune, some moved away, and it was finally discovered that these cases required attention from the Department of the Interior. And then it was a special agent was sent there to look over those cases. And that which was true in that county was true in every county wherever there were Indians in the State of Oklahoma. Hence the necessity of appointing the district agents they want to dispose of here. Some of those agents have made mistakes. There may be men among them who are incapable and who are dishonest, but the practice is right, and the principle ought to be adhered to by this House and by this Congress.

Ah, the gentleman from Illinois [Mr. GRAHAM] gave you a volume of information when he told you that in one county—think of it—in one county among the Five Civilized Tribes there were 1,400 guardianship cases.

Mr. CARTER. Will the gentleman yield?

Mr. MCGUIRE of Oklahoma. I yield.

Mr. CARTER. I just wanted to ask the gentleman where the district agents were when that was done?

Mr. MCGUIRE of Oklahoma. I will get to that. The district agents when some of that was done were on the ground. But the guardianship cases were so numerous they could not get to them—they needed more agents; and I say instead of decreasing the agents you ought to increase them. It was found to be a necessity at the east end of the State where the Five Civilized Tribes were after we had the first experience in the western part of the State, which was settled up by the white man.

Now, they say there has been some graft. There has been some graft; some graft that I regret exceedingly. It was stated by the gentleman from South Dakota [Mr. BURKE] that there had been an attorney's fee of $12,000 paid to an attorney practicing here in the city of Washington. I remember that very distinctly.

Mr. CARTER. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from Oklahoma yield to his colleague?

Mr. MCGUIRE of Oklahoma. I yield to the gentleman.

Mr. CARTER. Can the gentleman give to the House the name of this attorney and any information about why he was appointed?

Mr. MCGUIRE of Oklahoma. Regretting it as I do—I do not like to mention names—the gentleman referred to, who was receiving this fee, which was nothing more nor less than graft, was a man by the name of Ormsby McHarg. But after the matter was called to the attention of the President of the United States, Mr. Taft, he discharged that attorney, and every time the Interior Department has discovered a thing of this

kind it has been made in the end right. I say that things have been done down there that ought not to have been done; but let me tell you that if you discontinue those agents who are now in every county, the interests of the Indians will not be as well protected as they are now. The government at Muskogee can not reach every section of that State, 150 miles away. Do you realize, gentlemen, that Muskogee is 150 miles away from some sections of the Five Civilized Tribes? I say that that local government can not reach out 150 miles and take care of 1,400 guardianship cases in one county, and what is true in this county is true in practically every other county.

Now, if a probate judge is overtaxed, or, if in some instances, he should be showing political favoritism, there can be no harm in having some additional supervision. Then if the Indian agent should happen to be incompetent, or should happen to be dishonest, in any case there can be no harm coming from having him superintended or watched by a good, honest probate judge. The least you can say, gentlemen, is that this is putting up a further guard against the destruction of the minor and the incompetent Indian in that country. I say, again, there are 27 or 28 counties within the Five Civilized Tribes, with 14 agents—a little more than one to each two counties—and I undertake to say that there is not one of those agents who is not having all he can do. If one happens to be dishonest, if one happens to be incompetent, relieve him. But, gentlemen, do not relieve those incompetent Indians down there of this service that is absolutely necessary for the preservation of the property of those Indians who have to cope with the white man on every side of them. [Applause.]

Mr. Chairman, I yield back the remainder of my time.

Mr. STEPHENS of Texas. Mr. Chairman, I yield to the gentleman from Wisconsin [Mr. COOPER] three minutes.

Mr. COOPER. Mr. Chairman, I desire to say a word only concerning the surprising fact developed here that the Secretary of the Interior has had unlimited discretion in the expenditure of the trust funds of those five tribes. I am sure that nowhere else in the United States is such power over trust funds or public funds of any kind vested in any executive officer. The constitution of the State of Wisconsin expressly prohibits the payment of any money out of the State treasury except in pursuance of an appropriation by law. Of course, no man ought to have access to public funds, to expend them, without restrictions, in his discretion; much less should he have access to the funds of a cestui que trust, to expend them without limit at his pleasure. Therefore I am uncompromisingly in favor of fixing by statute the maximum amount which can be expended by the Secretary of the Interior in behalf of these Indians for any purpose.

As the gentleman from Illinois [Mr. GRAHAM] and the gentleman from Oklahoma [Mr. MCGUIRE] suggested, there ought to be officials there to see that the interests of the full-blood Indians are thoroughly protected against adventurers seeking to rob them. But the maximum possible amount that may be expended for district agents and the maximum amount that can be used for any other purpose should be fixed plainly and absolutely in the statutes of the United States beyond the mere discretion of any officer of the Government.

We should by law protect the trust funds of helpless Indians as the constitutions of the respective States protect their public funds against unrestricted expenditures by executive officers.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STEPHENS of Texas. How many speeches does the gentleman from South Dakota expect to have on his side?

Mr. BURKE of South Dakota. I shall use the balance of my time in one speech.

Mr. STEPHENS of Texas. Then I will yield to the gentleman from Oklahoma [Mr. FERRIS] such time as he may desire.

Mr. BURKE of South Dakota. Mr. Chairman, what time is there left now?

The CHAIRMAN. The gentleman from South Dakota has 12 minutes and the gentleman from Texas has 22 minutes remaining.

Mr. FERRIS. Mr. Chairman, the whole debate has resolved itself into the question as to whether or not this amendment leaves enough officials down there to transact legitimately and properly the business that the Federal Government has reason to expect to be transacted. I shall sweep aside all matters not pertinent to this one proposition and address myself to it.

This bill carries $150,000, and that has been agreed to. That amount can be used for administrative purposes in the Five Civilized Tribes in any way the Indian Office desires. It is without restraint, without limit; it is theirs for district agents, special agents, or anything they desire.

Mr. COOPER. I want to ask the gentleman one question right there.

The CHAIRMAN. Does the gentleman from Oklahoma yield to the gentleman from Wisconsin?

Mr. FERRIS. I do.

Mr. COOPER. Will that permit the employment of these district agents?

Mr. FERRIS. Precisely; and they can spend any part of it or all of it for that purpose, if they so desire.

Mr. CAMPBELL. Not unless you strike out this proviso.

Mr. FERRIS. This proviso has nothing to do with the text. The text appropriates $150,000 for administration, and they can use it for any purpose they desire. Let me follow out this line of thought. The $150,000 carried in this bill will employ 60 people, at $2,500 per annum each. They can be used for any purpose desired.

This bill, in addition to this $150,000 specifically designated for Oklahoma, carries $200,000 for Indian police, which is a field service, and can be used wherever desired in the field. In addition to that an item has already been agreed to, carrying $85,000 for district agents, the very same class of service that is now under consideration. Of course they are not by the bill specifically designated for Oklahoma, but the department can send them there if they desire. I hope the gentleman from Wisconsin [Mr. COOPER] will listen to this, because I want him to hear it.

This bill carries $85,000 for district agents, precisely the class of employees referred to by the gentleman from Illinois [Mr. GRAHAM]. Further, the Indian commissioner and the Interior Department can designate any or all of that $85,000 for district agents to Oklahoma, if that is desired. They can send any part of that $200,000 worth of police to Oklahoma if they desire. I want everyone to understand there is no limitation or restraint on the expenditure of these funds mentioned.

In addition to that, the bill is full of appropriations for Indian farmers, for Indian matrons, for all kinds of field service, and for the protection of Indian wards generally.

In addition to that—and I want this committee to have this fact before it—the Department of Justice has exclusive control of these 34,000 suits that the gentleman from Illinois [Mr. GRAHAM] refers to. The Indian Office has nothing to do with that. For the last four years we have appropriated each year $50,000, through the regular Committee on Appropriations, for the Department of Justice, who go down there and take this matter in hand entirely independent of the Indian Office or Interior Department.

So, in addition to the $150,000 here appropriated, in addition to the $85,000 here appropriated, in addition to the $200,000 here appropriated, which items are already agreed to, we appropriate, through the Committee on Appropriations, of which the gentleman from New York [Mr. FITZGERALD] is chairman, $50,000 each year to carry on these suits.

Now, I want to repeat what I said last Friday. I said then that I was not one who wanted to withdraw protection from the full-blood incompetent Indians of Oklahoma, and I say so now. I do not advocate it now, nor will I next year, or the next year if I am here, or wherever I may be as a private citizen. We have a little handful of full-blood Indians who need some protection, but $150,000 will employ 60 people at a salary of $2,500 a year for each one of them, and that amount is carried in this identical bill. An item of $85,000 is already agreed to, and that will employ a lot of district agents, and the Interior Department can send any or all of them to Oklahoma if they desire.

There is in the Committee on Appropriations—and I went to see Mr. Courts, the clerk of that committee, to ascertain this—now estimated for and going to be allowed $50,000 for the Department of Justice again this year. I say here on my responsibilty as a Member, with a knowledge of this country and these Indians covering 25 years, that 60 people are probably too many rather than too few. Sixty people, at $2,500 a year, are enough for full and complete administration for the little handful of full-blood Indians who remain there, and the rest of them do not need supervision. They come to you and they say, "We have 101,000 allottees." That is true. But they do not tell that they are made up of white men, negroes, intermarried citizens, men who are not even vaccinated as Indians, let alone being helpless incompetents, as some of these people would have you believe. The closing up of these affairs in Oklahoma is like the ever-recurring Japanese war that we hear about every year when the Army and Navy bills are up for passage. The prophesied trouble is feigned for the purpose of merely perpetuating themselves in office.

Their fears are not well grounded. Those people are nearly all competent in the Five Tribes part of our State. Of course, this does not apply to the backward Indians of other reservations, but it is certainly true over there. Some of the so-called

Indians, why, if they were even vaccinated for Indians it would not "take." Men like Senator OWEN, like the gentleman from Oklahoma [Mr. CARTER], leading bankers, leading merchants, are Indian allottees, are a part of this 101,000 allottees. With what propriety can the American Congress put minute and detailed administration upon such people who do not desire it and do not need it? Twenty-five hundred dollars apiece for 60 men, I again repeat, is apt to be too much administration rather than too little. Already the State is reeking, groaning, and complaining and asking to be relieved from it. The Indians are asking, When will we get our property? When can we be free to manage our own affairs? They say that it is because we seek to defend men who are irregular. We have not more citizens in Oklahoma that are irregular than in other States. But, my friends, over in the grand old State of Virginia the other day a little irregularity has recently transpired. It brought a pain in the heart of every good man to know that the grand old Commonwealth of Virginia should be so blighted by such a terrific crime. We have a few things in Oklahoma, but nothing in comparison with that which took place in Virginia. We have some few people there that are not good people, but because we have a few people there that are not good are you going to indict and challenge all? Are you on a false theory going to gobble up in salaries and trips to Washington all of the Indian funds and make great drains on the Federal Treasury by sending 211 people down there to hold jobs that are not needed?

But even if I am mistaken when I say that we have too much administration rather than too little, this amendment does not for one moment keep this Congress from bringing in a bill here to-morrow or the next day or the next day to provide for any people that may be needed on the pay rolls. I will be entirely frank with gentlemen. I think that each one of these tribes should have an attorney if they want it. I will support such a bill. I think perhaps they ought to have a chief. I will support such a bill and help get it out of the Indian Committee. I think each chief should have a secretary. I will help support that and help get it out of the Committee on Indian Affairs. I will, and some of the other Members will, display some activity to get those things out of the committee, but to let present conditions go on and let over a million dollars be expended in salary and expenses annually ought not to longer prevail. You may roll it under your tongue until you are tired and these stubborn facts will not down. You may assert that you spend this for certain purposes, and that for another purpose, and this for an additional purpose, but, my friends, they do expend the Indian money and they ought not to expend it. I call your attention to the printed hearings, on pages 275, 276, 277, and 278, which show what is going on down there. I will print for the benefit of the House the pages of the hearings for their information:

Mr. FERRIS. You are acquainted with the organization of the Muskogee Agency, are you not?

Commissioner VALENTINE. Yes, sir.

Mr. FERRIS. You are acquainted with the commissioner, Mr. Wright, also Dana H. Kelsey?

Commissioner VALENTINE. Yes, sir.

Mr. FERRIS. I ask you if these agencies are not pretty highly organized with reference to heads and subheads?

Commissioner VALENTINE. I should state substantially so.

Mr. FERRIS. How much disaster and havoc would be wrought if we cut off that $74,000 and appropriated $100,000 for carrying on the affairs of the Five Civilized Tribes and placed it under the direction of the Interior Department, so that the Secretary could cut the expenses and direct that the expenses down there should come within the appropriation?

Commissioner VALENTINE. I should say that that would be a little drastic for the first year, until they saw how the organization worked out.

Mr. FERRIS. But is it fair to say just the first year, when for three consecutive years the incoming Congress has directed, in terms as positive as it could write them, that those affairs should be closed up in one year?

Commissioner VALENTINE. Not in that sense, but during the first year in which a very substantial change in reorganization has been made.

Mr. FERRIS. But it would not be without ample notice?

Commissioner VALENTINE. I think anyone can concede that it will be ample notice.

Mr. FERRIS. I will read from the act of 1908; and I find this language on page 24 of that act (Public No. 104); the title was "For completion of the work":

"For the completion of the work heretofore required by law to be done by the commissioner to the Five Civilized Tribes, $143,410, said appropriation to be disbursed under the Secretary of the Interior, and the Secretary of the Interior is directed to so disburse this appropriation as to complete said work by July 1, 1909."

Commissioner VALENTINE. That is very clear standing by itself, Mr. FERRIS, but I think it only fair to call your attention to other provisions in some of those bills which made it substantially impossible to comply with them. There were not only those provisions in the bill, but suits pending which made it absolutely impossible to comply.

Mr. FERRIS. The suits are being handled by the Department of Justice, are they not, for which specific appropriations are made?

Commissioner VALENTINE. That is not the point; but we could not wind up the affairs of these tribes until we knew how the suits were decided.

Mr. FERRIS. But inasmuch as that matter is being handled almost exclusively from the Department of Justice—I think I am right about that—don't you think it fair to say that these expenses ought to be diminished and that this agency force ought to be cut down?

Commissioner VALENTINE. I have no quarrel with you on that point. I think it ought to be cut down and terminated as early as practicable.

* * * * * * *

Mr. FERRIS. The allotment work done there is nearly completed in all of these tribes, is it not?

Commissioner VALENTINE. Substantially completed.

Mr. FERRIS. Authority of law has been given for the sale of all the surplus lands excepting the segregated lands, has it not, and legislation is pretty well under way for that now, as far as the surplus is concerned?

Commissioner VALENTINE. Yes, sir.

Mr. FERRIS. Then, don't you think there could yet be a marked decrease in the official force and in the amount the Federal Government has got to expend to carry on those affairs down there for the present?

Commissioner VALENTINE. I do, sir.

Mr. FERRIS. And no havoc or disaster would be the result if a marked cut was made, would there?

Commissioner VALENTINE. I think not.

Mr. FERRIS. He does use some money from the leasing division and some from the surplus-sales division?

Commissioner VALENTINE. I think he does.

Mr. FERRIS. They have at the Muskogee Agency what is known as the leasing division, a royalty division, sales and accounts division, restriction division, field and intruder division, clerk's division, cashier's division, typewriter's division, mailing division, and pipe-line division. Don't you think that is an unusually highly organized concern down there, and could not a great lot of those divisions be dispensed with and economy practiced there?

Commissioner VALENTINE. I think, while they look rather numerous on paper, that Mr. Kelsey, superintendent of the Union Agency, has his office pretty well organized; I think the really unnecessary expenses, if I am correct in thinking that there is some, lies not so much internally in his office, or even internally in the office of the commissioner to the Five Civilized Tribes, perhaps, as in the duplication that exists between the two offices, and that the substantial saving which could be made would be made in combining those two offices under one head, and that a still further substantial saving could be made, having combined those two offices under one head, in splitting them up as suggested in response to the question of you gentlemen here.

Mr. FERRIS. J. George Wright's division spends about $39,000 a year, I notice from your justification, and the Kelsey division spends the rest of it, which together approximates $174,000.

Commissioner VALENTINE. Mr. Wright, I think, spends a great deal of tribal money.

Mr. FERRIS. You would not care at this time to indicate which one of those divisions could be best dispensed with?

Commissioner VALENTINE. No, sir.

Mr. FERRIS. You think it would be better to cut the appropriation and let him divide it as he thinks best?

Commissioner VALENTINE. I think that should be left to the administration office.

Mr. FERRIS. There were, at the beginning of 1908, 2,800,000 acres of land, and they have been selling a great deal of that, have they not, Mr. Commissioner?

Commissioner VALENTINE. That is as I recall it.

Mr. FERRIS. That leaves about 1,200,000 acres not disposed of; that includes the surplus land, does it not?

Commissioner VALENTINE. I do not think it includes either the segregated area of 1,500,000 acres of timberland. We generally handle those reserve lands under three items: Segregated coal lands over 400,000 acres, and the so-called forest reserves, about 1,500,000 acres, and the rest of the surplus lands.

Mr. FERRIS. There is no legislation provided for to dispose of all those lands?

Commissioner VALENTINE. Except the segregated lands.

Mr. FERRIS. You are using the funds from the proceeds to pay for the expenses of the sale?

Commissioner VALENTINE. Yes, sir.

Mr. FERRIS. And of the segregated lands?

Commissioner VALENTINE. We can not completely pay the expenses, because the comptroller has limited us as to what we can use that money for.

Mr. FERRIS. But there is authority in the legislation to use the proceeds of the funds from the sales?

Commissioner VALENTINE. We are asking wider authority than we now have.

Mr. FERRIS. If the segregated surface bill becomes law (it has just passed both Houses), it provides that there shall be sufficient funds deducted from the proceeds of the sales to carry on that expense, does it not?

Commissioner VALENTINE. I have not read the bill. That is my understanding.

Mr. FERRIS. Well, that is a fact. And do you think there could be considerable economy practiced at the Muskogee Agency?

Commissioner VALENTINE. There is no question in my mind.

Mr. FERRIS. That is all.

The lieutenant governor of our State is an allottee; the speaker of the legislature is an allottee, one of the 101,000 that we hear so much about here in debate. We have men in the legislature; we have sheriffs, county officers; we have men, even, who are nonresidents of the State that go to make up the 101,000 people. I do not charge a thing against a single man down there. I presume they are good men; I do not know them all personally, but I know a good many of them. I do not make any inflammatory charges against any of them in the Interior Department. I do desire to say, and we all recognize it, that by negligence or good nature, or both, and by a desire of men to hold positions these pay rolls have grown and grown and grown and climbed and climbed until last year, the fiscal year ending June 30, 1911, the expenses reached the high-water mark of $1,308,023.98. For the year 1908 they were $743,000; for 1909 they were $716,000; and for 1910 they were about $900,000—I have not the exact figures. For many years it has been too

much. I have the names and the salaries on this sheet of every man that works at the Union Agency. It appears in the earlier part of my remarks. There are 211 of them in one town, at one agency, to administer upon a little handful of Indians like Senator OWEN and Representatives CARTER and DAVENPORT. The time has come when the Federal Government ought to take off its hands, segregate these white men, segregate the freed men, segregate the men who are only vaccinated Indians, and draw the agency down to a small affair and to an expense of less than $100,000 a year in the operation of it; and then they can do full justice and full credit and have removed from Indian administration people who are not entitled to be considered as Indians at all. The word "Indian" has no meaning when applied to men with scarcely no Indian blood in their veins.

Mr. CARTER. Will the gentleman yield?

Mr. FERRIS. Certainly.

Mr. CARTER. I want to ask the gentleman if in the list of 211 persons are included tribal chiefs or attorneys or other officials of the Five Civilized Tribes.

Mr. FERRIS. I think not, although there is an item of $57,000 for attorneys; but I presume those are special attorneys. They do not contain tribal officers proper, I am quite sure.

Mr. MILLER. Will the gentleman yield to me?

Mr. FERRIS. I will.

Mr. MILLER. The gentleman says that he is in favor of having attorneys for each of the Five Civilized Tribes to look after their interests, involving many millions, before all the courts up to the Supreme Court of the United States. If this provision should become a law that employment will have to cease, unless some other provision is made by Congress.

Mr. FERRIS. That is true, but that does not frighten or appall me in the least. We can provide for them.

Mr. MILLER. Unless there is some legislation between now and June 30 the tribes will be without chiefs and attorneys and without all other tribal authority of a tribal government. Does the gentleman think, and is he willing to state, there is any reasonable certainty there will be any legislation by Congress between now and June 30 providing for that?

Mr. FERRIS. I think so, and I think it will come in much less time than the gentleman expects. I anticipate that the Senate will strike out this provision and insert the whole proposition, and I think then we will take care of the attorneys, one for each tribe; but if I have my way, which I seldom have, they will not spend $57,000 for attorneys next year. They will spend about $5,000 a year for each of the five tribes, which will be a total of $25,000 a year for the whole five tribes, and while I shall probably support it as vigorously as will the gentleman, because I am willing to have a good attorney for each tribe share the responsibility with the delegation in Congress, for they may do some good—probably will; have in the past and may in the future—yet much money has been squandered for attorneys' fees in the past. We should see to it there is no repetition of it or a possibility of a repetition of it. We can ill afford to allow Indian money to be used up in attorneys' fees.

They have in the past paid $750,000 to one firm of attorneys for fees, which shall never prevail again if I can be heard to protest against it and the Congress or the department heeds my protest. They probably should have one attorney, but not a dozen. They should not have their property tied up under a 5 per cent contract or a 10 per cent contract or a 20 per cent contract or a 50 per cent contract, and I shall protest every time I can be heard, wherever I can be heard.

Mr. CONNELL. Mr. Chairman, will the gentleman yield?

Mr. FERRIS. Yes.

Mr. CONNELL. The gentleman stated that there were 211 employees looking after a handful of Indians.

Mr. FERRIS. That is true.

Mr. CONNELL. Can the gentleman state how many Indians are in that handful which it takes 211 employees to take care of?

Mr. FERRIS. I can reply to the gentleman that there are 101,000 allottees——

Mr. MURDOCK. How many restricted Indians?

Mr. FERRIS. The Indian Office records show about 35,000; but many of those are as competent as I am, or as able to be here as I am, are as able to present their case in any forum of the United States as I am. Let me call your attention to the fact that Senator Owen and Congressman Carter are two of those 101,000 allottees, and could not even sell their land when they came to Congress, and that was only about five years ago. There are many men who have not been fortunate enough to get into Congress, and hence they are still tied up, at least some of them are. They are still held to be incompetent; they are still supervised; they are compelled to be paid their own money in $10 monthly payments or not at all. Such work is wrong ab initio and should not longer prevail.

Mr. KINDRED. Mr. Chairman, will the gentleman yield for a question?

Mr. FERRIS. Yes.

Mr. KINDRED. Do the Indian agents under the law possess police authority, and, if so, would that obviate the necessity for employing so many policemen?

Mr. FERRIS. It might work out in that way. I do not know just how that would work out. The police roll is authority that prevails throughout the United States, and it is the same service that prevails everywhere in the United States. It is a general appropriation of $200,000 for police not specially for Oklahoma, but can be used anywhere in the States. The service they are trying to inject into this bill prevails nowhere in the United States, except in the Five Civilized Tribes. As a specific proposition we do appropriate generally $85,000 for district agents, but they may be designated anywhere in the United States. There is no special designation anywhere except in eastern Oklahoma, where Indians are more competent than anywhere in the United States.

Mr. JACKSON. Is it not true that the number of allottees, as the gentleman stated, is 101,000?

Mr. FERRIS. Yes.

Mr. JACKSON. And is it not true that that includes 16,055 allotments made to the Potawatomi Indians of Kansas, very few of whom ever went to the Territory?

Mr. FERRIS. I can not answer as to the number. There were some of that kind. For instance, I am informed that Senator CURTIS, of Kansas, has an allotment in our State, and he has never lived there.

Mr. JACKSON. And is it not true that, according to the Federal census of 1907 and of 1910, there are only about 75,000 Indians of the Five Civilized Tribes?

Mr. FERRIS. I do not think there are that many; I do not think it even approaches that number. I think that the real truth of the business is that there are not over 5,000 or 6,000 Indians that need supervision in that Five Tribes part of the State, possibly 10,000 at the outside. There are so many white men on the rolls by intermarriage, adoption, and so forth; that is why the totals are so large.

Let me draw a comparison here; it may be of interest to the House. I live right in the middle of the Kiowa, Comanche, and Apache Tribes of Indians. They are full-blood Indians, and they really need an agent and a detailed supervision that these gentlemen speak about. They have no district agents. At that agency they expend only about $25,000 annually, and I think no one complains of the sufficiency of the service there. We have a good agent and a few good men to help him, and everything gets along all right without field agents.

Mr. MANN. But they have trachoma.

Mr. FERRIS. Yes; and through the gentleman's generosity we gave them a hospital the other day that should have been given them sooner. They have needed it some time.

Mr. MANN. Maybe if they had district agents they would not have trachoma.

Mr. FERRIS. I think the district agents are not very effective trachoma operators. Let me proceed a little further. Let me read from the report of the department—the last one issued by the commissioner of the Five Civilized Tribes to the Secretary of the Interior—and let me show you what he says he took in and what the Secretary says they expended, by tribes. That ought to be interesting information; that ought to be information that would interest everyone here.

The figures I will quote are from the current reports of the commissioner of the Five Civilized Tribes and from the Commissioner of Indian Affairs. There are five of these tribes, and I will refer to them one at a time. The receipts of the Choctaw Nation were $318,616, and they expended $454,650.22—pretty good administration. In the Chickasaw Nation the receipts were $102,219.44, and they expended $175,111.08—pretty good administration. In the Cherokee Nation, of which Mr. DAVENPORT is a member, they collected $13,028.87, and they expended $138,128.90. In the Creek Nation they collected $42,643.39, and expended $117,002.11. In the Seminole Nation they reached the high-water mark of ridiculousness; they collected the magnificent sum of $292.95, and they expended $28,170.86. There were some additional receipts, but they consisted of proceeds from land sales, the transfer of tribal money from the Interior Department to local banks through the union agency and do not properly belong as receipts. Some of the totals I have quoted do not belong there as receipts. Remember, this is all independent of the general appropriation that is carried in this bill aggregating nearly $8,000,000; this is independent of the $50,000 that we appropriate through the Committee on Appropriations

for the Department of Justice; this is independent of the $85,000 that this bill carries for agents; and independent of the $200,000 that this bill carries for police. We ask to be relieved from the officers that we do not need. [Applause.]

The CHAIRMAN. The time of the gentleman has expired, and the gentleman from South Dakota [Mr. BURKE] is recognized for 12 minutes.

Mr. BURKE of South Dakota. Mr. Chairman, I yield the balance of my time to the gentleman from Kansas [Mr. CAMPBELL].

Mr. CAMPBELL. Mr. Chairman, we are fast approaching the last chapter that shall be written on the American Indian. The final word of the gentleman from Oklahoma was we protest against the officers of the United States coming into his State to help supervise the Indian. The Government of the United States is the guardian of the Indian and the Indian is its ward. There are 35,000 full bloods in the State of Oklahoma and in the Five Civilized Tribes——

Mr. FERRIS. The gentleman does not mean full bloods, but restricted Indians. Many of those are mixed bloods.

Mr. CAMPBELL. About 18,000 full bloods. It has been the ambition of the State of Oklahoma, since it has become a State, to control everybody within its borders. The people who made it a State got in there in spite of those who were endeavoring to protect the Indian. The Indian is there now struggling for his last rights. By the provision of this bill he will be without even an attorney to appear for him. The grafter on every hand is waiting for the passage of this bill so that he can exploit the Indian. I have been in Oklahoma among the Five Civilized Tribes. I have been alone among them; I have been there with a committee. The disposition shown toward the Indian is this: If you can get his property, get it; it does not matter how. If you can get the property of an Indian child, get it; it does not matter how you do it. Within recent months the most horrible murder has been perpetrated in order to get the property of Indian children—helpless children.

Mr. DAVENPORT. Those were negroes, were they not?

Mr. CAMPBELL. They were enrolled under the Indian laws. They had valuable land, and the persons who wanted it could not get it until they put dynamite under the house occupied by those innocent children and dynamited the house and killed the children.

Mr. DAVENPORT. That was the Taft incident. I would like to ask the gentleman——

Mr. CAMPBELL. No; I can not yield to the gentleman.

Mr. DAVENPORT. The gentleman has reference to——

Mr. CAMPBELL. I have reference to the case of Herbert and Castella Sells, in Muskogee County.

Mr. DAVENPORT. Well, the Taft incident in Muskogee County, I know all about that.

Mr. CAMPBELL. I know all about it. I know that the man who perpetrated that infamous murder would never have been brought to justice if it had not been for the district agents which you drop out of this bill. That is not all. Some of the probate courts, under the laws of the State of Oklahoma, have worked with these grafters and have aided in the robbing of Indian children. I shall give some of the cases:

Elisha Hodges, a half-blood Choctaw Indian child, 11 years of age, had 320 acres of land. A guardian was appointed. Later his guardian made application to the court to lease 26 acres of that land to a man by the name of Buell. The land was leased as a stone quarry for 10 years, at $25 a month, payable in advance. The same day the guardian of this Indian child filed with the same probate court, before Judge Phillips, of Bryan County, a petition to sell 320 acres of land, alleging it was necessary to sell the land to get money to pay for the support of the Indian child——

Mr. CARTER. Will the gentleman yield?

Mr. CAMPBELL. I can not yield.

Mr. CARTER. I yielded to the gentleman when I had no more time than the gentleman has.

Mr. CAMPBELL. I have only a few minutes. The child's property was ordered sold—the 320 acres, including the tract that had been leased at $25 a month. The property sold for $420 to the lessee, Buell.

One hundred dollars was taken of this as court expenses; the child got $320—$20 more than he would have gotten for one year's rent. The probate judge approved that sale.

That probate judge on the 30th day of December, 1907, appointed I. K. Pool, a white man, as guardian of his own child by an Indian mother. A few days after that he filed a petition to sell 320 acres of land that this child had inherited from its mother. It was stated the sale was necessary to pay for the keep of the child and improve the child's homestead. The court ordered the land sold, and it was sold. I will give the report of the administrator on the sale of the land and thus show how honestly the property of Indian children will be cared for if gentlemen from Oklahoma can keep Government agents out of that State.

Mr. FERRIS. Will the gentleman yield?

Mr. CAMPBELL. I can not yield.

Mr. FERRIS. The gentleman is making a serious assault that ought not to go in the RECORD.

Mr. CONNELL. Does the gentleman think that judge ought to be recalled?

Mr. CAMPBELL. He was defeated for renomination. It appears from the record that L. W. Rushing, J. L. Austin, and W. J. Kendall were appointed as appraisers. They appraised the land at $2,560. The land was sold for $2,000 to one of the appraisers, Mr. Rushing. It further appears that on February 8, 1908, the guardian filed a petition to sell his ward's interest in the allotment of Bensie Bobb, deceased. Now, let us have the final report:

On December 2, 1908, the guardian filed his report, as follows:

Receipts:	
From sale of Summie Pool's surplus allotment	$1,500.00
From sale of Summie Pool's homestead allotment	950.00
From sale of Bensie Bobb's estate	325.00
From rent of ward's allotment in 1908	55.75
	2,830.75
Expenditures:	
By cash to Julius Campbell, for allotment	480.00
By cash to Julius Campbell, for allotment of S. B. Pool	500.00
Clearing and breaking 140 acres, at $10 per acre	1,400.00
2 sets of houses, cribs, wells, lots, etc	1,650.00
Court costs, publication, attorney's fee, etc	146.20
Time, traveling expenses, witness's fees, etc	86.40
3,636 bois d'arc posts, set at 12½ cents each	454.50
66 spools of galvanized barbed wire, at $3.80 per spool	250.80
	4,967.90
Less court reduction	75.00
	4,892.90

The court cut off $75 of that, which left this child indebted to this guardian in the sum of $2,062.15 on that transaction. The court ordered the sale of the child's homestead to pay the guardian for this balance. And yet Oklahoma protests against Government agents going into that State to protect Indian children and Indian wards. Let me say this, that the conscience of Oklahoma about judges has been aroused, and the 40 probate judges have asked that district agents be not discontinued, but that they be furnished to act as guardians ad libitum to all incompetent wards of the Government who come in their courts.

Mr. FOSTER. What were the district agents doing?

Mr. CAMPBELL. They were not appointed at that time.

Mr. CARTER. What was the date?

Mr. CAMPBELL. In December, 1907, and the district agents were not appointed until May 27, 1908.

The CHAIRMAN. The gentleman's time has expired. All time has expired. The question is on the amendment of the gentleman from Minnesota [Mr. MILLER].

Mr. BURKE of South Dakota. Let it be stated.

The CHAIRMAN. The amendment of the gentleman from South Dakota is to strike out the proviso, which the Clerk will report.

The Clerk read as follows:

Page 25, beginning with line 20 and ending with line 24, strike out: "*Provided, further,* That during the fiscal year 1913 no money shall be expended from the tribal funds belonging to the Five Civilized Tribes, except from schools, without specific appropriation by Congress."

The CHAIRMAN. The question is on agreeing to the amendment.

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

Mr. BURKE of South Dakota. Mr. Chairman, I ask for a division.

The committee divided; and there were—ayes 24, noes 55.

So the amendment was rejected.

The CHAIRMAN. The Clerk will report the next amendment as a new paragraph.

The Clerk read as follows:

After line 12 add the following as a new paragraph:

"For salaries and expenses of district agents for the Five Civilized Tribes in Oklahoma and other employees connected with the work of such agents, $100,000."

Mr. BURKE of South Dakota. Mr. Chairman, that amendment should follow the proviso and not come in after line 12. The proviso not going out, the amendment should follow the proviso.

The CHAIRMAN. The question is on the amendment offered by the gentleman from South Dakota [Mr. BURKE].

The question was taken, and the noes seemed to have it.

Mr. BURKE of South Dakota. Division, Mr. Chairman.

The committee divided; and there were—ayes 40, noes 51.

Mr. BURKE of South Dakota. Mr. Chairman, I demand tellers.

Tellers were ordered; and the Chairman appointed Mr. STEPHENS of Texas and Mr. BURKE of South Dakota.

The committee again divided; and the tellers reported—ayes 37, noes 54.

So the amendment was rejected.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

The Secretary of the Interior is hereby authorized to pay, out of the funds of the Chickasaw Indians now on deposit in the Treasury of the United States, to Douglas H. Johnston, governor of said nation, the sum of $3,000 per annum from March 1, 1910, to March 1, 1912.

Mr. WILLIS. Mr. Chairman, I desire to reserve a point of order on the paragraph just read. It is quite apparent on the face of the proceedings here that this is an expenditure not authorized by existing law. If there is any doubt about it, the reading of the committee hearings at pages 309 and 310 would convince one that it is not authorized by existing law, because it is there stated, in a statement made before the committee by the gentleman from Oklahoma [Mr. CARTER], that—

The Chickasaw governor originally drew $1,500, but the Chickasaw Legislature passed an act raising the governor's salary to $3,000. The succeeding August an election was held, Gov. Johnson was elected, and inaugurated in September. The bill came to the President, Mr. Roosevelt, and he disapproved it. The bill did not become a law.

In other words, the very authority that is sought to be quoted here as a basis for this appropriation—a bill passed by the Chickasaw Legislature—is stated not to have become a law. Then, further on in the hearings, on the next page—page 310—a statement appears to the same effect. The gentleman from Oklahoma [Mr. CARTER], in response to a query by the chairman, says:

I do not know what was in his mind about it. He has told me he always thought Congress would pay him $3,000.

In other words, it appears that we are to appropriate this amount because somebody thought Congress was going to do it. I think there should be an explanation. I reserve my point of order, Mr. Chairman.

Mr. CARTER. Mr. Chairman, the point of order is conceded. There is no doubt but that the paragraph is subject to a point of order. I can not state any more fully the facts than they have been stated in the hearings as read by the gentleman from Ohio [Mr. WILLIS], but I will repeat just briefly.

The Chickasaw governor originally drew $1,500. In May, 1902, as I now remember, the Chickasaw Legislature passed an act increasing that salary to $3,000. Previous to that time the act of June 28, 1898, required the approval of all bills appropriating money from the tribal treasury by the President of the United States. That bill was sent on to the President for his approval. At that time the President was a little out of humor with the tribal chief and disapproved the bill. Whether his disagreement with the chief had anything to do with this disapproval I know not, but that has been charged. At any rate the act did not become a law. But the tribe by that act expressed their willingness for their chief to have $3,000.

I can see no impropriety in paying it to him. He is still serving the tribe as chief.

I offer this as an evidence of my good intent and good faith to assist in providing for the Five Civilized Tribes such officials as they need if they will only leave that to be done by Congress.

Mr. WILLIS. Does the gentleman yield?

Mr. CARTER. Yes.

Mr. WILLIS. Does the fact appear that the council of this nation still believes that the governor should have $3,000? Have they done anything or taken any action to that effect since this bill was vetoed by the President?

Mr. CARTER. Not since then. I think that is the last action taken.

Mr. WILLIS. When was that?

Mr. CARTER. That was in May, 1902, and if I am not mistaken the act of July 1, 1902, took away from the tribal council the right to increase salaries. I am not sure about that.

Mr. WILLIS. If they are anxious that the governor shall have this salary, it is curious that they did not pass the bill again and put it up to the President for his signature.

Mr. CARTER. The tribal council can only meet when the Secretary of the Interior permits them to meet, and he has not permitted the council for the Chickasaw Nation to meet for several years.

Mr. WILLIS. I do not desire to be contentious about this matter. I have no doubt that this is a worthy governor. He certainly has an able and distinguished advocate here, and I do not make the point of order.

Mr. MANN. Mr. Chairman, I make the point of order.

Mr. FOSTER. I make the point of order, Mr. Chairman.

The CHAIRMAN. The point of order is sustained.

The Clerk read as follows:

For support and education of 600 Indian pupils, including native pupils brought from Alaska, at the Indian school, Salem, Oreg., and for pay of superintendent, $102,000; for general repairs and improvements, $9,000; for construction of industrial building, $6,000; in all, $117,000.

Mr. WILLIS. Mr. Chairman, I move to strike out the last word, simply for the purpose of getting some information. What is the reason for requiring that these pupils shall be brought from Alaska? Why can they not just as well be taken care of in Alaska as to bring them at great expense to Oregon for education?

Mr. STEPHENS of Texas. If the gentleman will permit me, we have no Indian schools in Alaska, and we do not wish at the present time to enter into the making of appropriations for that purpose. I understand that there are very few Indians in that country, and it is cheaper to bring them down to Oregon.

Mr. WILLIS. Is that the idea of the Commissioner of Indian Affairs, that they shall be brought down to Oregon, rather than be educated in schools in Alaska?

Mr. STEPHENS of Texas. We have numerous requests of that kind, and it has been done for several years at the request of the Department of the Interior. There are some Indians there, but not enough to warrant the establishment of an Indian school there.

The Clerk read as follows:

For continuing the construction of the Modoc Point irrigation project, including drainage and canal systems within the Klamath Indian Reservation, in the State of Oregon, in accordance with the plans and specifications submitted by the chief engineer in the Indian Service and approved by the Commissioner of Indian Affairs and the Secretary of the Interior in conformity with a provision in section 1 of the Indian appropriation act for the fiscal year 1911, $50,000 appropriated in the act of March 3, 1911, is hereby made available until expended: *Provided*, That the total cost of this project shall not exceed $155,000, excluding the sum of $35,141.59 expended on this reservation to June 30, 1910, and that the entire cost of the project shall be repaid into the Treasury of the United States from the proceeds from the sale of timber or lands on the Klamath Indian Reservation.

Mr. MANN. I reserve a point of order on that.

Mr. FOWLER. I reserve a point of order on the last paragraph, especially on that portion which relates to the $50,000 appropriated by the act of March 3, 1911, and which reads as follows:

Is hereby made available until expended.

The words "until expended" are too broad. This committee is providing for appropriations for Indian affairs, and has a right to make appropriations for the next fiscal year, and that alone. I suggest that an amendment be made to that part of the bill, so that it may provide for a reappropriation of this sum. I reserve the point of order, Mr. Chairman, with the view of getting some information from the chairman of the committee.

Mr. MANN. If my colleague will yield——

Mr. FOWLER. Certainly.

Mr. MANN. It is customary in all these appropriations for irrigation projects, river and harbor improvements, and things of that sort, to have the appropriations remain available until expended. I think it is usually not necessary to include those words in the act. Just what the difficulty was here, of course, I do not know; but it is customary, when an appropriation is made for a permanent improvement, that that shall continue available until expended.

Two years ago we passed an act covering everything back into the Treasury that was not expended, thereby repealing that law which made these appropriations available until expended. We found that that interfered with appropriations for river and harbor improvement, and we passed a special provision, providing that river and harbor appropriations should remain available until expended. I presume that by reason of the first act which I have just referred to this appropriation was not so intended.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. FOWLER] has expired.

Mr. MANN. I ask unanimous consent that my colleague have five minutes more.

The CHAIRMAN. The gentleman from Illinois [Mr. MANN] asks unanimous consent that the time of his colleague [Mr. FOWLER] be extended five minutes. Is there objection?

There was no objection.

Mr. FOWLER. It is not contended that the Congress has the authority to make an appropriation beyond the coming fiscal year?

Mr. MANN. Congress has the authority, without any question, but I think the item is subject to a point of order on the ground that this committee is only authorized to report appropriations for the next fiscal year.

Mr. FOWLER. I did not mean Congress, but this Appropriations Committee.

Mr. MANN. I think it is likely that it is subject to a point of order, but it is customary to have appropriations of this character remain available until they are expended.

Mr. GARNER. May I interrupt the gentleman to ask him if it is not also the custom in river and harbor work or contract work, where a certain authorization is made, and part of it is made available for that fiscal year, to contract with reference to the final appropriation for the whole amount to complete the work?

Mr. MANN. That is undoubtedly the custom.

Mr. GARNER. And that is the only economical way in which it can be done?

Mr. MANN. I think so.

Mr. FOWLER. Mr. Chairman, I am not sure but that if this amount was reappropriated it would serve the purpose intended by the language here.

I am inclined to think, from my limited experience with these appropriation bills, that this language is subject to a point of order, because of the fact that the authority to appropriate under such circumstances is confined to the coming fiscal year; and, while I am not intending to obstruct or intending to try to defeat any legislation, I would like very well to have it reappropriated.

The CHAIRMAN. Does the gentleman from Illinois offer an amendment?

Mr. FOWLER. I will offer as an amendment the following: Strike out the words "is hereby made available until expended" and insert "is hereby reappropriated."

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

In line 18, strike out the words "is hereby made available until expended" and insert in lieu thereof the words "is hereby reappropriated."

Mr. FOWLER. A parliamentary inquiry, Mr. Chairman.

The CHAIRMAN. The gentleman will state it.

Mr. FOWLER. Is it not necessary to withdraw the point of order before this vote is taken?

The CHAIRMAN. The gentleman did not make the point of order; he reserved it.

Mr. MANN. Mr. Chairman, I reserve a point of order with the amendment pending. What is the reason for inserting the proviso here which is apparently the existing law?

Mr. BURKE of South Dakota. I will say that the existing law uses the word "including," and this uses the word "excluding." If the word "including," which appeared in the last act, was not wrongfully put in, which I am not prepared to say whether it was or not, the project could not be completed within the limit of cost as the existing law reads. This is simply to change it, and it must be changed if we do the construction for the $185,000.

Mr. MANN. I notice also that it provides "excluding the sum of $35,141.59 expended on this reservation June 30, 1910." The language in the last law was "expended on this project."

Mr. BURKE of South Dakota. That is because there was some money used on the reservation many years ago which had no value.

Mr. MANN. The change then was made deliberately?

Mr. STEPHENS of Texas. Yes; it was money that had been thrown away.

Mr. BURKE of South Dakota. Not necessarily thrown away.

Mr. MANN. Mr. Chairman, I withdraw the point of order.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. FOWLER].

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

The CHAIRMAN. The next paragraph of the bill has already been passed, and the Clerk will read.

The Clerk read as follows:

For continuing the construction of lateral distributing systems to irrigate the allotted lands of the Uncompahgre, Uintah, and White River Utes, in Utah, and to maintain existing irrigation systems, authorized under the act of June 21, 1906, to be expended under the terms thereof and reimbursable as therein provided, $75,000.

Mr. JONES. Mr. Chairman, I desire to offer the following amendment as an independent section.

The Clerk read as follows:

Amend section 22, as follows:
"For support and education of 120 Indian pupils at the school at Hampton, Va., $15,000."

Mr. JONES. Mr. Chairman, this amendment seeks to restore to this bill a part of an appropriation which the annual bill for the support of the Indian Service has carried for more than 30 years, an appropriation which for a third of a century has not been omitted from the Indian bill. There is located at Hampton, Va., what is known as the Hampton Normal and Agricultural Institute, a private institution. This well-known school has had a contract with the United States Government which, as I have said, it has existed for more than three decades, and under which it is provided that as many as 120 Indian students shall be received for the sum of $167 each. At present there are 83 such students attending this school.

The Hampton School may be said to be the pioneer in industrial education—that is, education in the trades—in the United States. Carlisle, a Government institution, is but an offshoot of Hampton. The reason for the existence of this contract is that the Hampton School is the only one in the United States where Indians can receive equally as good normal and industrial training, where they can be equally as well trained to teach and equally as well taught the domestic sciences. It is difficult for me to understand, Mr. Chairman, upon what theory the Committee on Indian Affairs has eliminated from this bill an appropriation which for many long years has been shown to have been of inestimable benefit to the young and ambitious Indians of the whole country.

The report which I hold in my hand assigns but one reason. It says:

It is the opinion of a majority of your committee that there are adequate facilities provided for the higher education of the Indian pupils now being educated at Hampton on or near their reservation.

And then adds:

Your committee is therefore of the opinion that a considerable saving to the Government could be made by educating these children in Government schools already provided for the higher education of Indians, thus saving the needless expense in the transportation of these pupils, and otherwise incurred, in taking them from their reservations in the West and educating them at the farthest point in the East, and paying $167 per capita for their education at that point, while it is shown that schools with equal facilities and advantages are educating pupils similar to these being educated at Hampton at much less than $167 per capita.

Mr. Chairman, I have read every word that appears in the hearings bearing upon this subject, and, so far as I can discover, the only witness who appeared before the committee was the Commissioner of Indian Affairs, Mr. Valentine, and I can not find one single word in his testimony which in the slightest degree bears out the statements contained in the report of the committee which I have just read.

The CHAIRMAN. The time of the gentleman from Virginia has expired.

Mr. JONES. Mr. Chairman, I have not before participated in the debate upon this bill, which has now been in progress for three days, and inasmuch as this is a very important matter to a great school in my State, I ask unanimous consent that I may be permitted to address the committee for 15 minutes.

The CHAIRMAN. The gentleman from Virginia asks unanimous consent that he may address the committee for 15 minutes. Is there objection?

Mr. MANN. Mr. Chairman, reserving the right to object, can we not reach an agreement as to how much time shall be expended on the amendment?

Mr. STEPHENS of Texas. Mr. Chairman, I would like to have it confined to 20 minutes—10 minutes to be used by the gentleman from Virginia and 10 by myself.

Mr. CARTER. Mr. Chairman, I would like to have five or six minutes on the amendment.

Mr. STEPHENS of Texas. I will yield that to the gentleman from Oklahoma.

Mr. JONES. Mr. Chairman, there are other gentlemen who wish to speak upon this proposition. I think the gentleman from Massachusetts [Mr. McCALL] desires to be heard.

Mr. MANN. Mr. Chairman, I have no desire to cut off any gentleman.

Mr. STEPHENS of Texas. It is now the usual time for the committee to rise, and I would like very much to have the bill passed this evening.

Mr. JONES. Mr. Chairman, there is no regular time for adjournment, and I hope there will be no objection to my request for 15 minutes.

Mr. STEPHENS of Texas. Then, Mr. Chairman, I shall submit a request for unanimous consent that all debate on this paragraph, on the motion made by the gentleman from Virginia, close in 25 minutes.

Mr. MANN. Mr. Chairman, I hope the gentleman will not insist upon that request.

Mr. FERRIS. Mr. Chairman, will the gentleman yield?

Mr. STEPHENS of Texas. Yes.

Mr. FERRIS. I think there is but one more controverted item in the bill——

Mr. MANN. There are several amendments to be offered, I am told.

Mr. FERRIS. I think if there could be an agreement had as to the Pima item, that it may go into the bill as agreed upon by the committee——

Mr. MANN. The committee amendment?

Mr. FERRIS. Yes; the amendment offered by the committee.

Mr. MANN. I am perfectly willing to agree to that. I reserve the point of order upon it.

Mr. STEPHENS of Texas. Then, Mr. Chairman, I ask unanimous consent to recur at this time to page 9 of the bill, line 12, for the purpose of offering the following amendment which I send to the desk and ask to have read.

The CHAIRMAN. The gentleman from Texas asks unanimous consent to recur to page 9, line 12, for the purpose of offering an amendment. Is there objection?

There was no objection.

Mr. STEPHENS of Texas. Mr. Chairman, I offer the following amendment.

Mr. FERRIS. Mr. Chairman, I ask unanimous consent that we pass over for the present the Hampton School item and proceed with the reading of the bill, and then we can consume such time as is left upon the Hampton item.

Mr. MANN. I understand the gentleman from Wyoming has an amendment to offer which will probably take 15 or 20 minutes, and I think there will be one or two other amendments.

Mr. STEPHENS of Texas. Mr. Chairman, I call for the reading of my amendment.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

Insert as a new paragraph, following line 11, page 9, the following:

"For maintenance, including purchase of electricity for irrigation wells already completed and the completion of the lateral irrigating ditches thereunder in connection with the irrigation of the lands of the Pima Indians in the vicinity of Sacaton, in the Gila River Indian Reservation, $15,000: *Provided*, That the Secretary of War be, and he hereby is, directed to convene a board of not less than three engineers of the Army of wide reputation and large experience to make the necessary examinations, borings, and surveys for the purpose of determining the reasonability and practicability of constructing a dam and reservoir at or in the vicinity of the Box Canyon, on the San Carlos Indian Reservation, known as the site of the proposed San Carlos Reservoir, on the Gila River, Ariz., and the necessary irrigation works in connection therewith to provide for the irrigation of Indian, private, and public lands in the Gila River Valley; said board of engineers to submit to Congress the results of their examinations and surveys, together with an estimate of cost, with their recommendations thereon, at the earliest practicable date. The sum of $10,000, or so much thereof of as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated for the purpose of conducting said investigation."

Mr. MANN. Mr. Chairman, the other day I reserved the point of order upon this amendment. I will withdraw the point of order. I have only one regret in respect to it, however, and that is that the committee has seen fit to use such a word as "reasonability," thereby enlarging the English language.

Mr. STEPHENS of Texas. Mr. Chairman, this suspends the action of the department in respect to the irrigation development of the Gila River in Arizona. The committee has gone through the matter very carefully, and this amendment has been suggested and written in the department and it is satisfactory to the gentleman from Arizona [Mr. HAYDEN]. There is no objection to it from any source and I ask for a vote.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Texas.

Mr. MONDELL. Mr. Chairman, I would like to speak to the amendment. Mr. Chairman, I shall offer no objection to the adoption of the amendment, but I want to make a suggestion in regard to it, and that is it is very doubtful whether the investigation proposed is at all necessary. There have been a number of investigations of the situation on the Gila River in the locality referred to. The Reclamation Service has made a full and exhaustive examination of the situation. One was made by the hydrographic branch of the Geological Survey before the reclamation act was passed, and since that time I think there has been another investigation made by the Indian Bureau. So there is now practically all the information that is obtainable with regard to the Gila River, the amount of water it carries, the amount of silt—as to the feasability of a dam at the point proposed, as to the amount of land that might be irrigated. There have been many people who have been much exercised on behalf of these Indians and some people have thought that they were more exercised on their own behalf than they were on behalf of the Indians. The probability is, after we get through, we will discover we could buy for these Indians 100-acre farms at $100 an acre much more cheaply than we can undertake to supply them an uncertain water supply from the Gila River. I say we have the facts, but they are somewhat scattered in various documents, and I think the Army has not yet investigated the question. I think all the other branches of the Federal Government that could by any possibility have anything to do with these matters have investigated it, but perhaps it will be well to call in the Army engineers and have them get together the information we have and seek further information, and at the end we will probably discover that it is impossible to build this great dam on the Gila River, and that if we build it it will fill up inside of a few years with silt. If there is anything further to be done for these Indians, who, by the way, have one of the most expensive irrigation plants in the world, a pumping plant, if there is anything more that should be done for them, it will probably be to take them from the reservation and buy farms for them. That would seem to be much cheaper than to build a reservoir and canals.

Mr. STEPHENS of Texas. Mr. Chairman, I ask for a vote.

The CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Texas.

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

Mr. JONES. Now, Mr. Chairman, I renew my request that I may be permitted to address the House for 15 minutes upon this proposition.

The CHAIRMAN. The gentleman from Virginia asks unanimous consent to address the House for 15 minutes. Is there objection? [After a pause.] The Chair hears none.

Mr. JONES. Now, Mr. Chairman, I wish to call the attention of this committee to one or two pregnant facts. As I was proceeding to point out when my time expired, it is claimed in the report of the committee accompanying this bill that there are schools located on the Indian reservations and supported by the Government at which the Indian children can be taught all the branches which are taught at Hampton, and much cheaper. Stress is laid in this report on the fact that the distance to be traveled by the Indian children from the reservation to Hampton is very great and therefore entails considerable cost to the Government. I am informed, and I believe the statement can not be questioned, that the normal courses at one time taught at the reservation schools are no longer taught there, and that it is not now pretended in any quarter that the Indian students at the reservation schools are trained in the art of teaching. There is not, I am told, a reservation school which attempts even to fit its scholars for teaching. So much, then, for the claim that the reservation schools are equipped to take the place of the Hampton school. Indeed, Mr. Chairman, there is no school in the United States which has the same appliances and which can afford the same facilities for giving Indian children normal, industrial, and agricultural education. This much must be conceded, I think. No less a distinguished educator than Dr. Eliot, late president of the great University of Harvard, is upon record as saying that there was no school, no university in America which presented the same or an equal combination of academic and industrial teaching as Hampton, and Dr. Gilman, president of the great University of Johns Hopkins, has declared that we could better spare any two universities in the United States than the Hampton Institute. And Gov. Woodrow Wilson, when president of Princeton University, indorsed the Hampton school in terms of commendation and praise scarcely less strong. I think, therefore, we may dismiss the proposition that there is any other school in the country possessing equal facilities with those of the Hampton Normal and Agricultural Institute, and where the Indian student can receive the training of which he stands the greatest need.

Mr. McGUIRE of Oklahoma. In this connection will the gentleman yield?

Mr. JONES. Yes; for a question.

Mr. McGUIRE of Oklahoma. I was just going state, before the gentleman left this point of his discussion, that this is the cheapest school for Indians in the United States—that is, it costs less per annum per capita to educate the Indians here in this school than anywhere.

Mr. JONES. I am very much obliged to the gentleman for this information; I was not informed as to that. I do know, however, that the Hampton Institute does not derive any profit from the $167 which the Government pays for the education of the Indian children which attend that school. With the authorities of this school it is not a question of making money out of the Government. The Government receives far more than it gives.

Mr. CONNELL. Will the gentleman yield?

The CHAIRMAN. Does the gentleman yield to the gentleman from New York?

Mr. CONNELL. For just one question.

Mr. JONES. I do.

Mr. CONNELL. Does the gentleman believe that the removal of the Indian from the Hampton School will cripple the work of the school or make it less effective than it was or tend to its disruption?

Mr. JONES. I do not believe that the loss of these Indian students will impair the efficiency of the school, but what I do say is that, in my judgment and in the judgment of those who are far better qualified than I am to speak upon this subject, the Indians who attend the Hampton School are being bet-

ter fitted to take their places in the world than it is possible for them to be elsewhere. I base this opinion not only upon what has been said by the distinguished educators from whom I have quoted, but also upon what was said by the Commissioner of Indian Affairs to the committee which prepared this measure. But the committee not only maintains in its report that the Indians can be as well educated at the reservation schools as at Hampton, but it states that they can be more cheaply educated there, and assigns as a reason for this that it costs a great deal to transport them from the reservations to Hampton. Upon this subject I appeal from what is said in the report to what my friend, the distinguished chairman of the committee, who doubtless wrote the report, said on the floor of the House on Friday last. On that day, in reply to something said by the gentleman from Pennsylvania [Mr. OLMSTED], the chairman of the committee is reported to have said—I read from the CONGRESSIONAL RECORD:

There is a measure pending that will, I hope, transfer the 120 students at Hampton, Va., to Carlisle or some other school. I do not think the Hampton School is any better than the Carlisle School. I am simply making the statement of the reasons why I will agree with the gentleman from Pennsylvania [Mr. OLMSTED] to meet him halfway.

If, notwithstanding what is said in the report upon this subject, it is now the purpose to take the Indian students from Hampton and transfer them to Carlisle, I fail to see how the Government is to save the traveling expenses dwelt upon in the report. It is just as expensive to transport Indians from the reservations to Carlisle as to transport them to Hampton. I submit that the chairman of the committee has himself effectually disposed of the economy argument attempted to be made in his report. For it now seems that it is not the purpose to educate the Indians, who would prefer to go to Hampton, in the fine schools we have been told so much about on the reservations and at a considerable saving to the Government, but to send them to Carlisle where there can be no traveling expenses saved. The distance from the reservations is just as great to Carlisle as it is to Hampton.

Mr. CARTER rose.

The CHAIRMAN. Will the gentleman from Virginia [Mr. JONES] yield to the gentleman from Oklahoma [Mr. CARTER]?

Mr. JONES. I will.

Mr. CARTER. Just a short statement. There is a saving by transferring the children from Hampton to Carlisle, because, as the gentleman has already stated, it costs $167 per capita at Hampton and only $138 at Carlisle.

Mr. JONES. Mr. Chairman, the gentleman hardly wishes to be understood as saying that the difference between $167 and $138 would be saved in the matter of transportation in sending the Indians to Carlisle rather than to Hampton. I have said nothing as to the cost of educating Indians at Carlisle, because I possess no knowledge on that subject. I have been trying to show that, in the light of what was said on this floor on Friday last, the economy argument of the report had no legs to stand upon. The gentleman from Oklahoma [Mr. MCGUIRE] made the statement a few moments ago that the Indians are being educated cheaper at Hampton than at any other schools. I leave that matter to the two gentlemen from Oklahoma for settlement. I have no information in regard to it. My contention is—and it is one that is supported by abundant testimony—that the reservation schools are not to be compared to the Hampton school. If excellence is to be considered, then Hampton Institute, in my opinion, is a much cheaper school than even Carlisle.

As I have said, the Government has even abandoned the normal courses in the reservation schools. Hampton, therefore, is practically the only school in the country—certainly the only one outside of Carlisle—where Indians are prepared to teach their own race. It can not be contended that even Carlisle is anything like as well equipped as Hampton to turn out competent Indian teachers. Having in mind what is said in the report as to the saving to the Government in educating the Indians at the reservation schools rather than at far-away Hampton, and the frankly avowed purpose of the chairman of the committee to transfer the Hampton Institute students to Carlisle and not to the reservation schools, I am at a loss as to how to meet the various and conflicting arguments of those who are opposed to restoring the appropriation for educating a certain number of Indians at Hampton.

I have heard it whispered around that there were negroes educated at the Hampton school as well as Indians. I wish to say in respect to this that whilst this is true, it is also true that the negro students and the Indians occupy different dormitories and are not even brought together in the mess halls.

I wish to state further that the State of Virginia, which I have the honor to represent in part upon this floor, has been appropriating for years out of the land funds considerable sums toward the maintenance of the Hampton School, and to-day is the first time I have ever heard this race question raised. There is not in all this land a community where there is more of culture and refinement than is to be found at Hampton. It is one of the very oldest cities in America, and there is no educational institution in America which is surrounded by more uplifting influences. A year spent in Hampton upon the beautiful grounds of this institution, and amid such elevating environments, is in itself an education for a poor Indian child whose whole previous life has been spent upon a reservation. The Indians who have been educated at Hampton are the best proof of this. The Indians have never objected to the presence of negroes at this school. No complaint has ever come from the white inhabitants of Hampton and the State of Virginia has never withheld from this school her bounty because Indians and negroes met together in the lecture halls and shops and on the experimental farms. Moreover, in the space of a third of a century this is the first time this argument has been advanced here in support of the proposition to take from the Indians the very best educational facilities they have ever enjoyed. There has never been the slightest friction between the two races in all these years at Hampton. They are not brought together in the dormitories or in the dining rooms, and there has never been complaint on the part of any Indian because of the fact that they meet in the classrooms, the shops, and the fields.

Mr. MCCALL. Will the gentleman yield?

The CHAIRMAN. Will the gentleman from Virginia [Mr. JONES] yield to the gentleman from Massachusetts [Mr. MCCALL]?

Mr. JONES. I will.

Mr. MCCALL. And the question has not been raised for 30 years in Congress before. [Applause.]

Mr. STEPHENS of Texas. The history of this school dates back to 1868. At that time Capt. Pratt, of the United States Army, and others captured a hostile band of Indians in the West. Many of them were young Indian men and women. They were carried in captivity to some fort in Alabama.

In order to test the question of the practicability of Indian education, these young Indian prisoners were sent to Hampton and put into that negro school, while the older Indian prisoners were kept in captivity in Alabama. This school had been organized a few years after the Civil War by Gen. Armstrong, and for the purpose of educating the negro children of the South. This school was, as I understand, organized and chartered by the missionary societies of the United States. There were several hundred negro students in the school at the time these Indian prisoners of war were put by force in the school. They could not help themselves, as they were prisoners and had to adapt themselves to their surroundings.

Congress at the next session made a small appropriation to pay for their instruction. Capt. Pratt, now Gen. Pratt, of the United States Army, retired, was placed in charge of these Indians, and also of the Hampton school for a few years, and later he organized the Indian school at Carlisle, Pa., and remained there for possibly 20 years in charge of the school.

This was strictly a school where only Indians were then and now taught. I can say without fear of successful contradiction that it is one of the best and cheapest Indian schools in the United States, as is shown by the Government reports on Indian schools. That statement shows that it costs only $128.36 per capita per annum for each student in this Carlisle Indian School. No one will deny but that they have a very capable and competent corps of professors there, and this school being constantly attended by a large number of Indians, the capacity has been increased, so that now it can accommodate two or three hundred more pupils. I have this information directly from Government reports and from the officers of this school.

When the idea was first originated by Capt. Pratt of educating the Indians, we had no nonreservation Indian schools in the country. The education of the Indian children was provided for in contract schools. Those contract schools have all been abandoned except the one at Hampton. This Hampton School is therefore the last of that system of schools. Every Indian pupil instructed at that school costs the Government $167 a year. We make a contract with the officers of the Hampton Negro School to pay $167 for every Indian that goes there.

For many years that amount of money has been paid to these contract schools. They provide at Hampton for 120 Indian students. There are only 83 reported as enrolled and there are only 71, as I understand it, in average daily attendance at that school. That fact shows that the Indians themselves, dropping from 120 down to 83 or 71, whichever computation you desire to make, do not desire to attend that school and will not do it.

Mr. REDFIELD. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from Texas yield to the gentleman from New York?

Mr. STEPHENS of Texas. Certainly.

Mr. REDFIELD. Did the gentleman's committee consult the principal of Hampton Institute before making this recommendation?

Mr. STEPHENS of Texas. He was here and made a written statement in regard to the matter for use by the committee. The committee was not in session when he was here; hence he had no opportunity—and asked for none—to appear before it.

Mr. REDFIELD. Was he asked to appear before the committee?

Mr. STEPHENS of Texas. The facts are as I have stated and are not disputed.

Mr. REDFIELD. Is it not a fact that he was afforded no opportunity to present the facts concerning the institution?

Mr. STEPHENS of Texas. It is not a fact. He did not appear before our committee, because it was not in session when he left his statement with me.

Mr. REDFIELD. Is it not a fact that the reason why, as you say, these pupils do not want this education is because at the Hampton Institute they conduct this system of education on a higher plane of normal teaching than is the case in any other school, Carlisle included, and that, therefore, as is the case in every other educational institution, those drop out who can not meet the standard?

Mr. STEPHENS of Texas. It is not.

The CHAIRMAN. The time of the gentleman has expired.

Mr. STEPHENS of Texas. Mr. Chairman, I ask unanimous consent to be allowed to proceed for five minutes more.

The CHAIRMAN. The gentleman from Texas [Mr. STEPHENS] asks unanimous consent to proceed for five minutes more. Is there objection?

There was no objection.

Mr. STEPHENS of Texas. There is another cogent reason, in my opinion, why these Indian pupils should be educated in the schools in the West and not in Hampton. It is this: We have many first-class Indian industrial Government schools built and in operation there now, including the Sherman School in California, the Haskell School in Kansas, and the Chilocco School in Oklahoma, and this is the first time I have heard these Government Indian schools lightly or disparagingly spoken of. I do not think the gentleman from New York has the correct idea with regard to these western schools. They are, as I have stated, Indian industrial schools, and they are equipped fully with all the up-to-date appliances, and they have the best teachers that the Government can get for the work in those Indian schools.

Several of these western nonreservation schools have been abandoned and sold or used for other purposes; and I can not conceive of any valid reason why these Hampton students should not be transferred from this negro school, where they are educated with 600 negroes, and educated in our own Government Indian schools in the West or at the Carlisle Indian School in Pennsylvania.

Why should we keep up at great expense to the Government these schools in the West for the purpose of educating Indians, and send these 83 Indians to the farthest point in the East, at Hampton, as stated in the report, for the purpose of educating them, at great cost for transporting them to Hampton and then back home?

There is another objection to Hampton School. The Indians as a race are subject to diseases of the lungs. Many of them die with the white plague. They are raised on the western plains and in the western mountains, and when they are brought to the East the damp, cold climate only hastens and develops this disease. These Indian boys and girls do not have the same strength, the same capacity, and the same health that they have on their native heath in the West.

For all these reasons I apprehend that the committee were right in striking from this bill this appropriation. No legitimate reason can be given why these 120 Indians should remain at Hampton at great expense to the Government when we have Indian schools taught by Government employees. Why humiliate the Indian boys and girls, our wards and dependents, by educating them in the same schools with negro children? It seemed to your committee that we should use our own schools, our own teachers, and separate these two races, and thus elevate the red race to the level of the white race and not degrade and humiliate him by sinking him to the low plane of the negro race.

Mr. REDFIELD. Mr. Chairman, I move to strike out the last word. I believe that the chairman of the Committee on Indian Affairs [Mr. STEPHENS of Texas] is the one who is under a misapprehension as to the facts about Hampton Institute. Unless 20 years' time spent in touch with this institution and with the gentlemen who are responsible for this institution and visits to it have taught me nothing at all, the chairman of the committee seems not to be informed as to what Hampton Institute is.

Mr. STEPHENS of Texas. Will the gentleman yield?

Mr. REDFIELD. Yes.

Mr. STEPHENS of Texas. I was at Hampton less than two months ago, and was among those students.

Mr. REDFIELD. I am glad to hear it. It is a pity the gentleman did not use his opportunities better.

Mr. STEPHENS of Texas. Oh, yes; but I have been there.

Mr. REDFIELD. Hampton is a normal school. It does not teach as Carlisle teaches. It does not aim to teach as the western schools teach, and does not desire to do so.

Hampton Institute teaches teachers. It produces, not Indians well trained in industrial arts, but Indians who teach industrial arts; and all over America, in the various schools of which the chairman of the committee has spoken and which I admire, there are to-day the graduates of Hampton Institute, teaching their own people. That school stands upon an utterly different level from these other contract schools. It is a strictly normal school. It stands as the Teachers' College in New York City stands to the high schools of that city. It teaches its pupils to be instructors of their own people, and in the absence of a definite statement as to the precise nature of its work from the officers of that institute it is not proper for this committee to make their present report. Only to-day the principal of the school told me he had had no adequate means of placing before the committee the facts as to the normal training which all of us know who are interested in Hampton Institute is the peculiar work of that school.

Mr. McCALL. Mr. Chairman, I hope that the amendment of the gentleman from Virginia [Mr. JONES] will be carried. It practically carries an appropriation which we have made every year for 30 years or more. The gentleman from Virginia [Mr. JONES] is one of the oldest Members of this House, and this appropriation has been made every year during his term of service here. No good reason whatever has been shown why the Government should abandon this institution. There is one thing in regard to it that has not been stated in the debate, and that is that it is one of the best endowed schools in the whole South. It has a plant of over $1,000,000 in value, and it is especially fitted to give a high grade of instruction. It does not imply any criticism of schools that are run upon a different plan to speak a good word for this school. President Eliot, who is one of the most distinguished educators in the world, has said that he knows no place where there is such a good combination of academic and industrial training as at this school.

The chairman of the committee [Mr. STEPHENS of Texas] at one moment is attempting to show that this school should be discontinued because the number of pupils there is only 80, when it should be 100 or more, and in the next breath he tells us that some Indian schools in the West are absolutely going out. So, evidently, there is a broader reason than that which he gives. The return that the Indian gets from that school, from the income derived from investments and from the use of the industrial opportunities there, is much more than the Government contributes toward his education. I think it would be a great mistake to drop this historic institution. It is doing great work for both races, and I submit that if a State like Virginia does not object the gentleman from Texas [Mr. STEPHENS] certainly should not object. If you weaken that school by taking away this appropriation, you weaken it for all the scholars who go there, and I think it would be a very narrow policy for this House of Representatives, after it has been engaged in this beneficent work for 30 years, to discontinue its appropriations.

The people of the North are interested in this school. They have given hundreds of thousands of dollars toward its maintenance and toward its funds and its appliances. I believe all denominations would regret to see the House take the action which is proposed by this bill.

Mr. FINLEY. Will the gentleman permit a question?

Mr. McCALL. Certainly.

Mr. FINLEY. I understand that this is not an industrial school, as is the school at Carlisle, Pa.; that it is rather a school for the training of teachers.

Mr. McCALL. It is both an industrial and academic school.

Mr. FINLEY. I want to ask the gentleman if conditions in Oklahoma and other States have not changed vastly in the last

10 or 25 years, and could not the teachers now be trained in their institutes of learning?

Mr. McCALL. That has not been developed yet. I say that you will have better schools in Oklahoma and in other States where the Indians live if they have an opportunity to educate their children at the Hampton Institute.

Mr. JONES. I want to say that they had a normal course in these State institutions and it has been abolished.

Mr. FINLEY. There are institutions of learning, colleges and schools, in Oklahoma and elsewhere, and why can not the teachers be trained there? I think if anything should be done for the Indians it should be largely along industrial lines, so that they may be qualified to make a living.

Mr. McCALL. If the gentleman from South Carolina does not believe that we should give them an academic training, perhaps he would vote to discontinue the school, but if he does he will vote to discontinue the highest training school for the Indian race in America.

Mr. FINLEY. Mr. Chairman, the argument that this appropriation should be continued because it is a high-grade institution and that the appropriation should not be taken away from it, I can not concede as sound. The State of Oklahoma has colleges, it has institutions of high learning, it has training schools where Indians and white people and citizens of that State can go and be trained to teach, the same is true elsewhere.

I do not think that the facts warrant the statement that Hampton Institute should be maintained and supported because it is a training school for Indian teachers. I think the teachers for the Indians can be trained elsewhere. I think the Indians should largely have industrial training. Of course there should be teachers among the Indians properly trained. The Indians are a great race and have made great progress, and I hope they will make more progress, but I do not think that sufficient has been shown here in the way of facts to warrant Congress to continue the appropriation for maintaining and supporting this institution of learning.

Mr. SLAYDEN. Will the gentleman yield?

Mr. FINLEY. I will.

Mr. SLAYDEN. I understood the gentleman from Massachusetts [Mr. McCALL] to say that if it was the idea of the gentleman from South Carolina that the Indian should not have an academic training then he should vote against this amendment. I want to know whether that suggestion is accurate, whether they can not have both an academic and an industrial training in the vicinity of their homes.

Mr. FINLEY. Mr. Chairman, I made no statement that will bear any such construction. The Indian should have an academic training, and he should also have an industrial training.

Mr. SLAYDEN. I think the gentleman from South Carolina misunderstands me.

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. FLOYD of Arkansas having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed the following resolution (S. Res. 278):

Resolved, That the Secretary notify the House of Representatives that the Senate has elected AUGUSTUS O. BACON, a Senator from the State of Georgia, President of the Senate pro tempore, to hold and exercise the office this day in the absence of the Vice President.

INDIAN APPROPRIATION BILL.

The committee resumed its session.

Mr. MILLER. Mr. Chairman, each year the Government expends a large sum of money for the education of the Indian. To my mind this is simply a question as to where the money can best be expended and produce the best results. The gentleman from South Carolina [Mr. FINLEY] has just stated that his objection to this amendment for the education of the Indian children at Hampton Institute is that there are provisions in the various States from which these Indians come for their education at home. If he will look into the subject for a moment, he will come to the conclusion that he is under a misapprehension of facts. It is true that in the various States from which these Indian children come there exist normal schools, colleges, and other institutions of learning, but in none of them is there provision made by the Government for the education of Indian children. In none of them is provision made by the Government to pay the expenses of educating a single Indian boy or girl. The thing to be considered here is whether the Government shall expend a certain amount upon the education of the Indian children at Hampton in preference to expending the same amount upon the education of Indian children somewhere else. I for one take it as exceedingly unwise to discontinue the education of the Indians at Hampton. For more than a generation Indians have been educated there with pronounced success.

It is generally accepted among people engaged in educational work that it is more than ordinarily desirable for children, white or Indian, to be taken from the immediate surroundings in which they may be born and in which their early life has been passed, taken from thence to another portion of the country, there to be educated, that they may have the benefit of the customs, the culture, the ideas, the society there to be found. It is a part of a liberal education, and a most important part. While it is true as a general policy that we should restrict our educational institutions to Indian reservations, there should be some exceptions. The only two exceptions of any practical benefit to-day are those at Carlisle and Hampton. The advance of the whites has gradually pushed the Indians farther and farther, till now most of the Indians are located in Western States. It is of the utmost value that a part of them, during the formative period of their lives, should be schooled in the East. The East has much to give them that they need. I hold that no American boy can behold Plymouth Rock or Bunker Hill without being a truer patriot and a better man. No youth, either white or Indian, is there whose love of country would not be advanced, whose manhood or womanhood would not be strengthened, by dwelling in the classic atmosphere at Hampton, the spot where American civilization was first born and where three centuries of American history have been written.

I believe in Carlisle, but I also believe that institution is already large enough and that you will injure the institution, that you will injure the children sent there, if you increase the number to be educated there by taking those now at Hampton. Let Carlisle stand in all her glory; let Hampton continue her splendid work of upbuilding American Indian manhood and womanhood.

Mr. STEPHENS of Texas. Mr. Chairman, I have investigated that matter, and they can easily take care of this number.

Mr. MILLER. Mr. Chairman, it has been stated that these Indians all come from the far West, and that the cost of transporting them to the East is great and should be stopped. The facts do not bear out that contention in any particular degree. I have here the statistics showing the States from which these children have come during the past 30 years. I would, in this connection, call the attention of the committee to the fact that from Florida 16 have come, and this institution is located the nearest to Florida of any Indian school in the land.

Three have come from Maine, 1 from Massachusetts, and from the Empire State of New York have come 159, a number exceeded by no other State in the Union, excepting alone the States of South Dakota and Wisconsin. Also, Mr. Chairman, there have come from the State of North Carolina 51, and to-day there are many Indian children in North Carolina who have no place to go to school unless they go to this school at Hampton. Hampton is performing a great work in the education of the Indian. It is teaching the Indian how to live by his hand and how to train his mind that the brain and hand may work together. It teaches the Indian to be self-supporting, and in so far as it does this it solves the Indian question. Hampton does more. It trains Indian boys and girls in the art and science of teaching and instructing their kinsmen, teaches them to be teachers, trains them to be instructors. No other Indian school in the world does this. No system of Indian schools is complete without it. We need Hampton. The other Indian schools need Hampton. The Indians need Hampton. Every consideration for the welfare of the Indian demands that we retain Hampton. I sincerely trust, I fervently entreat, the committee to vote for the offered amendment.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. STEPHENS of Texas. Mr. Chairman, I move that all debate on this amendment close in 10 minutes.

The CHAIRMAN. The question is on the motion of the gentleman from Texas that all debate on the pending amendment close in 10 minutes.

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

Mr. CARTER. Mr. Chairman, Hampton is a school attended by Indian and colored children only, in the State of Virginia, where mixed schools are prohibited.

I disavow here and now any prejudice against the colored race. I have known the negro from infancy. From my earliest childhood he was my daily companion and playmate. As I grew up he was my co-worker on range, field, and ranch. In later years he has been my faithful servant and stanch adherent and follower; and through all I have found him to be grateful to a fault, faithful in his friendship to me, and responsive to a trust when once you made him clearly understand

the responsibility of that trust. But notwithstanding the kindly feeling that I have for the colored man, experience has taught me the utter futility of any and all efforts to bring the negro into any closer social relationship with the white man.

Now, I want to ask the gentleman from Virginia [Mr. JONES] if he expects to elevate the Indian by practicing upon him a policy to which he himself will not condescend?

Mr. JONES. Mr. Chairman, I will say to the gentleman that the answer to his question is to be found in the character of the Indian graduates. The very best educated, the most prominent and influential Indians to be found in the United States to-day, were educated at Hampton, and they all praise the course of education there and indorse the school.

Mr. CARTER. Mr. Chairman, I shall not embarrass the gentleman from Virginia by pressing the question, because we all know full well his views upon this subject.

Much has been said first and last about the wonderful things we have done for the Indian, but let us not forget what the Indian has done for the white man. Let us not forget that this land of liberty—this great Republic, one of the greatest in area as well as otherwise on the face of God's moral vineyard—has been carved exclusively from the former domain of the red man, and in most every instance without an adequate consideration.

There was a time when the will of the North American Indian was supreme upon this continent—a time that when his sacred rights were infringed upon he entreated not nor asked for quarter, but rushed out upon the bloody warpath and waged cruel and relentless war, just as civilized nations are wont to do to-day. [Applause.] But that was before the white man started his benevolent assimilation steam roller. [Laughter.]

The history of the contact of these two races—the red and the white—reveals to us that ever since the great Genoese navigator landed on the sunny shores of San Salvador the white has been demanding and the red has been conceding. The white man began by asking for a night's lodging. The Indian consented, and before the dawn of day the white man planted a cross and in the name of a pretended Christianity claimed the lodging place for his own. He asked for a few acres of land on which to plant a small patch of Indian corn. The Indian consented, and the white man claimed a State. The Indian was then told that his presence in the State was undesirable, that he must move on westward, to a reservation, and, as was truthfully stated by the gentleman from Minnesota [Mr. MILLER], promised that the reservation should be his, free from intrusion by the white man, so long as grass grew and water ran, but hardly had the ink dried on the instrument of your plighted faith when you informed the Indian that he must select a small allotment from the reservation and surrender the residue for homes for his white brothers. You asked him to give up his tribal government, his chief, his council, and all his revered, traditional tribal institutions. The Indian responded by assuming the responsibilites of your United States citizenship. He was next asked to give up his free, wild, untrammeled life. He answered by accepting your mode of living, your book learning, and joining in your march of civilization and progress.

You then asked the Indian to give up the religion of his forefathers. He responded by surrendering the Great Spirit and happy hunting grounds and accepting faith in your God, your heaven, and all that the Christian religion implies; and finally, Mr. Chairman, the white man has demanded and the Indian has conceded until he has nothing left but his self-respect, and now you come to him with Hampton school and ask him to surrender that self-respect by placing his children on a social equality with an inferior race, a level to which you yourself will not deign to descend. [Loud applause.]

Mr. JONES. I would like to ask the gentleman if there is anything compulsory in my amendment?

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia.

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

On a division (demanded by Mr. JONES) there were—ayes 33, noes 65.

So the amendment was rejected.

The Clerk read as follows:

WASHINGTON.

SEC. 23. For support and civilization of the D'Wamish and other allied tribes in Washington, including pay of employees, $7,000.

Mr. FERRIS. Mr. Chairman, I move to strike out the last word, for the purpose of making a request. The American Congress, I think, is especially fortunate at this time in having with them a Member who is particularly familiar with the disease known as trachoma. This House very generously and very righteously, I think, adopted an amendment providing for a hospital for the treatment of those affected, and at my request the Member from New York, Dr. KINDRED, has presented a chart here. I trust he will be allowed to proceed for a few minutes, and I hope the committee will hear him.

Mr. MANN. Mr. Chairman, reserving the right to object, it is now 5 minutes to 6 o'clock. Does the gentleman intend to move that the committee rise after the gentleman from New York concludes?

Mr. FERRIS. Mr. Chairman, I ask unanimous consent that the gentleman from New York [Mr. KINDRED] have 10 minutes in which to address the House on the disease of trachoma, with the understanding that after that the committee shall rise.

The CHAIRMAN. The gentleman from Oklahoma asks unanimous consent that the gentleman from New York may have 10 minutes in which to address the committee. Is there objection? [After a pause.] The Chair hears none, and it is so ordered.

[Mr. KINDRED addressed the committee. See Appendix.]

Mr. RAKER. I ask unanimous consent to extend by remarks in the RECORD.

The CHAIRMAN. The gentleman from California [Mr. RAKER] asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. FERRIS. Mr. Chairman, I make a similar request.

The CHAIRMAN. The gentleman from Oklahoma [Mr. FERRIS] makes a similar request. Is there objection?

There was no objection.

Mr. STEPHENS of Texas. Mr. Chairman, I also make a similar request.

The CHAIRMAN. The gentleman from Texas [Mr. STEPHENS] also asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. MANN. I ask unanimous consent, Mr. Chairman, to extend remarks in the RECORD.

The CHAIRMAN. The gentleman from Illinois also asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. JONES. I ask unanimous consent, Mr. Chairman, to extend my remarks in the RECORD also.

The CHAIRMAN. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. CANNON. I would like to ask the gentleman from New York [Mr. KINDRED] this question: Does this trouble of which he speaks attack anybody but Indians?

Mr. STEPHENS of Texas. Mr. Chairman, I move that the committee do now rise.

Mr. KINDRED. If I had the time I would be very glad indeed to answer the gentleman's question.

Mr. STEPHENS of Texas. I move that the committee do now rise, Mr. Chairman.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. BARNHART, 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. 20728—the Indian appropriation bill—and had come to no resolution thereon.

ENROLLED JOINT RESOLUTION SIGNED.

The SPEAKER announced his signature to enrolled joint resolution of the following title:

S. J. Res. 96. Joint resolution to amend an act entitled "An act appropriating $350,000 for the purpose of maintaining and protecting against impending floods the levees on the Mississippi River," approved April 3, 1912.

ADJOURNMENT.

Mr. STEPHENS of Texas. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 6 minutes p. m.) the House adjourned until to-morrow, Tuesday, April 9, 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:

1. A letter from the Attorney General of the United States, transmitting, pursuant to House resolution adopted March 12, 1912, findings of the Kansas City court of appeals in the matter of disbarment of Leslie J. Lyons, United States district attor-

ney (H. Doc. No. 685); to the Committee on the Judiciary and ordered to be printed.

2. A letter from the Secretary of the Treasury, transmitting copy of a communication from the Acting Secretary of the Interior submitting estimate of appropriation for furniture and office appliances for the office of the Secretary and the bureaus of the department (H. Doc. No. 684); to the Committee on Appropriations and ordered to be printed.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, the Committee on Pensions was discharged from the consideration of the bill (H. R. 17891) granting a pension to Thomas Butler, and the same was referred to the Committee on Invalid Pensions.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

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

By Mr. NYE: A bill (H. R. 22993) to provide for an increase in the limit of cost of a public building at Minneapolis, Minn.; to the Committee on Public Buildings and Grounds.

By Mr. DOREMUS: A bill (H. R. 22994) to amend the laws relating to the judiciary; to the Committee on the Judiciary.

By Mr. RAKER: A bill (H. R. 22995) to establish a national park service, and for other purposes; to the Committee on the Public Lands.

Also, a bill (H. R. 22996) authorizing the Secretary of the Interior to set aside certain lands to be used as a sanitarium by the Order of Owls; to the Committee on the Public Lands.

By Mr. FERGUSSON: A bill (H. R. 22997) to provide for the surveying of the unsurveyed lands in the State of New Mexico; to the Committee on the Public Lands.

By Mr. BYRNS of Tennessee: A bill (H. R. 22998) providing that the United States, in certain cases, shall make compensation for the use of highways for carrying rural mail; to the Committee on Agriculture.

By Mr. BARTHOLDT: A bill (H. R. 22999) providing for the construction and maintenance by the city of St. Louis, Mo., of an intake tower in the Mississippi River at St. Louis, Mo.; to the Committee on Interstate and Foreign Commerce.

By Mr. HENRY of Texas: A bill (H. R. 23000) providing for publicity of contributions and expenditures for the purpose of influencing or securing the nomination of candidates for the offices of President and Vice President of the United States; to the Committee on Election of President, Vice President, and Representatives in Congress.

By Mr. ALEXANDER: A bill (H. R. 23001) to amend section 4472 of the Revised Statutes of the United States relating to the carrying of dangerous articles on passenger steamers; to the Committee on the Merchant Marine and Fisheries.

By Mr. FOWLER: Joint resolution (H. J. Res. 291) to appropriate $25,000 to maintain the levee at Shawneetown, Ill.; to the Committee on Appropriations.

PRIVATE BILLS AND RESOLUTIONS.

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

By Mr. ALEXANDER: A bill (H. R. 23002) for the relief of Henry Benson; to the Committee on Military Affairs.

By Mr. ALLEN: A bill (H. R. 23003) granting an increase of pension to Mary E. Acton; to the Committee on Invalid Pensions.

By Mr. ANDERSON of Minnesota: A bill (H. R. 23004) granting an increase of pension to George H. Suits; to the Committee on Invalid Pensions.

By Mr. ANDERSON of Ohio: A bill (H. R. 23005) granting a pension to Landon G. Harper; to the Committee on Invalid Pensions.

By Mr. AUSTIN: A bill (H. R. 23006) for the relief of Isaac Jenkins; to the Committee on Military Affairs.

Also, a bill (H. R. 23007) for the relief of Randall H. Trotter; to the Committee on Military Affairs.

Also, a bill (H. R. 23008) for the relief of heirs of James Moore, deceased; to the Committee on War Claims.

Also, a bill (H. R. 23009) for the relief of heirs or estate of John Jones, deceased; to the Committee on War Claims.

Also, a bill (H. R. 23010) for the relief of the estate of George W. Dice; to the Committee on War Claims.

Also, a bill (H. R. 23011) granting a pension to James C. Smith; to the Committee on Pensions.

Also, a bill (H. R. 23012) to remove the charge of desertion standing against John St. Clair; to the Committee on Military Affairs.

By Mr. BURKE of Wisconsin: A bill (H. R. 23013) granting an increase of pension to Albert Butler; to the Committee on Invalid Pensions.

By Mr. BYRNES of South Carolina: A bill (H. R. 23014) granting a pension to Robert Wilks; to the Committee on Pensions.

By Mr. CARLIN: A bill (H. R. 23015) for the relief of the heirs of Jackson Hogeland, deceased; to the Committee on War Claims.

By Mr. CLAYPOOL: A bill (H. R. 23016) granting an increase of pension to David B. Zeigler; to the Committee on Invalid Pensions.

By Mr. COOPER: A bill (H. R. 23017) granting an increase of pension to Cornelius W. Robinson; to the Committee on Invalid Pensions.

By Mr. CULLOP: A bill (H. R. 23018) granting an increase of pension to Henry C. Fellows; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23019) granting an increase of pension to Noah Brown; to the Committee on Invalid Pensions.

By Mr. DAVENPORT: A bill (H. R. 23020) granting an increase of pension to Edward S. Lane; to the Committee on Invalid Pensions.

By Mr. DICKINSON: A bill (H. R. 23021) granting an increase of pension to John W. Rains; to the Committee on Invalid Pensions.

By Mr. EDWARDS: A bill (H. R. 23022) for the relief of Z. T. De Loach; to the Committee on War Claims.

Also, a bill (H. R. 23023) for the relief of the heirs of Richard B. Sconyers; to the Committee on War Claims.

Also, a bill (H. R. 23024) for the relief of the heirs of John Brannen, deceased; to the Committee on War Claims.

Also, a bill (H. R. 23025) for the relief of the heirs of Mrs. M. E. Elders; to the Committee on War Claims.

Also, a bill (H. R. 23026) for the relief of the estate of Emanuel R. Cox; to the Committee on War Claims.

Also, a bill (H. R. 23027) for the relief of A. F. Mira or his heirs at law; to the Committee on War Claims.

Also, a bill (H. R. 23028) for the relief of the estate of Martha E. Trowell; to the Committee on War Claims.

By Mr. FOCHT: A bill (H. R. 23029) granting an increase of pension to David P. Little; to the Committee on Invalid Pensions.

By Mr. GRAY: A bill (H. R. 23030) granting a pension to Edgar C. Harris; to the Committee on Pensions.

Also, a bill (H. R. 23031) granting a pension to Harvey L. Rutherford; to the Committee on Pensions.

Also, a bill (H. R. 23032) granting an increase of pension to Jerusha A. Patton; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23033) granting an increase of pension to Hugh L. Mullen; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23034) granting an increase of pension to Henry M. Kocher; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23035) granting an increase of pension to William H. Dakins; to the Committee on Pensions.

Also, a bill (H. R. 23036) granting an increase of pension to Henry C. Peterman; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23037) granting an increase of pension to Valentine Steiner; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23038) granting an increase of pension to John A. Branson; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23039) granting an increase of pension to Frederick S. Rudy; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23040) granting an increase of pension to Nathan J. Otto; to the Committee on Invalid Pensions.

By Mr. HARRISON of New York: A bill (H. R. 23041) to remove the charges of desertion from the military record of Louis Scharnikow and grant him an honorable discharge; to the Committee on Military Affairs.

By Mr. HARTMAN: A bill (H. R. 23042) granting a pension to Agnes C. Wunderligh; to the Committee on Invalid Pensions.

By Mr. HAYES: A bill (H. R. 23043) to patent certain semi-arid lands to Luther Burbank under certain conditions; to the Committee on the Public Lands.

By Mr. HOUSTON: A bill (H. R. 23044) for the relief of the Cumberland Presbyterian Church, of Murfreesboro, Tenn.; to the Committee on War Claims.

Also, a bill (H. R. 23045) for the relief of the First Presbyterian Church of Fayetteville, Tenn.; to the Committee on War Claims.

Also, a bill (H. R. 23046) for the relief of Calhoun Lodge, No. 26, Independent Order of Odd Fellows, Fayetteville, Tenn.; to the Committee on War Claims.

Also, a bill (H. R. 23047) for the relief of the Methodist Episcopal Church South, of Tullahoma, Tenn.; to the Committee on War Claims.

By Mr. MOON of Tennessee: A bill (H. R. 23048) granting an increase of pension to Joshua Pack; to the Committee on Invalid Pensions.

By Mr. MORRISON: A bill (H. R. 23049) granting a pension to William A. Brown; to the Committee on Pensions.

By Mr. O'SHAUNESSY: A bill (H. R. 23050) granting a pension to Mary S. Bowen; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23051) granting an honorable discharge to John May; to the Committee on Military Affairs.

By Mr. PAYNE: A bill (H. R. 23052) granting an increase of pension to Edwin E. Cleaveland; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23053) granting an increase of pension to Thomas Scott; to the Committee on Invalid Pensions.

By Mr. RICHARDSON: A bill (H. R. 23054) for the relief of William Fuller; to the Committee on Pensions.

By Mr. SCULLY: A bill (H. R. 23055) granting an increase of pension to Holmes C. Grant; to the Committee on Invalid Pensions.

By Mr. SIMS: A bill (H. R. 23056) for the relief of the legal representatives of Jessie Russell, deceased; to the Committee on War Claims.

By Mr. SULLOWAY: A bill (H. R. 23057) granting an increase of pension to James Warren Brown, alias James Warren; to the Committee on Invalid Pensions.

By Mr. TAGGART: A bill (H. R. 23058) granting an increase of pension to William L. Miller; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23059) granting an increase of pension to Alexander Parks; to the Committee on Invalid Pensions.

Also, a bill (H. R. 23060) granting an increase of pension to Thomas J. Lamunyon; to the Committee on Invalid Pensions.

By Mr. UNDERHILL: A bill (H. R. 23061) granting a pension to Caleb W. Story; to the Committee on Invalid Pensions.

By Mr. WILLIS: A bill (H. R. 23062) granting a pension to Arminta Lary; to the Committee on Invalid Pensions.

PETITIONS, ETC.

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

By Mr. AIKEN of South Carolina: Petition of citizens of Ninety Six, S. C., 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 the Central Methodist Church, the Lutheran Church, and the Associate Reformed Presbyterian Church, of Newberry, S. C., favoring passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. ANDERSON of Minnesota: Papers to accompany bill for the relief of George H. Suits; to the Committee on Invalid Pensions.

By Mr. ASHBROOK: Petition of J. A. Richardson and 20 other citizens of Newark, Ohio, protesting against the passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of Walter Schonands and 13 other citizens of Millbuch, Ohio, asking immediate enactment of parcel-post bill (H. R. 14); to the Committee on the Post Office and Post Roads.

By Mr. AUSTIN: Petition of James R. Moore, administrator of estate of James Moore, deceased, praying for reference of his claim to the Court of Claims; to the Committee on War Claims.

Also, petition of C. J. Jones, heir of John Jones, deceased, of Knox County, Tenn., for reference of his claim to the Court of Claims; to the Committee on War Claims.

By Mr. AYRES: Memorial of the Amateur Athletic Union, for appointment of a commissioner to represent the United States Government at the coming Olympian championships; to the Committee on Foreign Affairs.

Also, memorial of the Chamber of Commerce of the State of New York, for passage of bill providing for creation of a Federal commission on industrial relations; to the Committee on Rules.

Also, memorial of the Chamber of Commerce of the State of New York, favoring passage of House bill 20044; to the Committee on Foreign Affairs.

Also, memorial of San Francisco Chamber of Commerce, indorsing House bill 20626; to the Committee on Interstate and Foreign Commerce.

By Mr. DAVENPORT: Papers to accompany bill for the relief of Edward S. Lame; to the Committee on Invalid Pensions.

By Mr. DYER: Petition of Whitman Agricultural Co., of St. Louis, Mo., protesting against passage of House bill 21100; to the Committee on the Judiciary.

Also, petition of Cornelia Greene Chapter, Daughters of the American Revolution, of St. Louis, Mo., for enactment of House bill 19641; to the Committee on Appropriations.

Also, petition of Cornelia Greene Chapter, Daughters of the American Revolution, of St. Louis Mo., for erection of a national archives building in Washington, D. C.; to the Committee on Public Buildings and Grounds.

Also, petition of citizens of St. Louis, Mo., for construction of one battleship in a Government navy yard; to the Committee on Naval Affairs.

Also, memorial of Camas (Mont.) Hot Springs Commercial Club, relative to certain irrigation projects; to the Committee on Irrigation of Arid Lands.

Also, petition of A. G. Peterson, of Hot Springs, Ark., for legislation increasing the efficiency of the Army Hospital Corps; to the Committee on Military Affairs.

Also, petition of the Illinois Bankers' Association, for farm demonstration work throughout the country; to the Committee on Agriculture.

Also, petition of the International Dry Farming Congress, for a survey of the unsurveyed portions of the public domain; to the Committee on the Public Lands.

Also, petition of L. J. Laughton, jr., of Capital Heights, Md., for improvement of Sixty-first Street NE., as provided in House bill 19636; to the Committee on the District of Columbia.

Also, petitions of Locals Nos. 223 and 238 of the United Garment Workers of America, for enactment of House bill 20423; to the Committee on the Judiciary.

Also, petition of the Association of Master Plumbers, for 1-cent letter postage; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of St. Louis, Mo., for establishment of a children's bureau; to the Committee on Labor.

Also, petition of the Missouri Veterinary Medical Association, for legislation to promote the efficiency of the veterinary service of the United States Army; to the Committee on Military Affairs.

Also, petitions of the St. Louis Sales Managers' Association and the Ross List & Letter Co., of St. Louis, Mo., in favor of 1-cent letter postage; to the Committee on the Post Office and Post Roads.

Also, petition of the Model Baby Shoe Co., of St. Louis, Mo., in favor of House bill 15926; to the Committee on the Judiciary.

Also, papers to accompany House bill 22056; to the Committee on Claims.

By Mr. FORNES: Memorial of the Amateur Athletic Union, for appointment of a commissioner to represent the United States at the coming Olympian championships; to the Committee on Foreign Affairs.

Also, memorial of the Chamber of Commerce of the State of New York, indorsing House bill 20044; to the Committee on Foreign Affairs.

Also, memorial of the Chamber of Commerce of the State of New York, for the creation of a Federal commission on industrial relations; to the Committee on Rules.

Also, petition of the Merchants' Association of New York, protesting against certain provisions of the Post Office appropriation bill; to the Committee on the Post Office and Post Roads.

By Mr. FULLER: Petition of H. B. Stevenson, of Capron, Ill., favoring adoption of joint resolution concerning the importation for sale of beverages containing alcohol, etc.; to the Committee on the Judiciary.

Also, petition of Cordova Chamber of Commerce, Cordova, Alaska, favoring an annual appropriation for wagon-road improvement, etc.; to the Committee on Appropriations.

By Mr. GARNER: Petition of members of the Farmers' Educational and Cooperative Union of the fifteenth congressional district of Texas, for legislation prohibiting gambling in all farm products, etc.; to the Committee on Agriculture.

By Mr. HAMLIN: Papers to accompany bill for the relief of Martha Coslett (H. R. 17075); to the Committee on Invalid Pensions.

Also, petition of citizens of the State of Missouri, for construction of one battleship in a Government navy yard; to the Committee on Naval Affairs.

By Mr. HANNA: Petition of Knut Bjornaht, of Haynes, N. Dak., asking that the duties on raw and refined sugars be reduced; to the Committee on Ways and Means.

Also, petition of citizens of Talley, N. Dak., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of Reynolds, N. Dak., protesting against parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of the State of North Dakota, asking that an action instituted against certain individuals by the Government be dropped; to the Committee on the Judiciary.

Also, petition of the Methodist Episcopal Church, Hensel, Pembina County, N. Dak., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. HARTMAN: Petitions of Granges Nos. 309 and 1339, Patrons of Husbandry, for enactment of House bill 19133, providing for a governmental system of postal express; to the Committee on Interstate and Foreign Commerce.

By Mr. KINDRED: Memorial of the Amateur Athletic Union, for appointment of a commissioner to represent the United States at the coming Olympian championships; to the Committee on Foreign Affairs.

Also, memorial of Chamber of Commerce of the State of New York, indorsing House bill 20094; to the Committee on Foreign Affairs.

Also, memorial of Chamber of Commerce of the State of New York, for the creation of a Federal commission on industrial relations; to the Committee on Rules.

By Mr. LAFEAN: Petition of the St. James Lutheran Church of Gettysburg, Pa., favoring passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of the Presbyterian and Methodist Episcopal Churches of Gettysburg, Pa., favoring passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of the St. James Lutheran Church and Methodist Episcopal Church and Presbyterian Church, all of Gettysburg, Pa., favoring the passage of joint resolution 163; to the Committee on the Judiciary.

By Mr. LINDSAY: Memorial of the Amateur Athletic Union, for appointment of a commissioner to represent the United States at the coming Olympian championships; to the Committee on Foreign Affairs.

Also, memorial of Chamber of Commerce of the State of New York, for the creation of a Federal commission on industrial relations; to the Committee on Rules.

Also, memorial of Chamber of Commerce of the State of New York, indorsing House bill 20044; to the Committee on Foreign Affairs.

By Mr. McKENZIE: Petition of citizens of Winslow, Ill., for passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. McKINNEY: Resolutions of the Siboney Camp, No. 3, United Spanish War Veterans, Department of Illinois, of Rock Island, Ill., favoring passage of House bill 17470; to the Committee on Pensions.

By Mr. MARTIN of South Dakota: Petition of the Congregational Christian Endeavor of Mitchell, S. Dak., favoring passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

By Mr. MOON of Tennessee: Papers to accompany bill for the relief of Joshua Peck; to the Committee on Invalid Pensions.

By Mr. MOTT: Petition of the Chamber of Commerce of the State of New York, favoring passage of House bill 21094; to the Committee on Rules.

Also, petition of the Chamber of Commerce of the State of New York, favoring passage of House bill 20044, for improvement of foreign service; to the Committee on Foreign Affairs.

By Mr. PATTEN of New York: Memorial of the Amateur Athletic Union, for appointment of a commissioner to represent the United States at the coming Olympian championships; to the Committee on Foreign Affairs.

Also, memorial of Chamber of Commerce of the State of New York, indorsing House bill 20044; to the Committee on Foreign Affairs.

Also, memorial of Chamber of Commerce of the State of New York, for the creation of a Federal commission on industrial relations; to the Committee on Rules.

By Mr. PRAY: Petitions of residents of Bearcreek and Alberton, Mont., urging that a clause be inserted in the naval appropriation bill providing for the building of one battleship in a Government navy yard; to the Committee on Naval Affairs.

By Mr. RAKER: Memorial of the Polish Society of California, protesting against an illiteracy test in the immigration laws; to the Committee on Immigration and Naturalization.

Also, memorial of the Chamber of Commerce of San Francisco, Cal., favoring House bill 20626; to the Committee on Interstate and Foreign Commerce.

Also, petition of the citizens of California, protesting against House bill 20281 and favoring House bills 19338 and 21225; to the Committee on Agriculture.

Also, memorial of the Chambers of Commerce of Oakland and Alameda, Cal., favoring House bill 18227 establishing the National Redwood Park; to the Committee on the Public Lands.

Also, memorial of 3,000 members of the California Retail Grocers' Association, opposing a parcel-post system; to the Committee on the Post Office and Post Roads.

Also, memorial of the Chamber of Commerce of Alameda, Cal., favoring Senate bill 3367; to the Committee on the Public Lands.

Also, petition of citizens of California, opposing House bill 20281 and favoring House bill 21225; to the Committee on Agriculture.

Also, petition of Bert L. Waite, of Arcata, Cal., favoring House bill 20595; to the Committee on Patents.

Also, memorial of the Chamber of Commerce of Alameda, Cal., relative to the Lincoln memorial; to the Committee on the Library.

By Mr. REILLY: Memorial of the Amateur Athletic Union, for appointment of a commissioner to represent the United States at the coming Olympian championships; to the Committee on Foreign Affairs.

Also, petition of Metavessett Grange, No. 42, of Middletown, Conn., for a general parcel-post system; to the Committee on the Post Office and Post Roads.

By Mr. RICHARDSON: Petition of citizens of Lauderdale County, Ala., for parcel-post legislation; to the Committee on the Post Office and Post Roads.

By Mr RODENBERG: Petition of certain citizens of Pocahontas, Ill., favoring passage of House bill 16214; to the Committee on the Judiciary.

By Mr. SCULLY: Petitions of Sam Unsbach, of Jersey City, and Howard H. Reid, of Point Pleasant, N. J., for enactment of House bill 20595, amending the copyright act of 1909; to the Committee on Patents.

Also, petition of J. Norman Shinn, of Pleasantville, N. J., for establishment of free delivery in the smaller towns and cities; to the Committee on the Post Office and Post Roads.

Also, petition of members of United Harbor, No. 1, for legislation to improve the efficiency of the Public Health and Marine-Hospital Service; to the Committee on Interstate and Foreign Commerce.

Also, memorial of the American Antitrust League, for extending the Federal arbitration act to the coal industry, etc.; to the Committee on the Judiciary.

By Mr. SIMS: Petition of residents of Jackson, Tenn., for a workmen's compensation act; to the Committee on the Judiciary.

Also, petition of citizens of Mansfield, Tenn., for enactment of House bill 14, providing for a general parcel-post system; to the Committee on the Post Office and Post Roads.

By Mr. J. M. C. Smith: Petition of 121 citizens of Pottsville, the Woman's Christian Temperance Union of Pottsville, Mich., and 23 citizens of Fulton, Mich., for passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petition of Bellevue Grange, No. 134, Bellevue, Mich., favoring passage of parcel-post system; to the Committee on the Post Office and Post Roads.

By Mr. SHEPPARD: Papers to accompany House bill 31231, to correct the military record of H. S. Hathaway; to the Committee on Military Affairs.

By Mr. SULZER: Memorial of the Amateur Athletic Union, for appointment of a commissioner to represent the United States at the coming Olympian championships; to the Committee on Foreign Affairs.

Also, memorial of Chamber of Commerce of the State of New York, indorsing House bill 20044; to the Committee on Foreign Affairs.

Also, petition of the Merchants' Association of New York, opposing certain sections contained in the Post Office appropriation bill as reported from the committee; to the Committee on the Post Office and Post Roads.

Also, memorial of the Cordova (Alaska) Chamber of Commerce, for certain improvements in the Territory of Alaska; to the Committee on the Territories.

By Mr. TALBOTT of Maryland: Petition of Emory Church Young Woman's Christian Temperance Union, of Woodensburg, Md., for passage of Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

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

By Mr. YOUNG of Michigan: Petition of citizens of Houghton and Barazo, Mich., protesting against passage of House bill 9433; to the Committee on the Post Office and Post Roads.

Also, petitions of citizens of the twelfth congressional district of Michigan, for parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petitions of citizens of Calumet and Houghton, Mich., protesting against parcel-post legislation; to the Committee on the Post Office and Post Roads.

Also, petition of citizens of Escanaba, Mich., for old-age pensions; to the Committee on Pensions.

Also, petitions of churches and citizens in the twelfth congressional district of Michigan, for passage of the Kenyon-Sheppard interstate liquor bill; to the Committee on the Judiciary.

Also, petitions of citizens of Delta and Chippewa Counties, Mich., against bill providing that motor boats over 40 feet in length shall carry licensed pilots and engineers; to the Committee on the Merchant Marine and Fisheries.

SENATE.

TUESDAY, *April 9, 1912.*

The Senate met at 2 o'clock p. m.

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

The VICE PRESIDENT resumed the chair.

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

DEMOTED EMPLOYEES OF THE POST OFFICE DEPARTMENT (S. DOC. NO. 548).

The VICE PRESIDENT laid before the Senate a communication from the Postmaster General, transmitting, in response to a resolution of January 22, 1912, a statement of the number of railway mail clerks and other post-office employees who have been demoted since January 1, 1912, which was referred to the Committee on Post Offices and Post Roads and ordered to be printed.

PETITIONS AND MEMORIALS.

The VICE PRESIDENT presented resolutions adopted by the board of aldermen of the city of New York, favoring an appropriation for the deepening of the East River, N. Y., which were referred to the Committee on Commerce.

He also presented a petition of the Citizens' Northwest Suburban Association, of Tenleytown, D. C., praying that an appropriation be made for the construction of a George Washington memorial building in the District of Columbia, which was ordered to lie on the table.

He also presented petitions of the congregations of the Methodist Episcopal Church, the Baptist Church, the Presbyterian Church, and the Methodist Church South, and of the Woman's Christian Temperance Union, of Stevensville, and of the Woman's Christian Temperance Union of Como, all in the State of Montana, praying for the adoption of an amendment to the Constitution to prohibit the manufacture, sale, and importation of intoxicating liquors, which were referred to the Committee on the Judiciary.

Mr. GALLINGER presented a memorial of the Park View Citizens' Association, of the District of Columbia, remonstrating against the enactment of legislation authorizing the extension and widening of Spring Road, Washington, D. C., which was ordered to lie on the table.

He also presented a memorial of the Rhode Island Avenue Suburban Citizens' Association, of the District of Columbia, remonstrating against the proposed increase in water rates in the District of Columbia, which was referred to the Committee on the District of Columbia.

Mr. SHIVELY presented a petition of Local Division No. 548, Brotherhood of Locomotive Engineers, of Peru, Ind., praying for the passage of the so-called employers' liability and workmen's compensation bill, which was ordered to lie on the table.

Mr. GRONNA presented a petition of sundry citizens of North Dakota, praying for the establishment of a parcel-post system, which was referred to the Committee on Post Offices and Post Roads.

He also presented a petition of Local Lodge No. 709, Brotherhood of Railroad Trainmen, of Minot, N. Dak., praying for the enactment of legislation to provide an exclusive remedy and compensation for accidental injuries, resulting in disability or death, to employees of common carriers by railroad engaged in interstate or foreign commerce or in the District of Columbia, and for other purposes, which was ordered to lie on the table.

Mr. CULLOM presented petitions of sundry citizens of Winslow and Pleasant Grove Township, in the State of Illinois, praying for the enactment of an interstate liquor law to prevent the nullification of State liquor laws by outside dealers, which were referred to the Committee on the Judiciary.

Mr. SUTHERLAND. I present resolutions adopted by the Citizens' Northwest Suburban Association, of the District of Columbia, in favor of the bill (S. 5494) to provide a site for the George Washington Memorial Building. I ask that the resolutions lie on the table and be printed in the RECORD.

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

Approval of Senate bill 5494, to provide a site for the George Washington Memorial Building.

Whereas Senate bill 5494 provides for a site in Armory Square for the erection of a George Washington Memorial Building to serve as a convention hall for patriotic, scientific, professional, and other organizations interested in promoting the welfare of the American people, which will furnish ample accommodations for the small and large conventions of American and foreign representatives of numerous organizations, which are yearly increasing in numbers because the city of Washington is recognized as the center of American thought and activity and as the most beautiful and healthy city on the American Continent; and

Whereas the erection of this memorial building will gratify the national demand for a national convention hall in the Nation's Capital where no adequate facilities now exist; and

Whereas this bill provides that the erection and maintenance of this memorial hall shall be paid for by private donations and subscriptions, which we regard as too uncertain and difficult to obtain, as shown by the history of the Washington Monument; and

Whereas this association, on the 6th day of May, 1910, unanimously adopted a resolution for the erection of a national convention hall in this city by an appropriation from Congress of $3,000,000, which would make certain its early completion for the free dissemination of ideas, on the same patriotic policy which created the Congressional Library at a cost of $6,000,000 for the free distribution of books: Therefore be it

Resolved by the Citizens' Northwest Suburban Association in public meeting assembled this 5th day of April, 1912, That while we favor this bill for the donation of the site, we strongly oppose the plan for the erection and maintenance of said building, and we unanimously petition the Congress of the United States in the name of the 90 per cent of the people of the District of Columbia and the Nation to amend said bill by appropriating $2,000,000 to construct and complete said George Washington Memorial Building, so that the people of this generation may enjoy the benefits thereof; be it further

Resolved, That a copy of this resolution and petition be presented to the President of the Senate and the Speaker of the House, and a copy to the chairman of the Committee on Public Buildings and Grounds of the Senate and House of the Sixty-second Congress.

A true copy.

C. C. LANCASTER, *President.*
A. J. YOWELL, *Secretary.*

Mr. DU PONT presented memorials of sundry citizens of Wilmington, Del., remonstrating against enactment of legislation compelling the observance of Sunday as a day of rest in the District of Columbia, which were ordered to lie on the table.

Mr. PENROSE presented petitions of sundry citizens of Philadelphia, Newtown, Cornwells, and Lumberville, all in the State of Pennsylvania, praying for the adoption of an amendment to the Constitution to prohibit the manufacture, sale, and importation for sale of beverages containing alcohol, which were referred to the Committee on the Judiciary.

Mr. CULBERSON presented a memorial of sundry citizens of Weatherford, Tex., remonstrating against the extension of the parcel-post system beyond its present limitations, which was referred to the Committee on Post Offices and Post Roads.

Mr. STONE presented a memorial of sundry citizens of St. Joseph, Mo., remonstrating against the extension of the parcel-post system beyond its present limitations, which was referred to the Committee on Post Offices and Post Roads.

Mr. POMERENE presented a memorial of the Northeast Washington Citizens' Association, of the District of Columbia, remonstrating against the proposed increase in the salaries of certain District officials, which was ordered to lie on the table.

THREE-YEAR HOMESTEAD BILLS.

Mr. BORAH. I present a telegram, in the nature of a petition, which I ask may lie on the table and be printed in the RECORD. The telegram relates to the three-year homestead bills.

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

SPOKANE, WASH., *April 8, 1912.*

Senator W. E. BORAH,
United States Senate, Washington, D. C.:

Thousands discouraged homesteaders on temporarily nonproductive land watching anxiously fight for homestead bills. At present men with means commute and leave poor men with families of small children needing the land, who would make permanent and in time prosperous homes if requirements were reasonable; starved out.

IRA MACLAREN.
CHAS. VANDEWALKER.
W. C. SMITH.
E. A. POTTER.
F. C. VANDEWALKER.