438. Also, petition of the Chamber of Commerce, Buffalo, N. Y., opposing the tariff tax on lumber; to the Committee on Ways and Means.

439. Also, petition of the National Brotherhood of Blacksmiths, Drop Forgers, and Helpers, protesting against the enaction of a sales tax law; to the Committee on Ways and Means.

440. Also, petition of the Niagara Falls Brewing Co., praying for a decrease in or the abolition of the tax on cereal beverages; to the Committee on Ways and Means.

441. Also, petition of the Chamber of Commerce of Buffalo, N. Y., favoring tax on all crude and refined methyl alcohol, etc.; to the Committee on Ways and Means.

442. Also, petition of Oscar H. Geiger & Co., New York City, against tax of 10 per cent on manufactured fur articles; to the Committee on Ways and Means.

443. Also, petition of Division No. 328, International Brotherhood of Locomotive Engineers, Buffalo, N. Y., protesting against the enactment of sales or turnover tax law, etc.; to the Committee on Ways and Means.

444. Also, petition of Local No. 76, N. B. of O. P., Buffalo, N. Y., urging the enactment of a tariff on imported pottery; to the Committee on Ways and Means.

445. Also, petition of William C. Werner, New York, protesting against a tax on furs, etc.; to the Committee on Ways and Means.

446. By Mr. DYER: Petition of the St. Louis Basket & Box Co., in favor of House bill 4900, known as the hamper and basket bill; to the Committee on Coinage, Weights, and Measures.

447. Also, petition of Paper Carriers' Local, A. P. L., indorsing the program of legislation asked by the American Legion in the interest of disabled soldiers, sailors, and marines of America; to the Committee on Interstate and Foreign Commerce.

448. By Mr. ELSTON: Petition of the executive board of California, Women's Christian Temperance Union, urging world disarmament conference; to the Committee on Foreign Affairs.

449. By Mr. KELLY of Pennsylvania: Petition of Emory Bible Class, Pittsburgh, Pa., protesting against the modification of the Volstead law; to the Committee on the Judiciary.

450. By Mr. KISSEL: Petition of Jesse Stiefel, New York City, N. Y., opposing the Star-Spangled Banner as the national anthem; to the Committee on the Library.

451. By Mr. MacGREGOR: Petition of the I. B. of B. D. F. and H., Buffalo, N. Y., against the passage of the sales tax bill, etc.; to the Committee on Ways and Means.

452. By Mr. SNELL: Petition of Moriah Post, American Legion, No. 223, Port Henry, N. Y., urging the enactment of five bills, as follows: (1) Legislation consolidating the three ex-service bureaus; (2) appropriations for a permanent hospital building program; (3) legislation decentralizing the Bureau of War Risk Insurance; (4) legislation to further extend the benefits of vocational training and providing vocational training with pay for all disabled men with disabilities of 10 per cent or more traceable to the service; (5) legislation providing privilege of retirement with pay for disabled emergency officers of the World War; to the Committee on Military Affairs.

453. By Mr. TINKHAM: Petition of Irving W. Adams Post, No. 36 (Inc.), the American Legion, Boston, Mass., urging legislation consolidating the three ex-service bureaus, etc.; to the Committee on Military Affairs.

454. Also, petition of the Foreign Policy Association of Massachusetts, urging Army be cut to 160,000 men, etc.; to the Committee on Military Affairs.

455. By Mr. YOUNG: Petition of Granville Chapter, No. 47, Order of the Eastern Star, of Granville, N. Dak., praying for the passage of the so-called Smith-Towner bill, to establish a department of education, etc.; to the Committee on Education.

456. Also, petition of Linton Lodge, No. 98, Ancient Free and Accepted Masons, of Linton, N. Dak., praying for the passage of the Smith-Towner bill, to establish a department of education, etc.; to the Committee on Education.

457. Also, petition of Minot Lodge, No. 6, Knights of Pythias, of Minot, N. Dak., praying for the passage of the so-called Smith-Towner bill, to establish a department of education, etc.; to the Committee on Education.

458. Also, petition of the Sylvester J. Hill Relief Corps, No. 24, of Granville, N. Dak.; Congregational Church of Granville, Granville, N. Dak.; and Dunseith Lodge, No. 99, Ancient Free and Accepted Masons, of Dunseith, N. Dak., praying for the passage of the so-called Smith-Towner bill, to establish a department of education, etc.; to the Committee on Education.

459. Also, petition of the North and South Dakota Wool & Warehouse Association, praying for the passage of House bill 2435, the Young emergency tariff bill; to the Committee on Ways and Means.

SENATE.

WEDNESDAY, *May 4, 1921.*

The Chaplain, Rev. J. J. Muir, D. D., offered the following prayer:

O God, we would see light in Thy light, and amid all the ways along which Thou dost lead us we would be confident of Thy guidance and certain that no path of Thy choosing shall ever be other than right for us. So help us, we beseech of Thee, ever to trust Thee with a confidence that is unshaken. We ask for Christ's sake. Amen.

The reading clerk proceeded to read the Journal of the proceedings of the legislative day of Monday, May 2, 1921, when, on request of Mr. CURTIS and by unanimous consent, the further reading was dispensed with and the Journal was approved.

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

The VICE PRESIDENT. The Secretary will call the roll.

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

Ball	Gooding	McKellar	Simmons
Borah	Hale	McKinley	Smoot
Brandegee	Harreld	McLean	Spencer
Broussard	Harris	McNary	Stanfield
Bursum	Harrison	Moses	Stanley
Calder	Heflin	Myers	Sutherland
Cameron	Hitchcock	Nelson	Trammell
Capper	Johnson	New	Underwood
Caraway	Jones, N. Mex.	Nicholson	Wadsworth
Culberson	Jones, Wash.	Norbeck	Walsh, Mass.
Cummins	Kellogg	Norris	Walsh, Mont.
Curtis	Kendrick	Oddie	Warren
Dial	Kenyon	Overman	Watson, Ga.
Dillingham	Keyes	Penrose	Watson, Ind.
Elkins	King	Phipps	Weller
Fernald	Knox	Poindexter	Williams
Fletcher	Ladd	Pomerene	Willis
France	La Follette	Ransdell	Wolcott
Frelinghuysen	Lenroot	Robinson	
Gerry	Lodge	Sheppard	
Glass	McCumber	Shields	

Mr. CURTIS. I wish to announce that the Senator from Kentucky [Mr. ERNST] is absent on account of illness in his family.

The VICE PRESIDENT. Eighty-one Senators having answered to their names, a quorum is present.

TOBACCO PRODUCT OF NORTH CAROLINA AND KENTUCKY.

Mr. OVERMAN. Mr. President, I find that yesterday in a friendly colloquy between myself and the Senator from Kentucky [Mr. STANLEY] as to the amount of the tobacco raised in North Carolina we were both right. The statistics have not been issued, but I obtained them from the Census Office this morning.

In 1919 the statistics show that while Kentucky raised 511,000,000 pounds of tobacco North Carolina raised 280,000,000 pounds. The Senator was right as to the number of pounds, but the value of North Carolina's crop was $151,000,000 while Kentucky's value was only $117,000,000, showing that in that respect I was right.

I ask that the statement which I obtained from the Census Office may be printed in the RECORD.

The VICE PRESIDENT. Without objection, it will be so printed.

The statement is as follows:

DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS,
OFFICE OF THE DIRECTOR.
Washington, May 3, 1921.

Hon. LEE S. OVERMAN,
United States Senate, Washington, D. C.

DEAR SENATOR OVERMAN: In response to your telephonic request for statistics showing production and value of tobacco in the States of North Carolina and Kentucky, censuses of 1910 and 1920, I submit the following statement:

	Production.	Value.
	Pounds.	
North Carolina:		
1909	138,813,163	$13,847,559
1919	280,163,432	151,288,264
Kentucky:		
1909	398,482,301	39,868,753
1919	511,872,486	117,730,675

The average value of tobacco per pound which was produced in both North Carolina and Kentucky during the year 1909 was approximately 10 cents. At the recent census, according to values supplied by the Bureau of Crop Estimates, the average value per pound in Kentucky was 23 cents and in North Carolina it was 54 cents. Please note that Kentucky ranked first at both censuses in production, but that in value North Carolina ranked first at the later census.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

The tobacco grown in North Carolina is of a bright yellow variety and is used principally in the manufacture of smoking tobacco, cigarettes, etc., while Kentucky produces a dark brown tobacco used chiefly in the manufacture of chewing tobacco.

I am very glad to supply you with these official figures.

Very truly, yours, W. M. STEUART,
Acting Director.

Mr. STANLEY subsequently said: Mr. President, I was somewhat surprised at the statement as to the comparative values of tobacco grown in Kentucky and North Carolina made by the junior Senator from North Carolina [Mr. OVERMAN]. Knowing his scholarship and great accuracy, I challenged the statement with some hesitancy. I see that the Senator's estimate as to the comparative values of the tobacco produced in 1919 in Kentucky and in North Carolina is supported by a statement from the Director of the Census. Upon just what data the Bureau of the Census depended in quoting these figures I do not know, but the census figures are manifestly inaccurate.

The census touching the production of tobacco is made under a special act of Congress enabling the Agricultural Department to furnish from time to time accurate statements not only of the production of this product but of the amount on hand. This legislation was necessitated by the activities of the American Tobacco Co. several years ago. It became necessary for the farmer to know the amount of tobacco in the United States in order that he might act accordingly in the pooling of that crop.

I wish to insert in the RECORD a statement from the Yearbook issued by the Department of Agriculture for 1919, showing that the acreage of tobacco in North Carolina for the year 1919, the year quoted by the Census Bureau, was 554,000, the total production 310,240,000 pounds, and the farm value $166,289,000. The production in Kentucky for the same period included an acreage of 550,000 and a production of 456,500,000 pounds, with a farm value of $174,383,000.

I have here the Crop Reporter for the year 1920. This Reporter gives the production in North Carolina for the year 1920 as an acreage of 582,000, with a farm value of approximately $174,333,000. For Kentucky for the same period there was an approximate acreage of 550,000 and a farm value of approximately $190,236,000, as against $174,333,000.

I ask permission to insert in the RECORD Table 140, on page 597 of the statistics of the Department of Agriculture, and the table quoted in the Crop Reporter for December, 1920, on page 139, giving the production of tobacco for the year 1920.

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

The tables referred to are as follows:

TABLE 140.—*Tobacco: Acreage, production, and total farm value, by States, 1919.*

State.	Acreage.	Production.	Farm value Dec. 1.
		Pounds.	
Massachusetts	10,000	15,400,000	$7,130,000
Connecticut	25,000	39,000,000	18,057,000
New York	2,700	3,483,000	784,000
Pennsylvania	41,000	54,120,000	9,200,000
Maryland	29,000	19,575,000	5,872,000
Virginia	230,000	131,100,000	62,141,000
West Virginia	15,000	10,500,000	5,250,000
North Carolina	554,000	310,240,000	166,289,000
South Carolina	135,000	81,000,000	18,468,000
Georgia	31,000	16,430,000	3,532,000
Florida	4,200	3,990,000	2,175,000
Ohio	90,000	77,400,000	26,084,000
Indiana	17,900	15,215,000	5,356,000
Illinois	700	525,000	105,000
Wisconsin	48,000	60,960,000	13,533,000
Missouri	3,500	3,500,000	1,260,000
Kentucky	550,000	456,500,000	174,383,000
Tennessee	110,000	88,000,000	22,088,000
Alabama	3,000	1,890,000	567,000
Louisiana	400	174,000	113,000
Arkansas	800	456,000	160,000
United States	1,901,200	1,389,458,000	542,547,000

Crop statistics, 1918–1920—Tobacco.

State.	Acreage.			Yield per acre.		
	1920	1919	1918	1920	1919	1918
	Acres.	*Acres.*	*Acres.*	*Lbs.*	*Lbs.*	*Lbs.*
Massachusetts	10,200	10,000	10,000	1,550	1,540	1,500
Connecticut	24,400	25,000	25,000	1,480	1,560	1,500
New York	2,400	2,700	3,000	1,280	1,290	1,250
Pennsylvania	40,000	41,000	45,600	1,510	1,320	1,420
Maryland	35,000	29,000	32,000	875	675	830
Virginia	243,000	221,000	215,000	730	570	770
West Virginia	13,000	15,000	13,600	800	700	720
North Carolina	582,000	528,000	468,000	660	616	705
South Carolina	103,000	112,000	86,400	650	722	720
Georgia	26,700	31,000	4,500	600	530	800

Crop statistics, 1918–1920—Tobacco—Continued.

State.	Acreage.			Yield per acre.		
	1920	1919	1918	1920	1919	1918
	Acres.	*Acres.*	*Acres.*	*Lbs.*	*Lbs.*	*Lbs.*
Florida	4,200	4,200	4,600	1,100	950	960
Ohio	63,000	76,000	100,000	960	860	980
Indiana	20,000	20,000	16,300	900	800	930
Illinois	700	700	800	750	750	760
Wisconsin	50,000	48,000	49,000	1,248	1,270	1,330
Missouri	6,000	5,000	3,300	1,000	1,000	900
Kentucky	550,000	600,000	490,000	850	830	960
Tennessee	117,000	138,000	77,800	730	810	800
Alabama	2,500	3,000	1,500	600	630	700
Louisiana	500	400	300	500	434	420
Arkansas	800	800	400	600	570	700
United States	1,894,400	1,910,800	1,647,100	796.1	761.3	873.7

State.	Production (000 omitted).			Price Dec. 1.		
	1920	1919	1918	1920	1919	1918
	Pounds.	*Pounds.*	*Pounds.*	*Cts. per lb.*	*Cts. per lb.*	*Cts. per lb.*
Massachusetts	15,810	15,400	15,000	40.6	46.3	40.0
Connecticut	36,112	39,000	37,500	35.0	46.3	44.0
New York	3,072	3,483	3,750	27.0	22.5	18.0
Pennsylvania	60,400	54,120	64,752	20.0	17.0	14.0
Maryland	30,625	19,575	26,560	29.0	30.0	30.0
Virginia	177,390	125,970	165,550	24.0	47.4	27.0
West Virginia	10,400	10,500	9,792	25.0	50.0	36.6
North Carolina	384,120	325,248	329,940	25.3	53.6	35.1
South Carolina	66,950	80,864	62,208	15.0	22.8	31.1
Georgia	16,020	16,430	3,600	37.0	21.5	46.0
Florida	4,620	3,990	4,416	48.0	54.5	46.0
Ohio	60,480	65,360	98,000	13.0	33.7	19.5
Indiana	18,000	16,000	15,159	14.0	35.2	20.7
Illinois	525	525	608	31.0	20.0	17.0
Wisconsin	62,400	60,960	65,170	25.9	22.2	22.0
Missouri	6,000	5,000	2,970	33.0	36.0	25.0
Kentucky	467,500	498,000	470,400	15.0	38.2	26.3
Tennessee	85,410	111,780	62,240	20.0	25.1	21.4
Alabama	1,500	1,890	1,050	35.0	30.0	30.0
Louisiana	250	174	126	40.0	65.0	65.0
Arkansas	480	456	280	31.0	35.0	25.0
United States	1,508,064	1,454,725	1,439,071	21.1	39.0	28.0

State.	Total farm value, basis Dec. 1 price (000 omitted).			Value per acre, basis Dec. 1 price.		
	1920	1919	1918	1920	1919	1918
Massachusetts	$6,419	$7,130	$6,000	$629.30	$713.02	$600.00
Connecticut	12,639	18,057	16,500	518.00	722.28	660.00
New York	829	784	675	345.60	290.25	225.00
Pennsylvania	12,080	9,200	9,065	302.00	224.40	198.00
Maryland	8,881	5,872	7,968	253.75	202.50	249.00
Virginia	42,574	59,710	44,698	175.20	270.18	207.90
West Virginia	2,600	5,250	3,584	200.00	350.00	263.52
North Carolina	97,182	174,333	115,809	166.98	330.18	247.46
South Carolina	10,042	18,437	19,347	97.50	164.62	223.92
Georgia	5,927	3,532	1,656	222.00	113.95	368.00
Florida	2,218	2,175	2,031	528.00	517.75	441.60
Ohio	7,862	22,026	19,110	124.80	289.82	191.10
Indiana	2,520	5,632	3,138	126.00	281.60	192.51
Delaware	163	105	103	232.50	150.00	129.20
Wisconsin	16,162	13,533	14,337	323.23	281.94	292.60
Missouri	1,980	1,800	742	330.00	360.00	225.00
Kentucky	70,125	190,236	123,715	127.50	317.06	252.48
Tennessee	17,082	28,057	13,319	146.00	203.31	171.20
Alabama	825	567	315	330.00	189.00	210.00
Louisiana	100	113	82	200.00	282.10	273.00
Arkansas	149	160	70	186.00	199.50	175.00
United States	318,359	566,709	402,264	168.05	296.58	244.23

Mr. STANLEY. These tables show that for the year 1919 Kentucky exceeded North Carolina in production by 146,000,000 pounds and in value by $8,211,000. Approximately the same difference is manifest from the reports of the Department of Agriculture for the year 1920.

I was sure when the Senator from North Carolina made the statement that he had good authority for it, knowing his accuracy and thorough knowledge of the subject; but, under the circumstances, the estimates and the information obtained by the Department of Agriculture are much more dependable than the estimates of the Census Bureau, in my opinion.

Mr. OVERMAN. Mr. President, I did not intend to detract from Kentucky. I was going on to show the wonderful increase in farming and manufacturing in my State, and I did state that she had increased wonderfully in the production of tobacco.

After the Senator from Kentucky took issue with me, I went out to the telephone and called up the Census Bureau, and they said that the figures had not yet been published, but they had them there, and would send them to me this morning, and I had them published in the RECORD, showing that where the value of the tobacco produced in Kentucky was $117,000,000, in North Carolina it was $150,000,000, and that in 10 years we had increased in the value of tobacco grown from $13,000,000 to $150,000,000, while Kentucky had increased from $39,000,000 to $117,000,000. It was the increase I was showing, to show that we did not need any foreigners to raise tobacco.

The issue came about in that way. The Senator from Missouri [Mr. REED] was contending that the American people were not as good as the foreigners in raising crops, and I showed that we had less foreign population than any other State in the Union, and that we had increased in population more than almost any other State in the Union, according to percentage, leaving out the foreign population, and that we had increased in industry, in finance, and in farming in percentages more than any other State, and that we had less foreign population.

That was the point I was making.

Mr. STANLEY. Mr. President, I appreciate perfectly well the fact that the Senator from North Carolina had no intention of making any invidious comparison between the sister States of North Carolina and Kentucky. Kentucky rejoices in the marvelous advance of North Carolina and in the splendid attainments of her representatives in the Senate; and, outside of Kentucky, there is not a State in the Union to which I would take off my hat with greater pride and pleasure than the imperial State of North Carolina.

RURAL CREDIT SOCIETIES.

Mr. McLEAN. Mr. President, I wish to call the attention of the Senate to S. 1265, to create rural credit societies, and for other purposes, which was introduced on the 27th day of April by the junior Senator from Iowa [Mr. KENYON] and referred to the Committee on Agriculture and Forestry. I think the senior Senator from Pennsylvania [Mr. PENROSE] will be interested in the appropriateness of its reference.

The bill creates two organizations, the rural credit society and the liberty insurance league. On page 3 of the bill, article 2, the nature of the business of the rural credit societies is described in the following language——

Mr. BORAH. Mr. President, have we got through with morning business?

Mr. McLEAN. I shall not occupy more than three minutes.

Mr. BORAH. If the Senator is going to call up the bill for a change of reference it will occupy more than three minutes.

Mr. McLEAN. I wish to assure the Senator that I have no desire to change the reference. On the contrary I wish to call the attention of the Senate to the reference in order that the Senate may appreciate the brilliant judgment exercised by the Senator from Iowa in referring the bill to the Committee on Agriculture and Forestry——

Mr. KENYON. I thank the Senator, but I ask him to read the remarks I made about the bill at the time I introduced it.

Mr. BORAH. Mr. President, has this day been set apart for a day of eulogies?

Mr. KENYON. Just 10 minutes.

Mr. McLEAN. I do not expect to occupy more than two minutes.

Mr. KENYON. I stated at that time that if there would be any hearings on the bill we would have joint hearings with the Committee on Banking and Currency, of which the Senator from Connecticut [Mr. McLEAN] is chairman. I felt that the Committee on Agriculture and Forestry would be much more friendly to the bill than the Senator's committee. That is one reason why I wanted to have it go to the Committee on Agriculture and Forestry. I am perfectly frank in saying that.

Mr. McLEAN. I think if I call the attention of the Senate to two sections, which are very brief, describing the purpose of the act, they will realize that the Senator from Iowa did not send it to the Committee on Agriculture and Forestry because he thought that committee would be blind to its faults or kind to its virtues. On page 3 the nature of the business is described as follows:

> The nature of the society's business shall be, and it is hereby, authorized and empowered to act as the financial and fiscal agent for the Government of the United States——

That goes in as a matter of course——

> in such manner, for such purposes, and on such terms as may be prescribed by the Secretary of Agriculture and approved by the society's board of directors; to do and transact a general banking and credit business through its executive, branch, and commune offices, and through such agents and agencies as its by-laws may prescribe.

At the close of article 2, which describes the business that may be transacted by the organization, there is the following proviso:

> That neither the society nor its branches or communes shall issue or print demand payable bank notes or currency.

I have no doubt when the Committee on Agriculture reports the bill favorably the Senator from Iowa will explain why he thought it necessary to embrace this restriction.

Mr. PENROSE. Mr. President——

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

Mr. McLEAN. Certainly.

Mr. PENROSE. I hope the Senator will proceed cautiously. This may have some relation to financing the suppression of coyotes and muskrats and other pests of the prairies.

Mr. McLEAN. I think the jurisdiction is very much broader than that, if the Senator will be patient. This proviso gives the Secretary of Agriculture the power to restrict the activities of the organization to the issuance of time notes and currency; that is, the bank notes, if they are made legal tender by the Secretary of Agriculture, must be payable at least one day from date. On page 28 of the bill——

Mr. KENYON. If the Senator from Connecticut is going to enter into a discussion of the bill, of course I shall want some time to reply. If we are going to discuss the bill this morning—and it is a long bill—it is hardly fair to pick out here and there some particular language of the bill. It is very popular to make fun of any rural credit bill.

Mr. McLEAN. I am not making fun of it. I merely wish to read the provision prescribing the nature of the rural credit business authorized by the bill for the purpose of indicating the sound judgment of the Senator from Iowa in having the bill referred to the Committee on Agriculture and Forestry. I will conclude in two minutes. The nature of the organization which is called "the league" is indicated by the following provision:

> SECTION 1. Nature of business: The nature of the league's business shall be, and it is hereby authorized and empowered, to act as the financial and fiscal agent for the Government of the United States in such manner, for such purposes, and on such terms as may be prescribed by the Secretary of Commerce and approved by the league's board of directors or trustees, to do and transact the business of insurance of every nature whatsoever, to sell indemnity against any and every contingency, to negotiate reinsurances of risks and companies, receive and execute trusts, make endowments, grant, purchase, and dispose of annuities and property. It shall operate such businesses or any of them through managers and agents in the several States, Territories, and insular possessions of the United States, and it may operate them or any of them in such foreign countries whose Governments grant it permits so to do.

Then follows a restrictive clause, and when I have read this I shall have concluded my remarks:

> *Provided*, That it is hereby authorized to limit its liabilities on such foreign business to such funds or capital of the department doing such foreign business as its by-laws may prescribe.

Mr. BORAH. Regular order, Mr. President.

Mr. KENYON. Mr. President, of course I am not entitled to speak on the bill at this time. I understand the purpose of the Senator from Connecticut is to ridicule the bill. The Senator has picked out here and there portions of the bill which may be subject to ridicule, but the entire plan of the bill is set forth in an article which was placed in the RECORD by me on day before yesterday. Whether this bill or some other bill is considered, no ridicule of rural credit bills is going to stop the consideration of some rural credit measure by this Congress. This may not be the proper bill, but there will be such a bill.

The VICE PRESIDENT. The regular order is the presentation of petitions and memorials.

PETITIONS AND MEMORIALS.

Mr. HARRELD presented a resolution of the Legislature of Oklahoma, which was referred to the Committee on Finance, as follows:

House resolution 4.

Be it resolved by the House of Representatives of the Eighth Legislature of the State of Oklahoma, That——

Whereas the matter imposing a tariff on oil importations in the United States is now before the Congress of the United States: Therefore be it

Resolved, That for the protection of the oil producers of the Mid-Continent oil fields the house of representatives of the eighth legislature do hereby memorialize Congress to cause to be imposed a tariff on oil importation into the United States sufficient and adequate to protect the oil-producing interests of the Mid-Continent oil fields and the United States.

Attest:

GEO. SCHWOBE,
Speaker House of Representatives, Oklahoma Legislature.

Mr. MYERS presented two memorials of citizens of Gallatin County, Mont., remonstrating against the enactment of legisla-

tion to dam up Yellowstone Lake, which were referred to the Committee on Commerce.

He also presented memorials of the American Brewing Co. and the Montana Brewing Co., both of Great Falls, Mont., remonstrating against the enactment of legislation placing a 50 per cent higher tax on cereal beverages, which were referred to the Committee on Finance.

Mr. FRANCE presented a resolution of the Baltimore Automobile Trade Association, of Baltimore, Md., favoring the enactment of legislation which will equalize the price difference in marketing vehicles and automotive merchandise salvaged from the war areas of Europe, which was referred to the Committee on Finance.

Mr. HARRIS presented a resolution of the National Board of Farm Organizations, of Washington, D. C., protesting against the enactment of legislation placing the Federal Trade Commission under the administrative control of any governmental department, which was referred to the Committee on Interstate Commerce.

Mr. WARREN presented a letter in the nature of a petition from the East Side Bottling Works, of Cheyenne, Wyo., praying for the enactment of legislation repealing the tax on bottled soft drinks, which was referred to the Committee on Finance.

Mr. BURSUM presented a resolution of Hugh A. Carlisle Post, No. 13, American Legion, of Albuquerque, N. Mex., which was referred to the Committee on Finance and ordered to be printed in the RECORD, as follows:

Whereas as a part of the great body of American public opinion which compelled and supported the entrance of this Nation into the World War for democracy and freedom against autocracy and oppression, we feel solemnly and in duty bound to accept along with the victory our troops so handsomely won the obligation to render to our soldiers, sailors, and marines injured and disabled in the service every aid, comfort, and restitution which, through hospital care, financial support, and vocational rehabilitation, a grateful Nation can give; and

Whereas now more than two years after the conclusion of the war there remains much to be done in providing adequate hospitalization, compensation, and vocational training for our disabled; and

Whereas the American Legion, representing the great bulk of the disabled, as well as all ex-service men and women, is, after careful analysis and study, suggesting and supporting a program of relief for the disabled which commends itself to us as most conservative and reasonable; and

Whereas with deep consciousness of our debt to the disabled we wish to join our voices with the American Legion in requesting that the legislation proposed be given earnest consideration by the National Congress: Therefore be it

Resolved, That we hereby indorse the program of legislation asked by the American Legion of the Sixty-seventh Congress in the interest of the disabled soldiers, sailors, and marines of America and urge upon our Representative from this district and our Senators from this State the speedy enactment of the five bills involved, including:

1. Legislation consolidating the three ex-service bureaus.
2. Appropriations for a permanent hospital building program.
3. Legislation to further extend the benefits of vocational training and providing vocational training with pay for all disabled men with disabilities of 10 per cent or more traceable to the service.
4. Legislation decentralizing the Bureau of War Risk Insurance.
5. Legislation providing privilege of retirement with pay for disabled emergency officers of the World War.

HUGH A. CARLISLE POST, NO. 13, AMERICAN LEGION,
F. O. WESTERFIELD, *Post Commander.*

Attest:

GEORGE L. BECKWITH, *Post Adjutant.*

Mr. CAPPER presented a memorial of Local Division No. 587, International Brotherhood of Locomotive Engineers, of Salina, Kans., remonstrating against the enactment of legislation repealing the excess-profits tax and substituting therefor a sales or turnover tax, which was referred to the Committee on Finance.

He also presented a resolution of Barney Local, No. 869, Farmers' Educational and Cooperative Union of America, of Erie, Kans., favoring the so-called truth in fabric bill, the packer control bill, a bill to remove objectional features from the various boards of trade, the emergency tariff bill, a permanent tariff bill to protect agriculture, a bill to compel manufacturers to place the manufacturing cost on each article, the bill to repeal the railroad guaranty, and opposing the Nolan bill and any bill that may shift the burden of income taxes to persons of small incomes, which was referred to the Committee on Interstate Commerce.

He also presented a resolution of Miami County Post, No. 156, American Legion, Paola, Kans., favoring the enactment of legislation providing adequate relief for wounded ex-service men, which was referred to the Committee on Finance.

Mr. MOSES presented a memorandum from the Ukrainian National Committee, of Manchester, N. H., in relation to the case of East Galicia, requesting that the Government of the United States recognize East Galicia (along with northern Bukovina) as an independent State—the West Ukrainian Republic; that the Government of the United States recognize the lawful Government of the West Ukrainian Republic, namely, the Government established by the Ukrainian National Assembly under the leadership of Dr. Eugene Petrushevich; and that the Government of the United States, as one of the temporary sovereigns of East Galicia, demand of Poland that she immediately evacuate East Galicia, which was referred to the Committee on Foreign Relations.

Mr. PENROSE. I present a memorial from Americans of Ukrainian ancestry and Ukrainians residing in Minersville, Pa., concerning conditions in East Galicia. I move that the memorial be referred to the Committee on Foreign Relations.

The motion was agreed to.

Mr. PENROSE. I also present a similar memorial from people of the same nationality residing in Rankin, Pa., on the same subject, and I move that it be referred to the same committee.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. MYERS, from the Committee on Military Affairs, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (S. 723) for the relief of James Duffy (Rept. No. 28);

A bill (S. 724) for the relief of Henry J. Davis (Rept. No. 29); and

A bill (S. 725) for the relief of Orion Mathews (Rept. No. 30).

Mr. STERLING, from the Committee on Civil Service, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 581. A bill to repeal the act prohibiting increased pay under lump-sum appropriations to employees transferred within one year (Rept. No. 31); and

S. 582. A bill to repeal section 5 of the act approved June 22, 1906, entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1907, and for other purposes" (Rept. No. 32).

BILLS AND JOINT RESOLUTIONS INTRODUCED.

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

By Mr. SPENCER:

A bill (S. 1553) authorizing the President to appoint Vance Richard Thralls a captain in the Regular Army; to the Committee on Military Affairs.

By Mr. JOHNSON:

A bill (S. 1554) to exempt from cancellation certain desert-land entries in Riverside County, Calif.; to the Committee on Public Lands and Surveys.

By Mr. HALE:

A bill (S. 1555) granting a pension to Ida M. Stewart (with accompanying papers); to the Committee on Pensions.

By Mr. HARRELD:

A bill (S. 1556) granting a national charter to organize and maintain subordinate chapters of the Phi Delta Omega Fraternities; to the Committee on the Judiciary.

A bill (S. 1557) for the relief of the heirs of James Taylor, deceased; to the Committee on Cla

By Mr. BRANDEGEE:

A bill (S. 1558) to carry out the findings of the Court of Claims in the case of William C. Staples; to the Committee on Claims.

A bill (S. 1559) for the relief of Edward W. Whitaker; to the Committee on Military Affairs.

A bill (S. 1560) to enlarge the area of lands authorized to be taken for the reclamation of the Anacostia River Flats; to the Committee on the Library.

By Mr. LENROOT:

A bill (S. 1561) for the relief of the Wisconsin Band of Pottawatomie Indians, and for other purposes; to the Committee on Indian Affairs.

By Mr. POMERENE:

A bill (S. 1562) to prevent the teaching, advocating, inciting, or promoting the overthrow of the Government by force or violence; to the Committee on the Judiciary.

By Mr. ROBINSON:

A bill (S. 1563) repealing the provision of law forbidding clerks, deputy clerks, and assistants to receive compensation through an office or position to which he may be appointed by the court; to the Committee on the Judiciary.

By Mr. BURSUM:

A bill (S. 1565) making eligible for retirement under the same conditions as now provided for officers of the Regular Army all officers of the United States Army during the World

War who have incurred physical disability in line of duty; to the Committee on Military Affairs.

By Mr. McNARY:

A bill (S. 1566) for the relief of E. W. McComas; to the Committee on Public Lands and Surveys.

A bill (S. 1567) for the relief of Herbert M. Friendly and Archibald E. Burns, and each of them; to the Committee on Patents.

A bill (S. 1568) granting an increase of pension to Indian war veterans and their widows; to the Committee on Pensions.

A bill (S. 1569) for the relief of Preston B. C. Lucas; to the Committee on Claims.

By Mr. HARRIS:

A bill (S. 1570) to revive the right of action under the act of March 12, 1863 (12 Stat. L., p. 820); to the Committee on the Judiciary.

By Mr. FRELINGHUYSEN:

A bill (S. 1571) to remove the charge of desertion from the military record of Isaac Dalzell, deceased; to the Committee on Military Affairs.

A bill (S, 1572) granting a pension to Arthur O'Hara; to the Committee on Pensions.

By Mr. WOLCOTT:

A bill (S. 1573) granting a pension to Lavinia Dillahay; to the Committee on Pensions.

By Mr. WADSWORTH:

A bill (S. 1574) authorizing the Secretary of War to exchange, with foreign nations desiring same, samples of arms and equipment in use by the Army of the United States; to the Committee on Military Affairs.

A bill (S. 1575) to vacate and close certain streets and alleys within the area known as the Walter Reed General Hospital, District of Columbia (with accompanying papers); to the Committee on the District of Columbia.

By Mr. CUMMINS:

A bill (S. 1576) granting a pension to James McManus;

A bill (S. 1577) granting an increase of pension to James H. Hargis;

A bill (S. 1578) granting a pension to Alois Menzel;

A bill (S. 1579) granting an increase of pension to Storm T. Roberts;

A bill (S. 1580) granting an increase of pension to David L. Armstrong; and

A bill (S. 1581) granting an increase of pension to Jeremiah Lynch; to the Committee on Pensions.

A bill (S. 1582) for the relief of Joseph D. McGarraugh; and

A bill (S. 1583) for the relief of James Kernan; to the Committee on Military Affairs.

By Mr. BALL:

A bill (S. 1586) to authorize the extension and widening of Fourteenth Street from Montague Street to its southern terminus, south of Dahlia Street; Nicholson Street from Thirteenth Street to Sixteenth Street; Colorado Avenue from Montague Street to Thirteenth Street; Concord Avenue from Sixteenth Street to its western terminus, west of Eighth Street west; Thirteenth Street from Nicholson Street to Piney Branch Road; and Piney Branch Road from Thirteenth Street to Blair Road; and for other purposes;

A bill (S. 1587) to authorize the widening of Georgia Avenue between Fairmont Street and Gresham Place NW.; and

A bill (S. 1588) for the prevention of venereal diseases in the District of Columbia, and for other purposes; to the Committee on the District of Columbia.

By Mr. NORRIS:

A bill (S. 1589) to amend section 2 of the act of August 9, 1912 (37 Stat. L., 265), relating to liens in patents and water-right certificates; to the Committee on Irrigation and Reclamation.

By Mr. KENDRICK:

A bill (S. 1590) to add certain lands to the Wyoming National Forest; to the Committee on Public Lands and Surveys.

By Mr. FRANCE:

A bill (S. 1591) to amend an act entitled "An act to revive with amendments an act to incorporate the Medical Society of the District of Columbia," approved July 7, 1838, as amended; to the Committee on the Judiciary.

By Mr. PENROSE:

A bill (S. 1592) for the retirement of certain emergency officers of the Army; to the Committee on Military Affairs.

A bill (S. 1593) for the relief of Cornelius Dugan; to the Committee on Naval Affairs.

A bill (S. 1594) granting a pension to William R. Miller;

A bill (S. 1595) granting an increase of pension to William F. Blanchard; and

A bill (S. 1596) granting an increase of pension to Anna O. D. Mickley; to the Committee on Pensions.

A bill (S. 1597) for the relief of Cecilia Barr;

A bill (S. 1598) to carry out the findings of the Court of Claims in the case of Kate Reaney Zeiss, administratrix of William B. Reaney, survivor of Thomas Reaney and Samuel Archbold, against the United States;

A bill (S. 1599) for the relief of the estate of David B. Landis, deceased, and the estate of Jacob F. Sheaffer, deceased;

A bill (S. 1600) for the relief of Annie McColgan;

A bill (S. 1601) for the relief of Sylvester Bonnaffon, jr.;

A bill (S. 1602) for the relief of Rinald Bros.; and

A bill (S. 1603) for the relief of Joseph W. Skill; to the Committee on Claims.

By Mr. McKELLAR:

A bill (S. 1604) to amend section 13 of an act known as the Federal reserve act, approved December 23, 1913; to the Committee on Banking and Currency.

By Mr. ELKINS:

A bill (S. 1605) granting the rank and pay of second lieutenant, United States Army, retired, to certain noncommissioned officers, United States Army, retired; to the Committee on Military Affairs.

A bill (S. 1606) granting an increase of pension to Mandaville Bush; to the Committee on Pensions.

By Mr. BALL (by request):

A joint resolution (S. J. Res. 47) proposing an amendment to the Constitution of the United States; to the Committee on the Judiciary.

By Mr. WADSWORTH:

A joint resolution (S. J. Res. 48) authorizing retirement as warrant officers of certain Army field clerks and field clerks Quartermaster Corps; to the Committee on Military Affairs.

By Mr. McNARY:

A joint resolution (S. J. Res. 49) giving to veterans of the Spanish American War and the Philippine insurrection the same preferred right of homestead entry granted veterans of the war with Germany; to the Committee on Public Lands and Surveys.

SANCTUARIES FOR GAME ANIMALS, BIRDS, AND FISH.

Mr. SHIELDS introduced a bill (S. 1564) to establish a sanctuary or sanctuaries for game animals and for birds and fish in the national forest reservations, and for other purposes, which was read twice by its title.

Mr. SHIELDS. Mr. President, I desire to say a word in explanation of that bill in order to call the especial attention of Senators who are interested, as it relates to several States, and is of particular interest to them.

There are a great many sanctuaries for game, or game preserves, established in the national parks of the United States in the Rocky Mountains and the Middle West which are accessible to the people of the States lying west of the Mississippi River. This bill relates particularly to States east of the Mississippi River and lying adjacent to the great Appalachian range and for the benefit of their inhabitants. The act of Congress passed in 1911, commonly known as the Weeks law, established forest reservations especially for the purpose of protecting the watersheds of the great navigable rivers which have their source in the Appalachian Mountains by protecting the forests and restoring the deforested areas. It provides for the purchase of lands lying in these mountains, in New Hampshire and on south to Alabama. The commission established under that act has purchased something short of 2,000,000 acres in those mountains, and the title is now vested in the United States and under the control of the Agricultural Department. Of these 2,000,000 acres some 400,000 acres are located in New Hampshire, 387,000 in Virginia, 326,000 in North Carolina, 300,000 in Tennessee, 163,000 in Georgia, 130,000 in West Virginia, 130,000 in Pennsylvania, 62,000 in Alabama, 36,000 in Arkansas, 32,000 in Massachusetts, and 19,000 in South Carolina. These are the approximate figures.

There are some 7,000,000 acres in the area in which it has been considered proper to purchase these lands, and eventually some 7,000,000 acres will be purchased. The lands are not as a rule susceptible of cultivation and only suitable for the production of timber. There are no game preserves or sanctuaries east of the Mississippi, as I am informed, perhaps with the exception of some established in the State of New York, and some bird sanctuaries established largely by private interests in the Gulf of Mexico on islands adjacent to Louisiana.

These lands, while primarily purchased for the purpose of protecting the watersheds of navigable rivers, are also intended as recreation grounds for all the States lying east of the Mississippi River and are convenient and accessible to the people of those States. They lie, as stated, from the extreme north to almost the extreme south and are adapted to game and fish of all kinds adapted and suitable to that large territory of varied

climatic conditions. They are to some extent being made accessible by roads constructed through them, but not as much as is contemplated by the commission having charge of them as soon as funds are provided. I believe that it is of great importance and great interest to the people of all the States lying east of the Mississippi that further purchases be made for the original purposes provided in the Weeks law and that game sanctuaries be established upon them for the breeding and protection of game, birds, and fish. It can be readily seen that the bill affects a very large territory and is of great interest to the people of the States I have mentioned and will, I think, be of great benefit to them.

These lands have been ceded to the Federal Government by all the States in which they are situated under general statutes. Some of those statutes provide for the control by the Federal Government of the game in the lands so ceded and some do so only in a qualified manner. It is well established under the common law that the title to the game is in the sovereign Government. In the United States it was early held, as I remember, by Mr. Justice Washington, then of the circuit court and afterwards of the Supreme Court of the United States, that the title to all game and fish was in the States, and held in trust for the benefit of the people of this particular State. This decision has been repeatedly affirmed, especially in the case of MacReady against Virginia, reported sometime in the nineties, in the reports of the Supreme Court, but the States can by proper legislation give this control in cases of this character to the United States.

I feel certain that with the establishment of these game sanctuaries and setting apart these lands for the breeding and propagation of game and fish, other States will do so, and that all the States of the Union, and especially those that are adjacent and will be interested, will make such cessions, and that the Federal Government eventually can control the game and fish. For that reason I believe that the Government, with the consent of the States, and subject to the laws of the States, or at least subject to regulations not in contravention of the laws of those States, may control the game upon these great forest reservations, and I hope that that will be done, and provide for its increase and protection within measurable limits.

I ask that this bill be referred to the Committee on Agriculture and Forestry; and I now call it to the attention of the Senators from the States in which the lands lie, that they may give the bill special attention and that I may have their support and cooperation in passing it.

The VICE PRESIDENT. The bill will be referred to the Committee on Agriculture and Forestry.

ADDITIONAL JUDGES FOR DISTRICT OF COLUMBIA.

Mr. BALL (by request) introduced the following bills, which were severally read twice by their titles and referred to the Committee on the District of Columbia:

A bill (S. 1584) to add one justice to the Supreme Court of the District of Columbia; and

A bill (S. 1585) to add two justices to the Court of Appeals of the District of Columbia.

Mr. OVERMAN. Mr. President, it seems to me the bills just introduced by the Senator from Delaware should have been referred to the Committee on the Judiciary. They provide for the appointment of additional judges, and such bills have always heretofore been referred to the Judiciary Committee. So far as I am personally concerned, I do not care to what committee they may be referred, but it appears to me that the proper reference would be to the Judiciary Committee, referring as they do to an increase in the number of judges to be appointed and their salaries.

Mr. BALL. The bills merely involve matters relating to the appointment of additional judges in the District of Columbia. The bill providing for the establishment of a traffic court was referred to the Committee on the District of Columbia. I have introduced the bills by request. I will say, however, that I have no objection to their being referred to the Committee on the Judiciary.

The VICE PRESIDENT. The previous order will be rescinded, and the bills will be referred to the Committee on the Judiciary.

Mr. WALSH of Montana. Mr. President, I desire to inquire whether the order of reference to the Judiciary Committee applies to both bills introduced by the Senator from Delaware?

The VICE PRESIDENT. Both bills have been referred to the Committee on the Judiciary.

AMENDMENTS TO NAVAL APPROPRIATION BILL.

Mr. POMERENE submitted an amendment providing that the President be authorized, in his discretion, to delay for a period of six months, in whole or in part, the proposed building program in order to enable him to arrange for a conference with the Governments of Great Britain, Japan, and such other powers as to him may seem proper, with the view of reducing substantially the naval building programs of the several Governments so participating in said conference, and if they agree upon such plan of reduction the President be further authorized to suspend, in whole or in part, the said building program in order to enable him to carry out any such agreement thus made, intended to be proposed by him to the naval appropriation bill, which was referred to the Committee on Naval Affairs and ordered to be printed.

Mr. BORAH submitted an amendment providing that the President be requested to invite the Governments of Great Britain and Japan to send representatives to a conference, which shall be charged with the duty of promptly entering into an understanding or agreement by which the naval expenditures and building programs of each of said Governments, to wit, the United States, Great Britain, and Japan, shall be substantially reduced annually during the next five years to such an extent and upon such terms as may be agreed upon, which understanding or agreement is to be reported to the respective Governments for approval, intended to be proposed by him to the naval appropriation bill, which was referred to the Committee on Naval Affairs and ordered to be printed.

AMENDMENT TO EMERGENCY TARIFF BILL.

Mr. STANLEY submitted an amendment intended to be proposed by him to House bill 2435, the emergency tariff bill, which was ordered to lie on the table and be printed.

DUTIES OF JUDGES.

Mr. KENYON submitted an amendment intended to be proposed by him to the bill (S. 384) to require judges appointed under authority of the United States to devote their entire time to the duties of a judge, which was ordered to lie on the table and be printed.

CONDITIONS IN THE CLOTHING INDUSTRY.

Mr. BORAH submitted the following resolution (S. Res. 63), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Committee on Education and Labor is hereby authorized and directed through the full committee, or through any subcommittee thereof, to investigate as speedily as possible the conditions in the clothing industry of the United States, including the working conditions therein; the causes of the industrial unrest in these industries in the various clothing centers in the United States and its bearing upon the cost of clothing to the public, and as bearing upon such cost the methods and costs of manufacturing clothing in the various clothing centers of the United States; the cost and selling price of woolen clothing and other materials used in the manufacuring of clothing, and the methods of sale and distribution of such woolen cloth and other materials, and also the cost and selling price of retailers of clothing throughout the United States; the rise in the wholesale and retail cost of clothing during the past seven years and the causes thereof; the profits in the manufacture and sale of clothing, both retail and wholesale, by years during the past seven years; the reason for the present industrial dispute in New York City and the presence, or absence, of any disputes in other large cities; the conditions of labor, with special reference to contracting system and sweatshops prior to the organization of the workers and since; the purpose, objects, methods, and tactics of the Amalgamated Clothing Workers of America and its relations, if any, with political organizations and quasi political groups; the purposes, objects, methods, and tactics of clothing manufacturers' associations, especially in New York City, and their relations, if any, with other organizations, business or political, with organizations engaged in the so-called open-shop campaign; the relations of retailers and retailers' associations, if any, with organizations engaged in the so-called open-shop campaign and with political organizations and quasi political groups; and to make a report to the Senate of such findings.

The said committee is hereby authorized to sit and act at such time and place as it may deem necessary, to require by subpœna or otherwise the attendance of witnesses, the production of books, papers, and documents; to employ counsel; and stenographers at a cost not exceeding $1.25 per printed page. The chairman of the committee, or any member thereof, may administer oaths to witnesses. Subpœnas for witnesses shall be issued under the signature of the chairman of the committee or subcommittee thereof. Every person who, having been summoned as a witness by authority of said committee or any subcommittee thereof, willfully makes default, or who, having appeared, refuses to answer questions pertinent to the investigation heretofore authorized, shall be held to the penalties provided by section 102 of the Revised Statutes of the United States.

The expenses thereof shall be paid from the contingent fund of the Senate on vouchers ordered by the subcommittee, signed by the chairman thereof and approved by the Committee to Audit and Control the Contingent Expenses of the Senate.

ROBERT F. ROSE.

Mr. KENYON submitted the following resolution (S. Res. 64), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate:

Resolved, That the Secretary of the Senate be, and hereby is, authorized and directed to pay out of the appropriation for expenses of inquiries and investigations, fiscal year 1921, contingent fund of the Senate, the sum of $30 to Robert F. Rose for reporting and transcribing a hearing held on January 13, 1921, for the Committee on the Philippines, United States Senate, on Senate bill 4785.

MIDSHIPMEN AT NAVAL ACADEMY.

Mr. POMERENE. Mr. President, I offer the resolution which I send to the desk. It is very brief, and I ask that it may be read for the information of the Senate.

The VICE PRESIDENT. The resolution will be read.

The resolution (S. Res. 65) was read, as follows:

Resolved, That the Committee on Naval Affairs of the United States Senate be, and it is hereby, instructed to investigate and report to the Senate—

(1) What, if any, further legislation is advisable regulating the examinations of midshipmen at the United States Naval Academy.

(2) What, if any, relief should be extended to the midshipmen who were required to submit their resignations as midshipmen because of their failure to pass certain required reexaminations held during the month of March, 1921.

Mr. POMERENE. I ask that the resolution be printed and lie on the table. To-morrow, before asking to have it referred to the Committee on Naval Affairs, at the close of morning business and with the indulgence of the Senate, I shall ask permission to submit a few observations upon it.

The VICE PRESIDENT. The resolution will be printed and lie on the table.

REDUCTION OF NAVAL ARMAMENTS.

Mr. BORAH. Mr. President, I wish to file a notice of a motion to suspend paragraph 3 of Rule XVI.

Mr. BRANDEGEE. Let it be read.

The VICE PRESIDENT. The notice filed by the Senator from Idaho will be read.

The Assistant Secretary read as follows:

The Senator from Idaho gives notice that under Rule XL he will move to suspend paragraph 3, of Rule XVI, in order that he may propose to the act (H. R. 4803) making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes, the following amendment:

"That the President is authorized and requested to invite the Governments of Great Britain and Japan to send representatives to a conference, which shall be charged with the duty of promptly entering into an understanding or agreement by which the naval expenditures and building programs of each of said Governments, to wit, the United States, Great Britain, and Japan, shall be substantially reduced annually during the next five years to such an extent and upon such terms as may be agreed upon, which understanding or agreement is to be reported to the respective Governments for approval."

MICHIGAN SENATORIAL ELECTION.

Mr. LODGE. I ask unanimous consent that the opinions of the Supreme Court in the case of Senator NEWBERRY may be printed as a public document for the use of the Senate.

Mr. UNDERWOOD. That is a case in which we are all very much interested; I do not mean so far as the particular case is concerned, but the declaration of the law, and I ask that the opinions be printed in the RECORD as well as a public document.

Mr. LODGE. I have no objection to that.

Mr. HITCHCOCK. I should like to inquire of the Senator if that includes the dissenting opinions also?

Mr. LODGE. Oh, certainly. My request is, as I stated, that the opinions be printed.

The VICE PRESIDENT. Without objection, the opinions will be printed in the RECORD and as a public document.

The opinions (S. Doc. No. 10) are as follows:

"Supreme Court of the United States.

"No. 559.—OCTOBER TERM, 1920.

"TRUMAN H. NEWBERRY et al., plaintiffs in error, *v.* The United States of America. In error to the District Court of the United States for the Western District of Michigan. (May 2, 1921.)

"Mr. Justice McReynolds delivered the opinion of the court.

"Plaintiffs in error—TRUMAN H. NEWBERRY, Paul H. King, and 15 others—were found guilty of conspiring (Criminal Code, sec. 37) to violate section 8, act of Congress approved June 25, 1910 (ch. 392, 36 Stat., 822–824), as amended by act of August 19, 1911 (ch. 33, 37 Stat., 25–29)—the Federal corrupt practices act—which provides:

"No candidate for Representative in Congress or for Senator of the United States shall give, contribute, expend, use, or promise, or cause to be given, contributed, expended, used, or promised, in procuring his nomination and election, any sum, in the aggregate, in excess of the amount which he may lawfully give, contribute, expend, or promise under the laws of the State in which he resides: *Provided*, That no candidate for Representative in Congress shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding $5,000 in any campaign for his nomination and election; and no candidate for Senator of the United States shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding $10,000 in any campaign for his nomination and election.

"*Provided further*, That money expended by any such candidate to meet and discharge any assessment, fee, or charge made or levied upon candidates by the laws of the State in which he resides, or for his necessary personal expenses, incurred for himself alone, for travel and subsistence, stationery and postage, writing or printing (other than in newspapers), and distributing letters, circulars, and posters, and for telegraph and telephone service, shall not be regarded as an expenditure within the meaning of this section, and shall not be considered any part of the sum herein fixed as the limit of expenses and need not be shown in the statements herein required to be filed.

"Act No. 109, section 1, Michigan Legislature, 1913, prohibits expenditure by or on behalf of a candidate, to be paid by him, in securing his nomination, of any sum exceeding 25 per cent of one year's compensation, and puts like limitation upon expenditures to obtain election after nomination. Section 1 is copied below (act 109, Michigan Legislature, 1913):

"SECTION 1. No sums of money shall be paid, and no expenses authorized or incurred, by or on behalf of any candidate to be paid by him in order to secure or aid in securing his nomination to any public office or position in this State, in excess of 25 per cent of one year's compensation or salary of the office for which he is candidate: *Provided*, That a sum not exceeding 50 per cent of one year's salary may be expended by the candidates for governor and lieutenant governor; or where the office is that of member of either branch of the legislature of the State, the 25 per cent shall be computed on the salary fixed for the term of two years: *Provided further*, That no candidate shall be restricted to less than $100 in his campaign for such nomination. No sums of money shall be paid and no expense authorized or incurred by or on behalf of any candidate who has received the nomination to any public office or position in this State in excess of 25 per cent of one year's salary or compensation of the office for which he is nominated; or where the office is that of member of either branch of the legislature of the State, the 25 per cent shall be computed on the salary fixed for the term of two years: *Provided*, That no candidate shall be restricted to less than $100. No sum of money shall be paid and no expenses authorized or incurred by or on behalf of any candidate contrary to the provisions of this act.

"Taken with the State enactment, the Federal statute in effect declares a candidate for the United States Senate punishable by fine and imprisonment if (except for certain specified purposes) he give, contribute, expend, use, promise, or cause to be given, contributed, expended, used, or promised in procuring his nomination and election more than $3,750—one-half of one year's salary. Under the construction of the act urged by the Government and adopted by the court below it is not necessary that the inhibited sum be paid, promised, or expended by the candidate himself, or be devoted to any secret or immoral purpose. For example, its open and avowed contribution and use by supporters upon suggestion by him or with his approval and cooperation in order to promote public discussion and debate touching vital questions or to pay necessary expenses of speakers, etc., is enough. And upon such interpretation the conviction below was asked and obtained.

"The indictment charges: That TRUMAN H. NEWBERRY became a candidate for the Republican nomination for United States Senator from Michigan at the primary election held August 27, 1918; that by reason of selection and nomination therein he became a candidate at the general election, November 5, 1918; that he and 134 others (who are named) at divers times from December 1, 1917, to November 5, 1918, unlawfully and feloniously did conspire, combine, confederate, and agree together to commit the offense on his part of willfully violating the act of Congress approved June 25, 1910, as amended, by giving, contributing, expending, and using and by causing to be given, contributed, expended, and used, in procuring his nomination and election at said primary and general elections, a greater sum than the laws of Michigan permitted and above $10,000, to wit, $100,000, and on the part of the other defendants of aiding, counseling, inducing, and procuring NEWBERRY as such candidate to give, contribute, expend, and use, or cause to be given, contributed, expended, and used, said large and excessive sum in order to procure his nomination and election. Plaintiffs in error were convicted under count 1, set out in the margin.[1]

"[1] COUNT 1.

"That TRUMAN H. NEWBERRY, Chase S. Osborne, Henry Ford, and William B. Simpson, before and on August 27, 1918, were candidates for the Republican nomination for the office of Senator in the Congress of the United States from the State of Michigan at the primary election held in said State on that day under the laws of said State, and Henry Ford and James Helm, before and on said August 27, 1918, were candidates for the Democratic nomination for the same office at said primary election; that from said August 27, 1918, to and including November 5, 1918, said TRUMAN H. NEWBERRY and said Henry Ford, by reason of their election and nomination at said primary election, became and were opposing candidates for election to the office of Senator in the Congress of the United States from said State of Michigan at the general election held in said State on said November 5, 1918—said TRUMAN H. NEWBERRY of the Republican Party and said Henry Ford of the Democratic Party—each of said candidates having, on said August 27, 1918, and on November 5, 1918, attained to the age of 30 years and upward and been a citizen of the United States for more than nine years, and each then being an inhabitant and resident of said State; and that said TRUMAN H. NEWBERRY, Paul H. King (and 133 others), hereinafter called the defendants, continuously and at all and divers times throughout the period of time from December 1, 1917, to and including said November 5, 1918, at and within said southern division of said western district of Michigan, unlawfully and feloniously did conspire, combine, confederate, and agree together and with divers other persons to said grand jurors unknown to commit an offense against the United States, to wit, the offense on the part of said TRUMAN H. NEWBERRY of willfully violating the act of Congress approved June 25, 1910, as amended by the acts of August 19, 1911, and August 23, 1912, by giving, contributing, expending, and using and by causing to be given, contributed, expended, and used, in procuring his nomination and election as such Senator

"The court below overruled a duly interposed demurrer which challenged the constitutionality of section 8, and by so doing we think fell into error.

"Manifestly this section applies not only to final elections for choosing Senators but also to primaries and conventions of political parties for selection of candidates. Michigan and many other States undertake to control these primaries by statutes and give recognition to their results. And the ultimate question for solution here is whether under the grant of power to regulate 'the manner of holding elections' Congress may fix the maximum sum which a candidate therein may expend or advise or cause to be contributed and spent by others to procure his nomination.

"Section 4, Article I, of the Constitution provides: 'The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.' Here is the source of congressional power over the elections specified. It has been so declared by this court (Ex parte Seibold, 100 U. S., 371; United States *v.* Gradwell, 243 U. S., 476, 481), and the early discussions clearly show that this was then the accepted opinion. (The Federalist, LVIII, LIX, LX; Elliot's Debates, Vol. II, 50, 73, 311; Vol. III, 86, 183, 344, 375; Vol. IV, 75, 78, 211.)

"We find no support in reason or authority for the argument that because the offices were created by the Constitution, Congress has some indefinite, undefined power over elections for Senators and Representatives not derived from section 4. 'The Government, then, of the United States can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication.' (Martin *v.* Hunter's lessee, 1 Wheat., 304, 326.) Clear constitutional provisions also negative any possible inference of such authority because of the supposed anomaly 'if one Government had the unrestricted power to control matters affecting the choice of the officers of another.'

at said primary and general elections a sum in the aggregate in excess of the amount which he might lawfully give, contribute, expend, or use or cause to be given, contributed, expended, or used for such purpose under the laws of said State of Michigan, to wit, the sum of $100,000, and by giving, contributing, expending, and using and causing to be given, contributed, expended, and used in procuring his nomination and election as such Senator, at said primary and general elections, a sum in the aggregate in excess of $10,000, to wit, said sum of $100,000, and on the part of said other defendants of aiding, counseling, inducing, and procuring said TRUMAN H. NEWBERRY so to give, contribute, expend, and use and cause to be given, contributed, expended, and used said large sum of money in excess of the amounts permitted by the laws of the State of Michigan and the said acts of Congress; the same to be money so unlawfully given, contributed, expended, and used by said TRUMAN H. NEWBERRY and by him caused to be given, contributed, expended, and used as such candidate for the following and other purposes, objects, and things, to wit:

"Advertisements in newspapers and other publications;

"Print paper, cuts, plates, and other supplies furnished to newspaper publishers;

"Subscriptions to newspapers;

"Production, distribution, and exhibition of moving pictures;

"Traveling and subsistence expenses of campaign managers, public speakers, secret propagandists, field, district, and county agents and solicitors, and of voters not infirm or disabled;

"Compensation of campaign managers, public speakers, and secret propagandists, and of field, district, and county agents and solicitors;

"Appropriating and converting to the use of the defendants themselves, and each of them, large sums of money under the guise and pretense of payment of their expenses and compensation for their services;

"Rent of offices and public halls;

"Bribery of election officials;

"Unlawful assistance of election officials;

"Bribery of voters;

"Expenses and compensation of Democratic obstructionist candidates at the primary election;

"Expenses and compensation of detectives;

"Dinners, banquet, and other entertainments given to persons believed to be influential in said State of Michigan;

"And no part of which said money was to be money expended by said TRUMAN H. NEWBERRY, as such candidate, to meet or discharge assessments, fees, or charges made or levied upon candidates by the laws of said State, or for his necessary personal expenses, incurred for himself alone, for travel and subsistence, stationery and postage, writing or printing (other than in newspapers), or for distributing letters, circulars, or postage, or for telegraph or telephone service, or for proper legal expenses in maintaining or contesting the results of either of said elections.

"[38 distinct and separate overt acts are specified.]

"And so the grand jurors aforesaid, upon their oaths aforesaid, do say, that said defendants, continuously and at all and divers times throughout the period of time in this count mentioned, at and within said division and district, in manner and form in this count aforesaid, unlawfully and feloniously did conspire to commit an offense against the United States, and certain of them did do acts to effect the object of the conspiracy against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

Mr. Iredell (afterwards of this court) in the North Carolina convention of 1788, pointed out that the States may—must indeed—exert some unrestricted control over the Federal Government. 'The very existence of the General Government depends on that of the State governments. The State legislatures are to choose the Senators. Without a Senate there can be no Congress. The State legislatures are also to direct the manner of choosing the President. Unless, therefore, there are State legislatures to direct that manner, no President can be chosen. The same observation may be made as to the House of Representatives, since they are to be chosen by the electors of the most numerous branch of each State legislature. If there are no State legislatures, there are no persons to choose the House of Representatives. Thus, it is evident, that the very existence of the General Government depends on that of the State legislatures.' (Elliot's Debates, Vol. IV, p. 78. See also the Federalist, XLIV.) The Federal features of our Government are so clear and have been so often declared that no valuable discussion can proceed upon the opposite assumption.

"Undoubtedly elections within the original intendment of section 4 were those wherein Senators should be chosen by legislatures and Representatives by voters possessing 'the qualifications requisite for electors of the most numerous branch of the State legislature.' (Art. I, secs. 2 and 3.) The seventeenth amendment, which directs that Senators be chosen by the people, neither announced nor requires a new meaning of election, and the word now has the same general significance as it did when the Constitution came into existence—final choice of an officer by the duly qualified electors. (Hawke *v.* Smith, 253 U. S., 221.) Primaries were then unknown. Moreover, they are in no sense elections for an office, but merely methods by which party adherents agree upon candidates whom they intend to offer and support for ultimate choice by all qualified electors. General provisions touching elections in constitutions or statutes are not necessarily applicable to primaries—the two things are radically different. And this view has been declared by many States' courts. (People *v.* Cavanaugh, 112 Calif., 674; State *v.* Erickson, 119 Minn., 152; State *v.* Taylor, 220 Mo., 618; State *v.* Woodruff, 68 N. J. L., 89; Commonwealth *v.* Wells, 110 Pa., 463; Ledgwood *v.* Pitts, 122 Tenn., 570.)

"Sundry provisions of the Constitution indicate plainly enough what its framers meant by elections and the 'manner of holding' them. 'The House of Representatives shall be composed of Members chosen every second year by the people of the several States.' 'No person shall be a Representative * * * who shall not when elected be an inhabitant of that State in which he shall be chosen.' 'When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.' 'Immediately after they [the Senators] shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes.' 'No person shall be a Senator * * * who shall not, when elected, be an inhabitant of that State for which he shall be chosen.' 'Each House shall be the judge of the elections, returns, and qualifications of its own Members.' 'No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office,' etc. 'The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows': 'The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected.' And provisions in the seventeenth amendment are of like effect.

"The plain words of the seventeenth amendment and those portions of the original Constitution directly affected by it should be kept in mind. Article I, section 3: 'The Senate of the United States shall be composed of two Senators from each State, chosen by the legislature thereof, for six years; and each Senator shall have one vote. Immediately after they shall be assembled in consequence of the first election they shall be divided as equally as may be into three classes.' * * * 'And if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.' Seventeenth amendment: 'The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. When vacancies happen in the representation of any State in the Senate, the executive authority of such State

shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct. This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.'

"As finally submitted and adopted the amendment does not undertake to modify Article I, section 4, the source of congressional power to regulate the times, places, and manner of holding elections. That section remains 'intact and applicable both to the election of Representatives and Senators.' (CONGRESSIONAL RECORD, vol. 46, p. 848.) When first reported, January 11, 1911, by Senator BORAH for the Judiciary Committee, the proposed seventeenth amendment contained a clause providing, 'The times, places, and manner of holding elections for Senators shall be as prescribed in each State by the legislature thereof,' the avowed purpose being thereby to modify section 4, Article I, by depriving Congress of power to regulate the manner of holding elections for Senators. (A copy of the original resolution as presented to the Senate is in the margin.)[1] Upon recommendation of a minority of the Judiciary Committee this clause was eliminated and reference to section 4, Article I, omitted from the resolution. After prolonged debate in the Sixty-first and Sixty-second Congresses the amendment in its present form was submitted for ratification. (See S. Rept. 961, 61st Cong., 3d sess.; S. Rept. 35, 62d Cong., 1st sess.; CONGRESSIONAL RECORD, vol. 46, pp. 847, 851, et seq.; vol. 47, passim, and pp. 1924, 1925, 6366.)

"Apparently because deemed unimportant no counsel on either side referred to 'An act providing a temporary method of conducting the nomination and election of United States Senators,' approved June 4, 1914 (ch. 103, 38 Stat., 384). To show its irrelevancy and prevent misapprehension the act is copied in the margin.[2] Section 2, which contains the only reference to nomination of candidates for Senator, expired by express limitation June 4, 1917, more than a year prior to the conduct here challenged. The act has no criminal provisions, makes no reference to the earlier statute upon which this prosecution is founded, and sheds no light on the power of Congress to regulate primaries and conventions. Its terms indicate intention that the machinery for designating party candidates shall remain under State control. But in no view can an attempt to exercise power be treated as conclusive evidence that Congress possesses such power. Otherwise serious discussion of constitutional limitations must cease. Moreover, the criminal statute now relied upon antedates the seventeenth amendment and must be tested by powers possessed at time of its enactment. An after-acquired power can not ex proprio vigore validate a statute void when enacted. (See Sutherland Stat. Constr., 2d ed., Vol. I, sec. 107.)

"A concession that the seventeenth amendment might be applicable in this controversy if assisted by appropriate legislation would be unimportant, since there is none. Section 2, act of June 4, 1914, had expired by express limitation many months before NEWBERRY became a candidate, and counsel very properly disregarded it.

"Because deemed appropriate in order effectively to regulate the manner of holding general elections, this court has upheld Federal statutes providing for supervisors and prohibiting interference with them, declaring criminal failure by election officers to perform duties imposed by the State and denouncing conspiracies to prevent voters from freely casting their ballots or having them counted. Ex parte Seibold (100 U. S., 371); Ex parte Clarke (100 U. S., 399); Ex parte Yarbrough (110 U. S., 651); In re Coy (127 U. S., 731); United States *v.* Mosley (238 U. S., 383.) These enactments had direct and immediate reference to elections by the people, and decisions sustaining them do not control the present controversy. Congress clearly exercised its power to regulate the manner of holding an election when it directed that voting must be by written or printed ballot or voting machines (ch. 154, 30 Stat., 836).

"Section 4 was bitterly attacked in the State conventions of 1787–89, because of its alleged possible use to create preferred classes and finally to destroy the States. In defense the danger incident to absolute control of elections by the States and the express limitations upon the power were dwelt upon. Mr. Hamilton asserted: 'The truth is that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect, or be elected. But this forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the regulation of the times, the places, and the manner of elections. The qualifications of the persons who may choose, or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature.' (The Federalist, LIX, LI.) The history of the times indicates beyond reasonable doubt that if the Constitution makers had claimed for this section the latitude we are now asked to sanction, it would not have been ratified. (See Story on the Constitution, secs. 814, et seq.)

"Our immediate concern is with the clause which grants power by law 'to regulate the manner of holding elections for Senators and Representatives'—not broadly to regulate them. As an incident to the grant there is, of course, power to make all laws which shall be necessary and proper for carrying it into effect. (Art. I, sec. 8.) Although the seventeenth amendment now requires Senators to be chosen by the people, reference to the original plan of selection by the legislatures may aid in interpretations.

"Who should participate in the specified elections was clearly indicated—members of State legislatures and those having 'the qualifications requisite for electors of the most numerous branch of the State legislature.' Who should be eligible for election was also stated. 'No person shall be a Representative who shall not have attained the age of 25 years and been seven years a citizen of the United States and who shall not when elected be an inhabitant of that State in which he shall be chosen.' 'No person shall be a Senator who shall not have attained the age of 30 years and been nine years a citizen of the United States, and who shall not when elected be an inhabitant of that State for which he shall be chosen.' Two Senators were allotted to each State, and the method was prescribed for determining the number of Representatives. Subject to these important limitations, Congress was empowered by law to regulate the times, places, and manner of holding the elections, except as to the places of choosing Senators. 'These words are used without any veiled or obscure significance,' but in their natural and usual sense.

"If it be practically true that under present conditions a designated party candidate is necessary for an election—a preliminary thereto—nevertheless his selection is in no real sense part of the manner of holding the election. This does not depend upon the scheme by which candidates are put forward. Whether the candidate be offered through primary, or con-

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[1] "S. J. Res. 134, 61st Congress, CONGRESSIONAL RECORD, vol. 46, p. 847.

"'*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein)*, That in lieu of the first paragraph of section 3 of Article I of the Constitution of the United States, and in lieu of so much of paragraph 2 of the same section as relates to the filling of vacancies, and in lieu of all of paragraph 1 of section 4 of said Article I, in so far as same relates to any authority in Congress to make or alter regulations as to the times or manner of holding elections for Senators, the following be proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States:

"'"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures

"'"The times, places, and manner of holding elections for Senators shall be prescribed in each State by the legislature thereof.

"'"When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided*, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election, as the legislature may direct.

"'"This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution."'

[2] "Act of June 4, 1914, ch. 103, 38 Stat., 384.

"'An act providing a temporary method of conducting the nomination and election of United States Senators.

"'*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That at the regular election held in any State next preceding the expiration of the term for which any Senator was elected to represent such State in Congress, at which election a Representative to Congress is regularly by law to be chosen, a United States Senator from said State shall be elected by the people thereof for the term commencing on the 4th day of March next thereafter.

"'SEC. 2. That in any State wherein a United States Senator is hereafter to be elected either at a general election or at any special election called by the executive authority thereof to fill a vacancy, until or unless otherwise specially provided by the legislature thereof, the nomination of candidates for such office not heretofore made shall be made, the election to fill the same conducted, and the result thereof determined, as near as may be in accordance with the laws of such State regulating the nomination of candidates for and election of Members at large of the National House of Representatives: *Provided*, That in case no provision is made in any State for the nomination or election of Representatives at large, the procedure shall be in accordance with the laws of such State respecting the ordinary executive and administrative officers thereof who are elected by the vote of the people of the entire State: *And provided further*, That in any case the candidate for Senator receiving the highest number of votes shall be deemed elected.

"'SEC. 3. That section 2 of this act shall expire by limitation at the end of three years from the date of its approval.'

"Approved June 4, 1914."

vention, or petition, or request of a few, or as the result of his own unsupported ambition, does not directly affect the manner of holding the election. Birth must precede, but it is no part of either funeral or apotheosis.

"Many things are prerequisites to elections or may affect their outcome—voters, education, means of transportation, health, public discussion, immigration, private animosities, even the face and figure of the candidate; but authority to regulate the manner of holding them gives no right to control any of these. It is settled, e. g., that the power to regulate interstate and foreign commerce does not reach whatever is essential thereto. Without agriculture, manufacture, mining, etc., commerce could not exist, but this fact does not suffice to subject them to the control of Congress. (Kidd *v.* Pearson, 128 U. S., 1.)

"Elections of Senators by State legislatures presupposed selection of their members by the people; but it would hardly be argued that therefore Congress could regulate such selection. In the Constitutional Convention of 1787 when replying to the suggestion that State legislatures should have uncontrolled power over elections of Members of Congress, Mr. Madison said: 'It seems as improper in principle, though it might be less inconvenient in practice, to give to the State legislatures this great authority over the election of the representatives of the people in the General Legislature as it would be to give to the latter a like power over the election of their representatives in the State legislatures.' (Supplement to Elliot's Debates, Vol. V, p. 402.)

"We can not conclude that authority to control party primaries or conventions for designating candidates was bestowed on Congress by the grant of power to regulate the manner of holding elections. The fair intendment of the words does not extend so far; the framers of the Constitution did not ascribe to them any such meaning. Nor is this control necessary in order to effectuate the power expressly granted. On the other hand, its exercise would interfere with purely domestic affairs of the State and infringe upon liberties reserved to the people.

"It should not be forgotten that, exercising inherent police power, the State may suppress whatever evils may be incident to primary or convention. As 'Each House shall be the judge of the elections, qualifications, and returns of its own Members,' and as Congress may by law regulate the times, places, and manner of holding elections, the National Government is not without power to protect itself against corruption, fraud, or other malign influences.

"The judgment of the court below must be reversed and the cause remanded for further proceedings in conformity with this opinion.

"Reversed.

"Mr. Justice McKenna concurs in this opinion as applied to the statute under consideration, which was enacted prior to the seventeenth amendment, but he reserves the question of the power of Congress under that amendment.

"A true copy.

"Test:

"_____ _____,

"*Clerk Supreme Court United States.*"

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"*Supreme Court of the United States.*

"No. 559.—OCTOBER TERM, 1920.

"TRUMAN H. NEWBERRY et al., plaintiffs in error, *v.* The United States of America. In error to the District Court of the United States for the Western District of Michigan. (May 2, 1921.)

"Mr. Chief Justice White, dissenting from the opinion, but concurring with a modification in the judgment of reversal.

"The conviction and sentence under review were based on an indictment charging a conspiracy to commit violations of the act of Congress known as the corrupt practices act as made applicable to State laws dealing with State nominating primaries for and the ensuing State elections of United States Senators and Representatives in Congress. The case is here by direct appeal because of the contention that primaries of that character are not subject to the regulating power of Congress, and as an incident there is involved the contention that even if the act of Congress was constitutional it had been prejudicially misconstrued. Sustaining the first of these contentions and therefore deciding the act to be unconstitutional, the court reverses and finally disposes of the case. Although I am unable to concur in the conclusion as to the want of power of Congress and in the judgment of reversal as rendered, I am nevertheless of opinion that there should be a judgment of reversal without prejudice to a new trial because of the grave misapprehension and grievous misapplication of the statute upon which the conviction and sentence below were based. I state the reasons which control me as to both these subjects.

"By an amendment to the corrupt practices act of 1910 Congress, in 1911, dealt with State primaries for the nomination of Senators and Representatives in Congress and with the election after nomination of such candidates (act of June 25, 1910, ch. 392, 36 Stat., 822; act of Aug. 19, 1911, ch. 33, sec. 8, 37 Stat. 25, 28). At that time there existed in the State of Michigan a law regulating State nominating primaries which included candidates for State offices as well as for the Senate and House of Representatives of the United States. These primaries were held in the month of August in each year preceding the November general election. By that law the result of the primaries determined the right to have a person's name placed as a candidate on the ballot at the general election, and in the case of United States Senators provision was made for the return of the result of the primary to the State legislature before the time when the duty of that body to elect a Senator would arise.

"The seventeenth amendment to the Constitution providing for the election of United States Senators by popular vote was promulgated in May, 1913. In June, 1914, Congress by legislation carrying out the amendment provided that thereafter Senators should be elected by popular vote, and where State laws to that effect existed made them applicable. But evidently to give time for the States to enact the necessary legislation substituting for election by the legislature the method of election established by the amendment, it was provided that where no law for primaries by popular vote as to Senators existed that subject should be controlled by the State law regulating primaries for the nomination of Representative at large, if provided for, and if not, by the provisions controlling as to primaries for general State officers, the operation of these latter provisions being expressly limited to a term of three years (act of June 4, 1914, ch. 103, 38 Stat., 384). Within the time thus fixed and before the election which was held of this case, the State of Michigan, in order to conform its laws to the amendment, modified them so as to provide for the election of Senators by popular vote, and made the general nominating State primary law applicable to that condition (act No. 156, Mich. acts of 1915), and by virtue of the amendment, the act of Congress, and the State law just stated, the primary with which we are concerned in this case was held in August, 1918.

"The plaintiff in error, NEWBERRY, was a candidate for the nomination of the Republican Party as United States Senator, and having been nominated at such primary became a candidate at the ensuing November election, and was returned as elected. Subsequently the indictment under which the conviction below was had was presented charging him and others in six counts with a conspiracy to commit violations of provisions of the corrupt practices act relating to State nominating primaries as well as to the resulting general election. It is not at this moment necessary to describe the nature of these accusations further, since it is not questioned that the indictment charged a conspiracy to commit crimes within the intendment of the corrupt practices act and hence involved the question of the constitutional power of Congress which the court now adversely decides and the basis for which I now come to consider.

"As the nominating primary was held after the adoption of the seventeenth amendment the power must have been sanctioned by that amendment; but for the purpose of clarity I consider the question of the power, first, from the provisions of the Constitution as they existed before the amendment, and, second, in contemplation of the light thrown upon the subject by the force of the amendment.

"The provisions of sections 2 and 3 of Article I of the Constitution fixing the composition of the House of Representatives and of the Senate and providing for the election of Representatives by vote of the people of the several States and of Senators by the State legislatures, were undoubtedly reservoirs of vital Federal power constituting the generative sources of the provisions of section 4, clause 1, of the same article creating the means for vivifying the bodies previously ordained—Senate and House—that is, providing:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

"As without this grant no State power on the subject was possessed, it follows that the State power to create primaries as to United States Senators depended upon the grant for its existence. It also follows that as the conferring of the power on the States and the reservation of the authority in Congress to regulate being absolutely coterminous, except as to the place of choosing Senators, which is not here relevant, it results that nothing is possible of being done under the former which is not subjected to the limitation imposed by the latter. And this is illustrated by the legislation of Congress and the decisions of this court upholding the same. See 'Act to regulate the times and manner of holding elections for Senators in Congress,' approved July 25, 1866 (14 Stat., 243); act of May 31,

1870 (16 Stat., 144); act of July 14, 1870 (16 Stat., 254); act of June 10, 1872 (17 Stat., 347); (ex parte Seibold, 100 U. S., 371; ex parte Clarke, 100 U. S., 399; ex parte Yarbrough, 110 U. S., 651; United States *v.* Mosely, 238 U. S., 383).

"But it is said that, as the power which is challenged here is the right of a State to provide for and regulate a State primary for nominating United States Senators free from the control of Congress, and not the election of such Senators, therefore as the nominating primary is one thing and the election another and different thing, the power of the State as to the primary is not governed by the right of Congress to regulate the times and manner of electing Senators. But the proposition is a suicidal one, since it at one and the same time retains in the State the only power it could possibly have as delegated by the clause in question and refuses to give effect to the regulating control which the clause confers on Congress as to that very power. And mark, this is emphasized by the consideration that there is no denial here that the States possess the power over the Federal subject resulting from the provision of the Constitution, but a holding that Congress may not exert as to such power to regulate authority which the terms of the identical clause of the Constitution confer upon it.

"But putting these contradictions aside, let me test the contention from other and distinct points of view: (1) In last analysis the contention must rest upon the proposition that there is such absolute want of relation between the power of government to regulate the right of the citizen to seek a nomination for a public office and its authority to regulate the election after nomination, that a paramount government authority having the right to regulate the latter is without any power as to the former. The influence of who is nominated for elective office upon the result of the election to fill that office is so known of all men that the proposition may be left to destroy itself by its own statement.

"(2) Moreover, the proposition, impliedly at least, excludes from view the fact that the powers conferred upon Congress by the Constitution carry with them the right 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers' (Art. I, sec. 8, cl. 18), and in doing so virtually disregards the previous legislative history and the decisions of this court sanctioning the same, to which we have referred, since that practice and those decisions unmistakably recognize that the power under the clause in question extends to all the prerequisite and appropriate incidents necessary to the discharge of the authority given.

"(3) From a somewhat different point of view the same result is even more imperatively required. Thus, as has been seen, the election was had under the seventeenth amendment to the Constitution, providing for the election of Senators by popular vote instead of by State legislatures. In the resolution providing for the passage of that amendment through Congress, as first reported by Senator BORAH on behalf of the Judiciary Committee, after making the changes necessary to substitute a provision causing Senators to be elected by popular vote instead of by the legislatures of the several States, the provision of section 4 of Article I reserving to Congress the power 'to make or alter,' except as to places, the regulations adopted by the several States as to the 'times, places, and manner' of electing Senators, was omitted, thus leaving all power on the subject in the States, free from any regulating control of Congress. (S. Rept. 961, 61st Cong., 3d sess.)

"There was division, however, concerning the matter, manifested by a proposition to amend the resolution, as reported, so as to retain the omitted provision, thus preserving the power of Congress as originally conferred (CONGRESSIONAL RECORD, vol. 46, pt. 1, p. 847). The legislative situation thus created was aptly stated by Senator BORAH, referring to the report of the committee and to the proposition (submitted by Senator Sutherland, of Utah) to amend that report and the resolution accompanying it. He said:

> "In reference to the amendment which has been suggested by the Senator from Utah [Mr. Sutherland], it was considered at some length before the committee. The proposition is a simple one. As the joint resolution now stands, the times, places, and manner of electing United States Senators is left entirely to the State. The State may determine the rules and regulations, and the times, places, and manner of holding elections for United States Senators.
>
> "If the amendment as offered by the Senator from Utah should prevail, then the matter would be left as it now is, subject to the supervision and control of Congress. (CONGRESSIONAL RECORD, vol. 46, pt. 1, p. 851.)

"After much consideration the amendment offered by Senator Sutherland was carried. (CONGRESSIONAL RECORD, vol. 46, pt. 4, p. 3307.) But the reported resolution, as thus amended, did not pass during that Congress. In the first session of the following Congress, however, the Sixty-second Congress, a resolution identical in terms with the one which had been reported in the Senate at the previous session was introduced in the House and passed the same. (H. Rept. No. 2, 62d Cong., 1st sess.) In the Senate the House resolution was favorably reported from the committee by Senator BORAH (CONGRESSIONAL RECORD, vol. 47, pt. 1, p. 787), accompanied, however, by a minority report by Senator Sutherland (S. Rept. No. 35, 62d Cong., 1st sess.), offering as a substitute a resolution preserving the complete power of Congress, as had been provided for in the Senate in the previous Congress, and an amendment to the same effect offered by Senator Bristow was subsequently adopted (CONGRESSIONAL RECORD, vol. 47, pt. 2, p. 1205), and as thus amended the resolution was ultimately submitted for ratification, and, as we have seen, was ratified and promulgated (38 Stat., 2049).

"When the plain purpose of the amendment is thus seen, and it is borne in mind that at the time it was pending the amendment to the corrupt practices act dealing with State primaries for nominating United States Senators which is now before us was in the process of consideration in Congress, and when it is further remembered that after the passage of the amendment Congress enacted legislation so that the amendment might be applied to State senatorial primaries, there would seem to be an end to all doubt as to the power of Congress.

"It is not disputable that originally instructions to representatives in State legislatures by party conventions or by other unofficial bodies as to the persons to be elected as United States Senators were resorted to as a means of indirectly controlling that subject, and thus, in a sense, restricting the constitutional provision as to the mode of electing Senators. The potentiality of instructions of that character to accomplish that result is amply shown by the development of our constitutional institutions as regards the electoral college, where it has come to pass that the unofficial nomination of party has rendered the discharge of its duties by the electoral college a mere matter of form. That in some measure, at least, a tendency to that result came about under the constitutional direction that Senators should be elected by the people would appear not doubtful. The situation on this subject is illustrated by a statement in a treatise by Haynes on 'Election of Senators,' 1906, page 132, as follows:

> "Notwithstanding our rigid Constitution's decree that the Senators from the several States shall be elected by 'the legislatures thereof,' this act of the legislatures may be deprived of nearly all of its vitality. The election of President offers an illustration of the filching of actual power away from the electors in whom it is vested by law. When James Russell Lowell, a Republican elector for Massachusetts in 1876, was urged to exercise his independence and vote for Tilden, he declined, saying that 'whatever the first intent of the Constitution was, usage had made the presidential electors strictly the instruments of the party which chose them.' The Constitution remains unchanged, yet presidential electors recognize that they have been stripped of all discretion. It appears that under certain conditions the election of Senators by State legislatures has been and can be made an equally perfunctory affair.

"The growth of the tendency to make the indirect result thus stated more effective evidently was the genesis of the statutory primary to nominate Senators. See statement concerning an amendment to the constitution of Nebraska on that subject as early as 1875, in the same treatise (p. 141).

"The large number of States which at this day have by law established senatorial primaries shows the development of the movement which originated so long ago under the circumstances just stated. They serve to indicate the tenacity of the conviction that the relation of the primary to the election is so intimate that the influence of the former is largely determinative of the latter. I have appended in the margin a statement from a publication on the subject,[1] showing how well founded this convic-

[1] "In many Western and Southern States the direct primary method has been applied to the choice of United States Senators as well as to State officers. (On this general topic, see the excellent treatise on The Election of Senators, by George H. Haynes (1906), especially chap. 11.) In the Southern States, victory in such a primary, on the Democratic side, is practically the equivalent of an election, as there is but one effective party in that section of the country. The direct nomination of Senators is generally accomplished under voluntary party regulations, as in Alabama, Arkansas, South Carolina, and Virginia. In other cases, however, this method of choice has been placed under legal protection, as in Florida (1901), Mississippi (1902), Louisiana (1906), and Texas (1907). Some Northern States have also adopted this method of direct nomination. Among Northern States, Wisconsin led the way in 1903, followed by Oregon in 1904, Montana in 1905, Iowa, Washington, Nebraska, North Dakota in 1907, Illinois, Kansas, New Jersey, Ohio, and Oklahoma in 1908. * * * In some of the States, as in Oregon, candidates for the legislature are afforded an opportunity to pledge themselves to vote for the party candidate receiving the highest vote in the regular election. In other cases a pledge is made to vote for the candidate receiving the highest number of votes in the primary. (Oregon, 1904, sec. 13. In Washington the candidate may pledge himself to vote for the party choice for United States Senator (1907, sec. 31). This latter is the general rule.) (Merriam, Primary Elections, 1908, pp. 83–85.)

tion is and how it has come to pass that in some cases at least the result of the primary has been in substance to render the subsequent election merely perfunctory. Under these conditions I find it impossible to say that the admitted power of Congress to control and regulate the election of Senators does not embrace, as appropriate to that power, the authority to regulate the primary held under State authority.

"(4) It is true that the plenary reservation in Congress of the power to control the States in the exercise of the authority to deal with the times, places, and manner of electing Senators and Representatives, as originally expressed in the Constitution, caused much perturbation in the conventions of the several States which were called upon to consider ratification, resulting from the fear that such power to regulate might be extended to and embrace the regulation of the election of the members of the State legislatures who were to exercise the power to elect Senators. It is further true that articles in the Federalist and other papers published at the time served to dispel the fear by directing attention to the fact that the regulating power of Congress only extended to the times, places, and manner of electing Senators and did not include an authority, even by implication, to deal with the election of the State legislatures, which was a power reserved to the States. But this only served to emphasize the distinction between the State and Federal power and affords no ground at this late day for saying that the reserved State power has absorbed and renders impossible of exercise the authority of Congress to regulate the Federal power concerning the election of United States Senators, submitted, to the extent provided, to the authority of the States upon the express condition that such authority should be subordinate to and controlled by congressional regulation.

"Can any other conclusion be upheld except upon the theory that the phantoms of attenuated and unfounded doubts concerning the meaning of the Constitution, which have long perished, may now be revived for the purpose of depriving Congress of the right to exert a power essential to its existence, and this in the face of the fact that the only basis for the doubts which arose in the beginning (the election of Senators by the State legislatures) has been completely removed by the seventeenth amendment?

"I do not stop to refer to the State cases concerning the distinction between State legislative power to deal with elections and its authority to control primaries, as I can not discover the slightest ground upon which they could be apposite, since here an inherent Federal right and the provision of the Constitution in dealing with it are the subjects for consideration.

"Moreover, in passing, I observe that as this case concerns a State primary law imposing obligatory results, and the act of Congress dealing with the same, it is obvious that the effect of individual action is wholly beside the issue.

"The consequence to result from a denial to Congress of the right to regulate is so aptly illustrated by the case in hand that in leaving the question I refer to it. Thus, it is stated and not denied that in the State primary in question, one of the candidates, as permitted by the State law, propounded himself at the primary election as the candidate for the nomination for Senator of both the Republican and the Democratic Parties. If the candidacy had been successful as to both, the subsequent election would have been reduced to the merest form.

"In view, then, of the plain text of the Constitution, of the power exerted under it from the beginning, of the action of Congress in its legislation, and of the amendment to the Constitution, as well as of the legislative action of substantially the larger portion of the States, I can see no reason for now denying the power of Congress to regulate a subject which from its very nature inheres in and is concerned with the election of Senators of the United States, as provided by the Constitution.

"The indictment remains to be considered. It contained six counts. For the moment it suffices to say that the first four all dealt with a common subject—that is, a conspiracy between NEWBERRY and others named to contribute and expend, for the purposes of the State primary and general election, more money than allowed by the corrupt practices act. The fifth count charged a conspiracy on the part of the defendants to commit a great number, to wit, 1,000, offenses against the United States, each to consist of giving money and things of value to a person to vote for NEWBERRY at said election, and a great number, to wit, 1,000, other offenses against the United States, each to consist of giving money and things of value to a person to withhold his vote from Henry Ford at said general election. The sixth count charged a conspiracy to defraud by use of the mails.

"At the trial, before the submission of the case to the jury, the court put the fifth count entirely out of the case by instructing the jury to disregard it, as there was no evidence whatever to sustain it. The bribery charge, therefore, disappeared. The second, third, and fourth counts, dealing, as I have said, with one general subject, were found by the court to be all in substance contained in the first count. They were, therefore, by direction of the court, either eliminated or consolidated with the first count. Thus, as contained in that count, the matters charged in the first four counts were submitted to the jury, as was also the sixth count; but the latter we need not further consider, as upon it there was a verdict of not guilty.

"The case therefore reduces itself solely to the matters covered in the first count. That count charged a conspiracy on the part of the defendants, 135 in number, including NEWBERRY, to commit an offense against the United States—that is, the offense on the part of NEWBERRY of violating the corrupt practices act by giving, contributing, expending, and using and by causing to be given, contributed, expended, and used, in procuring his nomination and election as such Senator at said primary and general elections, a sum in excess of the amount which he might lawfully give, contribute, expend, or use, and cause to be given, contributed, expended, or used for such purpose under the laws of Michigan, and in excess of $10,000, to wit, the sum of $100,000; and on the part of the other defendants of aiding, counseling, inducing, and procuring NEWBERRY as such candidate to give, contribute, expend, and use, or cause to be given, contributed, expended, or used, said large and excessive sum, in order to procure his nomination and election.

"Conspiracy to contribute and expend in excess of the amount permitted by the statute was, then, the sole issue, wholly disassociated from and disconnected with any corrupt or wrongful use of the amount charged to have been illegally contributed and expended. As putting out of view the constitutional question already considered, the errors assigned are based solely upon asserted misconstructions of the statute by the court in its charge to the jury, we bring the statute at once into view. It provides, so far as relevant to the case before us:

"No candidate for * * * Senator of the United States shall give, contribute, expend, use, or promise, or cause to be given, contributed, expended, used, or promised, in procuring his nomination and election, any sum, in the aggregate, in excess of the amount which he may lawfully give, contribute, expend, or promise under the laws of the State in which he resides: *Provided*, That * * * no candidate for United States Senator shall give, contribute, expend, use, or promise any sum, in the aggregate, exceeding $10,000 in any campaign for his nomination and election * * *.

"Coming to deal with the statute, the court, after pointing out in the most explicit terms that the limitation on the amount which might be lawfully contributed and expended or caused to be contributed and expended in the case at hand was $3,750 (that being the limitation imposed by the laws of Michigan adopted by the statute of the United States just quoted), then proceeded, over objections duly reserved, to instruct as to the significance of the statute, involved in the prohibitions, (a) against giving, contributing, expending, or using, and (b) against causing to be given, contributed, expended, or used, money in excess of that permitted by the statute saying on these subjects as follows:

"(a) It is important, therefore, that you should understand the meaning of the language employed in this corrupt practices act, and that you should understand and comprehend the effect and scope of the act, and the meaning of the language there employed, and the effect and scope and extent of the prohibition against the expenditure and use of money therein contained.

"The words 'give, contribute, expend, or use' as employed in this statute have their usual and ordinary significance, and mean furnish, pay out, disburse, employ, or make use of. The term 'to cause to be expended, or used' as it is employed in this statute means to occasion, to effect, to bring about, to produce the expenditure and use of the money.

"The prohibition contained in this statute against the expenditure and use of money by the candidate is not limited or confined to the expenditure and use of his own money. The prohibition is directed against the use and expenditure of excessive sums of money by the candidate from whatever source or from whomsoever those moneys may be derived.

"(b) The phrase which constitutes the prohibition against the candidate 'causing to be given, contributed, expended, or used excessive sums of money,' is not limited and not confined to expenditures and use of money made directly and personally by himself. This prohibition extends to the expenditure and use of excessive sums of money in which the candidate actively participates, or assists, or advises, or directs, or induces, or procures. The prohibition extends not only to the expenditure and use of excessive sums of money by the candidate directly and personally but to such use and expenditure through his agency or procurement or assistance.

"To constitute a violation of this statute, knowledge of the expenditure and use of excessive sums of money on the part of the candidate is not sufficient; neither is it sufficient to constitute a violation of this statute that the candidate merely acquiesces in such expenditures and use. But it is sufficient to constitute a violation of this statute if the candidate actively participates in doing the things which occasion such expenditures and use of money and so actively participates with knowledge that the money is being expended and used.

"Having thus fixed the meaning of the prohibitions of the statute, the court came to apply them as thus defined to the particular case before it, saying:

"(c) To apply these rules to this case: If you are satisfied from the evidence that the defendant, TRUMAN H. NEWBERRY, at or about the time that he became a candidate for United States Senator, was in-

formed and knew that his campaign for the nomination and election would require the expenditure and use of more money than is permitted by law and with such knowledge became a candidate, and thereafter by advice, by conduct, by his acts, by his direction, by his counsel, or by his procurement he actively participated and took part in the expenditure and use of an excessive sum of money, of an unlawful sum of money, you will be warranted in finding that he did violate this statute known as the corrupt practices act.

"Whether the instructions marked (a) and (b), if unexplained, were, in view of the ambiguity lurking in many of the expressions used therein, prejudicially erroneous, I do not think necessary to consider, since I see no escape from the conclusion that the instruction marked (c), which made application of the view of the statute stated in the previous passages (a) and (b), were in clear conflict with the text of the statute and were necessarily of a seriously prejudicial nature, since in substance they announced the doctrine that, under the statute, although a candidate for the office of Senator might not have contributed a cent to the campaign or caused others to do so, he nevertheless was guilty if he became a candidate or continued as such after acquiring knowledge that more than $3,750 had been contributed and was being expended in the campaign. The error in the instruction plainly resulted from a failure to distinguish between the subject with which the statute dealt—contributions and expenditures made or caused to be made by the candidate—and campaign contributions and expenditures not so made or caused to be made, and, therefore, not within the statute.

"There can be no doubt when the limitations as to expenditure which the statute imposed are considered in the light of its context and its genesis that its prohibitions on that subject were intended not to restrict the right of the citizen to contribute to a campaign but to prohibit the candidate from contributing and expending or causing to be contributed and expended to secure his nomination and election a larger amount than the sum limited as provided in the statute. To treat the candidacy, as did the charge of the court, as being necessarily the cause, without more, of the contribution of the citizen to the campaign was therefore to confound things which were wholly different, to the frustration of the very object and purpose of the statute. To illustrate: Under the instruction given, in every case where to the knowledge of the candidate a sum in excess of the amount limited by the statute was contributed by citizens to the campaign the candidate, if he failed to withdraw, would be subject to criminal prosecution and punishment. So, also, contributions by citizens to the expenses of the campaign, if only knowledge could be brought home to them that the aggregate of such contributions would exceed the limit of the statute, would bring them, as illustrated by this case, within the conspiracy statute, and accordingly subject to prosecution. Under this view the greater the public service and the higher the character of the candidate, giving rise to a correspondingly complete and self-sacrificing support by the electorate to his candidacy, the more inevitably would criminality and infamous punishment result both to the candidate and to the citizen who contributed.

"As it follows from the considerations which I have stated that the judgment below was, in my opinion, clearly wrong and therefore should be reversed, it is not necessary that I should go further and point out how cogently under the case presented the illustrations just previously made apply to it. For the reasons stated, although I dissent from the ruling of the court as to the unconstitutionality of the act of Congress, I nevertheless think its judgment of reversal should be adopted, qualified, however, so as to reserve the right to a new trial."

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"*Supreme Court of the United States.*

"No. 559.—OCTOBER TERM, 1920.

"TRUMAN H. NEWBERRY et al., plaintiffs in error, *v.* The United States of America. In error to the District Court of the United States for the Western District of Michigan. (May 2, 1921.)

"Mr. Justice Pitney, concurring in part.

"I concur in the judgment reversing the conviction of plaintiffs in error but upon grounds fundamentally different from those adopted by the majority, my view being that there is no constitutional infirmity in the act of Congress that underlies the indictment but that there was an error in the submission of the case to the jury that calls for a new trial.

"The constitutional question is so important that it deserves treatment at length.

"The Federal corrupt practices act (act of June 25, 1910, ch. 392, 36 Stat., 822, amended by act of Aug. 19, 1911, ch. 33, 37 Stat., 25, 28) limits the amount of money that may be given, contributed, expended, used, or promised, or caused to be given, contributed, expended, used, or promised by a candidate for Representative in Congress or for Senator of the United States in procuring his nomination and election to a sum not in excess of the amount he may lawfully give, contribute, expend, or promise under the laws of the State of his residence, with a proviso that in the case of a candidate for Representative the amount shall not exceed $5,000, and in the case of a candidate for Senator shall not exceed $10,000, in any campaign for nomination and election, and a further proviso that any assessment, fee, or charge made or levied upon candidates by the laws of the State, or moneys expended for the candidate's necessary personal expenses for travel and subsistence, stationery and postage, writing or printing (other than in newspapers), and distributing letters, circulars, and posters, and for telegraph and telephone service, shall not be regarded as an expenditure or considered as a part of the sum fixed as the limit of expense. Section 10 of the act (36 Stat., 824), renumbered as section 11 by the amendment (37 Stat., 26), prescribes fine or imprisonment for a willful violation of any of its provisions. The act and amendment were passed before the adoption of the seventeenth amendment providing for the election of Senators by direct vote of the people (declared adopted May 31, 1913; 38 Stat., 2049); but it is clear—indeed, undisputed—that, for present purposes, they are to receive the same construction and effect as if enacted after adoption of the amendment.

"The present case arose out of a campaign for nomination and election of a Senator in the State of Michigan, where a statute (act No. 109, sec. 1, Michigan Public Acts, 1913) limits the amount of money that may be paid and of expenses that may be authorized or incurred by or on behalf of any candidate to be paid by him in order to secure his nomination to any public office in the State to 25 per cent of one year's salary of the office and imposes a similar limit upon expenditures by or on behalf of any candidate who has received the nomination. By section 19 of the same statute 'public office' is made to apply to any national office filled by the voters of the State, as well as to the office of presidential elector and United States Senator. The acts of Congress, in connection with the statute of the State, limit the amount that a candidate for Senator of the United States may give, contribute, expend, use, or promise, or cause to be given, contributed, expended, used, or promised, in procuring his nomination and election, to $3,750 in the aggregate, aside from those expenditures that are specifically permitted without limit.

"Plaintiffs in error were indicted and convicted in the United States district court for a conspiracy (sec. 37, Criminal Code) to commit an offense against the United States, to wit, the offense, on the part of TRUMAN H. NEWBERRY, of willfully violating the acts of Congress above referred to by giving, contributing, expending, and using, and by causing to be given, contributed, expended, and used, in procuring his nomination and election as Senator of the United States at the primary and general elections in the year 1918 a sum in excess of the amount thus limited, to wit, the sum of $100,000, and on the part of the other defendants of aiding, counseling, inducing, and procuring (sec. 332, Criminal Code) said TRUMAN H. NEWBERRY so to give, contribute, expend, and use, and cause to be given, contributed, expended, and used said large sums of money in excess of the amounts permitted, etc., no part of which money was to be expended for any of the purposes specifically permitted without limit, numerous overt acts being alleged to have been done by one or more parties defendant to effect the object of the conspiracy.

"The averments of the indictment and the evidence at the trial related especially to expenditures contemplated to be made, and in fact made, to bring about Mr. NEWBERRY's selection at a nominating or primary election held in August, 1918, with only minor expenditures made after that date and in contemplation of the general election which was held in the following November. The case is brought to this court by direct writ of error, upon the fundamental contention that the acts of Congress, in so far as they assume to regulate primary elections and limit the expenditures of money that may be made or caused to be made by a candidate therein, are in excess of the power conferred upon Congress to regulate the 'manner of holding elections for Senators and Representatives' by section 4 of Article I of the Constitution of the United States. (This question was raised but not decided in United States *v.* Gradwell, 243 U. S., 476, 487–488; Blair *v.* United States, 250 U. S., 273, 278–279.)

"For reasons to be stated below, I consider it erroneous to treat the question as dependent upon the words of the cited section alone. I will, however, first deal with that section, viewing it in connection with other provisions immediately associated with it and here quoted:

"ARTICLE I. SECTION 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

"SEC. 2. The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. * * *

"(Sec. 3 is superseded by the seventeenth amendment, which provides):

"ART. XVII. The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof. * * * The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures. * * *

"SEC. 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof, but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators. * * *

"SEC. 5. Each House shall be the judge of the elections, returns, and qualifications of its own members. * * *

"It is contended that Congress has no power to regulate the amount of money that may be expended by a candidate to secure his being named in the primary election; that the power 'to regulate the manner of holding elections,' etc., relates solely to the general elections where Senators or Representatives are finally chosen. Why should 'the manner of holding elections' be so narrowly construed? An election is the choosing of a person by vote to fill a public office. In the nature of things it is a complex process, involving some examination of the qualifications of those from whom the choice is to be made and of those by whom it is to be made; some opportunity for the electors to consider and canvass the claims of the eligibles; and some method of narrowing the choice by eliminating candidates until one finally secures a majority, or at least a plurality, of the votes. For the process of elimination, instead of tentative elections participated in by all the electors, nominations by parties or groups of citizens have obtained in the United States from an early period. Latterly the processes of nomination have been regulated by law in many of the States, through the establishment of official primary elections. But in the essential sense, a sense that fairly comports with the object and purpose of a Constitution such as ours, which deals in broad outline with matters of substance and is remarkable for succinct and pithy modes of expression, all of the various processes above indicated fall fairly within the definition of 'the manner of holding elections.' This is not giving to the word 'elections' a significance different from that which it bore when the Constitution was adopted, but is simply recognizing a content that of necessity always inhered in it. The nature of that instrument required, as Chief Justice Marshall pointed out in McCulloch *v.* Maryland (4 Wheat., 316, 407), 'that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves.'

"It is said that section 4 of Article I does not confer a general power to regulate elections, but only to regulate 'the manner of holding' them. But this can mean nothing less than the entire mode of procedure—the essence, not merely the form, of conducting the elections.

"The only specific grant of power over the subject contained in the Constitution is contained in that section, and the power is conferred primarily upon the legislatures of the several States, but subject to revision and modification by Congress. If the preliminary processes of such an election are to be treated as something so separate from the final choice that they are not within the power of Congress under this provision, they are for the same reason not within the power of the States, and, if there is no other grant of power, they must perforce remain wholly unregulated. For if this section of the Constitution is to be strictly construed with respect to the power granted to Congress thereunder, it must be construed with equal strictness with respect to the power conferred upon the States; if the authority to regulate the 'manner of holding elections' does not carry with it ex vi termini authority to regulate the preliminary election held for the purpose of proposing candidates, then the States can no more exercise authority over this than Congress can, much less an authority exclusive of that of Congress. For the election of Senators and Representatives in Congress is a Federal function; whatever the States do in the matter they do under authority derived from the Constitution of the United States. The reservation contained in the tenth amendment can not properly operate upon this subject in favor of the State governments; they could not reserve power over a matter that had no previous existence; hence if the power was not delegated to the United States it must be deemed to have been reserved to the people and would require a constitutional amendment to bring it into play—a deplorable result of strict construction.

"But if I am wrong in this and the power to regulate primary elections could be deemed to have been reserved by the States to the exclusion of Congress, the result would be to leave the General Government destitute of the means to insure its own preservation without governmental aid from the States, which they might either grant or withhold according to their own will. This would render the Government of the United States something less than supreme in the exercise of its own appropriate powers, a doctrine supposed to have been laid at rest forever by the decisions of this court in McCulloch *v.* Maryland (4 Wheat., 316, 405, et seq); Cohens *v.* Virginia (6 Wheat., 264, 381, 387, 414), and many other decisions in the time of Chief Justice Marshall and since.

"But why should the primary election (or nominating convention) and the final election be treated as things so separate and apart as not to be both included in section 4 of Article I? The former has no reason for existence, no function to perform, except as a preparation for the latter, and the latter has been found by experience in many States impossible of orderly and successful accomplishment without the former.

"Why should this provision of the Constitution—so vital to the very structure of the Government—be so narrowly construed? It is said primaries were unknown when the Constitution was adopted. So were the steam railway and the electric telegraph. But the authority of Congress to regulate commerce among the several States was extended over these instrumentalities, because it was recognized that the manner of conducting the commerce was not essential. And this court was prompt to recognize that a transportation of merchandise, incidentally interrupted for a temporary purpose, or proceeding under successive bills of lading or means of transport, some operating wholly intrastate, was none the less interstate commerce if such commerce was the practical and essential result of all that was done. The Daniel Ball (10 Wall., 557, 565); Southern Pacific Terminal Co. *v.* Interstate Commerce Commission (219 U. S., 498, 526, 527); Ohio Railroad Commission *v.* Worthington (225 U. S., 101, 108, 110); United States *v.* Union Stock Yard (226 U. S., 286, 304); Texas & N. O. R. R. Co. *v.* Sabine Tram Co. (227 U. S., 111, 124).

"Why is it more difficult to recognize the integral relation of the several steps in the process of election?

"Congress, by the so-called enforcement act of May 31, 1870 (ch. 114, sec. 20, 16 Stat., 140, 145), and the supplement approved February 28, 1871 (ch. 99, secs. 1, 2, 3, 4, 16 Stat., 433, 434), prescribed a variety of regulations relating to elections of Members of the House of Representatives, including provisions for safeguarding the registration of voters. These were carried into the Revised Statutes as sections 2011, 2016, 2021, 2022, 5522. They were attacked as unconstitutional in Ex parte Siebold (100 U. S., 371), and were sustained as an exertion of the authority of Congress to pass laws for regulating and superintending such elections and for securing their purity—without suggestion that the registration of voters was not, for practical purposes, a part of the election itself and subject to regulation as such. Yet, in point of causation, identification of voters is related to the election as closely as is the naming of candidates.

"It is said that if 'the manner of holding elections' had been understood in a sense to include the nominating procedure, ratification of the Constitution by the State conventions could not have been secured. I do not see how this can be confidently asserted, in view of the fact that, by the very hypothesis, the conventions ratified a specific provision for regulating the only manner of holding elections with which they were familiar—dealt with the entire subject without limitation. Mr. Justice Story, in rehearsing the objections and the reasoning by which they were met, with citations from the debates and from the Federalist, refers to no objection that would be more cogent, supposing the regulation were extended to nominating procedure, than it would be if the regulation were confined to the ultimate election. (Story, Const., secs. 814–827). The sufficient answer to all objections was found in Hamilton's 'plain proposition, that every Government ought to contain in itself the means of its own preservation.' (Federalist, No. 59.)

"What was said, in No. 60 of the Federalist, about the authority of the National Government being restricted to the regulation of the times, the places, and the manner of elections was in answer to a criticism that the national power over the subject 'might be employed in such a manner as to promote the election of some favorite class of men in exclusion of others,' as by discriminating 'between the different departments of industry, or between the different kinds of property, or between the different degrees of property'; or by a leaning 'in favor of the landed interest, or the monied interest, or the mercantile interest, or the manufacturing interest'; and it was to support his contention that there was 'no method of securing to the rich the preference apprehended but by prescribing qualifications of property either for those who may elect, or be elected,' which formed no part of the power to be conferred upon the National Government, that Hamilton proceeded to say that its authority would be 'expressly restricted to the regulation of the times, the places, and the manner of elections.' This authority would be as much

restricted, in the sense there intended, if 'the manner of elections' were construed to include all the processes of election from first to last. The restriction arose from the express qualifications prescribed for Members of House and Senate and for those who were to choose them; subject to which all regulation sarily would have to proceed.
of preliminary, as well as of final, steps in the election neces-

"In support of a narrow construction of the power of Congress to regulate 'the manner of elections' of its membership, it is said there is a check against corruption and kindred evils affecting the nominating procedure in the authority of each House to judge of the elections, returns, and qualifications of its own Members, the suggestion being that if—to take a clear case—it appeared that one chosen to the Senate had secured his election through bribery and corruption at the nominating primary he might be refused admittance. Obviously, this amounts to a concession that the primary and the definitive election, whose legal separateness is insisted upon, are essentially but parts of a single process; else how could the conduct of a candidate with reference to the primary have legitimate bearing upon the question of his election as Senator? But the suggestion involves a fundamental error of reasoning. The power to judge of the elections and qualifications of its Members inhering in each House by virtue of section 5 of Article I is an important power, essential in our system to the proper organization of an elective body of representatives. But it is a power to judge, to determine upon reasonable consideration of pertinent matters of fact according to established principles and rules of law, not to pass an arbitrary edict of exclusion. And I am unable to see how, in right reason, it can be held that one of the Houses of Congress, in the just exercise of its power, may exclude an elected Member for securing by bribery his nomination at the primary if the regulation by law of his conduct at the primary is beyond the constitutional power of Congress itself. Moreover, the power of each House, even if it might rightfully be applied to exclude a Member in the case suggested, is not an adequate check upon bribery. corruption, and other irregularities in the primary elections. It can impose no penal consequences upon the offender; when affirmatively exercised it leaves the constituency for the time without proper representation; it may exclude one improperly elected, but furnishes no rule for the future by which the selection of a fit representative may be assured; and it is exerted at the will of but a single House, not by Congress as a lawmaking body.

"But if I am wrong thus far—if the word 'elections' in Article I, section 4, of the Constitution must be narrowly confined to the single and definitive step described as an election at the time that instrument was adopted—nevertheless it seems to me too clear for discussion that primary elections and nominating conventions are so closely related to the final election, and their proper regulation so essential to effective regulation of the latter, so vital to representative government, that power to regulate them is within the general authority of Congress.

"It is a matter of common knowledge that the great mass of the American electorate is grouped into political parties, to one or the other of which voters adhere with tenacity, due to their divergent views on questions of public policy, their interest, their environment, and various other influences, sentimental and historical. So strong with the great majority of voters are party associations, so potent the party slogan, so effective the party organization, that the likelihood of a candidate succeeding in an election without a party nomination is practically negligible. As a result, every voter comes to the polls on the day of the general election confined in his choice to those few candidates who have received party nominations, and constrained to consider their eligibility, in point of personal fitness, as affected by their party associations and their obligation to pursue more or less definite lines of policy, with which the voter may or may not agree. As a practical matter, the ultimate choice of the mass of voters is predetermined when the nominations have been made. Hence, the authority of Congress to regulate the primary elections and nominating conventions arises, of necessity, not from any indefinite or implied grant of power but from one clearly expressed in the Constitution itself (Art. I, sel. 8, cl. 18)—

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

"This is the power preservative of all others and essential for adding vitality to the framework of the Government. Among the primary powers to be carried into effect is the power to legislate through a Congress consisting of a Senate and House of Representatives chosen by the people—in short, the power to maintain a lawmaking body representative in its character. Another is the specific power to regulate the 'manner of holding elections for Senators and Representatives,' conferred by section 4 of the first article; and if this does not in literal terms extend to nominating proceedings intimately related to the election itself, it certainly does not in terms or by implication exclude Federal control of those proceedings. From a grant to the States of power to regulate the principal matter, expressly made subject to revision and alteration by the Congress, it is impossible to imply a grant to the States of regulatory authority over accessory matters exclusive of the Congress. And it is obvious that if clause 18 adds nothing to the content of the other express powers, when these are literally interpreted, it has no efficacy whatever and must be treated as surplusage. It has not heretofore been so regarded. The subject was exhaustively treated by Chief Justice Marshall, speaking for the court in the great case already referred to, McCulloch *v.* Maryland (4 Wheat., 316, 411–424), where he pointed out, pages 419, 420:

"First. The clause is placed among the powers of Congress, not among the limitations on those powers. Second. Its terms purport to enlarge, not to diminish, the powers vested in the Government. It purports to be an additional power, not a restriction on those already granted.

"According to the conclusive reasoning adopted in that case, whatever meaning may be attributed to section 4 of Article I, there is added by clause 18 of section 8 everything necessary or proper for carrying it into execution, which means into practical and complete effect.

"The passage of the act under consideration amounts to a determination by the lawmaking body that the regulation of primary elections and nominating conventions is necessary if the Senate and House of Representatives are to be, in a full and proper sense, representative of the people. Not only is this true of those cases referred to in the report of the Senate Committee (Senate Rept. No. 78, 62d Cong., 1st sess., p. 2), where the parties are so unequally divided that a nomination by the majority party is equivalent to election, but it is true in every case to the extent that the nominating processes virtually eliminate from consideration by the electors all eligible condidates except the few—two or three, perhaps—who succeed in receiving party nominations. Sinister influences exerted upon the primaries inevitably have their effect upon the ultimate election—are employed for no other reason. To safeguard the final elections while leaving the proceedings for proposing candidates unregulated, is to postpone regulation until it is comparatively futile. And Congress might well conclude that, if the nominating procedure were to be left open to fraud, bribery, and corruption, or subject to the more insidious but, in the opinion of Congress, nevertheless harmful influences resulting from an unlimited expenditure of money in paid propaganda and other purchased campaign activities, representative government would be endangered.

"The question of the authority of Congress to determine that laws regulating primary elections are 'necessary and proper for carrying into execution' the other powers specified, admits of but one answer—the same given by Chief Justice Marshall in the memorable case last cited (4 Wheat., 421): 'We think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited but consist with the letter and spirit of the Constitution, are constitutional.'

"This principle has been consistently adhered to and liberally applied from that day until this. Among a multitude of illustrative cases that might be cited, some recent notable but not exceptional ones may be instanced: Second Employers Liability cases (223 U. S., 1, 49), holding that the power of Congress to regulate commerce among the States brings within its authority the relations between common carriers by rail and their employees engaged in such commerce; Houston & Texas Railway *v.* United States (234 U. S., 342, 350, 355), holding that the same power authorizes Congress to regulate rates of transportation in the internal commerce of a State, to the extent of preventing injurious discrimination against the movement of traffic from State to State; Wilson *v.* New (243 U. S., 332, 353), holding that the power over interstate commerce extends to regulating the wages of the employees of common carriers engaged therein; Selective Draft Law cases (245 U. S., 366, 377, et seq.), sustaining an act imposing involuntary military duty upon the citizen as 'necessary and proper for carrying into execution' the power to declare war, raise and support armies, and make rules for the government and regulation of the land and naval forces; United States *v.* Ferger (250 U. S., 199, 205), upholding the authority of Congress to prohibit and punish the fraudulent making of spurious interstate bills of lading even in

the absence of any actual or contemplated movement of commerce from State to State; Hamilton *v.* Kentucky Distilleries Co. (251 U. S., 146, 155, 163), sustaining war-time prohibition of the sale of distilled spirits for beverage purposes as a measure necessary and proper for carrying into execution the war power; Jacob Ruppert *v.* Caffey (251 U. S., 264, 282, 299–301), sustaining an act prohibiting the manufacture and sale of non-intoxicating beer as 'necessary and proper' to render effective a prohibition against intoxicants; First National Bank *v.* Union Trust Co. (244 U. S., 416, 419), sustaining an act conferring upon national banks powers not inherently Federal but deemed appropriate to enable such banks to compete with State banks having like powers; and Smith *v.* Kansas City Title & Trust Co. (decided Feb. 28, last), sustaining an act establishing Federal land banks and joint-stock land banks having broad powers not national in their character, but deemed by Congress to be reasonably appropriate for performing certain limited fiscal functions in aid of the National Treasury.

"It would be tragic if that provision of the Constitution which has proved the sure defense of every outpost of national power should fail to safeguard the very foundation of the citadel.

"But its function in preserving our representative Government has long been recognized. In Ex parte Yarbrough (110 U. S., 651), where the question was as to the constitutionality of sections 5508 and 5520, Revised Statutes United States—the question having arisen upon an indictment for a conspiracy to intimidate a citizen of African descent in the exercise of his right to vote for a Member of Congress—the court, by Mr. Justice Miller, said (p. 657): 'That a Government whose essential character is republican, whose executive head and legislative body are both elective, whose most numerous and powerful branch of the legislature is elected by the people directly [now true of both branches], has no power by appropriate laws to secure this election from the influence of violence, of corruption, and of fraud, is a proposition so startling as to arrest attention and demand the gravest consideration. If this Government is anything more than a mere aggregation of delegated agents of other States and Governments, each of which is superior to the General Government, it must have the power to protect the elections on which its existence depends from violence and corruption. If it has not this power it is left helpless before the two great natural and historical enemies of all Republics, open violence and insidious corruption. The proposition that it has no such power is supported by the old argument, often heard, often repeated, and in this court never assented to, that when a question of the power of Congress arises the advocate of the power must be able to place his finger on words which expressly grant it. * * * It destroys at one blow, in construing the Constitution of the United States, the doctrine universally applied to all instruments of writing, that what is implied is as much a part of the instrument as what is expressed. This principle, in its application to the Constitution of the United States, more than to almost any other writing, is a necessity, by reason of the inherent inability to put into words all derivative powers—a difficulty which the instrument itself recognizes by conferring on Congress the authority to pass all laws necessary and proper to carry into execution the powers expressly granted and all other powers vested in the Government or any branch of it by the Constitution.' (Art. I, sec. 8, clause 18.)

"I conclude that it is free from doubt that the Congress has power under the Constitution to regulate the conduct of primary elections and nominating conventions held for choosing candidates to be voted for in general elections for Representatives and Senators in Congress, and that the provisions of the act of August 19, 1911 (37 Stat., 26–28), in that behalf are valid.

"Since the majority of the court hold that the act is invalid, it would serve no useful purpose to spend time in discussing those assignments of error that relate to the conduct of the trial. It may be said, however, that, in my opinion, the trial court did not err in refusing to direct a verdict for the defendants for want of evidence of the alleged conspiracy; nor in instructing the jury that the prohibition of the statute against the expenditure and use of money by a candidate beyond the specified limit is not confined to his own money, but extends to the expenditure or use of excessive sums of money by him, from whatever source and from whomsoever derived; nor in instructing them that in order to warrant a verdict of guilty upon an indictment for conspiracy it was not necessary that the Government should show that defendants knew that some statute forbade the acts they were contemplating, but only to show an agreement to do acts constituting a violation of the statute, their knowledge of the law being presumed.

"I find prejudicial error, however, in that part of the charge which assumed to define the extent to which a candidate must participate in expenditures beyond the amount limited in order that he may be held to have violated the prohibition—an instruction vitally important, because it was largely upon overt acts supposed to have been done in carrying out the alleged conspiracy that the Government relied to prove the making of the conspiracy and its character, and because, unless the purposes of defendants involved a violation of the corrupt practices act, they were not guilty of a conspiracy to commit an 'offense against the United States' within the meaning of section 37, Criminal Code.

"The instruction upon this topic, excepted to and assigned for error, was as follows: 'The phrase which constitutes the prohibition against the candidate, "causing to be given, contributed, expended, or used" excessive sums of money, is not limited and not confined to expenditures and use of money made directly and personally by himself. This prohibition extends to the expenditure and use of excessive sums of money in which the candidate actively participates, or assists, or advises, or directs, or induces, or procures. The prohibition extends not only to the expenditure and use of excessive sums of money by the candidate directly and personally, but to such use and expenditure through his agency, or procurement, or assistance. To constitute a violation of this statute knowledge of the expenditure and use of excessive sums of money on the part of the candidate is not sufficient; neither is it sufficient to constitute a violation of this statute that the candidate merely acquiesces in such expenditures and use. But it is sufficient to constitute a violation of this statute if the candidate actively participates in doing the things which occasion such expenditures and use of money and so actively participates with knowledge that the money is being expended and used. To apply these rules to this case: If you are satisfied from the evidence that the defendant, TRUMAN H. NEWBERRY, at or about the time that he became a candidate for United States Senator was informed and knew that his campaign for the nomination and election would require the expenditure and use of more money than is permitted by law and with such knowledge became a candidate, and thereafter by advice, by conduct, by his acts, by his direction, by his counsel, or by his procurement he actively participated and took part in the expenditure and use of an excessive sum of money, of an unlawful sum of money, you will be warranted in finding that he did violate this statute known as the corrupt practices act.'

"However this may be regarded when considered in the abstract the difficulty with it when viewed in connection with the evidence in the case to which the jury was called upon to apply it is that it permitted and perhaps encouraged the jury to find the defendants guilty of a conspiracy to violate the corrupt practices act if they merely contemplated a campaign requiring the expenditure of money beyond the statutory limit, even though Mr. NEWBERRY, the candidate, had not, and it was not contemplated that he should have, any part in causing or procuring such expenditure beyond his mere standing voluntarily as a candidate and participating in the campaign with knowledge that moneys contributed and expended by others without his participation were to be expended.

"The language of the corrupt practices act (37 Stat., 28) is: 'No candidate * * * shall give, contribute, expend, use, or promise, or cause to be given, contributed, expended, used, or promised,' etc. A reading of the entire act makes it plain that Congress did not intend to limit spontaneous contributions of money by others than a candidate, nor expenditures of such money, except as he should participate therein. Of course, it does not mean that he must be alone in expending or causing to be expended the excessive sums of money; if he does it through an agent or agents, or through associates who stand in the position of agents, no doubt he is guilty, qui facit per alium facit per se; but unless he is an offender as a principal there is no offense. Section 332, Criminal Code, declares: 'Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.' Clearly this makes anyone who abets a candidate in expending or causing to be expended excessive sums a principal offender, but it can not change the definition of the offense itself as contained in the corrupt practices act so as to make a candidate a principal offender unless he directly commits the offense denounced. Spontaneous expenditures by others being without the scope of the prohibition, neither he nor anybody else can be held criminally responsible for merely abetting such expenditures.

"It follows that one's entry upon a candidacy for nomination and election as a Senator with knowledge that such candidacy will come to naught unless supported by the expenditure of money beyond the specified limit is not within the inhibition of the act unless it is contemplated that the candidate

shall have a part in procuring the excessive expenditures beyond the effect of his mere candidacy in evoking spontaneous contributions and expenditures by his supporters; and that his remaining in the field and participating in the ordinary activities of the campaign with knowledge that such activities furnish in a general sense the 'occasion' for the expenditure is not to be regarded as a 'causing' by the candidate of such expenditure within the meaning of the statute.

"The state of the evidence made it important that, in connection with that portion of the charge above quoted, the jury should be cautioned that unless it was a part of defendants' plan that Mr. NEWBERRY should actually participate in giving, contributing, expending, using, or promising, or causing to be given, contributed, expended, used, or promised, moneys in excess of the limited amount—either himself or through others as his agents—his mere participation in the activities of the campaign, even with knowledge that moneys spontaneously contributed and expended by others, without his agency, procurement, or assistance, were to be or were being expended, would not of itself amount to his causing such excessive expenditure. The effect of the instruction that was given may well have been to convey to the jury the view that Mr. Newberry's conduct in becoming and remaining a candidate with knowledge that spontaneous contributions and expenditures of money by his supporters would exceed the statutory limit and his active participation in the campaign were necessarily equivalent to an active participation by him in causing the expenditure and use of an excessive sum of money, and that a combination among defendants having for its object Mr. Newberry's participation in a campaign where money in excess of the prescribed limit was to be expended even without his participation in the contribution or expenditure of such money, amounted to a conspiracy on their part to commit an offense against the act.

"For error in the instructions in this particular the judgment should be reversed, with directions for a new trial.

"Mr. Justice Brandeis and Mr. Justice Clarke concur in this opinion."

EMERGENCY TARIFF.

The VICE PRESIDENT. The morning business is closed and the calendar under Rule VIII is in order.

Mr. PENROSE. I move that the Senate proceed to the consideration of House bill 2435, the so-called emergency tariff bill, which is the unfinished business before the Senate.

The motion was agreed to; and the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 2435) imposing temporary duties upon certain agricultural products to meet present emergencies, and to provide revenue; to regulate commerce with foreign countries; to prevent dumping of foreign merchandise on the markets of the United States; to regulate the value of foreign money; and for other purposes, which had been reported from the Committee on Finance with an amendment.

Mr. PENROSE. I suggest that the bill be read for action in reference to the committee amendment.

The VICE PRESIDENT. The Senator from Pennsylvania asks unanimous consent that the bill be read for the purpose of amendment, the committee amendment to be first considered.

Mr. UNDERWOOD. Just one minute, Mr. President.

Mr. SIMMONS. Mr. President, do I understand that the Senator is suggesting now that we enter immediately upon the consideration of amendments?

Mr. PENROSE. I can not hear what the Senator says in the confusion prevailing.

The VICE PRESIDENT. Neither can the Chair.

Mr. SIMMONS. Mr. President, I was inquiring of the Senator from Pennsylvania whether it was his suggestion that the amendments be read with a view to immediate action upon them as they are reached in the reading.

Mr. PENROSE. I suppose they should be read formally. I do not expect immediate action on the details of the committee amendment, but it certainly ought to be laid before the Senate.

Mr. SIMMONS. If the only purpose of the reading is that the Senate may be advised as to the amendments, I have no objection; but if it is the purpose to take up the amendments as they are reached, discuss them, and vote upon them, I think that would be rather premature.

The VICE PRESIDENT. The Chair is advised that there is but one committee amendment to the bill.

Mr. SMOOT. There is only one amendment.

Mr. McCUMBER. I was about to suggest to the Senator that the committee, as he will remember, struck out Title II and substituted what appears as an amendment. I understand the Senator from Pennsylvania has asked unanimous consent that the formal reading of the bill be dispensed with, and that the committee amendment may be read. Then the whole matter will be open for discussion.

Mr. SIMMONS. If that is the purpose, I have no objection. It is true, as the Senator from North Dakota has stated, that there is only one amendment, but that amendment embraces quite a number of separate and distinct propositions.

Mr. PENROSE. And entirely new propositions.

Mr. SIMMONS. It covers six or seven pages of the bill.

Mr. UNDERWOOD. I have no objection to what the Senator from Pennsylvania asks, except that I should like to have an understanding about it. There is but one amendment, and if that is read now, it may be adopted at any moment. There will no doubt be some amendments offered to the amendment. If it were adopted, it might raise a question as to whether there could be separate votes on those amendments. If it is understood that the committee amendment is not to be pushed to a vote immediately, so that after action upon it there could not be any amendment made to it, I have no objection to the proposal.

Mr. PENROSE. Mr. President, of course I have not the slightest notion of taking any snap judgment in this matter, and I shall be very glad to confer with the Senator from North Carolina [Mr. SIMMONS] as the minority leader on this legislation, or with the Senator from Alabama [Mr. UNDERWOOD], before any final action is arrived at.

I ought to inform the Senate that the tariff features of this measure are absolutely unamended and unchanged; they are the same as they were in the bill which was passed in the last Congress and failed to receive the approval of the then President. The change is in the amendment relating to the antidumping and valuation features. The Finance Committee, having a little more time to give to the subject, and a little more light having been thrown upon it than was available in the House, apparently, has reported to the Senate for their consideration what is largely a new measure. I ask to have it read in order that it may be laid before the Senate.

I take this opportunity, Mr. President, to state that at the proper time in the debate I hope briefly and concisely to address the Senate, explaining the action of the committee. In the meanwhile, I call to the attention of the Senate the rather detailed and elaborate report which has been compiled, explaining all the changes.

Mr. UNDERWOOD. Mr. President, I do not see any objection in the world to dispensing with the formal reading of the bill and proceeding with the reading of the committee amendment, with the understanding that, of course, we would like to have the bill considered for a day or two, to give opportunity for debate, before it is voted upon. With that understanding, I see no objection to the course suggested.

Mr. PENROSE. Of course, Mr. President, as far as I am concerned, that will be the program. If the Senator from Alabama desires to have the whole bill read, very well.

Mr. UNDERWOOD. As I said, I have no objection to dispensing with the formal reading of the bill, with that understanding.

The VICE PRESIDENT. The Secretary will read the bill for amendment, the amendment of the committee to be first considered.

The bill was read to the end of section 5, page 6, line 19.

The ASSISTANT SECRETARY. The committee proposes to strike out all of Title II, antidumping, as printed in the bill, and to insert a new Title II and a new Title III, to read as follows:

TITLE II.—ANTIDUMPING.

DUMPING INVESTIGATION.

SEC. 201. (a) That whenever the Secretary of the Treasury (hereinafter in this act called the "Secretary"), after such investigation as he deems necessary, finds that an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation into the United States of a class or kind of foreign merchandise, and that merchandise of such class or kind is being sold or is likely to be sold in the United States or elsewhere at less than its fair value, then he shall make such finding public to the extent he deems necessary, together with a description of the class or kind of merchandise to which it applies in such detail as may be necessary for the guidance of the appraising officers.

(b) The powers and duties conferred or imposed upon the Secretary by this section may be exercised by him through such agency or agencies as he may designate.

SPECIAL DUMPING AGENCY.

SEC. 202. (a) That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and as to which the appraiser or person acting as appraiser has made no report to the collector before such finding has been so made public, if the purchase price or the exporter's sales price is less than the foreign market value (or, in the absence of such value, than the cost of production) there shall be levied, collected, and paid, in addition to the duties imposed thereon by law, a special dumping duty in an amount equal to such difference.

(b) If it is established to the satisfaction of the appraising officers, under regulations prescribed by the Secretary, that the amount of such difference between the purchase price and the foreign market value is wholly or partly due to the fact that the wholesale quantities, in which such or similar merchandise is sold or freely offered for sale to all purchasers for exportation to the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), then, under regulations prescribed by the Secretary, the foreign market value shall for the purposes of this section be decreased accordingly.

(c) If it is established to the satisfaction of the appraising officers, under regulations prescribed by the Secretary, that the amount of such difference between the exporter's sales price and the foreign market value is wholly or partly due to the fact that the wholesale quantities, in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the United States in the ordinary course of trade, are greater than the wholesale quantities in which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), then, under regulations prescribed by the Secretary, the foreign market value shall for the purposes of this section be decreased accordingly.

PURCHASE PRICE.

SEC. 203. That for the purposes of this title, the purchase price of imported merchandise shall be the price at which such merchandise has been purchased or agreed to be purchased, prior to the time of exportation, by the person by whom or for whose account the merchandise is imported, including the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any costs, charges, United States import duties, and expenses, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States; and plus the amount, if not included in such price, of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller, in respect to the manufacture, production, or sale of the merchandise, which have been rebated or which have not been collected, by reason of the exportation of the merchandise to the United States.

EXPORTER'S SALES PRICE.

SEC. 204. That for the purpose of this title the exporter's sales price of imported merchandise shall be the price at which such merchandise is sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, including the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less (1) the amount, if any, included in such price, attributable to any costs, charges, United States import duties, and expenses, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, (2) the amount of the commission, if any, for selling in the United States the particular merchandise under consideration, (3) an amount equal to the expenses, if any, generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise, and (4) the amount of any export tax imposed by the country of exportation on the exportation of the merchandise to the United States; and plus the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States; and plus the amount of any taxes imposed in the country of exportation upon the manufacturer, producer, or seller in respect to the manufacture, production, or sale of the merchandise, which have been rebated, or which have not been collected, by reason of the exportation of the merchandise to the United States.

FOREIGN MARKET VALUE.

SEC. 205. That for the purposes of this title the foreign market value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade for home consumption (or, if not so sold or offered for sale for home consumption, then for exportation to countries other than the United States), including the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of exportation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase.

COST OF PRODUCTION.

SEC. 206. That for the purposes of this title the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing, identical or substantially identical merchandise, at a time preceding the date of shipment of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per cent of such cost) in the case of identical or substantially identical merchandise;

(3) The cost of all containers and coverings, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per cent of the sum of the amounts found under paragraphs (1) and (2)) equal to the profit which is ordinarily added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the same general trade as the manufacturer or producer of the particular merchandise under consideration.

EXPORTER.

SEC. 207. That for the purposes of this title the exporter of imported merchandise shall be the person by whom or for whose account the merchandise is imported into the United States:

(1) If such person is the agent or principal of the exporter, manufacturer, or producer; or

(2) If such person owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in the business of the exporter, manufacturer, or producer; or

(3) If the exporter, manufacturer, or producer owns or controls, directly or indirectly, through stock ownership or control or otherwise, any interest in any business conducted by such person; or

(4) If any person or persons, jointly or severally, directly or indirectly, through stock ownership or control or otherwise, own or control in the aggregate 20 per cent or more of the voting power or control in the business carried on by the person by whom or for whose account the merchandise is imported into the United States, and also 20 per cent or more of such power or control in the business of the exporter, manufacturer, or producer.

OATHS AND BONDS OF ENTRY.

SEC. 208. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and delivery of which has not been made by the collector before such finding has been so made public, unless the person by whom or for whose account such merchandise is imported makes oath before the collector, under regulations prescribed by the Secretary, that he is not an exporter, or unless such person declares under oath at the time of entry, under regulations prescribed by the Secretary, the exporter's sales price of such merchandise, it shall be unlawful for the collector to deliver the merchandise until such person has made oath before the collector, under regulations prescribed by the Secretary, that the merchandise has not been sold or agreed to be sold by such person, and has given bond to the collector, under regulations prescribed by the Secretary, with sureties approved by the collector, in an amount equal to the estimated value of the merchandise, conditioned: (1) That he will report to the collector the exporter's sales price of the merchandise within 30 days after such merchandise has been sold or agreed to be sold in the United States, (2) that he will pay on demand from the collector the amount of special dumping duty, if any, imposed by this title upon such merchandise, and (3) that he will furnish to the collector such information as may be in his possession and as may be necessary for the ascertainment of such duty, and will keep such records as to the sale of such merchandise as the Secretary may by regulation prescribe.

DUTIES OF APPRAISERS.

SEC. 209. That in the case of all imported merchandise, whether dutiable or free of duty, of a class or kind as to which the Secretary has made public a finding as provided in section 201, and as to which the appraiser or person acting as appraiser has made no report to the collector before such finding has been so made public, it shall be the duty of each appraiser or person acting as appraiser, by all reasonable ways and means to ascertain, estimate, and appraise any invoice or affidavit thereto or statement of cost of production to the contrary notwithstanding) and report to the collector the foreign market value or the cost of production, as the case may be, the purchase price, and the exporter's sales price, and any other facts which the Secretary may deem necessary for the purposes of this title.

APPEALS AND PROTESTS.

SEC. 210. That for the purposes of this title the determination of the appraiser or person acting as appraiser as to the foreign market value or the cost of production, as the case may be, the purchase price, and the exporter's sales price, and the action of the collector in assessing special dumping duty, shall have the same force and effect and be subject to the same right of appeal and protest, under the same conditions and subject to the same limitations; and the general appraisers, the Board of General Appraisers, and the Court of Customs Appeals shall have the same jurisdiction, powers, and duties in connection with such appeals and protests as in the case of appeals and protests relating to customs duties under existing law.

DRAWBACKS.

SEC. 211. That the special dumping duty imposed by this title shall be treated in all respects as regular customs duties within the meaning of all laws relating to the drawback of customs duties.

SHORT TITLE.

SEC. 212. That this title may be cited as the "Antidumping act, 1921."

TITLE III.—ASSESSMENT OF AD VALOREM DUTIES.

SEC. 301. That whenever merchandise which is imported into the United States is subject to an ad valorem rate or duty or to a duty based upon or regulated in any manner by the value thereof, duty shall in no case be assessed on a value less than the export value of such merchandise.

EXPORT VALUE.

SEC. 302. That for the purposes of this title the export value of imported merchandise shall be the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is sold or freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, including the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States, less the amount, if any, included in such price, attributable to any costs, charges, United States import duties, and expenses, incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States, and plus, if not included in such price, the amount of any export tax imposed by the country of exportation on merchandise exported to the United States.

REFERENCES TO "VALUE" IN EXISTING LAW.

SEC. 303. (a) That wherever in Title I of this act, or in the tariff act of 1913, as amended, or in any law of the United States in existence at the time of the enactment of this act relative to the appraisement of imported merchandise (except secs. 2874, 2976, and 3016 of the Revised Statutes, and sec. 801 of the revenue act of 1916), reference

is made to the value of imported merchandise (irrespective of the particular phraseology used and irrespective of whether or not such phraseology is limited or qualified by words referring to country or port of exportation or principal markets) such reference shall, in respect to all merchandise imported on or after the day this act takes effect, be construed to refer, except as provided in subdivision (b), to actual market value as defined by the law in existence at the time of the enactment of this act, or to export value as defined by section 302 of this act, whichever is higher.

(b) If the rate of duty upon imported merchandise is in any manner dependent upon the value of any component material thereof, such value shall be an amount determined under the provisions of the tariff act of 1913, as in force prior to the enactment of this act.

DEFINITIONS.

SEC. 304. That when used in this title the term "Tariff act of 1913" means the act entitled "An act to reduce tariff duties and provide revenue for the Government, and for other purposes," approved October 3, 1913.

TITLE IV.—GENERAL PROVISIONS.

STATEMENTS IN INVOICE.

SEC. 401. That all invoices of imported merchandise, and all statements in the form of an invoice, in addition to the statements required by law in existence at the time of the enactment of this act, shall contain such other statements as the Secretary may by regulation prescribe, and a statement as to the currency in which made out, specifying whether gold, silver, or paper.

STATEMENTS AT TIME OF ENTRY.

SEC. 402. That the owner, importer, consignee, or agent, making entry of imported merchandise, shall set forth upon the invoice, or statement in the form of an invoice, and in the entry, in addition to the statements required by the law in existence at the time of the enactment of this act, such statements, under oath if required, as the Secretary may by regulation prescribe.

CONVERSION OF CURRENCY.

SEC. 403. (a) That section 25 of the act of August 27, 1894, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," is amended to read as follows:

"SEC. 25. That the value of foreign coin as expressed in the money of account of the United States shall be that of the pure metal of such coin of standard value; and the values of the standard coins in circulation of the various nations of the world shall be estimated quarterly by the Director of the Mint and be proclaimed by the Secretary of the Treasury quarterly on the 1st day of January, April, July, and October in each year."

(b) For the purpose of the assessment and collection of duties upon merchandise imported into the United States on or after the day of the enactment of this act, wherever it is necessary to convert foreign currency into currency of the United States, such conversion, except as provided in subdivision (c), shall be made at the values proclaimed by the Secretary under the provisions of section 25 of such act of August 27, 1894, for the quarter in which the merchandise was exported.

(c) If no such value has been proclaimed, or if the value so proclaimed varies by 5 per cent or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. For the purposes of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through the exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange.

(d) Sections 2903 and 3565 of the Revised Statutes are repealed.

(e) Section 25 of such act of August 27, 1894, as in force prior to the enactment of this act, and section 2903 of the Revised Statutes, shall remain in force for the assessment and collection of duties on merchandise imported into the United States prior to the day of the enactment of this act.

INSPECTION OF EXPORTER'S BOOKS.

SEC. 404. That if any person manufacturing, producing, selling, shipping, or consigning merchandise exported to the United States fails, at the request of the Secretary, or an appraiser, or person acting as appraiser, or a collector, or a general appraiser, or the Board of General Appraisers, as the case may be, to permit a duly accredited officer of the United States to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the market value or classification of such merchandise, then while such failure continues the Secretary, under regulations prescribed by him, (1) shall prohibit the importation into the United States of merchandise manufactured, produced, sold, shipped, or consigned by such person, and (2) may instruct the collectors to withhold delivery of merchandise manufactured, produced, sold, shipped, or consigned by such person. If such failure continues for a period of one year from the date of such instructions the collector shall cause the merchandise, unless previously exported, to be sold at public auction as in the case of forfeited merchandise.

INSPECTION OF IMPORTER'S BOOKS.

SEC. 405. That if any person importing merchandise into the United States or dealing in imported merchandise fails, at the request of the Secretary, or an appraiser, or person acting as appraiser, or a collector, or a general appraiser, or the Board of General Appraisers, as the case may be, to permit a duly accredited officer of the United States to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise, then while such failure continues the Secretary, under regulations prescribed by him, (1) shall prohibit the importation of merchandise into the United States by or for the account of such person, and (2) shall instruct the collectors to withhold delivery of merchandise imported by or for the account of such person. If such failure continues for a period of one year from the date of such instructions the collector shall cause the merchandise, unless previously exported, to be sold at public auction as in the case of forfeited merchandise.

DEFINITIONS.

SEC. 406. That when used in Title II or Title III or in this title—

The term "person" includes individuals, partnerships, corporations, and associations; and

The term "United States" includes all Territories and possessions subject to the jurisdiction of the United States, except the Philippine Islands, the Virgin Islands, the islands of Guam and Tutuila, and the Canal Zone.

RULES AND REGULATIONS.

SEC. 407. That the Secretary shall make rules and regulations necessary for the enforcement of this act.

TITLE V.—DYES AND CHEMICALS.

SEC. 501. (a) That on and after the day following the enactment of this act, for the period of six months, no sodium nitrite, no dyes or dyestuffs, including crudes and intermediates, no product or products derived directly or indirectly from coal tar (including crudes, intermediates, finished or partly finished products, and mixtures and compounds of such coal-tar products), and no synthetic organic drugs or synthetic organic chemicals, shall be admitted to entry or delivered from customs custody in the United States or in any of its possessions unless the Secretary determines that such article or a satisfactory substitute therefor is not obtainable in the United States or in any of its possessions in sufficient quantities and on reasonable terms as to quality, price, and delivery, and that such article in the quantity to be admitted is required for consumption by an actual consumer in the United States or in any of its possessions within six months after receipt of the merchandise.

(b) Upon the day following the enactment of this act the War Trade Board Section of the Department of State shall cease to exist; all clerks and employees of such War Trade Board Section shall be transferred to and become clerks and employees of the Treasury Department, and all books, documents, and other records relating to such dye and chemical import control of such War Trade Board Section shall become books, documents, and records of the Treasury Department. All individual licenses issued by such War Trade Board Section prior to the enactment of this act shall remain in effect during the period of their validity, and the importations under such licenses shall be permitted. All unexpended funds and appropriations for the use and maintenance of such War Trade Board Section shall become funds and appropriations available to be expended by the Secretary in the exercise of the power and authority conferred upon him by this section.

SEC. 502. That this title may be cited as the "Dye and chemical control act, 1921."

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

The PRESIDING OFFICER (Mr. LADD in the chair). The Secretary will call the roll.

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

Ashurst	Harreld	McKellar	Shortridge
Ball	Harris	McKinley	Simmons
Borah	Harrison	McLean	Smoot
Brandegee	Heflin	McNary	Spencer
Broussard	Hitchcock	Moses	Stanfield
Bursum	Johnson	Myers	Stanley
Calder	Jones, N. Mex.	Nelson	Sterling
Capper	Jones, Wash.	New	Sutherland
Caraway	Kellogg	Nicholson	Swanson
Curtis	Kendrick	Norbeck	Trammell
Dial	Kenyon	Norris	Underwood
Dillingham	Keyes	Oddie	Wadsworth
Fernald	King	Overman	Walsh, Mass.
Fletcher	Knox	Penrose	Walsh, Mont.
France	Ladd	Phipps	Warren
Frelinghuysen	La Follette	Poindexter	Watson, Ind.
Gerry	Lenroot	Pomerene	Weller
Glass	Lodge	Ransdell	Willis
Gooding	McCormick	Robinson	Wolcott
Hale	McCumber	Sheppard	

Mr. DIAL. I desire to announce that my colleague, the senior Senator from South Carolina [Mr. SMITH], is absent on official business. I ask that this announcement may stand for the day.

The PRESIDING OFFICER. Seventy-nine Senators having answered to their names, a quorum of the Senate is present.

Mr. McCUMBER. Mr. President, I think every Member of the Senate realizes the depressed condition of the industries throughout the United States at the present time, a condition which has not improved materially during the last six months. While we recognize that every industry throughout the country in every line was suffering the reaction that would very naturally occur from war conditions, it was well known that one particular line of industry suffered far more heavily than any other, namely, the agricultural industry; that while the farmer's products have gone down from a half to a third of the old prices, everything that the farmer is compelled to purchase is still held at the old price.

This condition induced the House and the Senate during the last session to pass an emergency tariff bill which related solely to agricultural products. It was conceded that we could not take up as an emergency proposition every matter that would be covered by a permanent tariff bill. We therefore limited the emergency tariff bill to farm products only, and to only a portion of those products.

The bill passed the House and the Senate during the last session, was presented to President Wilson, and was by him vetoed. We did not have a sufficient number of supporters of the bill to assure its being made a law against the President's veto, and therefore the matter was dropped, with the expectation of taking it up immediately with the new administration.

Since the convening of the present Congress the matter was taken up in the House and in the Senate. Bills were intro-

duced and referred to the Finance Committee in the Senate and the Committee on Ways and Means in the House. Hearings were had before the Committee on Ways and Means of the House, and as soon as the bill was received from the House short hearings were had before the Senate Finance Committee, and the bill was reported again.

It was the understanding of the Finance Committee, at least at our last meeting prior to the reintroduction of this emergency tariff bill, that the bill should be reintroduced in the House and in the Senate in exactly the same form that it was presented to the President of the United States, with no modification whatever. Congressman YOUNG, of my State, reintroduced the bill in the House and I introduced the same bill in the Senate, and they were referred to the respectitve committees.

Mr. President, I regret that the House in its wisdom saw fit to attach to what was purely an emergency tariff proposition other provisions relating to dumping and to a new method of determining basic values for general tariff levies, due to the fact that there was a very low-rate exchange in foreign countries, and thereby injected new questions into this discussion. I regret that the antidumping bill was attached more particularly because I see no present occasion for it. In all of the hearings that we had before the Committee on Finance there was not in any instance any showing of any dumping of foreign goods into this country, and with the present situation I certainly do not think there is any danger of dumping agricultural products into the United States; and this emergency bill was intended to cover agricultural products only. Of course, great quantities of agricultural products are imported into the United States, but as such products are not exported into this country at prices below the sales price in the producing country, these importations do not come under the term "dumping." The only remedy is a protective tariff rather than an antidumping law. But the House added an antidumping provision and included also another provision under Title II which we may call the "exchange valuation" as a basis of fixing our tariffs.

Mr. HARRISON. Mr. President, will the Senator yield before he gets away from the antidumping clause?

Mr. McCUMBER. Certainly.

Mr. HARRISON. Does the antidumping proposition as carried in this bill, and which the Senator said he opposed, apply just to the articles included in the emergency tariff, or does it include all articles carried in the tariff law?

Mr. McCUMBER. All articles, whether carried in a tariff law or not. It relates to the matter of dumping any article into the United States no matter whether it is included in this bill or otherwise.

Mr. HARRISON. So the antidumping provision, then, is a general proposition which applies to all importations into this country without regard to whether they are on the free list or on the dutiable list?

Mr. McCUMBER. That is true, and that is also true with reference to the exchange valuation. They are both general laws attached to this special bill; but the matter came before the committee with these additions, and the committee considered that it was better to take the matter as it came from the House and to make such changes as were necessary without striking out those two provisions.

Mr. KING. Mr. President, will the Senator permit an inquiry for information?

Mr. McCUMBER. Certainly.

Mr. KING. I think I understood the Senator's answer to the question propounded by the Senator from Mississippi. As I understand the Senator, this bill repeals pro tanto the Underwood-Simmons law, which permits certain articles and commodities to come in free.

Mr. McCUMBER. No; it does not repeal it pro tanto. It does not even affect it unless there is a dumping of that article into the United States. It does not pretend to change the tariff on any product except in cases where dumping is found to exist.

Mr. KING. In its practical operations, if the Senator will still pardon me, would it not be so administered as to prohibit effectually the importation into the United States of any article whatever under the free list as the present statute exists?

Mr. McCUMBER. On the contrary, Mr. President, I do not think it will in any instance, because, as I have stated before, I do not think there are any cases of dumping at the present time, and under the present situation over the world I do not think there is any danger of it, and I will tell the Senator why. The price of almost every manufactured commodity is so much higher in the United States than anywhere else in the world that it is not necessary for the exporter from a foreign country to export it into this country at a less price than the same article is sold for in the markets of the producing country; and, therefore, there is no particular danger, in my opinion, of anything in the line of what we understand by the general term "dumping," which means that the article is sold in the United States or sold for exportation to the United States at a less price than it is sold for home consumption or for exportation to any other foreign country.

Mr. KING. If the Senator will pardon me, I think the Senator is correct; that is my understanding; and yet, in view of the economic and industrial price conditions throughout the world, I could not understand why there was any necessity for enacting an antidumping provision, because, as we all know, articles now sold in Germany in the main are sold for a less price than they are sold for in the United States.

Mr. McCUMBER. I stated that I personally regretted that the antidumping proposition was attached in the House. The bill must pass through both Houses. I can see no possible harm that can come from it, even though it may not be of any particular use at this time, and if the majority of the Members of the House feel that it is proper legislation I have no objection to inserting it here, because of the fact that I think it will do neither harm nor good. I speak most candidly upon that proposition.

Mr. KING. Mr. President, the Senator from North Dakota is always candid, and I hope he will not be offended when I ask if, as a matter of fact, the antidumping proposition is not a fraud upon the public? Is it not a pretense that some benefit is going to be derived from an enactment which will be of no benefit whatever?

Mr. McCUMBER. Oh, no, Mr. President, because it is so worded that there is no danger unless it is sought by a foreign competitor to sell goods for less than cost or less than they can be sold for consumption in the home country for the purpose of destroying an industry in this country and, when the industry is destroyed, of then raising the price to an excessive amount; and that is all the old antidumping law was. That is all we can say of the new one. I have looked at the matter from every angle, and I can not see any possibility of any danger whatever in the provision.

Mr. SIMMONS. Mr. President——

Mr. McCUMBER. I yield to the Senator.

Mr. SIMMONS. I think the Senator from Utah and probably the Senator from Mississippi are somewhat apprehensive that under this antidumping provision articles now upon the free list would be automatically, in effect, transferred to the dutiable list. If I understand the matter correctly, that would be the effect if under the definition of "dumping" in this bill there is technical dumping into the United States of an article now on the free list; but under the technical definition of what is hereafter to be regarded as dumping for the purpose of applying this law, there will be no dumping unless the foreign home market price is greater than the export sale price. If the home price—that is, the price at which goods are ordinarily sold in the regular course of business for home consumption in Germany—is greater than the price at which those goods are exported and sold in this country, then the extent of the difference between the home price and the exporter's price is characterized as dumping, and that difference becomes an additional duty where there is a duty now imposed under the law, and if no duty is imposed under the present law it becomes a positive duty against the article.

Mr. McCUMBER. I intended to cover that. I think I can give the Senator a very brief illustration.

Mr. SIMMONS. So that, if the Senator will pardon me just one minute, if there is dumping it would apply to an article on the free list as well as to an article on the dutiable list.

Mr. McCUMBER. I admit that.

Mr. SIMMONS. But the testimony of practically all of the experts who have appeared before our committee was to the effect that at the present time there is no dumping, within the meaning of this act.

Mr. McCUMBER. That is correct.

Let me say, in answer to the Senator from Utah, suppose an article is on the free list that is sold in the usual wholesale quantities in Great Britain for $5, American money, and the same article, though it is on the free list, is sold for exportation to the United States for $4. Then there would be a duty imposed upon that article of the difference between $5, the foreign selling price, and $4, the export price, or there would be $1 duty imposed upon that article.

But we have found no instances in which anything of that kind has occurred, nor, to my mind, is likely to occur.

Mr. SMOOT. The Senator said the duty would be a dollar. It would be the rate of duty on the dollar's difference, not a duty of a dollar.

Mr. McCUMBER. Yes; the duty would be the difference.

Mr. KING. The senior Senator from Utah is correct if it is upon the free list, but if it is upon the dutiable list, then there would be the duty on the dollar difference plus the duty which now exists under the Simmons-Underwood law.

Mr. McCUMBER. Certainly; if it is upon the dutiable list it will add just so much to the duty. In other words, the article will have to have a value which will be as high as the home selling value, no matter what it is sold for in the United States.

Mr. SMOOT. If I did not misunderstand the question of my colleague, the junior Senator from Utah, he has the wrong idea in his mind. Take the case the Senator cited of a dollar's difference. If the rate of duty on the $4 was 35 per cent, then the rate of duty on the difference between the price here and the dumping price—that is, a dollar—would be 35 per cent.

Mr. McCUMBER. I want to correct both Senators. My statement was correct in the first instance. It is not the duty on the $1, but there is $1 added to the duty under the bill.

Mr. KING. I agree with the Senator.

Mr. SIMMONS. The Senator from North Dakota is absolutely right about that.

Mr. McCUMBER. It is not a duty. I did not understand the Senator's position. So it will cost the exporter abroad just as much to bring an article into the United States as though he had purchased it at the price for which it was sold in the country of production.

Mr. KING. But may I not inquire of the Senator if it is not possible for this antidumping provision to be so administered as that it may perpetuate a monopoly existing in the United States, or permit manufacturers in the United States to augment the present prices which they are charging to the public?

Mr. McCUMBER. I do not think that is possible. Of course, if we have in the United States a monopoly in the production of a particular article by one particular firm and there is an attempt to undersell that particular firm by importing goods into this country at a price less than the cost price in the home country or a price less than what they are sold for export to other foreign countries, of course that would protect the persons manufacturing that article in this country, even though they had a monopoly in the manufacture of those products.

Mr. KING. If the Senator will pardon me, it is the theory of the antidumping provision, as well as all of the provisions of the bill, to restrain the fall of prices, or to maintain existing prices, or to increase them.

Mr. McCUMBER. No; the purpose of the bill is to prevent an attempt by any foreign producer to dump his goods into the United States for less than cost for the purpose of destroying an industry in the United States. In other words, we want to perpetuate our industries of every character in the United States so far as we can.

Mr. KING. But, after all, this legislation, as well as substantially all tariff legislation, is for the purpose of increasing prices upon domestic products, or maintaining a standard of prices, and preventing a fall of prices. In other words, the policy now is to bolster up the market for the products manufactured and sold in the United States.

Mr. McCUMBER. The purpose is to allow the manufacturers in the United States to continue in business, even though it costs them much more to manufacture than it does those in a foreign country and to provide for the employment of American labor and American capital, because anyone who has followed the ups and downs of any business in the United States in which there is competition knows that when an industry in the United States is destroyed by underselling by a foreign competitor all prices immediately go up to an exorbitant degree and far beyond what was originally the American price. I do not think there is any misunderstanding of the purpose of this measure. Of course, it is protective, and protection means higher prices in the United States for the time being than would be given for the particular articles if we had no protection.

Mr. SIMMONS. Mr. President, if the Senator will pardon me, for the sake of clarification of the situation created by the statement made by the Senator from Utah [Mr. SMOOT] inadvertently, I think, it is well for us to understand definitely what the dumping duty is levied upon, and what it is. If I understood the Senator from Utah, he was contending that the dumping duty would be the rate of duty imposed in the present law upon the difference between the home price and the export price.

Mr. McCUMBER. I think that was afterwards corrected.

Mr. SMOOT. I will say to the Senator——

Mr. SIMMONS. Of course, that could not be true, because in that case, if an article was on the free list, of course, there would be no duty to apply to it. This is intended to embrace, and, as a matter of fact, does embrace, articles on the free and the dutiable lists.

Mr. SMOOT. Of course the special dumping duty is an amount equal to the difference between the home-market price and the export price, whatever it may be.

Mr. SIMMONS. It is a flat duty to the full amount of the difference between the home price and the exporter's price, and that difference is not subject to the specific duty imposed under the present tariff, as indicated in the illustration given by the Senator from North Dakota.

Mr. McCUMBER. It is just as I stated in the illustration. If an article is produced in Great Britain and sold in the usual wholesale quantities for $5, and the same article is sold to an American importer for $4, that article will take a duty of $1 in addition to any other duties which may be imposed on it, or if there is no duty imposed upon it, if it is on the free list, it will then take on a duty of $1.

Mr. SIMMONS. The Senator is absolutely correct in that statement.

Mr. SMOOT. I wish to ask the Senator a question at that point, so that he can clear up the whole matter. Not only is the dollar added, but if the duty upon the article imported was 35 per cent, would not the 35 per cent apply to the $5 instead of the $4?

Mr. McCUMBER. The Senator is discussing a provision outside of the antidumping title, but I will answer him.

Under the provision of Title III, I think it is, which relates to the basis of levying duties, we take either the home-selling price or the export price, whichever may be the higher; and, as I stated, if an article produced in Great Britain is sold at wholesale there for $5, and the same article is sold in the United States to an importer for $4, the rate of tariff would be based upon the higher price, which is the home-selling price of $5.

Mr. SMOOT. That is correct.

Mr. McCUMBER. And that would be in addition to the $1, where it is a dutiable article.

Mr. SMOOT. The Senator is correct; and the only reason why I brought the question up was to have all of the differences brought out at this time.

Mr. STANLEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from North Dakota yield to the Senator from Kentucky?

Mr. McCUMBER. I yield.

Mr. STANLEY. As I understand, the Senator has just stated that in almost every instance at present competing articles manufactured in this and foreign countries are made more cheaply in foreign countries than in this country; that the cost of production, owing to the difference in exchange and the different wage scales in the United States and Europe, is less in foreign countries than it is in this for almost every article offered in the competitive market. Is that correct?

Mr. McCUMBER. Certainly, that is usually correct; and I think you may say in respect to practically every article.

Mr. STANLEY. If that be true, are we going to enter any foreign market, with our cost of production higher than the cost in foreign countries, without selling our surplus for less than the cost of production?

Mr. McCUMBER. Mr. President, I do not know how we are going into any country and sell for less than the cost of production. I do not think any business will enter that kind of a line of competition. People will buy wherever they can buy cheapest. They will sell where they can sell to the best advantage. We can not sell a competing article in Great Britain, where the article is produced in Great Britain for a lower price than that for which it is produced here. Therefore, there can be no exchange of those particular competing articles. We may sell in other countries some things they may have to buy of ours, and we may buy of them some things we do not produce. The world will be governed in its trade relations by that general principle.

Mr. STANLEY. Mr. President, the practice, so called, of "dumping" has been defended on the ground that the difference between the cost of producing the amount demanded by the home market and that which can be produced by a plant running to the maximum of its capacity justifies the selling this so-called surplus at much less than the average cost of production of the amount necessary for the home market, and can be sold for less than it cost to produce the lesser amount; and, owing to the fact that the production of this surplus, this difference between normal production and maximum production, involves no extra overhead charges, no extra amount for labor, simply means using the maximum of the mills' output and keeping employees constantly engaged. In the steel industry, for instance, keeping your blast furnace always going and utilizing your gases for motive power, and so forth, that has

been continually done by large enterprises, and defended, notwithstanding the fact that the surplus was sold abroad at less than the actual cost of production by a plant not run to the maximum of its capacity.

Now, if we mean to enter any foreign market under present conditions we must either sell, according to the statement of the Senator, below the cost of production or at least below the prices at which the commodity is offered in the home market. There is no foreign market open to us for any great amount of wood or steel or textile fabric to-day, unless under present conditions we sell abroad for less than we sell at home. Does not the Senator admit that?

Mr. McCUMBER. Hardly; but I will allow the Senator to finish his sentence.

Mr. STANLEY. If that be true, then we must engage in the practice which we are condemning in the bill. Is not that a fact?

Mr. McCUMBER. I think not.

Mr. STANLEY. Or at least penalize it.

Mr. McCUMBER. I think not.

Mr. STANLEY. If the Senator will pardon me for just one further observation, if the countries of the Old World follow our example and enact similar legislation the doors of Europe will be closed to American industry.

At this point, if the Senator will indulge me further, on that very proposition I should like to offer an amendment and ask that it be printed and submitted at the proper time. I offer the following amendment to page 26 of the pending antidumping provision.

The PRESIDING OFFICER. Without objection, the proposed amendment will be received and printed.

Mr. SIMMONS rose.

Mr. McCUMBER. Does the Senator wish me to yield to him?

Mr. SIMMONS. If the Senator will.

Mr. McCUMBER. Certainly.

Mr. SIMMONS. I think the Senator would probably admit that in a majority of cases, especially where the articles are used in large quantities by great corporations like the United States Steel Corporation, our export trade before the war in those industries was based almost entirely upon what under this bill would be dumping. The American home price was so much higher than the foreign price that it was utterly impossible for us to meet competition in the foreign markets unless we sold our products abroad at less than the home-market price. Under the definition of dumping in the pending bill any sale made abroad at less than the home-market price would be dumping. I assume that that condition exists now. On account of the high prices which obtain in our home market it would be impossible for us to dispose of many of the products of American industry in foreign countries, unless we were willing to sell them at a price less than the home price or less than the price at which they were sold in this country for consumption in this country, and that if other countries were to apply the same law to our exports that it is sought and proposed in this bill to apply we would find our exportation burdened in the foreign markets by an enormous tariff levy. I think the Senator must admit that.

I am not arguing the question whether or not there would probably be retaliation. In the present condition probably there might be no retaliation because there is practically no dumping going on in this country to-day, so the experts tell us, but that statement is based upon a temporary condition which obtains both abroad and here. In the near future there may be dumping in this country, as there was before the war, under the rigid rule of definition in the bill, and if that condition should arise and other countries should find it necessary to resort to the same practices that we resort to and have been forced to resort to in order to get in the markets, they would find themselves penalized by very heavy tariff duties, and they might under those conditions be incited to legislation of a retaliatory character. However, that is in the future.

Mr. McCUMBER. Yes; that is anticipating something that in all probability never will happen.

Let us consider the proposition that is made by the Senator from Kentucky [Mr. STANLEY]. Take the case of the steel mills prior to the war, when they had accumulated a surplus and wanted to keep their mills running because there would be an enormous loss to shut them down, and they were producing more goods than they could sell in the United States, keeping up the price in the United States and selling to another country for a less price than the home price. But now just recall that they were not exporting steel rails to Great Britain for less than it cost to produce them in the United States. If they did the British antidumping law would probably apply. I do not think that in any case steel rails were sold abroad for a price less than the cost of production, but to keep the mills going a very comparatively small amount of the surplus was sold to South American countries for less than the American market price. Argentine, if it wants to build a railroad, has not great mills for the manufacture of steel rails. If our mills should sell to Argentine steel rails for even less than it cost to produce in the United States, Argentine might make a law calling that dumping, but she would not do so, because she does not produce any rails, and is therefore desirous of obtaining them as cheaply as possible. We shall have no conflict with Great Britain on the subject, or with Germany or with any of those countries, because we will not compete in dumping to sell those countries products which we manufacture in the United States for a less price than we sell them for in the United States, because of the fact that it would be impossible to manufacture and sell them for a less price than they are manufactured and sold for in Great Britain or in Germany.

So these fears are extremely ethereal and improbable. There is only one instance in which under the pending bill there could be antidumping on a product which we do not produce in the United States. For instance, if we have in the United States the material and the resources to produce a certain kind of article such as dyes, for instance, which we did not produce before the war, and a company were formed for the purpose of developing that industry, and some foreign competitor, fearing that we would establish that industry in the United States and having had a monopoly in the United States up to that time, should then proceed to ship their goods into the United States for less than the cost of production, and the Secretary of the Treasury should find upon investigation that the purpose of selling for less than it cost in the home-producing country was to prevent the establishment of that industry in this country, then dumping would obtain under this bill. With these restrictions upon dumping into this country, I do not think that there is anything that we need to fear.

The greater part of Title II consists in definitions of home values and export values, and so forth, and I shall not stop to discuss them.

Title III deals with the assessment of ad valorem duties, and I wish to clarify that title and its purposes. Under our present tariff law our duty is levied upon the market price and not upon the price paid by the American purchaser who imports goods into this country. Under the old conditions that worked very well, but under the conditions which have faced us since the war it is found to work very injuriously to our producers and unjustly to the Government for the reason which I have mentioned, that our prices are so much above the foreign production and selling price that it enables the foreign Government to levy an export price upon the article or the foreign manufacturers to combine and agree to a practical export price far in excess of the home-producing price, and therefore while we are receiving goods from, say, Germany which are sold in the German market for $2 measured in gold and sold to the American exporter for $8, or four times the price, we are receiving no benefit from the lower price in Germany to American people by reason of their lower production, and are not receiving our proper tariff duties upon the price which the American people must pay.

Therefore the committee agreed upon making a tariff based upon either the foreign producing and selling price, or the exporting price of the foreign country, whichever was highest. We did that as a compromise between the present system of levying upon the very low production price in the foreign country and the demand of the American producers that the tariff should be levied upon the products measured in American gold and not in the foreign depreciated currency.

If an article, therefore, is manufactured and sold in Germany for $5, and the same article is shipped to the United States, even though its price to the importer is $10, under the present law the customs officer collects but $1 under a 25 per cent duty, whereas if the duty is based upon the export price—that is, the charge made to the person who imports the article from the foreign country—the United States would receive $2 duty instead of $1.

Mr. HITCHCOCK. Mr. President, do I understand that what the Senator describes is now going on; that exporters are purchasing, say, in Germany, for $8 articles to be brought to the United States which are selling in Germany for $2?

Mr. McCUMBER. The evidence was that articles are produced in Germany and are sold to the exporter for a sum several times as much as the price at which they are sold to the domestic consumer—I do not give the exact figures—and are sold in the United States in the usual wholesale quantities as

high as ten times the price of the same product in the German market. That is being done not merely to a limited extent but to a great extent.

Mr. HITCHCOCK. So that the man representing the exporter, who buys the goods in Germany, is paying four times as much as consumers in Germany are paying for the same article?

Mr. McCUMBER. Yes.

Mr. HITCHCOCK. Such a condition has never before existed in the world, so far as I know.

Mr. McCUMBER. I have stated why that condition has not existed in the past. I have stated that the American prices are so enormously higher than some of the foreign prices that the manufacturers and the foreign Government acting with those manufacturers have agreed upon an export duty in some cases of over 100 per cent.

Mr. HITCHCOCK. I am not talking about that.

Mr. McCUMBER. That duty is added to the price of the article.

Mr. HITCHCOCK. I am asking the Senator this question: Is it possible that two prices prevail in Germany for the same article—one $2 and the other $8—and that no class of people takes advantage of the difference in order to make a great profit? What is there to prevent anybody buying?

Mr. McCUMBER. The expert informs me that the average price paid by the exporter is from two to three times the amount for which the article is sold in the German market for home consumption.

Mr. HITCHCOCK. Can the Senator explain by what method the American importer is prevented from buying at the local price?

Mr. McCUMBER. He can buy at the local price if he sells in the home country, but he is prevented from buying for export at the local price, because of a combination which has been made between the foreign Government itself and the manufacturers; and this is possible because the article can be sold at such profit in the United States that the foreign Government can levy a tax of 100 per cent and more.

No one can buy an article for export unless he pays from two to three times the price for which the article is sold for home consumption in the same quantities to the people of the country of manufacture.

Mr. HITCHCOCK. The Senator has already expressed his fear that a plot was on foot in those countries to dump their surplus goods in the United States at phenomenally low prices.

Mr. McCUMBER. Who has expressed that fear?

Mr. HITCHCOCK. The Senator from North Dakota has.

Mr. McCUMBER. On the contrary, the Senator from North Dakota has declared over and over again that he had no such fear at all. I have so stated to the Senate to-day, and if the Senator from Nebraska had been present when I began the discussion he would not say that I had said there was any fear of dumping.

Mr. HITCHCOCK. The Senator is supporting the pending bill with the antidumping clause in it, which has evidently been put into the bill because the committee fears that there is a menace of dumping goods into this country at phenomenally low prices.

Mr. McCUMBER. The Senator from Nebraska is mistaken.

Mr. HITCHCOCK. Let me finish.

Mr. McCUMBER. If the Senator had been present during the earlier part of the discussion, his mind would have been disabused of any such idea.

Mr. HITCHCOCK. What is the purpose of the antidumping clause?

Mr. McCUMBER. The fear of the House that a condition might arise in the near future in which an antidumping law would be necessary. The Committee on Finance did not join in that fear; but, inasmuch as the antidumping provision can in no instance do any harm, for the purpose of expediting the passage of the bill it was thought best by the committee to allow the provision which the House had put in to remain in the bill.

Mr. HITCHCOCK. So that, while the committee has reported an antidumping clause here, it does not believe it is necessary?

Mr. McCUMBER. It does not believe that under present conditions there is any dumping going on. I have repeated that often enough, I think.

Mr. HITCHCOCK. Yes. On the other hand, the Senator now states that what these countries are actually doing is to inflate the prices of goods which they are selling to us; and yet, in the same breath, he supports clauses here before the Senate providing against dumping, on the theory that they are going to deflate their prices and sell goods to us at phenomenally low figures.

Mr. McCUMBER. I have stated again and again that under present conditions the prices are inflated for export rather than deflated, and therefore, under present conditions, it is not necessary to have an antidumping law, in my opinion, now. There may arise a month from now, or there may arise two months from now, a condition in which some foreign business concern, desiring to enter the American market, may be willing to slaughter its profits for a given length of time for the purpose of destroying the American industry. This bill, so far as the Committee on Finance is concerned, is simply aimed at that possible condition. In the agricultural products I can see that the condition might arise, although during the life of the pending bill I do not believe it will arise.

Mr. HITCHCOCK. Mr. President, we began to hear about the bogey of our being flooded with cheap goods from the war-stricken countries before the World War was over, and a year or two before the war closed gentlemen were alarming the country, getting into a hysterical condition over the great danger that the United States was going to be flooded with cheap goods for the American people to use. The war has been over for nearly three years and the Senator from North Dakota admits here on the floor that there has been nothing whatever to justify that apprehension.

Mr. McCUMBER. I do not admit anything of the kind. I admit that there has been no dumping; I admit that, so far as the evidence shows, goods are not being sold for export to the United States for a less price than they are sold for home consumption; but that does not carry with it any assurance that countries are not selling and exporting to the United States products at such low prices that the American producer can not compete with them. This is the fact to-day; but it is not dumping; it is simply because our markets are on a free basis; the door has been thrown wide open; and we are receiving imports at such low prices that the American producer can not compete.

Mr. HITCHCOCK. Yet the Senator from North Dakota in the same breath states that what these countries are doing is to inflate the prices and compel our exporters to pay three and four times as much for the goods as their home consumers pay.

Mr. McCUMBER. I did not say "these countries," because the term "these countries" means all the world. I have said that certain countries are doing that. The Senator from Nebraska certainly comprehends the difference between a country like Australia sending in wool for half what it costs to produce it in the United States, in which the condition which I have mentioned does not apply, and the case of Germany, in which it does apply. It also applies, as the Senator from Utah [Mr. SMOOT] informs me, in Jugoslavia.

Mr. POMERENE. Mr. President, will the Senator yield for a question?

Mr. McCUMBER. Certainly.

Mr. POMERENE. I was interested in the statement which the Senator made, to the effect that there was no dumping, as he has defined that term.

Mr. McCUMBER. That is, so far as any evidence before the committee is concerned.

Mr. POMERENE. I understand that, but I want to ask the Senator specifically whether he intended that statement to apply to the dye industry?

Mr. McCUMBER. There has been no dumping, so far as I know, in the dye industry up to the present time, because the War Trade Board established a licensing system under which dyestuffs have been kept out. In this bill the provision for licensing is continued, for fear that there will be dumping in connection with dyestuffs.

Mr. POMERENE. I knew that to be the fact, just as the Senator has stated it; but I did not make myself clear. What I intended to ask the Senator was whether, in his judgment, the evidence taken by the committee shows that there is any likelihood of the dumping of dyes into this country if the amendment to the bill were not adopted? In other words, are not the duties which were practically dictated, or rather—I do not like to use that term—designated by the dye industries themselves sufficient to prevent the dumping which some of the dye people seem to fear so much?

Mr. McCUMBER. I think not. I will not call it dumping, but I think that dye products, some of the highest qualities of dyes, at least, can be brought into this country for a price which, to protect the American industry, would require a duty of from 1,000 to 2,000 per cent. If we are to become expert in the production of that character of dyes, so as to manufacture them in the United States, we can hardly accomplish that result, in my opinion, and I think the other members of the committee share that opinion with me, unless we have what is equivalent to a prohibition against their importation.

Mr. POMERENE. Mr. President, am I not right in the statement that at the time of the enactment of the dye bill the schedule of rates therein set forth was the schedule which was suggested by the dye industries themselves in the belief that it would be sufficient to maintain and protect that industry?

Mr. McCUMBER. I can not answer that; I do not know what their opinion was at that time; but it is evident that at the present time, whatever their opinion was when the last tariff bill was enacted, that those duties are insufficient, and I think that is generally admitted.

Mr. SIMMONS. Mr. President——

Mr. McCUMBER. I yield to the Senator from North Carolina.

Mr. SIMMONS. I will not interrupt the Senator now if he prefers to go on with his remarks without interruption, but the Senator has been so very liberal about yielding that I should like to ask him a question.

Mr. McCUMBER. I am perfectly willing to yield. I think such interruptions will be helpful, if we stick to the text, to discuss this matter quite freely as we are going over it for the first time, so that we may all get as clear an understanding as possible. Therefore I shall not object to interruptions, if the interruptions are for the purpose of eliciting explanations of the items of the bill.

Mr. SIMMONS. I wish to ask the question, Mr. President, for the purpose of getting from the Senator, if he has it, some information that I have been trying my best to get, and up to this time without success, which I think very important for the intelligent consideration of the part of the measure which the Senator is now discussing. Before I ask the question, however, in order that it may be intelligible, the Senator will have to permit me to make a brief statement of my understanding.

Mr. McCUMBER. Certainly.

Mr. SIMMONS. Under the present law the values upon which the duties prescribed in our tariff law are to be applied are fixed arbitrarily, without any reference to the price paid in the home market by the exporter, and without any reference to the price charged by the professional exporter when merchandise is sold in this country. The value is arbitrarily fixed at the price at which the merchandise is ordinarily sold in the usual course of business in the country of exportation. That is the present standard for ascertaining the value to which our tariff duties shall be applied. Under the amendment which the Senator is discussing it is proposed to change that and to take the two valuations—the price at which goods are sold in the country of exportation for home consumption, and the price at which goods are sold in that country for exportation to this country—and to apply the duties prescribed in the present law to the one of those valuations which happens to be the higher. That is to say, if the domestic price is higher, then the duty applies to that price, under this bill, as it does under the present law; but if the domestic price is less than the export price—that is, the price at which these foreign goods are sold for export to this country—then the duty shall be applied to the higher price, namely, the export price.

The Senator has said, and the testimony sustains him absolutely, that at this particular time Germany has two prices. One is what is known as the domestic price, and applies where goods are sold for consumption in that country. The other is an export price and applies where goods are sold for exportation to a foreign country, to this country. The testimony shows that at this time, in practically every case, the price for home consumption—that is, the price upon which the present tariff law applies—is very much less than the price fixed for exportation. They maintain those two standards of prices there. Under the present law our duties are imposed upon the lower price—that is, the domestic price. If this bill becomes a law our duties will be imposed upon the higher price—that is, the foreign exporter's sales price.

The Senator says, and the testimony supports him, that at this time the exporter's price is from one to two times higher than the home-consumption price. If that is so, and this bill becomes a law, then the rates prescribed in our present tariff act will have to be applied, not to these lower rates, as they are under the present law, but to these higher rates, which are twice or three times higher. I want to ask the Senator if the effect of that is not to increase the protective tariff rates of the present law 100, 200, or 300 per cent, just as the exporter's price exceeds the domestic price by twice or by three times?

That question was raised in the committee by myself. To my mind it is absolutely clear that that is the effect. I asked some of the experts if they could give the committee an idea as to how much this change in the basis of valuation would lift up the tariff levies that would hereafter be made, upon the basis, of course, of the present law. There is not any proposition in this bill to change the rates of the present law at all, except as they apply to agricultural products—that may be said generally—and a very few manufactured products. So that hereafter the rates of the present law, if this amendment is adopted, will be levied upon these foreign products at the higher valuation that would be brought about by adopting the export price, as compared with the lower valuation growing out of the home-consumption price, which is the basis of applying the tax under the present law.

Of course, if the Senator's premises are correct, and the exporter's price is much the higher—and we will all concede that the testimony supports that—the Senator will concede that it necessarily will increase the amount of customs duties that will have to be paid. I am anxious to find out—I tried to get the information yesterday—whether the majority members of the committee have yet gotten any information from our experts who looked into that matter to indicate to what extent this change would increase the potential rates that will be collected at the customhouse upon goods imported into this country from Germany. We are talking about exports from Germany now, and most of the talk in the committee was about exports from Germany.

Mr. McCUMBER. The question is one of simple mathematics, so far as we can apply those mathematics to the facts in any case. If we have not the facts, of course we can not tell just exactly what the mathematical application would result in.

Mr. SIMMONS. The Senator does not understand me.

Mr. McCUMBER. Yes; I will answer the question, if the Senator will allow me.

Mr. SIMMONS. I am trying to get, in general——

Mr. McCUMBER. I understand the Senator, of course, and I want to follow up his own statement. The Senator has given his basis.

We will suppose, now, that an article is sold in the markets of Germany in wholesale quantities for $100. Under the old system, if it were imported into the United States, no matter what the exporter paid for it, he might have even bought it for less, but we would still base our duty upon the value of $100. Under the amendment if the article is sold for export for $200, and the duty is 10 per cent, the duty would be $20, whereas in the first instance it would be but $10. Therefore, the same goods would cost in the United States $10 more than they would if the levy continued to be made upon the home selling value.

The Senator asked if the committee is informed to just what extent this difference applies; in other words, what is the general difference between the home selling price and the foreign selling price? In order, of course, to make his computation and know just exactly what any article or any given class of articles would cost, he must know that difference. We have not the information definitely. The Senator will remember that at our last meeting, or next to the last meeting, we asked for that information from the Treasury Department as definitely as it could be obtained. I am informed to-day that the Treasury Department will have that information to us in detail, or hopes to have it, to-morrow; but the general testimony showed, as I have stated, that the selling price for export was from two to three times the selling price for home consumption.

Mr. SMOOT. That is only on certain classes of goods.

Mr. McCUMBER. That is on a certain class of goods. Of course on some goods there is no difference. Some goods are sold in Germany for the same price that they are sold for export; and I do not mean to say, I do not want the Senator or the Senate to understand, that this rule as to what operates as an export tax by the German Government applies to every article that is exported. My understanding of the testimony is that it shows that the Government compels the exporters to fix a price on certain articles that will be from two to three times the price for which the same article is sold in Germany, and that the exporters are to collect that, and when collected, of course, it goes into the German treasury. That is one of their means of obtaining income from their exports, and operates practically as an export duty.

I think before we get through with the debate we shall have full information, or at least as full as the Senate could ask, upon that subject.

Mr. SIMMONS. These experts who looked up this matter were officials connected with appraisement, with the Customs Court, and with the Treasury Department, and I think it was supposed that they could by examination of the books ascertain to what extent this higher export valuation was practiced in Germany and in other countries, and that they might be able to give us some approximate idea of how much this proposed change in the method of valuation in this bill would be likely to

increase the tariff levy. I do not understand that this principle applies only in Germany. Does the Senator understand that?

Mr. McCUMBER. No; it applies to Jugoslavia, and undoubtedly to Austria, and many of the southeastern European countries.

Mr. WATSON of Indiana. Wherever there is a depreciated currency.

Mr. SIMMONS. The importations from every country where it does apply would be assessed upon the value at a much higher basis. That is indisputably so.

Mr. McCUMBER. Certainly that must follow.

Mr. WATSON of Indiana. Of course, the Senator can have no objection to the importer paying the tariff based on the price he pays for the goods he imports. If it be the higher price, he must pay on that price.

Mr. SIMMONS. I am not discussing that. I am discussing the extent to which tariff duties would be raised automatically by the adoption of this amendment. I understand that in the amendment there is a provision that to the exporter's price, whatever that may be, there shall be added any export duty which may be imposed, and that the tariff duties shall be levied upon those export duties as well as upon the substantive price.

Mr. McCUMBER. But these export duties are, of course, only the duties which I have already mentioned. There is not an additional export duty other than those I have suggested.

Mr. SIMMONS. I call the Senator's attention to the fact that there may be and it may be right upon us now, because we are advised that in the settlement of the reparations controversy between the Allies and Germany it is proposed to levy a certain export tax upon their foreign trade. If that happens, and the practice is continued, you will have to add to the value that additional duty levied for the benefit of our allies in order to collect your part at least of the reparations from Germany.

Mr. McCUMBER. That assumes, Mr. President, that the export tax will be in addition to the present export tax. It may or may not be. The other is equivalent to an export tax, only the manufacturers who sell for export collect the tax, as agents of the Government, and turn it in, instead of the customs officers making the collections.

Mr. SIMMONS. What I mean is that at present this arrangement I am speaking about, by which goods are sold for so much more here than in Germany, is the result of interference on the part of the Government, and represents in a large measure a levy made upon goods by the German Government. If that Government needs that in its present situation for its domestic purposes, and it is compelled under the terms of settlement to pay an additional sum in the form of an export tax, it will naturally add that, and that will swell the price upon which our duties will be imposed by that much, whatever it may be.

Mr. McCUMBER. Of course, she can do that to a certain extent. There is a limit to which she can add her export tax, and that limit is the price at which the goods can be produced, with a tax and all costs added, and then sold in the United States at a profit, and I anticipate that there would be no danger but prices would be kept down sufficiently low to enable her to retain the American market. After all, I think the Senator must agree with me that in all instances where the importer can afford to import goods and sell them in the United States in competition with the home manufacturer he should be required to pay the tariff duties the same as though the cost in the first instance had included those duties. In other words, I do not believe that the Senator would contend that where the importer can purchase goods in the foreign market, even though at a price above the foreign home sales price, and still reap a good profit in the United States, he should be allowed to pay his import duty on a basis of one-half or one-third what he paid for the goods.

Mr. SMOOT. Mr. President, I think there are other reasons that can be given for the difference in the selling price of goods in Germany, at home, and the selling price of goods for exportation. Of course, I am not going to take the time of the Senate now to discuss that, but I am going to discuss it before the consideration of this bill is concluded.

There is one other thing I want to call attention to right now, in answer to a question asked by the Senator from North Carolina [Mr. SIMMONS]. His question led all present to believe, I think, that there was a higher protective duty on the goods because of the amount of duty which will be collected.

Mr. SIMMONS. No, Mr. President, I said nothing of that sort. I said the same duty would obtain, but it would have to be levied upon a much higher valuation of the foreign merchant.

Mr. SMOOT. Yes, and the Senator said, after that, in his second question, that if the duty levied before was sufficient—I do not know whether he used the word "protective" or not—if the duty levied before was sufficient, then under existing circumstances there would be two or three times the protection.

Mr. SIMMONS. The Senator is misrepresenting me.

Mr. SMOOT. I do not want to misrepresent the Senator for a moment.

Mr. SIMMONS. I did not say that or anything like it. What I did say was that the present tariff duties, and those prescribed in this emergency tariff bill, if this new valuation section of the bill prevails, would be applied to the higher valuation of the foreign products growing out of this custom, which it is admitted obtains in Germany particularly, of charging an export price far in excess of the home consumption price.

Mr. SMOOT. That is true, Mr. President; there is not any doubt about that.

Mr. SIMMONS. That would not result necessarily in the importer having to pay a larger amount than he would under the present rule of valuation, which looks to the price in the domestic market, for domestic consumption.

Mr. SMOOT. That is true, Mr. President; but, at the same time, by way of protection, it is not the same increase by any manner of means as the amount of duty collected, because of the fact that every class of goods manufactured in the United States is costing to-day approximately double what it did in 1913, when the present rates of duty were imposed, and as far as protection is concerned it is not represented by the amount of increase in the amount to be collected at the port of entry.

Mr. McCUMBER. Mr. President, I think we have made that sufficiently clear, and I want to speak for a moment on the other provision of the bill, which is Title IV.

Mr. CUMMINS. Mr. President, before the Senator from North Dakota leaves that subject, and for information only, I ask this question: Is the German export duty, or whatever it may be called, the same no matter to what country the goods are exported?

Mr. McCUMBER. So far as I know, Mr. President; I have not heard that it differs any in any country, but I think it is the same whether the goods are shipped to England or to the United States.

Mr. CUMMINS. Germany, then, is not attempting to vary her export duties to fit the conditions in the various countries to which the goods are exported?

Mr. McCUMBER. I do not understand that to be the case. As I was about to say, Mr. President, when the bill came from the House it contained a provision that in the estimation and liquidation of duties upon any imported merchandise the collector of customs shall not in any case estimate the depreciated currency at more than 66⅔ per cent. This is a very important departure from the general rule of determining values. This provision was met by most strenuous protest from importers throughout the country. Under the normal rate of exchange a gold mark is worth 23.8 cents in gold American money. However, there is no gold in circulation in Germany; all business is conducted, all goods are purchased and sold, with a depreciated paper mark, which varies from day to day, but ordinarily is worth in American money only 1.6 cents, as compared with the normal of 23.8 cents. By declaring that the depreciation should not be estimated at more than 66⅔ per cent, it means simply this, that you give a value to the paper mark of practically 8 cents instead of 1.6 cents.

Applying that, assuming the paper mark is worth 1.6 cents, if you buy a consignment of goods in Germany that cost 100,000 marks, the actual cost in American money of that consignment of goods would be $1,600. If the ad valorem duty were 25 per cent, the Government would collect under the present law $400.

If, however, you arbitrarily assume that a mark is worth 8 cents instead of 1.6 cents, the gold cost of the consignment would be estimated at about $8,000, and the duty of 25 per cent collected would be $2,000, as against the $400. In other words, by adopting the House bill, limiting the depreciation of currency to 66⅔ per cent, you would actually require the payment of five times as much duty upon any consignment of goods in Germany as is now being paid, and I think the committee agreed generally that it would in most instances absolutely prohibit importation from those countries having a very low, depreciated currency, and the Finance Committee was not able to accept that proposition.

But, recognizing the fact that while wages, standards of living, and cost of living generally in Germany and in other countries of depreciated currency have not gone down commensurately with their currency depreciation, they have nevertheless gone far below the prewar standards of living and wages in those countries. With a very much higher standard of living in this country, and with the prices of all commodities in this country greater than before the war, it was believed that the

old basis of protection would be insufficient, and therefore the committee adopted the proposition of making the basis of assessment upon either the home market value or the market price to the exporter, whichever might be the highest, and struck out this House provision.

I think that explains the bill sufficiently. Title IV deals only with the administrative measures to prevent fraud. Title V is the amendment made by the Senate.

Mr. HITCHCOCK. Mr. President——

Mr. McCUMBER. Just one moment. It continues the present licensing system for a period of six months and transfers the powers of the War Trade Board to the Treasury Department, together with the necessary clerks and equipment. Senators will remember that when we passed the Knox resolution the other day, which declared a state of peace between this country and Germany, it practically disposed of the War Trade Board and its powers. Therefore to protect the dye industry of the United States the bill provides for the transfer of those powers to the Treasury Department during the continuance of the measure, which is limited to six months.

I wish to say, in conclusion, and then I shall yield to the Senator from Nebraska, that I am not going to discuss at this time the tariff in Title I, the agricultural title of the bill. It is exactly the same as the former bill when it passed the Senate and the House and was presented to the President and vetoed by him during the last session of Congress. It was fully and amply discussed at that time, and if there is any Senator who was not then in the Senate who desires in his spare hours to look over the RECORD between the 17th of January and the 18th day of February last, he will find a full discussion of that matter. It is also rather fully explained in the report made by the committee. If Senators wish to challenge the propriety of any of the agricultural schedules, I shall then take occasion possibly to reply, if I deem it necessary.

I now yield to the Senator from Nebraska.

Mr. HITCHCOCK. I am sorry the Senator has left his former topic so far. I wish to go back to that part of his speech in which he was discussing the extent of tariff protection and whether it should be based upon the foreign market price of the article or whether it should be based upon the inflated selling price to the American exporter. I wish to ask the Senator, in the first place, if in the antidumping provision the insistence is made that the tariff should be based upon the foreign market value, is it not also just to have it based upon the foreign market value for all other purposes?

Mr. McCUMBER. I do not think that I fully comprehend the Senator's question. If he will give me an illustration I can understand it better.

Mr. HITCHCOCK. I will give the Senator an illustration. The testimony of one witness before the committee showed, for instance, that German chinaware selling before the war at 4 marks, which was practically 96 cents, is now sold to the United States at $2.50.

Mr. McCUMBER. At what was it selling before the war?

Mr. HITCHCOCK. I shall come to that in a moment. Under the insistence of the bill and in accordance with the belief of the Senator, the importer to the United States should be compelled to pay the existing tariff on a $2.50 value instead of, as formerly, upon the value of 4 marks.

Mr. McCUMBER. Was 4 marks the price before the war?

Mr. HITCHCOCK. It was 4 marks, which before the war was 96 cents, and it is now sold to the American exporter for $2.50.

Mr. McCUMBER. It would not be based on that under the law.

Mr. HITCHCOCK. Will the Senator allow me to finish my question?

Mr. McCUMBER. Certainly.

Mr. HITCHCOCK. The Senator holds that the American consumer should be compelled to pay a price in this country which includes a tariff on $2.50 worth of chinaware, whereas formerly he only paid a price which included the tariff on 96 cents' worth of chinaware. Why penalize the American consumer when, as a matter of fact, the foreign market value of that china to the German consumer is just what it was before, not nominally but actually? This witness goes on to say, and I shall read the complete paragraph:

> German chinaware selling before the war at 4 marks is now sold to the United States at $2.50 and in the home market at 60 marks. Duty is assessed on the home value, which converted into United States currency, approximates 96 cents.

In other words, the chinaware still sells at 96 cents in Germany and, as it is now, the duty will still be on the value of 96 cents, but the bill makes the duty payable on a $2.50 valuation. The question I put to the Senator is this: If under the antidumping clause it is proper to take the German home market value on that chinaware, why is it not proper to take the German home market value for the regular import tax, as we do now?

Mr. WATSON of Indiana. The whole question simply resolves itself into what the ad valorem rate should be based on. It must be based upon the price the importer in the United States pays. That is all there is to it.

Mr. HITCHCOCK. No; on the contrary, the antidumping clause particularly excludes that.

Mr. WATSON of Indiana. The Senator is confusing antidumping with the usual flow of commerce.

Mr. HITCHCOCK. No; I am not at all.

Mr. WATSON of Indiana. The sections are not interchangeable. Antidumping depends——

Mr. HITCHCOCK. Not at all. I say you have a bill here which provides that if the German market is lower than the export price for the American market, you shall charge on the export price for the American market, but if the German market is higher than the export market, as it would be under the antidumping provision, you tax the American consumer on the highest market. What is sauce for the goose is sauce for the gander. If it is proper to charge on the German standard of value to the American consumer in the one case it is proper in the other, and one or the other of your theories in the bill is utterly wrong.

Mr. McCUMBER. The Senator is mistaken there.

Mr. HITCHCOCK. I feel, as representing the interests of the American consumer, that it is manifestly unfair to compel him to pay a price in this country based upon a value of $2.50 instead of, as heretofore, the market value in Germany, which is 96 cents.

Mr. McCUMBER. The Senator is mistaken in what constitutes dumping from Germany. It is not based upon the price at which it is sold in Germany; it is based upon a price which is lower than the price at which it is sold for home consumption in Germany. If Germany sells an article in her home market for very much less than it is sold for export, still it is not dumping. If she sells it for less in the home market than she sells it for exporting, it is not dumping. But if she sells it for less for export than it cost or than its usual selling price in the home market, that is dumping.

Mr. HITCHCOCK. The Senator and I understand each other entirely.

Mr. McCUMBER. In the instance which the Senator has put to the Senate there is no dumping, and therefore there is no application of the dumping law.

Mr. HITCHCOCK. It is a very simple matter. The dumping provision is intended to reach a case in which Germany or any other country sells us a dollar's worth of goods, say, for 60 cents. Then in that case, if she sells it to us for 60 cents, you compel the importer and indirectly the American consumer to pay on the full dollar, although it did not cost him a dollar. In this case when it costs him more than the local price you compel him to pay the actual cost in the German market instead of assessing it upon the German market itself. That is what you do.

Mr. McCUMBER. That takes two answers.

Mr. HITCHCOCK. I say it is inconsistent.

Mr. McCUMBER. Not a bit.

Mr. HITCHCOCK. In both cases you are compelling the American consumer to pay the highest tax.

Mr. McCUMBER. They are not at all inconsistent. Each one has its separate answer. If an article costs a dollar in Germany, and Germany sees fit to sell it to the United States for 60 cents for the purpose of destroying an industry in the United States, then we will say yes, we ought to prohibit it, and the people ought to pay the difference between the dollar and the 60 cents, or 40 cents. There is no question about that. We should not allow any country to sacrifice an industry in the United States by selling a product for less than it cost in the home country for the purpose of destruction. That is an answer to that proposition.

The second proposition is whether we should collect a duty of, say, 25 per cent upon an article that is produced in Germany for $1 and sold for export for $2? Yes. If the exporter can afford to buy that article in Germany for $2 above the German price and still sell it here to advantage and in competition with the American product, then, of course, he should pay his duty, just exactly as he should pay it if it cost the $2 originally in Germany.

Mr. HITCHCOCK. I have instanced a case where chinaware is being sold in Germany at the same value that it was sold for before the war—that is, the 60 marks for which it now sells

are of the same value as the 4 marks at which it sold before the war, because the marks have depreciated.

Mr. SMOOT. That is, in this country.

Mr. HITCHCOCK. The German people are paying the same value for the chinaware, and the German market on chinaware is just where it was before the war, because 4 marks then are the same as 60 marks now. In the existing tariff law a certain duty was levied and is now being assessed on chinaware brought into this country based on German value, which is the same as before the war; yet this bill levies a tax practically one and a half times greater on that very chinaware which is being sold to consumers in that country at just the same value at which it was sold before the war. This is a bill to swell the taxes inordinately. It makes a higher tax than has ever been levied before on chinaware in the United States.

Mr. McCUMBER. Of course, if the price of an article in foreign markets is two and a half times as great as it was before the war or two and a half times as great as it sells for in the country of production at the present time, my judgment is that if it can be imported into the United States and sold at a profit at those prices the importer should pay a tariff exactly the same as though it cost two and a half times as much in Germany as it is sold to the German purchaser for.

Mr. HITCHCOCK. That is where the Senator made a mistake. The importer does not pay the tax. The American consumer is being required to pay the tax. It is the American consumer you are hitting, and you are doing it under the guise of an emergency tariff on agricultural products, and you are levying upon the people of the United States a grossly increased revenue by figuring on the export duty instead of the value in the European country.

Mr. McCUMBER. Of course, if you levy one penny on an article brought into the United States, the American people pay that penny. No one is questioning that. If you levy a dollar, or 10 per cent, upon goods which cost $10, the American consumer pays that dollar. But just remember that the cost of the production of chinaware in the United States has gone up just as much as the increased price for export to the United States in Germany is at the present time. If we are going to have protection, we need the same protection. I have always admitted that the American consumer pays all taxes. Whether they are import taxes or direct taxes or whatever they are the consumer pays them. No one is questioning that proposition. But the question is when you pay this $2.50 for something that is sold in Germany for 96 cents, and when the importer buys that and charges it up to the American people, and can afford to sell it to an advantage and at a profit in the United States, whether he should be compelled to pay the tariff on that $2.50 or whether he should be allowed to pocket the additional profit of the difference between the duty on $2.50 and the duty on 96 cents. Of course, if he can get it for much less, his profits will be greater, because he will sell for the market value in the United States, and if the market value in the United States is considerably greater than in the country of production he rather than the American people will get the advantage of the reduction in the tariff rate. He will add to his usual profits in the sale of his imported goods the profit derived from a reduction of his import duties. The committee believed that the Government rather than the importer should have this additional tariff duty.

Mr. SMOOT. Mr. President, this is a case where the situation may be so easily demonstrated that I think I might as well call attention to the existing situation at the present time as any other, if the Senator from North Dakota will permit me to do so.

Mr. McCUMBER. Certainly.

Mr. SMOOT. Senators must know that the mark has not depreciated in Germany to the extent that the mark has depreciated in the other countries of the world, where its value is based upon gold; in other words, the depreciation of the mark where it must be paid in the gold is nearly 16 to 1; but when a German manufacturer hires help to manufacture glassware, the mark for his purposes has depreciated from its value before the war only about 8 or 9 to 1. The German laborer when he pays his rent does not to-day pay sixteen times the amount which he paid when the mark was at par; he pays only about eight or nine times the amount which he formerly paid. The German who purchases German goods does not pay sixteen times the price of those goods before the depreciation of the mark. Sometimes he pays as high as ten times the former price, but sometimes he pays as low as five times the amount which he formerly paid. Therefore, to-day the German manufacturer of chinaware who receives 60 marks for it, gets more labor in Germany than he ever did when he sold it for 4 marks, and will therefore make a larger profit. It is true he makes the American purchaser pay $2.50 for the article, but that is because of the fact that he has got to be paid in gold, for whether an article is exported from this country or from some other country, the seller does not receive anything but gold or its equivalent.

Mr. SIMMONS. I would like to ask the Senator a question at that point.

Mr. SMOOT. The Senator may ask me any question he pleases.

Mr. SIMMONS. Does the Senator mean to say that I can buy 100 marks at the rate of 1½ cents per mark——

Mr. SMOOT. In gold; yes.

Mr. SIMMONS. And when I have bought those 100 marks at that rate, that I can go into the German market with those marks and buy products that are worth three or four times as much in gold as I paid for those marks?

Mr. SMOOT. I have not said that.

Mr. SIMMONS. That is what the Senator is saying means, for it can not mean anything else. The Senator says the purchasing power of the mark in Germany is more than a cent and a half, yet that I can buy the German mark in Germany for a cent and a half, and immediately upon buying it that I can buy goods that are worth four times that much.

Mr. SMOOT. If the Senator from North Carolina had followed me, he would not have made that statement.

Mr. SIMMONS. But I did follow the Senator.

Mr. SMOOT. I say that many kinds of goods may be purchased in Germany for 8 marks where the price in gold would be 16 marks, or twice as much. Mr. President, rents in Germany are not more than ten times higher than they were as against a depreciation in the mark of sixteen times. Depreciated currency is all that is in circulation in Germany. I do not believe that a million dollars in gold have gone out of Germany for several years past. Transactions have been based on the transfer of credits, and those credits come about by the exportation of goods. I do say, however, that I can go to Germany, take $1,000 in gold, buy 60,000 marks for it and I can take those 60,000 marks and in many cases buy double the amount of German-made goods for home consumption than if the same goods were to be exported.

Mr. HITCHCOCK. The testimony which I cited to the Senator shows that as to a particular commodity the price in marks and in gold is the same; that it is 96 cents.

Mr. SMOOT. Yes; that is based upon gold being sixteen times greater in value than the mark. The man who buys the article in Germany for the 60 marks pays for it in gold worth sixteen times the value of the paper money.

Mr. HITCHCOCK. But he buys the article for 96 cents.

Mr. SMOOT. He buys it for 96 cents in gold.

Mr. HITCHCOCK. But the American who goes there with gold buys it for $2.50.

Mr. SMOOT. That is entirely another question. As I have said, we are speaking here of the advantage derived by the Germans. If the German manufacturer had to pay his help in gold, then the statement made by the Senator from Nebraska would be absolutely correct; there would be a discrimination; but the German manufacturer for $2.50 in German depreciated currency can get nearly one-eighth as much labor as he got before the war, but he could not get the same amount of gold with that paper money that he could get before the war. That paper money is circulated inside the country; it buys many things of which the German people control the price. That currency is like some of the scrip upon different stores on which some of the Western States used to do business in years past. The merchants would buy produce of all kinds with such scrip and the merchants would exchange merchandise for it. In trade in the city in which the scrip was issued sometimes the depreciation would be 10 or 20 per cent, but one could not go out into another State and use it or sell it for 50 per cent of its face value. So it is with the depreciated currency of Germany. Inside of Germany they can buy more goods there and more labor for that depreciated currency than can be done outside. The depreciation of the currency within Germany is not nearly so great as its depreciation in foreign countries where they have to redeem it in gold.

Mr. President, that is one of the reasons, if not the main reason, why to-day the home price in Germany is much less than is the price of their goods when exported abroad. Why? Because every dollar's worth of goods exported means payment in gold, while every dollar's worth purchased in Germany is paid for in depreciated currency according to its value in Germany.

This condition will continue so long as this wide difference in purchasing power exists, and we can not get around it. In enacting a law we have got to frame a law that will apply to all countries alike. I do not think that the Senator from Ne-

braska would for a moment say that the same condition exists in England, where there has not been a heavy depreciation; but it exists in Poland; it exists in Austria; it exists in Jugo-Slavia; it exists in all those countries whose currency has so depreciated that so far as the gold value is concerned it is almost nil. Poland stands at the head. The depreciation of her currency is even greater than that of Germany. Austria's currency is almost worthless. All we are trying to do in this bill is to equalize, if it is possible, the difference between an American dollar and the depreciated currency of foreign countries.

As to the House provision, which, as the Senator from North Dakota has said, applies where the depreciation has not been less than 66⅔ per cent, I have my doubts whether that would not be a violation of the favored-nation clause. The provision as to a 66⅔ per cent depreciation would not touch England; it would not affect France; it would just barely affect Italy; but it would mean much to Germany. The Senator from North Dakota has told the Senate just what it would mean. In other words, under the House provision the duties imposed upon goods costing a thousand marks would be $80, whereas under the provision as reported by the Senate committee the duty would be $16 only; that is, the duty would be imposed upon the thousand marks' worth of goods at $16, or one-fifth of the amount as provided in the House bill.

What is there different in this, Mr. President, from the existing law? I may say that there is only one difference. To-day under the rulings of the Treasury Department the value of goods is reckoned in the money of the country of production. There is no change in that respect. But under existing law the duties are imposed upon the home-market value; and, as the Senator from North Dakota has explained, we have added a provision to the effect that there shall be the right to base the reckoning on whichever is the highest, the export or the invoice price in the home market. That is all there is to all of these words in the bill, outside of the regulations provided and the antidumping clause.

Mr. KELLOGG. Mr. President, will the Senator yield?

Mr. SMOOT. Yes; I yield.

Mr. KELLOGG. As I understand, to-day if one buys goods in France for 2,000 francs he goes to the American consul, and the American consul certifies the value of 2,000 francs on that day in dollars, and he pays the duty on those dollars.

Mr. SMOOT. Whatever the francs figure in American gold dollars.

Mr. KELLOGG. Yes; that is what I say.

Mr. SMOOT. That is what he pays the duty on.

Mr. KELLOGG. That is the practice under the present law.

Mr. SMOOT. Yes; but it is based upon the home market value, whereas under the provision of the pending bill, on account of the depreciation in German marks and of the currency of other countries and because of the fact that the value of their currency in the home market is greater than it is in gold dollars, we propose to add a provision under which goods are sold higher in the home market than the invoice price of the goods, or if they are sold to an exporter at a price greater than the home market price, then the duty shall be based upon whichever is the higher. That is necessary because of the condition existing in the foreign countries, brought about through the war and resulting in depreciating the value of their money.

Why, Mr. President, there is so little added by this antidumping provision and the other titles of this bill that I did not think it was going to lead to very much discussion. As the Senator from North Dakota [Mr. McCUMBER] has said, the duties levied upon agricultural products are exactly the same as they were in the former bill as it passed the Senate, and the other provisions are added simply for the purpose of equalizing, if you please, the values of foreign currency with the gold dollar in the United States.

The VICE PRESIDENT. The question is on the amendment of the committee.

Mr. SIMMONS. Mr. President, I do not know of any Senator on this side who desires to proceed this afternoon. In a little conference that I held with the Senator from Pennsylvania [Mr. PENROSE], the chairman of the committee, before he left the Senate Chamber, he advised me that he would not be ready to speak before to-morrow. I prefer, before addressing myself to the bill, to hear from the chairman of the committee. In fact, that is a courtesy that is generally extended; and while I could go on this afternoon if I were forced to do it, I should prefer not to do it.

Mr. CURTIS. Mr. President, I wonder if the Senator in charge of the bill can not get an agreement with the other side to vote upon this measure on Saturday? It is an emergency bill, and we ought to pass it. It has been here very much longer than it should have been, and I do hope that something may be done to get the measure through.

Mr. POMERENE. Mr. President, when was the bill reported to the Senate?

Mr. CURTIS. Just a few days ago, but a similar bill passed the Senate at the last session of Congress.

Mr. SIMMONS. Mr. President, the bill contains some very important and intricate provisions—some provisions that the discussion which has taken place here this afternoon demonstrates are of deep interest and great concern to the country. The bill can not pass without reasonable discussion. We are not prepared now to make any agreement about fixing a time for voting, but I will say to the Senator from Kansas that there is no disposition on the part of this side of the Chamber to prolong the discussion. If the Senator will be patient and wait until to-morrow, until we have had a little further discussion of the bill, I think we shall be able to reach an agreement to vote at a very early day—not Saturday, but some day early next week, not later than Wednesday.

Mr. WATSON of Indiana. Mr. President, suppose debate should be exhausted, then the Senator would not object to a vote?

Mr. SIMMONS. No; in that event, of course, I should not object to a vote.

Mr. WATSON of Indiana. Does the Senator know of Senators on his side who want to speak?

Mr. SIMMONS. I think there are a good many Senators over here who propose to speak, but they are not going to make long speeches and they are not going to prolong the discussion unnecessarily. After to-morrow, I think, we shall know about where we stand. Then I will state to the Senator in charge of the bill that I shall be willing on the part of this side of the Chamber, to agree to a very early date for a vote.

Mr. WATSON of Indiana. Very well.

Mr. McCUMBER. I suggest to the Senator from North Caroline that we had better have a short executive session, and then I shall propose that we take a recess until 12 o'clock to-morrow.

Mr. UNDERWOOD. I think if the bill were under pressure and Senators were prepared to go ahead with the debate a recess would be very advisable; but the debate has not gotten into its run yet.

Mr. SMOOT. It will to-morrow.

Mr. McCUMBER. It will to-morrow, I will say to the Senator, I am certain. I hope we shall consider that it is a bill of some exigency, at least.

Mr. POMERENE. Mr. President, the Senator from North Dakota a moment ago suggested that we take a recess. I think there will be some morning business to-morrow.

Mr. McCUMBER. I think there will be no objection to Senators who wish to introduce bills doing so. Routine morning business can always be transacted by unanimous consent.

Mr. POMERENE. I gave notice this morning that I would to-morrow make a few observations on a Senate resolution which I submitted, and I do not want to intrude on the tariff discussion. The matter I have presented is a pretty important one, however, and if the Senate decides to take any action it ought to be taken quickly, I think.

Mr. McCUMBER. I do not think there will be any objection to that.

Mr. POMERENE. Very well. With that understanding, I have no objection to a recess.

EXECUTIVE SESSION.

Mr. McCUMBER. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After seven minutes spent in executive session the doors were reopened.

RECESS.

Mr. McCUMBER. I move that the Senate take a recess until to-morrow at 12 o'clock.

The motion was agreed to; and (at 3 o'clock and 50 minutes p. m.) the Senate took a recess until to-morrow, Thursday, May 5, 1921, at 12 o'clock meridian.

CONFIRMATIONS.

Executive nominations confirmed by the Senate May 4, 1921.

DIPLOMATIC SERVICE.

Envoy extraordinary and minister plenipotentiary to Salvador.

Montgomery Schuyler.

PENSION OFFICE.

Deputy Commissioner of Pensions.

Hamlin M. Vandervort.

RENT COMMISSION, DISTRICT OF COLUMBIA.

Member of Rent Commission.

William F. Gude.

UNITED STATES MARSHAL.

United States marshal, western district of Texas.

David A. Walker.

UNITED STATES ATTORNEYS.

United States attorney, eastern district of Virginia.

D. Lawrence Groner.

United States attorney, western district of Arkansas.

Samuel S. Langley.

PUBLIC LAND SERVICE.

Receiver of public moneys at Miles City, Mont.

John Henry Bohling.

Surveyor general of Idaho.

Virgil W. Samms.

REGULAR ARMY.

ORDNANCE DEPARTMENT.

First Lieutenant.

Merle Halsey Davis.

FIELD ARTILLERY.

Captain.

Derrill de Saussure Trenholm.

POSTMASTERS.

COLORADO.

Melissa H. Hayden, Breckenridge.
Frank L. Barton, Haxtum.

MICHIGAN.

Henry M. Lawry, Caspian.
Orrin T. Hoover, Chelsea.
George A. McNicol, Hillman.

NORTH CAROLINA.

William R. Anderson, Reidsville.

NORTH DAKOTA.

Charles P. Thomson, Minto.
Ernest C. Lebacken, Reynolds.

OHIO.

Thomas R. Gordon, East Youngstown.
Henry D. Weaver, Leetonia.
Guy E. Matthews, Liberty Center.

WYOMING.

Prince A. Gatchell, jr., Buffalo.
A. Verne Wiggins, Lusk.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *May 4, 1921.*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Almighty God, Thou hast made us and not we ourselves; therefore work within us the pleasure of Thy holy will and help us to be alert, grandly free, always conscious of our high calling and the solemnity of our obligations. Be Thou with our stricken Member in great comfort and recovery, and when the day is done and the door of the workaway world is closed, let Christ come and give us rest within the shades of night, through Jesus Christ our Lord. Amen.

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

LEAVE OF ABSENCE.

Mr. BYRNS of Tennessee. Mr. Speaker, I ask unanimous consent that my colleague, Mr. PADGETT, may be excused for the day, on account of illness.

The SPEAKER. The gentleman from Tennessee asks unanimous consent that his colleague, Mr. PADGETT, be excused for the day, on account of illness. Is there objection?

There was no objection.

EMIL S. FISCHER.

Mr. FORDNEY. Mr. Speaker, I move to reconsider the vote taken yesterday on Senate joint resolution 38.

Mr. WINGO. Mr. Speaker, I make the point of order, first, that this is Calendar Wednesday; second, that under Calendar Wednesday rule the motion comes too late; third, that the action of the House in refusing to advance the bill to a third reading is a refusal of consideration. If those should fail, I make the further proposition that the resolution sought to be read a third time by this reconsideration undertakes to grant naturalization to a foreign citizen without requiring him to renounce his allegiance to his own country or take the oath of allegiance to this country.

Mr. MONDELL. Mr. Speaker, there is no question about the right of the gentleman from Michigan to move a reconsideration. The gentleman from Michigan does not intend to press the motion to-day; he is simply presenting it. That can be presented on Calendar Wednesday beyond all question.

Mr. WALSH. Will the gentleman yield?

Mr. MONDELL. Yes.

Mr. WALSH. If the gentleman can make a motion to reconsider to-day, can the motion be made to lay it on the table to-day and have it voted upon?

Mr. MONDELL. That matter is not before the House. The gentleman from Michigan is offering a motion to reconsider, which he has a right to do under the rules. There does not seem to be any question about that—whether you can go on on Calendar Wednesday is another question.

Mr. WINGO. The reconsideration is a consideration of the bill; it is business on Calendar Wednesday.

Mr. MONDELL. The gentleman is filing a motion to reconsider.

Mr. WINGO. If he can file that the House determines eo instanti what it will do, whether it will proceed at once or let it lie. Generally by unanimous consent the House, by custom, permits the mover of the motion to determine when he will call it up, but he has the right under the rule of reconsideration to ask for its consideration then. As a matter of fact, any Member of the House has a right to object to its going over. If he does that we can move to lay it on the table, and that would be a consideration. The predecessor of the present occupant of the chair had this matter before him and it was thrashed out, and I was under the impression that the present occupant of the chair had decided the question similar to the decision of Speaker Clark.

The SPEAKER. The Chair does not remember it, and the Chair would be glad to have the gentleman refer him to it.

Mr. WINGO. It is business, is it not?

The SPEAKER. The gentleman from Arkansas offered several reasons for his point of order, the first one being that it is too late. The Chair would like to ask the gentleman on what ground?

Mr. WINGO. Here is the proposition. The Calendar Wednesday rule was adopted by this House subsequent to Rule XVIII on reconsideration. Rule XVIII on reconsideration gives the right to make that motion on the same or the succeeding day. Now, by implication, when the calendar rule is adopted, it bars all other business except that provided for by the rule; we amended to that extent the reconsideration rule, and nothing can be considered on Calendar Wednesdays except that specifically authorized. Calendar Wednesday is a special rule; it seeks to amend and restrict the general rules of the House. It is like a statute; whenever Congress passes a general law and subsequently it seeks to pass a special act covering one particular phase of the general act, then nothing can be done under the special act except that specifically authorized, because of the well-known rule of interpretation, inclusio unius est exclusio alterius. When the House adopted the Calendar Wednesday rule, the Congress having included certain things, it excluded all others.

Mr. MONDELL. Will the gentleman yield?

Mr. WINGO. Yes.

Mr. MONDELL. Assuming that the motion can not be filed to-day, could it be filed to-morrow?

Mr. WINGO. I do not think it could; that is what I have been arguing.

Mr. MONDELL. Then by adoption of the Calendar Wednesday rule this privilege fails.

Mr. WINGO. The gentleman had his chance yesterday. I have not the decision of Speaker Clark before me. I am willing to reserve the point of order on the question and let it go over until to-morrow morning, and that will give the Chair and the parliamentary clerk time to look it up.

The SPEAKER. That would be an excellent way to dispose of it.

Mr. FORDNEY. I have not the slightest objection, if that will preserve my rights.

The SPEAKER. No rights of the gentleman will be lost.

Mr. WALSH. Mr. Speaker, I do not think that should be done. I would like to direct the Speaker's attention to the situation. Paragraph 7 of Rule XXIV says that on Wednesday of each week no business shall be in order except that provided by paragraph 4 of the rule. Assuming this question came up

yesterday upon the question of consideration and consideration was refused, could the gentleman on Calendar Wednesday move to reconsider that vote and throw the bill before the House for consideration? This says that no business shall be in order except as provided by paragraph 4 of this rule unless the House by a two-thirds vote shall otherwise determine. I do not believe we should establish a precedent and permit this question to go over until to-morrow, when one legislative day will have intervened, in order that he might then make a motion and the point of order be determined.

Mr. WINGO. Mr. Speaker, my suggestion is that it be considered as of to-day.

Mr. FORDNEY. All there is to this question is this: The rule provides that a motion to reconsider may be made the same or the succeeding day. I tried to make that motion last evening, but a point of no quorum was made and immediately a motion to adjourn intervened, and that prevented the making of this motion yesterday. It is time now to determine whether or not this rule has been abrogated by some other, and whether under such conditions there is only one day when a Member can make a motion to reconsider. I think it is absolutely unfair, but I am perfectly willing that it should go over until to-morrow without prejudice.

The SPEAKER. That has been refused.

Mr. STAFFORD. Mr. Speaker, as I understand the gentleman from Michigan, he does not move to-day to reconsider, but only desires to enter the motion for reconsideration.

Mr. FORDNEY. That is all.

Mr. STAFFORD. The entering of a motion for reconsideration, as it has been done in some rare instances during my service in the House, merely gives the Member who enters the motion, or any other Member, the right at some subsequent time to bring it up, to have it voted upon. The right to reconsider is one of the highest privileges that a Member can have in this House. The contention of the gentleman from Arkansas [Mr. WINGO] that the defeat on a third reading would not permit reconsideration can not be entertained, because the precedents are uniform that when the House votes down a Senate bill on a third reading it is a rejection of a measure, and if it is a rejection of the measure, a Member can move to reconsider right then and there. The gentleman yesterday could have made the formal motion to reconsider the vote and have that motion lie on the table, but it was not done, and any Member voting in the majority, and the gentleman from Michigan, I believe, voted with the majority——

Mr. FORDNEY. I did.

Mr. STAFFORD. Has the right at any time on the day of the vote or the succeeding day to enter the motion. The rule creating Calendar Wednesday requires a two-thirds vote to set it aside, except for the unfinished business on the Speaker's table coming over from the day before, but there are precedents that this motion of reconsideration takes precedence of other motions, except a conference report, so high is the privilege, as provided by the rules.

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

Mr. STAFFORD. Yes.

Mr. MONDELL. It takes precedence of any motion except a motion to adjourn.

Mr. WALSH. The gentleman yielded to me, I understood.

Mr. STAFFORD. I did yield to my colleague first, but I am very glad, indeed, to receive the suggestion of the floor leader that the motion takes precedence of every motion except a motion to adjourn, and also, as I believe, conference reports.

Mr. WALSH. If the gentleman enters a motion to reconsider, in whose control is that motion after the motion has been entered?

Mr. STAFFORD. The entering of a motion to reconsider permits any member of the majority who gets recognition of the Chair at any time thereafter to call it up. It may be to-morrow or at any time before the close of the session. It gives the House the right to reconsider its vote, and the House should have that right.

The present Speaker and all Speakers have held that all rules of the House must be considered together. It is a fundamental rule of construction that all rules must be given consideration in connection with the other rules that are in force, and that the rule, as in the case of statutes, should be given effect rather than negatived. Shall it be said that the mere raising of the question of Calendar Wednesday, because of the legislative situation yesterday, when no quorum of the House developed, takes away the right of a Member under the rule to enter his motion to reconsider? If so, then you are not giving any effect whatever to Rule XVIII, which gives the right to a member of the majority to enter a motion to reconsider within two days after the vote has been taken. The gentleman from Michigan is entirely within his rights in entering the motion to reconsider.

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

Mr. STAFFORD. Yes.

Mr. WALSH. Does the gentleman contend that entering the motion to reconsider makes it a privileged motion, which can be called up by anyone who voted in the majority at any time?

Mr. STAFFORD. At any time any member of the majority, when he gets the eye of the Speaker, who determines when a Member shall be recognized, shall have the right, if no other privileged motion is ahead of this, to gain recognition for the consideration of that motion. Otherwise you negative the rules of the House, which say that a Member shall have the right within two days to enter his motion to reconsider.

Mr. BLANTON. Mr. Speaker, will the gentleman from Michigan yield?

Mr. FORDNEY. Yes.

The SPEAKER. The gentleman from Wisconsin has the floor.

Mr. STAFFORD. Mr. Speaker, I have yielded the floor.

Mr. BLANTON. Mr. Speaker, I want to suggest, if the gentleman has the right to enter his motion to reconsider, he has the right to have action on it now, and that action might take up all of Calendar Wednesday.

Mr. STAFFORD. To that contention let it be said that it would require a two-thirds vote to bring up the motion. The mere entering of the motion is not moving its consideration at that time.

Mr. WINGO. Mr. Speaker, I want first to notice the suggestion of the gentleman from Wisconsin [Mr. STAFFORD] that the gentleman from Michigan [Mr. FORDNEY] simply offers to "enter" a motion. There is no right in the rules of the House to "enter" such a motion. The question of reconsideration is not governed by practices that have grown up, but it is governed by a specific rule, and that rule is Rule XVIII, which provides that on the same day or the succeeding day a Member may "move" for reconsideration and that thereafter any Member may call it up for consideration. In other words, it is not like entering a bill in the basket. The House has provided how a bill may be read the first time—that is, by dropping it in the basket. That is "entering" the bill, and technically it is the first reading. Then the next step. We have provided for the second reading of the bill by the general rules of the House, which determine whether or not a bill is privileged for the second reading. The question of consideration has been waived by the rule of the House against the first reading by entering the bill and filing it with the Clerk in a certain way. The rules also provide that when a bill is called up for second reading the House still has control of consideration, and the Chair is familiar with the procedure upon an objection to consideration. Not only that, but under the practices of the parliament the House must decide each time whether it will consider the bill by advancing it to the next stage. So the question comes up and the Speaker has to put the question, "The question is on the third reading." The question, in effect, in the light of decisions and the practices of the parliament, is, "Will the House consider the bill on its final reading?"

Now, I contend this involves a question of consideration. The gentleman from Massachusetts [Mr. WALSH] suggested that the motion to reconsider might be made on the question of reconsideration on a second reading. This House has decided time and time again that the question of reconsideration is not permitted on a question of the consideration of a bill. Now, that being true, one of the points of order I made is this, that the House having clearly voted upon the question of consideration—that is, will the House advance this bill to a third reading—it is really a submitting of the question of consideration. The second reading has disclosed whether or not the House is sufficiently interested in it that it wants to advance it to a final consideration. So I contend that this consideration having failed it is like the consideration of a second reading, it is not reconsiderable.

Now, the next question is with reference to Calendar Wednesday. There has never been but two things claimed in order that are alleged to be specifically covered by the Calendar Wednesday rule. One is that when on Tuesday the House closes all consideration, except a final vote by ordering the previous question, then the next morning it comes up as unfinished business on the Speaker's table, and is admitted by implication under the first provision of Calendar Wednesday rule. That contention was overruled. Next is covered by a decision of Mr. Speaker Clark. The gentleman from Illinois [Mr. MANN] appealed, and the House overwhelmingly sustained Mr. Speaker Clark. Mr. MANN contended that you could not even consider a

presidential veto on Wednesday, and Mr. Speaker Clark held that the question of a presidential veto being controlled by the Constitution, that the limitation of Calendar Wednesday rule, which shut out all business not specifically enumerated in paragraph 4 of the rule, was written in the light of the Constitution and could not exclude a constitutional privilege. Now, there are the only two things that can be considered on Calendar Wednesday other than Calendar Wednesday business. One is unfinished business on the Speaker's table. Next is the question provided for in the Constitution—veto messages, and that by the rules is unfinished business. The House for its own protection has seen fit to adopt Calendar Wednesday, and to say that it did not by implication amend, so far as the second day is concerned, the reconsideration rule would be to fly in the face of the rule. The gentleman yesterday had the right to make the motion to reconsider, but he says that he was shut off. He was shut off by action of the House, because at 5.30 the House, knowing what the gentleman wanted to do, the man in charge of the floor, the gentleman from Iowa, made a motion to adjourn. If the House wanted to permit the proceedings provided for under the rule in reference to this resolution, it could have voted down the motion to adjourn and given the gentleman the right to make the motion yesterday, but the House by that action passed its judgment, which is conclusive, as if the motion to reconsider was voted on formally. In other words, the assumption is that the House always acts with knowledge of the facts, and it can deny a man the right under the rule by a majority vote on some things and by a two-thirds vote in other instances. Yesterday it was by a majority vote under the practice of the House. You permit this to-day in the face of the Calendar Wednesday rule, in the face of the ruling of Mr. Speaker Clark, and in the face of one decision I am sure the Speaker, on reflection, will find, although it was not pressed, but the suggestion was made, and I now recall that the question had been decided by Mr. Speaker Clark—I think the Speaker will find it—but even if it were the case of the first impression the Speaker must stand on the fundamentals of the rule, however much he might desire to relieve a gentleman from embarrassment. The clear unequivocal rule is that nothing is in order on Calendar Wednesday except that specifically provided for by section 4 of the rule, and a motion to reconsider was not included in that. [Applause.]

Mr. MONDELL rose.

The SPEAKER. The Chair does not care to hear further argument. The Chair is ready to rule. The rule provides that:

When a motion has been made and carried or lost, it shall be in order for any Member of the majority, on the same or succeeding day, to move for the reconsideration thereof.

On the face of that the gentleman from Michigan [Mr. FORDNEY], who voted yesterday with the majority, is obviously entitled to-day to make a motion to reconsider. The gentleman from Arkansas [Mr. WINGO] makes the point of order that this being Calendar Wednesday the motion is not in order. He first makes the claim that the defeat of a bill on the third reading is the same as a refusal to consider a bill, and therefore the motion to reconsider is not in order. The Chair thinks the gentleman is correct in his claim that when the question of consideration is raised it is not in order to reconsider that decision. But the Chair does not think that the defeat of a bill on the third reading is at all the same as refusing consideration. If it were, then this bill could be taken up again, because refusing to consider a bill does not defeat it. But this bill can not be taken up again. It is dead unless it can be revived by the motion to reconsider, and the Chair does not think that the defeat of a bill on the third reading is at all identical with a refusal to consider a bill.

Then the other point which the gentleman makes, and which the Chair thinks is more serious and doubtful, is that, this being Calendar Wednesday, no business is in order except the business prescribed in the rule for that day. That raises a close question. But the Chair thinks that when two rules conflict, as they do here—one saying that in this case the motion to reconsider could be made yesterday or to-day and the other saying that to-day being Calendar Wednesday only certain business which does not embrace this motion to reconsider can be transacted—the two rules should, if possible, be so interpreted as to give effect to both. And the Chair thinks that in this instance it can be readily done, because the purpose of the rule defining and limiting the business which can be transacted on Calendar Wednesday is to preserve the time of Calendar Wednesday exclusively for that business and not allow other matters to come in and consume any of that time.

Now, it does not necessarily follow that when a gentleman makes a motion to reconsider he has the right to have that motion immediately considered and voted on and debated. The decisions are quite clear. The Chair will read one heading from paragraph 5673, page 334, volume 5, of Hinds' Precedents, as follows:

While the motion to reconsider may be entered at any time during the two days prescribed by the rule, even after the previous question is ordered or when a question of the highest privilege is pending, it may not be considered while another question is before the House.

And in another case it says, in paragraph 5677, page 338, of the same volume:

When a motion to reconsider relates to a bill belonging to a particular class of business, the consideration of the motion is in order only when that class of business is in order.

So the fact that a motion to reconsider can be made does not carry with it the right to debate it or to vote upon it at that time, but simply makes it pending. And therefore, if the Chair should rule that this motion to reconsider can be made to-day, the Chair would hold it could not be acted upon to-day, because Calendar Wednesday is set aside for other business. It could only be acted upon at some future time when business of that class was in order in the House. The Chair thinks that such interpretation saves both Calendar Wednesday and the right of reconsideration. It allows a motion to reconsider to be made, as the rule provides, on either Tuesday or Wednesday, but it does not allow it to interfere with the business of Calendar Wednesday or take any time on that day, but simply allows a Member to make the motion which is then pending and which can then be brought up at a day when that business is in order.

Therefore the Chair overrules the point of order made by the gentleman from Arkansas [Mr. WINGO].

Mr. WINGO. Will the Chair recognize a motion to lay the motion to reconsider on the table?

The SPEAKER. The Chair will not. The Chair will recognize the gentleman for that purpose when the proper time comes.

Mr. WINGO. I think the Chair is right about its having to be made subsequently.

Mr. FORDNEY. Mr. Speaker, I enter the motion.

The SPEAKER. The gentleman has already made the motion.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. Crockett, one of its clerks, announced that the Senate had passed with an amendment the bill (H. R. 4075) to limit the immigration of aliens into the United States, in which the concurrence of the House of Representatives was requested, and had requested a conference with the House of Representatives upon the bill and amendment, and had appointed Mr. COLT, Mr. DILLINGHAM, and Mr. KING as conferees on the part of the Senate.

ENROLLED BILL PRESENTED TO THE PRESIDENT FOR HIS APPROVAL.

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

H. R. 3152. An act granting the consent of Congress to the Ironton & Russell Bridge Co. to construct a bridge across the Ohio River at or near the city of Ironton, Ohio, and between the county of Lawrence, Ohio, and the county of Greenup, Ky.

ENROLLED JOINT RESOLUTION SIGNED.

The SPEAKER announced his signature to enrolled joint resolution of the following title:

S. J. Res. 30. Joint resolution to authorize the President of the United States to appoint a representative of the Executive to cooperate with the Joint Committee on Reorganization.

SENATE BILLS REFERRED.

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

S. 1020. An act for the relief of dependents of Lieuts. Jean Jagou and Fernand Herbert, French military mission to the United States; to the Committee on War Claims.

S. 1018. An act to amend an act entitled "An act to give indemnity for damages caused by American forces abroad," approved April 18, 1918; to the Committee on Military Affairs.

CALENDAR WEDNESDAY.

The SPEAKER. This is Calendar Wednesday. The Clerk will call the committees.

ASSOCIATIONS OF PRODUCERS OF AGRICULTURAL PRODUCTS.

Mr. VOLSTEAD (when the Committee on the Judiciary was called). Mr. Speaker, I call up the bill H. R. 2373.

The SPEAKER. The gentleman from Minnesota calls up a bill, which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 2373) to authorize association of producers of agricultural products.

Be it enacted, etc., That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however*, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

SEC. 2. That if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place, not less than 30 days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist therefrom. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be reduced to writing and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist therefrom. On the request of such association or if such association fails or neglects for 30 days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business or on any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof.

Also the following committee amendment was read:

Page 1, line 4, after the word "dairymen," insert the word "nut."

Mr. VOLSTEAD. Mr. Speaker, a bill almost identical with it was introduced in the last Congress and passed by more than a two-thirds majority in this House, and went to the Senate, where it was somewhat amended. There was a disagreement between the House and the Senate, and the bill failed for that reason. I made some slight changes in reintroducing the bill, in order to meet some of the objections that were made in the Senate and otherwise to perfect the measure.

It aims to authorize cooperative associations among farmers for the purpose of marketing their products. There are a great many of those associations to-day scattered all over this country. There are a great many of them in Europe. In this country they have been constantly threatened with prosecution. Many States have modified their laws so as to legalize these organizations, and the last national conventions of the two great parties, Republicans and Democrats, passed resolutions indorsing legislation of this kind. There is, as I understand, a general demand for it among the farmers, and their organizations have practically agreed upon this form of a bill.

The objection made to these organizations at present is that they violate the Sherman Antitrust Act, and that is upon the theory that each farmer is a separate business entity. When he combines with his neighbor for the purpose of securing better treatment in the disposal of his crops, he is charged with a conspiracy or combination contrary to the Sherman Antitrust Act. Business men can combine by putting their money into corporations, but it is impractical for farmers to combine their farms into similar corporate form. The object of this bill is to modify the laws under which business organizations are now formed, so that farmers may take advantage of the form of organization that is used by business concerns. It is objected in some quarters that this repeals the Sherman Antitrust Act as to farmers. That is not true any more than it is true that a combination of two or three corporations violates the act. Such combinations may or may not monopolize or restrain trade. Corporations to-day have all sorts of subsidiary companies that operate together, and no one claims they violate this act.

Let me give you an illustration of the situation in the West in places where we are raising wheat.

You take a warehouse company known usually as a line elevator company. It has a warehouse or elevator at almost every station on a railway stretching clear across the State. It often has elevators on several railway lines. The wheat that is bought by these elevators is handled by one corporation. Now, the farmers in my section, in the Dakotas, in Montana, and other States have a large number of little local elevators. They have built them and they own them themselves, but they are not able to act together lawfully. This bill seeks to place them in the same position as the line elevator, so they may be able to compete successfully with them.

Now, those little elevators owned by the farmers are compelled almost in every instance to sell their grain to the line elevators, and are consequently at a great disadvantage. If these organizations should combine with corporations not organized as provided in this bill to thus monopolize or restrain trade, they will become subject to the Sherman Antitrust Act just the same as any other combination of corporations. We are merely seeking to give them a status that will make it possible for them to organize and to cooperate with other organizations similarly organized to the extent that may be necessary to meet industrial conditions.

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

Mr. VOLSTEAD. Just for a question.

Mr. SABATH. In what way does this bill differ from the Clayton Act? The Clayton Act in a sense permits the farmers to organize.

Mr. VOLSTEAD. The Clayton Act does not permit them to have any stock or operate for any profit. This bill makes it possible for them to have a small amount of stock and to operate to some extent for profit, but the profit must not exceed 8 per cent on their capital.

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

Mr. VOLSTEAD. Yes.

Mr. KING. I am very much interested in the gentleman's bill, and am not opposed to it in any way; but I want to call attention to the fact that when the farmers of Kansas attempted to gather together their wheat in one place and hold it for a higher price, as was done also in the gentleman's country, and in the corn country in which I live, the Federal Reserve Board sent out word to the banks to collect their loans, so that they were required to call up their loans and sell their stock. That is what stopped the combination of the farmers' credits. Does this bill cover that?

Mr. VOLSTEAD. This bill does not cover that feature.

Mr. KING. That would have to be covered in order to make this bill effective, would it not?

Mr. VOLSTEAD. You would have to cover it by entirely different legislation.

Mr. BLANTON. Mr. Chairman, will the gentleman yield?

Mr. VOLSTEAD. Yes.

Mr. BLANTON. The purpose is, I take it, to assist the farmers in getting a fair price for their products?

Mr. VOLSTEAD. That is it.

Mr. BLANTON. And to permit them to hold their products while there is a "bear" market on that would take their property from them?

Mr. VOLSTEAD. Yes; the same as other corporations do.

Mr. BLANTON. Yes. Suppose under this bill we should have a Secretary of Agriculture who has ideas, unfortunately, like those that Mr. Houston had, against the farmer in many instances. Would he not take advantage of this provision in serving notice on them every time they attempted to get a better price for their product?

Mr. VOLSTEAD. He might do that.

Mr. BLANTON. You are putting the power to do that in the hands of the Secretary of Agriculture, who might be antagonistic to the interests of the farmers of the country.

Mr. BARKLEY. Mr. Chairman, will the gentleman yield?

Mr. VOLSTEAD. Yes.

Mr. BARKLEY. I am in sympathy with this bill and voted for it a time or two before. But there is one feature in it about which I am uncertain—that is, limiting the profit to 8 per cent. Down in my country we have organizations of farmers, the object being to enable the farmers to hold their tobacco in order that they may get a better price. They put their stock into an organization and the organization sells it and turns the proceeds back to the farmer. Does this enable the farmer to get 8 per cent profit?

Mr. VOLSTEAD. The 8 per cent applies only to the capital stock. On that only 8 per cent is permitted.

Mr. BARKLEY. If an individual farmer puts $100 into the capital stock of the organization, he is limited to 8 per cent on that $100, but he can make all he can get on his crop, can he not?

Mr. VOLSTEAD. Yes. He is allowed to get for his crop all that he can. The 8 per cent limitation is to prevent the association from paying a dividend of more than that percentage upon capital invested.

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

Mr. VOLSTEAD. Yes.

Mr. PARRISH. I am in favor of the bill, but I want to make a suggestion that ought to be included in the bill. It is left with the Secretary of Agriculture to indicate the place where these hearings are to be held. The bill says he can fix the time and place. Does not the gentleman think that it would be better if we fixed it so that the Secretary of Agriculture would have to hold the hearings in the judicial district where the principal office of the association was located? Suppose the Secretary notified an association 2,000 miles away that the hearing would be held here in Washington. That would make it impossible for many of the associations to put up the necessary expenses to send men here and attend this hearing. If the hearing is to be had the place should not be left arbitrarily to the Department of Agriculture, but should be held in the district where the corporation or organization is doing business. What does the gentleman think about that?

Mr. VOLSTEAD. I think it would be a good idea to fix the place, but I do not think there would be much danger in leaving it as it is in the bill.

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

Mr. VOLSTEAD. Yes.

Mr. LONDON. Associations may exist under this bill in an unincorporated form?

Mr. VOLSTEAD. Either incorporated or unincorporated.

Mr. LONDON. What method now is there for bringing an unincorporated organization into court? Is service on the officers sufficient?

Mr. VOLSTEAD. Yes. I believe so.

Mr. MOORE of Virginia. Mr. Speaker, will the gentleman yield?

Mr. VOLSTEAD. Yes.

Mr. MOORE of Virginia. The gentleman will recall that when a similar bill was under consideration in the last Congress a question that the gentleman and I thought rather important was raised. I wonder whether that question has been had in mind or dealt with in the preparation of this bill?

Mr. VOLSTEAD. I will say, if the gentleman will pardon me, that the amendment met with a great deal of opposition in the Senate.

It was insisted that all these organizations ought to be subject to similar restraint, and besides there was strong objection on the part of farm organizations. They insisted that all of them ought to be put on the same footing.

Mr. MOORE of Virginia. The gentleman will recall that he and I thought that the organizations which are now exempt from the Clayton law ought to remain exempt.

Mr. VOLSTEAD. We put it in the bill in the shape of an amendment at that time; but it was contended that if any association should so unduly monopolize a product or restrain trade as to increase the price beyond what is fair, there ought to be some power to restrain them, and that this bill ought to contain a provision of that kind. So far as I know, none of these associations have objected to the bill in its present form. Since the bill was drawn it has been very generally submitted to farm organizations throughout the country.

Mr. MOORE of Virginia. The gentleman and I will agree, and I want to call the attention of the House to this proposition, that if the bill is enacted as drawn, one effect of it will be to place under the control of the Secretary of Agriculture certain farm organizations that are now conducted without joint-stock arrangements and without profit sharing, whereas at the present time they are permitted to operate without any such control or supervision, and it seems to me that to do that would be really injurious to some extent to the farming interests.

Mr. VOLSTEAD. Mr. Speaker, how much time have I used?

The SPEAKER. The gentleman has used 14 minutes.

Mr. VOLSTEAD. I reserve the remainder of my time.

Mr. WALSH. Mr. Speaker, I am opposed to the measure.

The SPEAKER. The Chair will recognize the gentleman.

Mr. DOMINICK. Mr. Speaker, a parliamentary inquiry. I should like to know if we are going to have any time on this side.

Mr. WALSH. Does the gentleman desire time in opposition?

Mr. DOMINICK. Yes.

Mr. WALSH. I will yield to the gentleman. How much times does he desire?

Mr. DOMINICK. I should like to have 15 minutes myself, and probably a little more.

Mr. WALSH. I will yield to the gentleman 15 minutes later.

Mr. DOMINICK. All right.

Mr. WALSH. Mr. Speaker, as the distinguished chairman of the Committee on the Judiciary [Mr. VOLSTEAD] has stated, this measure was passed by the House in the last Congress. The title as printed is a bill "to authorize associations of producers of agricultural products"; but from the argument which has been made and which will be made in its favor it may well be denominated the third chapter in a story entitled "Take care of the farmer and let the rest of the world go hang"; because this is another chapter in special legislation creating a privileged class, and enlarging the privileges heretofore granted to those engaged in producing agricultural products. The gentleman from Texas [Mr. BLANTON], that keen, alert gentleman whom we hear from so frequently and sometimes with profit, asked whether if we had a Secretary of Agriculture unfortunately who might interpret the provisions of this bill in a manner which would keep the farmer from getting inordinate prices for his products, the bill would then be of any advantage to him.

Mr. BLANTON. Will the gentleman yield there?

Mr. WALSH. I do not desire to yield at this point. I will yield a little later.

Mr. Speaker, I think the time has come, after our emergence from the great world struggle, when we should cease legislating in the manner proposed in this bill. It is proposed to permit producers of agricultural products to organize into corporations or associations, and to limit the profit of such associations or corporations to 8 per cent, for the sole purpose of securing higher prices for their commodities, and the gentleman from Minnesota [Mr. VOLSTEAD] admits that there are many of these associations in the various States operating and functioning to-day.

In fact, last October there appeared in the columns of the press the announcement that the Wheat Growers' Association of the United States, with a membership of 70,000 in Kansas, Oklahoma, Texas, Nebraska, and South Dakota, had issued from its office in Wichita, Kans., a proclamation to all its members urging them to refrain from selling any wheat after 8 p. m. on October 25, 1920, until such time as the price of good wheat was raised to $3 a bushel at the growers' terminal market. Agricultural colleges, farm bureaus, State boards of agriculture, and similar organizations were urged to cooperate.

I wonder what the waiting world would have said if the Association of Steel Producers or the Lumbermen's Association of the United States had issued a notice that they wished their members to refrain from selling steel or lumber or any of the other commodities so necessary to our commercial life until the prices were raised $3 or more above those prevailing at the time.

The result of this bill will be to permit the growers of agricultural products to create a monopoly for their own goods, and it will set them aside from the operation of the general laws that apply to others entering into our commercial life and activities.

Mr. COOPER of Wisconsin. Will the gentleman permit a question?

Mr. WALSH. I prefer not to yield until I have finished my statement. I appreciate the fact that by reason of the unholy alliance which we saw operating here in the last session of the last Congress, which undoubtedly will operate here by reason of having been reinforced, namely, the alliance between certain gentlemen on that side of the aisle from the cotton-producing States and certain gentlemen upon this side of the aisle from the agricultural sections of this country, this measure will be jammed through without delay and possibly without amendment. Upon all other matters which come before this House the gentlemen there and the gentlemen here have very little in common, and I fear, sir, that if such an alliance as that is permitted to operate and continue here our Republic will fall upon evil days, because it will bring about a clash between the consuming class and the producing class. Mind you, I do not admit that the only producers in this country are those who operate in the vast reaches of the agricultural States. There are other gentlemen throughout the United States who toil and labor with their hands, and with their minds as well, and they, too, produce, and they are in the vast majority. Possibly they are not in the majority upon the floor of this House, and possibly they are not in the majority sometimes at the polls upon election day, when this issue is submerged beneath other and more important questions and is for the time lost sight of.

But if that clash is coming it will be a serious one, and I do not believe that we should encourage it by legislating along this line. Now, the Clayton antitrust law provides, in section 6, which was enacted in 1914:

That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

They are exempt as well as the members of the labor unions. By reason of the exemption of the labor unions which is on a par granted in that act to producers of agricultural products, by the extension of that exemption granted to labor unions we have seen organized labor hold the Government of the United States by the throat, as instanced by the strike of the shipbuilders at Bridgeport, which took a direct pronunciamento from the Executive of this Nation in the midst of the great war to bring them to their senses. By reason of their power, which was exerted chiefly by noise, they induced this Congress to pass the Adamson law, and other legislation which permitted the railroad employees of this Government to stop all traffic and commerce overnight on the order of one or two individuals holding high-salaried jobs at the head of certain organizations if their demands were not granted.

Now we see the shipping of the sea threatened with paralysis. Because, Mr. Speaker, we embark on a policy and say to certain classes of our people who are outside the provisions of the law, "You are exempt from its operation, and you are encouraged to do things which, if granted to other organizations, would bring indictments by the score and condemnations long continued, both in this forum and elsewhere." I submit, sir, that in our return to normal conditions, in our attempt to get our country back on the firm footing on which it stood prior to the war, we ought not to be in a hurry to rush into such legislation as this and encourage the producer of agricultural products to form combinations to hold over the people of the Nation; to permit them in their granaries and storerooms to store their products and say you shall pay our enhanced price, and pay more than the ordinary demand for it would bring.

During the war we made very many futile attempts to set aside the laws of supply and demand. We passed laws here to prevent profiteering, but we exempted the agricultural producer from the operation of that law. It is true the highest tribunal in the land held that law was unconstitutional, but the exemption was there, and the extension of the exemption is in this proposed law.

The first chapter in the story to which I have alluded was the enactment of the legislation renewing the finance corporation. What wonderful benefits were to be received we were told if we would put that organization in motion once more! For whom? For the farmers of this country. Have you heard that they or their customers have been wonderfully relieved by the operations of that organization? Perhaps in a few cases it has given some little relief. The second chapter was the passage of the emergency tariff bill, which put a tariff on certain agricultural products, which is soon to be acted on in the coordinate branch. Now, we are asked to permit these associations to be formed for the purpose of marketing products, and permit them to fix the prices. I submit, Mr. Speaker, that it is unwise to embark on that policy. I submit that as a result of the exemptions we have already given them and to the labor organizations the peace and well-being of our people have not been enhanced to any great degree, and that while there are wheat growers' associations with some 70,000 members, according to the clipping I have just read, while there are the cotton growers' association and the prune and raisin and corn growers' and various other associations which cooperate to market their products under State laws, they have not encouraged the production of those products. Where it has increased production, however, the cost to the consumer has continued to mount.

For these reasons I deem it wise on my own responsibility to express my objection to this measure. I doubt if there will be a great many who will oppose it, but, notwithstanding that, I do not feel that I can give it my support.

Mr. REAVIS rose.

Mr. BLANTON. Will the gentleman yield?

Mr. WALSH. I will.

Mr. BLANTON. Will the gentleman yield to the gentleman from Nebraska and then give me five minutes?

Mr. WALSH. Is the gentleman from Texas opposed to the bill?

Mr. BLANTON. Not altogether. I am opposed to one feature of it.

Mr. WALSH. Well, I will yield to the gentleman from Nebraska.

Mr. REAVIS. One of the chief reasons why the gentleman is opposed to this bill is by reason of the fact that the farmers will be enabled to fix the price of their products?

Mr. WALSH. That would result; yes.

Mr. REAVIS. That is one of the gentleman's objections. Will the gentleman be good enough to tell me of any American business man other than the farmer who to-day has not the privilege of fixing the price of his product?

Mr. WALSH. I do not admit the premises of the gentleman's question that the farmer has not the privilege of fixing the price of his product. I said enhancing the price. The farmer to-day fixes his price.

Mr. REAVIS. Do I understand the gentleman to take the position that the farmer to-day is having the privilege of fixing the price of the commodity that he sells?

Mr. WALSH. I notice that some of the farmers have threatened that they will not plant some of their crops because their crops heretofore have not brought the prices which they have asked. I assume that the farmer has been fixing a price that he could not get.

Mr. REAVIS. Does the gentleman know of any business man in America who does not fix the price of the commodity that he sells?

Mr. WALSH. I say that I do not admit that the farmer does not fix the price.

Mr. REAVIS. Then the gentleman takes the position that the farmer fixes the prices of his products?

Mr. WALSH. I assume that the farmer fixes the price of his products; otherwise he would not sell. [Laughter.] Oh, the gentlemen from the agricultural States hear that with merriment, and, as the gentleman from Minnesota [Mr. VOLSTEAD] says, they know what they are talking about. Whether they do or not, they know what they are after, and they know how to talk to get it.

Mr. REAVIS. Mr. Speaker, will the gentleman permit another suggestion?

Mr. WALSH. I shall permit a question.

Mr. REAVIS. Premised upon a statement. Coming from an agricultural district, I state it as a fact that the farmer has always been compelled to take for his product the price that the purchaser offered, or he does not sell it. This bill is for the purpose of permitting an organization that will place him on an equality with every other American business man and in some measure permit him to fix the price of his products.

Mr. HUSTED. Mr. Speaker, will the gentleman from Massachusetts yield to me?

Mr. WALSH. Yes.

Mr. BLANTON. Mr. Speaker, will the gentleman yield me two minutes?

Mr. WALSH. I have yielded to the gentleman from New York. I assumed when I promised to yield to the gentleman from Texas [Mr. BLANTON] that he intended to ask me a question. If my time in opposition to the measure permits, I shall yield him five minutes, if he can not get it from the gentleman in charge of the bill. I now yield to the gentleman from New York.

Mr. HUSTED. Mr. Speaker, does the gentleman think that the mill owners of his district to-day, under present conditions, are better able to fix the price of their products than the farmers of the country?

Mr. WALSH. I was about to say to the gentleman from Nebraska [Mr. REAVIS] that in my city to-day there are some 30 or 40 cotton mills that are not operating. Some of them are operating three days a week, some of them are operating some departments the entire week. They have produced a surplus of their goods which they can not sell, but I have not heard of their combining, of their calling a meeting of the Southern New England Manufacturers' Association to say that they will hold this cotton cloth or this cotton yarn until they can get 60 or 80 cents a pound for it. It is on the market.

Mr. REAVIS. If the gentleman will permit a question there——

Mr. HUSTED. One more question.

Mr. WALSH. Mr. Speaker, how much time have I taken?

The SPEAKER. The gentleman has used 19 minutes.

Mr. WALSH. Mr. Speaker, I yield 15 minutes to the gentleman from South Carolina [Mr. DOMINICK].

Mr. DOMINICK. Mr. Speaker, I am very glad, indeed, to have the support of the gentleman from Massachusetts [Mr. WALSH], or at least have his opposition to this bill. I hope the

bill will be defeated. I am opposed to it, but for entirely different reasons from those expressed by the gentleman from Massachusetts. He seems to think that this is a bill only in the interest of the farmer and of the agricultural classes. I hope that Representatives from the agricultural districts, representing the agricultural classes, will not be misled by his argument, because if they will examine the bill, section 2 particularly, they will see that it is not in the interest of the farmer but is absolutely against his interest. What is the situation to-day? The gentleman from Minnesota [Mr. VOLSTEAD] in his opening address says that both political parties are in favor of cooperative associations, of farmers' associations, such as are proposed in this bill. Both parties have come out in their platforms in favor of such associations, but what does this bill give them? Does this give them what those parties promised in their platforms? Does this bill give the agricultural interests anything that they do not have to-day? The first section of the bill allows them to form these organizations. Have they not that permission now? Those associations are now being formed, and have been formed throughout the country and are now in existence without legislative authority from the Congress of the United States. And here, under the guise of giving the farmer something in the way of a cooperative association, you allow him to do what he has the right to do now, and what he has been doing, but at the same time you give him that right, section 2 is inserted, which gives arbitrary power to the Secretary of Agriculture, at any time he has reason to believe that commodities are being held for advancement of prices, to give 30 days' notice of a hearing, to hold the hearing, and issue his order, and at the time he issues his order he can immediately go to the Department of Justice and get the Attorney General to act; to go into the United States courts and obtain an order of injunction against the farmers' associations and tie up your corn and oats and wheat and cotton in the United States courts. If you want to do something for the farmer, strike out section 2 of this bill.

This is not a farmers' bill. I am not a farmer and I am not on the Agricultural Committee, but I am on the committee that was charged with its consideration. If it were in the interest of the farmer, why should it not be before the Agricultural Committee instead of the Judiciary Committee? It is not in the interest of the farmer. I want to say now that I do not agree with a lot of demagogic speeches that have been made in the interest of the farmer and the agricultural classes; but the older I get the more I believe that enough has not been said in their favor. The gentleman from Massachusetts has referred to the fixing of the price of steel and lumber and other commodities. We can get along without steel sometimes and we can get along without lumber and without cotton goods, but when it comes to having something to eat, when it comes to getting something that the world has got to have in order to live and exist, then we must depend upon the agricultural classes of our country to produce that something. The gentleman from Massachusetts spoke about this bill as being the third chapter in the relief for the farmers, and he ridiculed the attempt that has been made by this Congress to revive the War Finance Corporation, and said that that effort had accomplished nothing. The gentleman from Massachusetts may be well informed, but for his information I would state that a bank has been formed in the South with headquarters at New Orleans and has had its stock subscribed and has received assistance from the revived War Finance Corporation, and is now exporting cotton to Europe.

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

Mr. DOMINICK. Yes.

Mr. WALSH. Is it not a fact that arrangements for the organization of that corporation were made several weeks before we passed the bill reviving the War Finance Corporation?

Mr. DOMINICK. There is no doubt about that; but by reason of the reviving of this corporation this bank in the South was able to get assistance which was badly needed.

Now, he says that the next chapter in the proposition was the passage of the emergency tariff act. Well, I thoroughly agree with him that in the passage of that they have handed not only the farmers of this country but the Republican Party is fixing to hand to the entire citizenship of this country one of the yellowest lemons that ever was handed out from a legislative body. [Applause on the Democratic side.] Now, I hope that the Representatives from the agricultural districts in this Congress will not be led away and support this bill. There is nothing in the bill whatsoever that is in the interest of the farmer. This bill gives them nothing here that they have not now, and if you want to do something to the detriment of the farmer, you pass this bill in the manner in which it is now written. As far as I am concerned, I have no objection whatever to the first section of the bill. At the proper time, Mr. Speaker, I shall move to amend the bill by striking out section 2. [Applause.]

Mr. BYRNES of South Carolina. Will the gentleman yield?

Mr. DOMINICK. I will.

Mr. BYRNES of South Carolina. I want to ask my colleague if at this time we have not truck-growers' associations organized all over the country and what effect this bill will have upon such organizations?

Mr. DOMINICK. We have truck-growers' associations throughout the country, some of them in the district of my friend from South Carolina. Under this bill, under section 2—now listen to the language:

But if the Secretary of Agriculture shall have reason to believe that any such association—

If he gets the idea into his head that the truck growers growing lettuce, cucumbers, Irish potatoes in the beautiful coast country of my friend, that they are trying to get too much for their product, he can go into a United States court and get an injunction against them, so that they can not sell their stuff when it is rotting in the fields; you can not do anything with it under this legislation.

Mr. WINGO. Will the gentleman yield?

Mr. DOMINICK. I will.

Mr. WINGO. The gentleman suggested he wanted to offer an amendment to strike out section 2. May I suggest to the gentleman that while he has the time and has the floor he had better offer his amendment and have it pending?

Mr. DOMINICK. I thank the gentleman for the suggestion.

Mr. BLACK. Will the gentleman yield?

Mr. DOMINICK. I will.

Mr. BLACK. I desire to ask this question: I was wondering what necessity there is for passing a law of this kind. For example, we have the California Nut Growers' Association, the California Orange Growers' Association, we have in Texas certain farmers' associations that bargain collectively, and I was wondering what the necessity is?

Mr. DOMINICK. The only necessity, I will say to the gentleman from Texas, to my mind for passing this bill is to put a further restriction and limitation upon the farmers of the United States and take some more of our State rights from us and bring us under the jurisdiction of the various and several United States courts. That is the only object I see.

Mr. KNUTSON. Is it not a fact that the farmers' organizations of this country have asked for the passage of this bill?

Mr. DOMINICK. I do not know; but I doubt if a single one had seen section 2. I can not understand why any man would want voluntarily to put his neck in a halter, and that is what the farmers would be doing here.

Mr. KNUTSON. Does not the gentleman assume the farmers know what they want?

Mr. DOMINICK. It depends upon who they are. There are some who are called farmers, and I have known of some organizations, I have heard of some here in Washington, that assume to speak for the farmers. I do not know who they are speaking for, but they are not speaking truly for the farmer.

Mr. KNUTSON. Does the gentleman say the American Farm Bureau comes under that category?

Mr. DOMINICK. I do not know of that organization.

Mr. KNUTSON. They have about 1,500,000 members.

Mr. DOMINICK. I do not know of them in the South.

Mr. CLOUSE. Will the gentleman yield?

Mr. DOMINICK. I will.

Mr. CLOUSE. I would like to ask the gentleman, referring to section 1 of this act, in reference to this particular language—

That persons engaged in the production of agricultural products—

if it is not possible for a man under that provision of this act who has never been regularly engaged in agricultural products or agricultural pursuits to organize a company and receive the benefits of this act, although he is not a bona fide farmer?

Mr. DOMINICK. It is possible it could be done.

Mr. HUSTED. If the gentleman will permit, the gentleman from Texas [Mr. BLACK] asked why this legislation was needed in view of the fact there are many associations organized and operating now under State statutes permitting associations of this kind. The gentleman cited the California Nut Growers' Association as one example. The reason, as I understand it, why they want this legislation is because they are organized under local statutes and their operations within their States are undoubtedly legal, but the very association to which the gentleman refers has doubt as to the legality of its operation in interstate commerce, and they want legislation of this kind to make their acts legal throughout the country.

Mr. DOMINICK. There has been nobody put in jail yet, as I understand it, for violation of these acts.

Mr. DYER. They have been indicted.

Mr. VOLSTEAD. If the gentleman will permit, I will inform the gentleman they have been indicted. There was an indictment and there has been at least one conviction within a very few months.

Mr. DOMINICK. Mr. Speaker, in my time I want to offer an amendment to the bill to strike out section 2.

The SPEAKER. The gentleman can do so if the gentleman from Massachusetts yields for that purpose; but, of course, if he yields, the gentleman from Massachusetts loses the floor.

Mr. DOMINICK. A parliamentary inquiry, Mr. Speaker.

The SPEAKER. The gentleman will state it.

Mr. WALSH. I have no objection to the gentleman offering his amendment now, to be voted on at the close of general debate.

The SPEAKER. The Clerk will report the amendment.

The Clerk read as follows:

Mr. DOMINICK moves to amend the bill by striking out all of section 2.

Mr. DOMINICK. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. DOMINICK. I want to know now if I will be entitled to recognition at any time during the consideration of the bill on my amendment?

The SPEAKER. The gentleman will be entitled to time if the gentleman from Minnesota [Mr. VOLSTEAD] does not move the previous question and it should be ordered.

Mr. DOMINICK. I would like to know how much time I have remaining.

The SPEAKER. The gentleman's time has expired.

Mr. WINGO. The gentleman from Massachusetts, having control of the time, having yielded for it to be offered——

The SPEAKER. The gentleman from Massachusetts yielded to have it read for information. He had no objection to that, but he did not yield the floor. Is not that correct?

Mr. WALSH. I so stated. It was simply to be read for information.

Mr. DOMINICK. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. DOMINICK. Under the rules it is presumed the bill will be open for amendment?

The SPEAKER. The Chair, of course, does not know what the intention is. Unless the House adopts the previous question and thereby shuts off amendment, of course it will be open to amendment.

Mr. DOMINICK. I am trying to get clear in my own mind what the rules of the House were as to an amendment to a bill that was being considered in the House.

The SPEAKER. The House has that right at any time, if no gentleman moves the previous question and the House adopts it. That, of course, would cut off amendment. The Chair can not prophesy whether there is any intention to do that or not.

Mr. VOLSTEAD. Mr. Speaker, I yield to the gentleman from Arkansas [Mr. TILLMAN].

Mr. TILLMAN. Mr. Speaker, the gentleman from Texas [Mr. BLACK] inquired of the gentleman from South Carolina [Mr. DOMINICK] if it was not true that there are a number of farmers' organizations now operating in the different States, and if this would not have the effect of destroying those organizations. The gentleman from New York [Mr. HUSTED] very properly answered that by saying that these State organizations have no authority to conduct interstate and foreign commerce and that this bill merely gives them the right to do that. They will still maintain these organizations; they will not be destroyed, but our farmers will be encouraged and permitted under this measure to conduct a nation-wide and a world-wide trade, with their rights in the premises duly safeguarded.

The gentleman from Massachusetts [Mr. WALSH] is much disturbed because he is afraid this is class legislation and that the farmer is to be the beneficiary of such legislation. Since when did statesmen from New England become frightened at class legislation? A vast moneyed aristocracy has grown up in that exclusive and cultured section because of class legislation, but be it understood that New England class legislation extends special and profitable tariff protection to her citizenry engaged in manufacturing clothing, shoes, and a thousand other necessary articles and lets the consumer of those products and the farmer "go hang."

Mr. REAVIS. Will the gentleman yield?

Mr. TILLMAN. I will.

Mr. REAVIS. Is it the New England idea of class legislation, when we pass legislation, to protect anybody other than New England?

Mr. TILLMAN. Surely; and I so stated. The gentleman from Massachusetts is worried about class legislation to-day, but recently, I think, he voted for the Cummins-Esch bill to help the railroads to the extent of hundreds of millions, which was special legislation; and the gentleman from New England also voted for various tariff bills, clearly legislation for a favored, special class. Now, the farmer should be fairly treated in this House; he insists that this bill should be passed, and I think his modest desires in this regard should be respected.

I call your attention to a clipping that demontrates the necessity and the wisdom of this legislation.

Mr. HUSTED. Will the gentleman yield?

Mr. TILLMAN. I will be glad to do so.

Mr. HUSTED. Does the gentleman favor the proposition of having some classes subject to the provisions of the Sherman antitrust law and exempting others as a class?

Mr. TILLMAN. It is not at all necessary to answer that question, because this bill does not do that.

Mr. HUSTED. I fail to see how you escape it.

Mr. TILLMAN. It does not. I call your attention at this juncture to something that occurred in my home town within the last 10 days. The local daily paper gives it in these words:

[From the Fayetteville (Ark.) Daily Democrat.]

Ninety-three cents for hides of two calves was all Alfred Henbest, an Arkansas farmer, could get for his hides this week, and while in view of the price he has to pay for his family's shoes and his son's saddle and bridle—

All of which are manufactured in the tariff-blessed confines of Massachusetts, so ably represented by my genial friend, Mr. WALSH, who does not favor class legislation where farmers are involved.

It was a few minutes later when he entered a local hardware store and had to pay the full value of the smaller hide, 40 cents, for a single leather lacing string; then he got mad and took his troubles to the press:

"What is a farmer going to do?" he asked a Democratic representative to-day. "And why is it that while I can get only 40 or 50 cents each for my hides, I have to pay as much as the whole hide is worth for a single string of leather one-half inch wide, when I buy?"

That string was manufactured in New England—New England, that through her Congressmen condemns as class legislation all measures proposed to help the farmer.

Mr. Henbest has 160 acres of the best farm land in this section and with taxes double what they were last year, and crops lost, and prices on farm products down, he is discouraged.

Congress can busy itself all it wants to with the League of Nations and the tariff, but what Mr. Henbest and hundreds of others like him feel the lawmakers ought to do is to find some way the farmer will be guaranteed a living wage on what he produces or a lower price on what he has to buy.

[Applause.]

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

Mr. TILLMAN. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER pro tempore. The gentleman from Arkansas asks unanimous consent to extend his remarks. Is there objection?

There was no objection.

Mr. VOLSTEAD. Mr. Speaker, I yield three minutes to the gentleman from Texas [Mr. BLANTON].

The SPEAKER pro tempore. The gentleman from Texas is recognized for three minutes.

Mr. WALSH. And I yield to the gentleman two minutes.

The SPEAKER pro tempore. And the gentleman from Massachusetts yields to the gentleman from Texas two additional minutes. The gentleman from Texas is recognized for five minutes.

Mr. BLANTON. Mr. Speaker, in my judgment section 2 is a most dangerous provision in this bill, not to New England, but to the farmers of the country. I am not willing to place the destiny of 10,000,000 farmers in the United States in the hands of any one single individual. I am not willing to let the Secretary of Agriculture, especially after our experience in late years with a certain Democratic one, pass upon the rights, absolutely without any benefit of clergy, of all the farmers of the country. Secretary Houston was at the head of the State University in my State. He was at the head of the Agricultural and Mechanical College there, and he made good in those positions. He was Secretary of Agriculture, a member of the Cabinet, and in one sense made good. But in my judgment he was the worst enemy that the producers of this country ever had [applause], and he was a Democrat.

The gentleman from Massachusetts [Mr. WALSH] is unfortunate when he discusses agriculture. He is at a disadvantage when he rises to this subject. He does not do himself justice when he discusses agriculture and the interests of the farmers of the land, while on practically every other subject, if he will let agriculture alone [laughter], every other way he is easily the biggest man your party has on this other side of the aisle. [Applause.]

Mr. WALSH. Mr. Speaker, I do not think the gentleman ought to abuse me after I yielded him two minutes of my time. [Laughter.]

Mr. BLANTON. When he begins to discuss agriculture he immediately begins to shrivel up [laughter], and every time he discusses agriculture he reminds me of a little story I heard of the time when he made a visit on one of his campaign trips to the Cape Cod cranberry farmers in his district. He went out to see those boys, because they all had votes, and he found them and their wives and little children on their knees in the mud working in the soil of Massachusetts. He had on his long-tail, silk-lined, black frock coat and had his boots polished and wore the proper kind of tie and color of vestments, and so on, and those mud farmers in Massachusetts looked at him and said, "My God, are you our Congressman? Why, we had thought from reading about you that you were a big man." [Laughter.]

My friend ought to let agriculture alone. He is out of his sphere when he is discussing agriculture. I follow him on many issues. I have found on many subjects of legislation for the good of this country that his judgment is good and sound. I vote with him sometimes. But whenever he gets to discussing the interests of the farmer, the interests of the farmer are so antagonistic to the interests of those 40 manufacturing plants that he says are idle in his own town that he thinks first of the manufacturing plants and forgets the farmer.

Section 2 should be stricken out. The one thing that will make me vote for this bill with section 2 left in it is the sole fact that the farmers' organizations have asked that it be passed. They do not want section 2, but want the bill passed even with section 2 in it. I do not believe it is in their interest. I believe that section 2 will absolutely tie them up, hog tie them, so that one man, if he should be like Secretary Houston, would be empowered absolutely to ruin the farmers' interests in the country.

A MEMBER. He is not now Secretary.

Mr. BLANTON. But you may have a change some time. You may have a change in the very man from Iowa that is down there now. He changes his ideas sometimes. Then what are you going to do about it? Are you going to place the destinies of 10,000,000 men, who produce the food and clothing of the land, in the hands of one man? With section 2 left in it I will vote for this bill under protest. I say it is dangerous, and I say you ought to vote section 2 out of this bill. [Applause.]

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

Mr. VOLSTEAD. Mr. Speaker, I yield five minutes to the gentleman from Nebraska [Mr. REAVIS].

The SPEAKER pro tempore. The gentleman from Nebraska is recognized for five minutes.

Mr. REAVIS. Mr. Speaker, I take it for granted that all of us are more or less actuated by selfishness in our attitude upon this and all other legislation. I come from a district that is almost exclusively agricultural. I favor this proposition because I believe, in the first instance, it will prove beneficial to those whom I represent. I favor it because I hope that it will increase the price of their products.

The gentleman from Massachusetts [Mr. WALSH] is no more unselfish in his opposition to this than I am in approving it. The very reason which excites my favor is the reason why he opposes it. I favor an increase in the value of farm products because my people sell them. He disapproves of the increase of the price of farm products because his people buy them, and we are both on the same footing, so far as the purpose which prompts our action on this bill is concerned. But it goes beyond that, gentlemen. Agriculture and the interests of the farmer lie at the very foundation of this Nation's prosperity. You will never be prosperous in New England when the farmer is suffering present conditions, and the very fact that the farmer to-day is compelled to sell his products far below the cost of production, the very fact that to-day, because of the industrial conditions, he is practically bankrupt, is the reason why the 40 textile mills the gentleman referred to are idle in his district. If the farmers of this country were getting a proper price for their products, if the farmers of this country were getting a reasonable profit upon the result of their toil, the gentleman's people would be at work. [Applause.] And they will not be at work until that condition obtains.

As I suggested in a question to the gentleman from Massachusetts, for whom I have the very highest regard—and even though it may discredit him in this body, I want to join in the very complimentary statement made regarding him by the gentleman from Texas [Mr. BLANTON]—but I want to suggest to the gentleman from Massachusetts, as I did suggest to him in the question I asked him——

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

Mr. REAVIS. I regret I can not yield. I have not the time.

The SPEAKER pro tempore. The gentleman declines to yield.

Mr. REAVIS (continuing). I want to suggest to him that the farmer is the only business man in America to-day who does not fix the price of the product that he sells.

The farmer goes to the grain buyer in the town where he does his business and if he disposes of his product he disposes of it at the price that he is offered; he never fixes the price. This legislation is primarily inspired by the desire to put the farmer in a condition, through cooperation and organization, where in some measure he may overcome the difficulties that inhere in his business, that make cooperation and organization almost impossible, to relieve him in some measure from his natural handicaps and put him on an equal footing with all the other business men of America and permit him in some measure to fix the price of the thing that he raises.

I believe that section 2 of this bill is absolutely unnecessary. I believe that the difficulties of organization among farmers, the difficulties of getting together, of attempting to organize for the purpose of fixing the prices of products, make section 2 rather an idle provision.

Mr. J. M. NELSON. Will the gentleman yield?

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

Mr. REAVIS. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

The SPEAKER pro tempore. The gentleman from Nebraska asks unanimous consent to revise and extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. DOMINICK. Mr. Speaker, I ask unanimous consent to revise and extend my remarks in the RECORD.

The SPEAKER pro tempore. The gentleman from South Carolina asks unanimous consent to revise and extend his remarks in the RECORD. Is there objection?

There was no objection.

Mr. WALSH. I yield eight minutes to the gentleman from Indiana [Mr. SANDERS].

Mr. SANDERS of Indiana. Mr. Speaker, I think the present bill is so clearly and palpably unconstitutional that I can not give it my support. When I say I think it is unconstitutional, I do not mean that it is class legislation. There may be some things said about it with reference to its being class legislation, dealing with the wisdom of the legislation, but I do not think it is class legislation in the sense that the Constitution forbids class legislation.

If section 2 were stricken out, the bill might not be unconstitutional. But section 2 being so palpably unconstitutional, I think a court in construing it would hold the entire act unconstitutional.

Mr. J. M. NELSON. Will the gentleman yield?

Mr. JOHNSON of Mississippi. Will the gentleman yield?

The SPEAKER pro tempore. Does the gentleman from Indiana yield; and if so, to whom?

Mr. SANDERS of Indiana. I respectfully decline to yield, because I have such a short time. Section 1 of this act authorizes the formation of these organizations. Section 2 provides that whenever the Secretary of Agriculture shall have reason to believe that an association monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, a complaint may be made against it. Then there is a further provision that upon such complaint being made to the Secretary of Agriculture a day shall be fixed when the organizations shall show cause why it should not desist therefrom. Then, on the hearing there may be an order directing such association to cease and desist therefrom, and the district court, when a petition is filed with it, may enter a decree affirming, modifying, or setting aside said order. Then, when the order is filed in the court, the court may have the right to issue a temporary writ of injunction without any hearing of any kind. Without any judicial hearing at all the court shall have the right to enjoin the acts of these farmers.

Mr. VOLSTEAD. Will the gentleman yield?

Mr. SANDERS of Indiana. Not just now. Upon the hearing the court may issue a permanent injunction enjoining the farmers from doing what? From monopolizing or restraining trade so that the price of an agricultural product is unduly enhanced.

Now, under the decision on the Lever Act this section is plainly unconstitutional, because you have no standard whatever that is recognized by law and that will hold under our Constitution. Here you have a permanent injunction, the violation of which may send the violator to jail for contempt of

court, and that injunction is limited under the law to the sole point of forbidding the enhancing of the price of farm products. This brings it squarely within the decision on the Lever Act. The Lever Act provided:

That it is hereby made unlawful for any person willfully * * * to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries.

The Supreme Court of the United States held that that was not a sufficiently certain standard to come within the constitutional provision. In other words, it submits it to the court or to the jury to determine what the law is, and that is exactly what it would do in this case. What are you going to say? The gentleman from Nebraska [Mr. REAVIS] says the bill is for the purpose of permitting farmers to enhance the price of products, and I think that is obviously its purpose. And yet if they go beyond the line of demarcation they violate the law, and if after having been enjoined they violate it they may be sent to jail because of the violation. And who is going to fix that line of demarcation? Why, it will be left to the court in each case, and that is precisely the same point made in the Lever case. I heard the oral opinion in that case, and it struck me at the time that it was a very just decision. And, my friends, aside from the constitutional question, I think it would be exceedingly unwise as a matter of legislation for us to leave to the Secretary of Agriculture, in the first instance, but finally to any court, the right to determine what is an unreasonable price for farm products. We have many of these organizations now. Do not forget that they will be brought under the terms of this act whenever it is passed. So that I am opposed to the bill with section 2 in it, because it is so clearly unconstitutional, and since it is our duty to weigh these constitutional questions, I can not vote for it.

Second, if it were not technically unconstitutional, I think it would be a matter of unwisdom for this House to embark upon that sort of delegation of power.

Now I will be glad to yield.

Mr. J. M. NELSON. The purpose of this act is to relieve the farmers from the possible menace of the Sherman law in interstate commerce, is it not?

Mr. SANDERS of Indiana. I think so.

Mr. J. M. NELSON. And it leaves it to the arbitrary action of the Secretary of Agriculture.

Mr. SANDERS of Indiana. In the first place.

Mr. J. M. NELSON. Then what do they gain under this law?

Mr. SANDERS of Indiana. I doubt if they would gain very much.

Mr. LAYTON. They would gain this, would they not, that if this act is passed they will not be liable to prosecution?

Mr. SANDERS of Indiana. Yes; that is true.

Mr. J. M. NELSON. If they violate the law they are subject to prosecution?

Mr. SANDERS of Indiana. If they violate the Sherman Antitrust Act and depend upon this for release from prosecution, and this act is held unconstitutional, then they can be prosecuted under the Sherman Antitrust Act.

Mr. LAYTON. I agree with the gentleman about section 2.

Mr. BARBOUR. Will the gentleman yield?

Mr. SANDERS of Indiana. Certainly.

Mr. BARBOUR. If this bill becomes a law they gain recognition of the right to exist, which is questioned at this time.

Mr. SANDERS of Indiana. If the act was constitutional they would gain the right to exist, but if it is unconstitutional they would think that they had the right to exist and go ahead and act under the provisions, and having acted, when it turned out to be unconstitutional, they would be convicted under the terms of the Sherman Antitrust Act.

Mr. JOHNSON of Mississippi. Will the gentleman yield?

Mr. SANDERS of Indiana. I will.

Mr. JOHNSON of Mississippi. I happened to be in the Supreme Court when the decision in the Lever case was announced, as was the gentleman from Indiana. Does not the gentleman believe that section 2 of the bill will defeat the very purpose for which it is enacted, that at the very first violation of the act some one will complain to the Secretary of Agriculture, and it will be investigated, and thereupon the law will be declared unconstitutional and the farmers will be without any remedy?

Mr. SANDERS of Indiana. Of course, I can not say what action will be taken, but it leaves it arbitrarily to one officer to determine the whole question.

Mr. VOLSTEAD. Will the gentleman yield?

Mr. SANDERS of Indiana. Yes.

Mr. VOLSTEAD. Why is this unconstitutional any more than the authority conferred on the Federal Trade Commission or on the Interstate Commerce Commission?

Mr. SANDERS of Indiana. No similar right is conferred on those bodies.

Mr. BURTNESS. Will the gentleman yield?

Mr. SANDERS of Indiana. I will.

Mr. BURTNESS. Assuming that the bill passes and section 2 is held to be unconstitutional, does the gentleman think that will vitiate section 1?

Mr. SANDERS of Indiana. I have no doubt that the court would, in construing the act, say that this Congress intended to create an organization and surround it by safeguards, and that the safeguards being a vital part of the act and unconstitutional, the whole act would be held unconstitutional.

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

Mr. MILLS. Mr. Speaker, the gentleman from Indiana has covered very thoroughly the precise point I wanted to make with reference to the constitutionality of this statute, although I think he underestimates the doubt as to section 1. I would call his attention and that of the distinguished chairman of the Judiciary Committee to the case of Connolly against The Pipe Line, One hundred and eighty-fourth United States, in which a similar statute exempting the farmers from the provisions of the Illinois antitrust act was held unconstitutional by the Supreme Court on the ground that it discriminated as between classes in the application of a penal statute without a sufficient ground for distinction.

As to the second point with reference to the constitutionality of the second section, not only by the Lever decision referred to by the gentleman from Indiana, but we have another decision applicable to a law written almost in the same language as the bill before the House. It was a Kentucky statute providing that a combination should only be in restraint of trade in the sale of an article provided it sold the article at greater or less than its actual value.

The Supreme Court held that that language did not lay down a sufficient standard so as to give a man reasonable information beforehand to permit a reasonable compliance. In my judgment there can be no question but that section 2 is unconstitutional, and section 1 is open to the gravest doubts.

But this bill has one other and to my judgment an even greater defect. It purports, and in the report of the committee it is distinctly stated that it only purports to permit farmers' associations for the purpose of marketing their products and incidentally to economize in the marketing. If that is the purpose of the bill, I think we can all support it. Every one knows that the present system of distribution is faulty. Why, I saw some figures applicable to the State of New York which showed that the farmers were only receiving 30 per cent of the price paid by the consumer, while the railroads received 8 or 10 per cent, and the balance, 60 per cent, went to the cost of distribution. There is no question but an organization of fruit growers in California has produced better and more economical distribution and not only permitted the farmer to get better prices but also permitted the consumer to get them at a lower price.

But this bill goes much further than that. The report says that in so far as the terms of the act are concerned, aside from the mere act of forming an association, they do not apply. The report says that the bill does not eliminate those provisions of the Sherman antitrust law. I beg to differ with that report.

I should like to point out to you gentlemen that the bill permits the formation of these associations and permits the association and their members to make necessary agreements to effect such purposes. Now, what are the purposes referred to? Preparing for market, handling and marketing their products for interstate and foreign commerce. It permits them to make any agreement that they see fit to make. In other words, it permits one of these associations, if necessary, to combine with another interstate association.

Mr. HUSTED. Will the gentleman yield?

Mr. MILLS. I am afraid I can not for want of time. As I say, it permits one of these associations, if necessary, to combine with another association in violation of the Sherman Antitrust Act. It permits one association, if necessary, to make an agreement with all other existing associations not to sell to a single commission merchant that sells below a certain price. It is possible, if it is the intent of the framers of this bill to simply permit the formation of an association or corporation for the purpose of marketing, to say specifically in this bill that the other provisions relating to what these associations shall do after they are formed shall be subject to the provisions of the Sherman Antitrust Act. [Applause.]

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

Mr. WALSH. Mr. Speaker, how much time have we remaining?

The SPEAKER pro tempore (Mr. STAFFORD). The gentleman from Minnesota has 31 minutes and the gentleman from Massachusetts 4 minutes.

Mr. VOLSTEAD. Mr. Speaker, I yield five minutes to the gentleman from Iowa [Mr. TOWNER].

Mr. TOWNER. Mr. Speaker, I am sorry that I have not the time to discuss the constitutional questions that have been suggested. They are very interesting, but they would require more time than I can possible give to them. However, let me suggest that the authority quoted by the gentleman from New York [Mr. MILLS] which he thinks would apply to the first section I am quite sure would not be in point for this reason: The committee will, of course, understand that in the original formation of a penal act any exception may be made that the legislators choose to make. They are not required to make it universal in its application. They can make whatever exceptions they desire or think wise. This is only such an exception, and I am sure will be so interpreted by the Supreme Court.

Regarding the constitutional objection to section 2 that is raised by the gentleman from Indiana [Mr. SANDERS], that proposition I think is not by any means clear. The constitutional objection that he suggests there that the parties in effect would not have their day in court, I think is not well taken, for the reason that if the gentleman will examine all of its provisions he will find that almost everything essential or that which has been held essential in the determination by a court of equity of a proposition such as this may be found in the bill. Trial is provided for, appeal from the Secretary is provided for, the court is given power to make any rules it chooses to make, and the court could even submit question of fact to a jury under the provisions of this section.

But I desire to call attention to the fundamentals of this proposition. I do not think gentlemen have the right to consider this class legislation. I call the attention of members of the committee to this fact: The very business of farming is impossible of combinations. You all know that the farming business by great corporations is a thing not only unsatisfactory to the people themselves who do the farming, but they are a positive danger to the State. You can not make a combination of farmers and put them into a corporation.

The farmer is an individual unit. He must manage his own farm. He must have his own home. He stands defenseless against combinations of corporations. He finds when he goes out to do business in the world that he has to do business with a combination that represents 40 or 50 or 100,000 individual incorporators, but the farmer is a unit and he can not incorporate. It is against the policy of the State to have large bodies of land owned by corporations and operated by tenants, subordinates, or hirelings. Everyone knows that is contrary to the interest of the Nation at large. What is sought here? In the interest of the farmer as he deals in business with these gigantic combinations of individuals, should he not have the right as a protection to himself and the privilege that is granted to everyone else with whom he deals, to act in combination and cooperation with those who are engaged in the same business with him? It seems to me that to force this class proposition into this act is not justified when you consider the conditions that exist. This is not an extraordinary privilege, it is only a right that ought to be granted to the farmer, in the interest of the corporations themselves and everyone else who is not engaged in the farming business in the United States. What is the position of the farmer to-day? If you will examine the recent report of the Secretary of Commerce, Mr. Hoover, an enlightening and illuminating report, you will see that below all of the average of every other product produced in the country are the farmers' products. Why is it that his go down to the bottom always in a period of depression? Why is it that he is placed at a disadvantage every time hard times or embarrassing situations occur? It seems to me it must be plain to everyone that it is because he is placed in such a disadvantageous position with regard to all of the rest of the business world. This is not an unreasonable request, it is only what ought to be granted in right and justice to the farmers of the country, who certainly are an important factor in the life and welfare of the Nation. [Applause.]

Mr. VOLSTEAD. Mr. Speaker, I yield five minutes to the gentleman from Kansas [Mr. TINCHER].

Mr. TINCHER. Mr. Speaker and gentlemen of the committee, I shall not attempt in five minutes to discuss the constitutionality of this law. I take it that the Judiciary Committee gave the matter considerable thought, and if there was any doubt, or if I had any doubt in my mind, the opinion of Judge TOWNER would satisfy me.

I have been amused to listen to the debate among the opponents of this bill. My distinguished farmer friend from Massachusetts [Mr. WALSH] is against the bill because of section 1, because it permits an organization and is a discrimination in favor of his friends, the farmers.

Then along comes my friend on the other side [Mr. DOMINICK], and he is against the bill because of section 2, which corrects the defects that my friend from Massachusetts finds in section 1. Taking the two opponents of the bill, considering their two arguments carefully, I think any well-balanced man would conclude that these two arguments should convince anyone that he ought to vote for the whole bill.

I do not think the farmers of this country ask for class legislation, but the way the antitrust laws, so called, are being administered to-day amounts to the proposition that the farmer or the organizations of farmers that are attempting to promote their business by organizing are about the only people who are being bothered by that law. I remember, two or three years ago, when the agitation for this legislation started, the little dairy interests out in the great State of Ohio attempted to organize and collectively sell their products to a distributor, which was a legitimate and fair and right thing to do. It should have been permitted under any law; but they were attacked, and not by the great Department of Agriculture, even under the administration of Mr. BLANTON'S friend, Mr. Houston, but they were attacked by individuals and through the Department of Justice and arrested and placed in jail overnight, a lot of them, for attempting to sell their product under what is known as collective bargaining.

The farmers of this country, as I understand it, through their respective organizations have indorsed this measure. Section 1, because they want the privilege of cooperating and of collective bargaining, and section 2, because they are not asking for class legislation and are not asking for the privilege of cooperating to the extent of seeking to manipulate the market in any unfair way. They are not afraid that the Secretary of Agriculture would enforce or attempt to enforce section 2 to their detriment or in any unfair way in the manner the laws are being enforced against them to-day.

I wonder sometimes when I hear men who find some excuse for opposing every measure that comes on the floor of this House that is calculated to help the farmer; I wonder when I hear them proclaim their love and affection for the farmer if it is real. I have in mind the distinguished gentleman who is a great Congressman—and I believed him to be a great Congressman even before this mutual admiration society grew up between him and the distinguished statesman from Texas [Mr. BLANTON]; I knew that he was a great statesman before that—but I have in mind a case where at the last session, not this session, he was bitterly opposed to a tariff because that tariff he thought discriminated in favor of the actual producer of raw material. He comes from a section of the country that has been nursed by protection long before he was born. I am not for class legislation, but I agree with the gentleman from Nebraska that until agriculture can have a fair deal and until agriculture can prosper there are not great hopes for the opening of his mills. I do disagree with the gentleman, and our disagreement was expressed by him in his remarks this morning when he said that he did not consider agriculture as the only or principal productive industry of this Nation, and that is where the real difference comes in. [Applause.]

The SPEAKER. The time of the gentleman has expired.

Mr. WALSH. Mr. Speaker, I yield four minutes to the gentleman from Maryland [Mr. HILL].

Mr. HILL. Mr. Speaker and gentlemen of the House, this proposed bill to authorize association of producers of agricultural products does two things. It repeals line 5, section 6, of the Clayton Act and it also authorizes a type of price agreement which was found illegal under the Sherman Act in the case of the United States against the Standard Sanitary Enamel Co. and 48 other defendants, generally known as the Bathtub Trust case, which was decided in the circuit court of appeals in 1915. If you look at the first page of this bill you will see that it provides that these associations may be corporations with capital stock. That repeals the provision of the Clayton Act in section 6, which says:

> Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help and not having capital stock—

And so forth.

So in voting for this bill you vote definitely to repeal the Sherman Act as modified by the act of October 15, 1914, which is known as the Clayton Act. In the second place, you definitely authorize the organization of farmers' corporations for price-fixing agreements. It has been said here that farmers could not organize to physically work together, but they can organize to fix prices, and this bill gives that permission. There is no more reason why you should authorize this in the case of farmers and exempt them from the Sherman and other trust acts than

you should in case of bathtub makers or tin-can makers. It is also in violation of the decision of the courts of the United States in the American Can Co. antitrust prosecution. Therefore I shall vote against this bill.

If this bill, however, is to be passed I think we should have a proper regard for usual and regular law enforcement procedure. The provision on page 3, line 14, is dangerous and improper in that it authorizes the Secretary of Agriculture to take the place of the Attorney General in instituting the prosecution of cases, and therefore should this bill come to a reading I shall offer an amendment conforming this bill to the usual procedure in the drug acts and the cattle inspection acts and to the normal procedure in ordinary criminal prosecutions by which the Attorney General, not the Secretary of Agriculture, shall institute any court proceedings.

Mr. VOLSTEAD. Mr. Speaker, I yield 15 minutes to the gentleman from Texas [Mr. SUMNERS].

Mr. SUMNERS of Texas. Mr. Speaker and gentlemen of the House, under the Clayton Antitrust Act agricultural organizations may operate in interstate commerce so long as they operate without capital stock and do not earn dividends. These organizations want the right to have capital stock and they want the right to earn a dividend equal to about the average interest rate, and they want to be sure when they go into interstate commerce they will not have every district attorney in the country jumping on them. They are willing to yield to the public—that the Secretary of Agriculture, in the first instance, who is the agent of the whole public, if prices received are unreasonable, may issue an order against them to desist, and then if they do not desist the Secretary of Agriculture may go into the Federal court and procure an injunction. In other words, under that arrangement the Secretary of Agriculture is to stand as a buffer between these farmers' organizations and prosecutions in the Federal courts and is to stand between these organizations and the public and protect the public.

The hearings upon this bill were conducted when I was not a member of the Judiciary Committee, but I understand the bill is satisfactory to the agricultural organizations of the country, and is earnestly desired by them. It is my judgment that these organizations must be permitted to operate as is authorized by this bill, and that there should be an elastic, public control to protect both the public and the organizations themselves against the abuse of the power which it is necessary for them to have in order properly to function.

It is necessary to give to them the opportunity to operate without unnecessary handicap; to free them as far as possible from the danger of unnecessary harassing and fear of prosecution, but at the same time to preserve in the public the power to protect itself. The organizations recognize that the Secretary of Agriculture has been chosen as the public agency rather than some other agent of the Government, because the Secretary of Agriculture is assumed to be familiar with the difficulties and problems which are peculiar to agriculture.

Agriculture has peculiar problems. I believe that the failure to recognize that fact has been more responsible than anything else for the widespread distress among the agricultural interests. Agriculture has peculiar problems, but they are not problems which are exclusively of interest to agriculturists. They affect the most vital public interests.

When steam and electricity were applied to the activities of men, when the modern organizations for manufactory production and business developed, agriculture was not able to keep pace in that general business evolution. It was not able to organize the selling end of its business. In the modern sense it was not able to become a business. Yet it has to compete with business and share with business the responsibility of an interrelated unit in the organizations which make up our business and industrial life. It can not even write into its initial selling price the cost of production, much less that cost plus a profit. It has to trade with industry; it has to bid against industry for the service of every individual engaged in its vocation; but when it traded with industry, industry fixed the price of both commodities, and when it came to bid with industry for the labor of those engaged in its vocation, it bid against a business which can write its labor cost into its initial selling price, which agriculture can not do.

Partly due to inherent difficulties which are well understood, to the heavy draft made by industry upon those engaged in agriculture most capable of leadership, due in part to the general notion that agriculture is a sort of inexhaustible commissary, useful only to feed business, and due to the fact that this general attitude has reflected itself in a general financial and economic policy, fashioned to meet the needs of a people who think, legislatively and economically, in the terms of a city dominated commerce, we have come to an acute crisis with regard to the business of agriculture, and something must be done to relieve that condition.

This bill is intended to help agriculture reach that degree of business organization and development which will give to it greater economic strength, and give to it a vocational independence more nearly approaching that which is held by the businesses which are conducted in the cities; to enable agriculture to offer a bid of sufficient net profit as against the bid being offered by industry and other vocations to hold the required number of the total population in agricultural productivity to make sure of the food and clothing supply; to eliminate much of the economic and food waste in distribution, and to divide that economy and to reflect it in greater agricultural prosperity and in reduced cost to consumers.

The interest of agricultural producers is violated by the high speculative prices which consumers are often compelled to pay, and the interest of consumers is violated by the ruinous prices which producers are now receiving. It is to the interest of the producer that he shall have a stable price and a reasonable, constant profit. It is to the interest of the consumer, also; therefore it is better to have the control of producers extend nearer than now to consumers as against the control of prices by the speculator, who has no concern in the maintenance of stable prices but whose concern is only for his immediate profit.

Farmers must be paid as much net profit as other vocations bid. The movement of population from the country to the city will not end until that profit is paid. It is inevitable that consumers must ultimately pay that profit. The hazards of the business of agriculture must be insured against and paid for by consumers in the price paid for that which they buy. They must ultimately pay—they are paying now in large part for the food and economic waste incident to distribution. This bill is intended to eliminate much of the hazard of agriculture and to reduce the spread between what the farmer receives and what the consumer pays.

There is another viewpoint, an important one. That time has come when the economic structure of agriculture must be strengthened and agriculture must be freed from its present condition of economic servility and dependency and placed side by side with other industries and businesses of this country, which together make up our complex, interrelated, and interdependent economic and industrial structure. We must recognize that agriculture is not only the source from which we draw our food and clothing material, but in many sections of this country it is primarily the basic business. Its stability measures the stability of every dependent business, and its prosperity measures the prosperity of every dependent business. It is to every other business in those sections what the foundation is to the superstructure; it is to every other business in those sections what the root of the plant is to the plant; and at least, in a secondary sense, it is the basic business of the whole country. We often say that, but we do not reflect a conscious realization of the fact.

The instability of agricultural prices, the rapid and absurd fluctuations to which they are subjected, its economic weakness, imperils the stability of every business which rests upon agriculture as its basic business. That is a viewpoint of this matter and of this business which the country must get. Considered generally as one of the interrelated businesses, the economic weakness of agriculture, which business must be trusted to hold a part of the line of our economic defense, is a constant peril to every other unit that is helping to hold that line. We are having a demonstration of that fact now.

When the unusual pressure and strain incident to the present world conditions came against the line of our economic defense, that line gave way first at the point held by agriculture. That is largely why we have not been able to retire gradually and in good order to the old line of business stability which we formerly occupied. The fact that the line broke there demonstrates where the weakest point was and where we ought to strengthen.

When agriculture gave way under the pressure exercised upon our economic front, the line broke where agriculture held, and that which could have been a gradual, orderly retirement has developed into a rout, a rout not only of agriculture but of the business, manufacturing, and financial interests of the whole country, and has thrown us into a state of confusion and danger from which we have not been able to extricate ourselves. There is nothing remarkable about what has happened. It was inevitable that it would happen. There is no strength, no power, to resist in the economic structure of agriculture. Considered together, our businesses are like a great levee. Any weak spot is a menace to the whole back country. It breaks where

the weak spot is, and where it breaks shows where the weak spot was. It was perfectly apparent before this condition came that we would break at that point held by agriculture the first great strain that came. That is why your mills are closed down in New England.

This bill is intended merely as one and only one of a constructive program with reference to agriculture which must find legislative sanction before economic stability is established for agriculture and economic safety is established for a country so dependent upon agriculture as ours is. The fact is, our entire agricultural program should be built around a proper system of sale and distribution of agricultural products, with a properly adjusted credit system.

Agricultural production now has sale as its objective, or, rather, net profit as its objective. How long will it take us to learn that fact? There is where the nerve center is now located. There is the only place under modern conditions where the stimulant for production can be applied with effect. A proper system for the sale and distribution of agricultural commodities, of course, includes a proper system of credits—not a system of credits which is suitable to businesses which have a constant turnover, but a system of credits which is suitable to a business which has only seasonable and annual ready-for-market periods.

I hope we have a Secretary of Agriculture now who has some real sense, and who will cut out many of the things now being done which can be done by the farmers for themselves, and that he will help to bring this Government to the doing through his department of that which is a proper governmental functioning—that thing which is required by the public interest, that thing which can not be done by farmers unaided for a long time, and never unless they form an organization so strong and comprehensive that its power will be a menace both to the public and to themselves. A proper marketing system, a proper financial system, necessary economic strength, and business independence, that is what is required. This bill helps toward that consummation of the former and helps to lay the foundation upon which we can build the latter.

Mr. HUDSPETH. Will the gentleman yield?

Mr. SUMNERS of Texas. Yes.

Mr. HUDSPETH. I just want to ask you what was the difference between the House and the Senate on this bill? Was it section 2 at that time?

Mr. SUMNERS of Texas. The Senate conferees insisted upon an amendment far more drastic than section 2, and one which the agricultural organizations, so I understand, regarded as less favorable than the present Clayton Act.

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

Mr. SUMNERS of Texas. Yes.

Mr. FESS. There has been some misunderstanding as to the force of this bill. It was stated at the last session during the consideration of the other bill that a cooperative dairy could not run without being subject to prosecution under the Clayton Act.

Mr. SUMNERS of Texas. That is understood to be the fact, if it has capital stock and operates in interstate commerce.

Mr. FESS. Now, on the other hand, if there was a group of cooperative associations joining in a combination, this bill would not permit that, would it?

Mr. SUMNERS of Texas. This bill is intended to permit farmers to organize and have central selling agencies through which they may operate. I want to say to my friends on this side who are fighting this bill that if you destroy this bill, if the representatives of these agricultural organizations know what they are talking about, you are going to put them up against prosecutions from district attorneys all over this country. Under this bill it is proposed that the Secretary of Agriculture, representing all the people in this country, presumed to be familiar with the problems of agriculture, will be able to cooperate with these agricultural associations, helping them to build a greater strength for themselves; at the same time, when they put the prices up too high, instead of jumping on them and putting their members in jail, in the first instance, he will say to them, "The prices are too high; you have got to back up." And if they do not do so, he will then bring suit in the district court, where the farmers will have the same right to defend as they would have in the event of prosecutions brought in the first place. The judgment, if gotten, will be one of injunction, and not for crime. This may not work, but the farmers want to try it, and the committee has not been able to devise anything better which would have a chance to pass the Senate, and it is doubtful if we can get this by.

Mr. SANDERS of Indiana. How would he know how much to tell them to back up?

Mr. SUMNERS of Texas. It would depend on how much sense he has.

Mr. SANDERS of Indiana. Suppose he had all the wisdom of Solomon?

Mr. SUMNERS of Texas. Then he would not have any trouble.

Mr. WILSON. Do I understand the gentleman to say that organizations of farmers are about to be prosecuted now?

Mr. SUMNERS of Texas. Yes. That is why they are here asking for this bill. These men who represent agricultural organizations, your cotton farmers and your truck farmers, who are trying to bring themselves to a position where they can exercise some control on the prices of their commodities, stand now face to face with the possibilities of prosecution. We are trying to form these organizations in the South and bring our people from under the curse of industrial slavery. They need the right to have capital stock. They are not permitted now to have a single organization with a dollar of capital stock or to earn the interest dividend on capital stock if they opefate interstate.

Mr. WILSON. These organizations wish to have capital stock?

Mr. SUMNERS of Texas. They ask Congress to give them the chance to operate with capital stock, and they want the privilege of organizing these corporations, earning enough money to pay an 8 per cent dividend on their capital stock.

Mr. WILSON. Is it the purpose of this bill to enable them to go ahead with their organization?

Mr. SUMNERS of Texas. Yes. There is not a single agricultural organization now, such as are being formed, to sell our cotton that can safely operate in interstate commerce that has a dollar of capital stock. Not only is that true, but it is a question as to what is meant by the language "without profit" in the Clayton Act.

Every farmer in this country that is trying to do that which is necessary to give him some sort of economic protection in this country stands face to face with the possibliity of going to the penitentiary.

They want their rights to be made clear. They want to go unafraid to the discharge of a duty that they owe to themselves, to their families, and to the country, and Congress has no right to leave a statute in such a shape as that an honest man may not know whether he may go to the penitentiary or not. If there is anything wrong about this bill, let us get at it and cure it. But as it is now the gentlemen who object to putting the Secretary of Agriculture in this position between the farmers and prosecution leave their constituents subject to prosecution by every district attorney in the United States.

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

Mr. SUMNERS of Texas. Yes.

Mr. REAVIS. Does not section 2 put a disability upon the farmer that is not put upon any other man, in that it allows the Secretary of Agriculture to tell him how much profit he may make, while nobody else is told how much he can make?

Mr. SUMNERS of Texas. Yes. But farmers do get important concessions, and it is an attempt to get something through the Senate, and the farmers are willing to do this. The farmers say they do not want an unfair profit. The farmers want a stable price and a fair profit. They do not want to hold up the American people. They say, "We are willing to stand up before the American people and defend any price that we ask the American people to pay." [Applause.] That is their position.

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

Mr. SUMNERS of Texas. Yes.

Mr. LANKFORD. Do you favor section 2 in order to get the bill through?

Mr. SUMNERS of Texas. I favor it because it is necessary to get it through, and there must be some sort of public control. The farmers themselves recognize that. We must not deny the people the necessary power to do the necessary things for fear they may abuse it. The thing to do is to give them the power, and then give the public a chance, too; and that is what this bill does. This is not a perfect bill. It is the best we can do. The agricultural situation is desperate, and we ought to do the best we can do and do it now. It is a choice between giving the Secretary of Agriculture, the Department of Commerce, or the Department of Justice original supervision. The farmers prefer the Secretary of Agriculture, and I see no reason why the public should object to his designation. [Applause.]

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

Mr. VOLSTEAD. Mr. Speaker, I yield five minutes to the gentleman from Massachusetts. By my count that leaves me six minutes.

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

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

Mr. HUSTED. Mr. Speaker, we all realize that agriculture is in a bad state. We also realize that it is more difficult for the farmer to organize than it is for the merchant and the manufacturer.

The purpose of this bill is to enable the farmers to organize in associations maintaining selling agencies and doing anything else that is necessary to enable them to increase the prices of their products.

I attended the hearings before the Committee on the Judiciary in the last Congress. The farmers' representatives were very frank in admitting that that was what they wanted, and that was what they expected the effect of the legislation would be.

I have a great deal of sympathy with the desire of the farmers to organize and better their condition, but we might as well understand what we are proposing to do. I believe that just about the worst kind of legislation we can enact here is that legislation which excepts special interests from the operation of general statutes, which discriminates in favor of one of several classes of interests. If the general statutes are bad, let us repeal the statutes and enact new ones that are proper.

The desire for this legislation is not so much an argument in its favor as it is an indictment of the provisions of the Sherman and other antitrust acts. I am one of those who believe that those acts should be repealed, and that other proper legislation of control should be enacted to take their place.

During the World War we suspended suits for violation of the antitrust act, and when the war was over we authorized the continuance of the prosecutions. It was a parody on the administration of justice. And why were those suits suspended? Those suits were suspended because during the war we wanted production, and we knew that the enforcement of the antitrust act would stifle production. To the extent that any legislation stifles production it is opposed to the general prosperity of the country.

"Oh, the antitrust acts operate very unequally," it has been said. "They operate against the farmer." And they do, because the farmer is not in as good a position to organize in large corporations as the manufacturer or the merchant. The farms are scattered all over the country. Those interests can not be assembled in organizations as manufacturing interests can. But even among the manufacturers there is discrimination, because men with large capital can form a great big corporation and accomplish anything they want under it, whereas under the provisions of the antitrust act a few small interests can not combine and obtain the same advantages.

But even though these things are true, that does not justify legislation which exempts certain interests from the operation of general laws. Let us change the general laws and perfect them. And especially at this time is it unwise to make this exemption to enable the farming interests to enhance the price of agricultural products, to increase the cost of living, when there are at least a million men out of employment, to whom that increase would be a vital thing. If we are going to do it let us do it at a better time than this. Do not select as the time for passing legislation of this kind a time when the mills in the East are either idle or running upon part time, when men are out of employment, and when it should be our constant care to keep the cost of living down just as low as we can possibly do it.

The SPEAKER. The time of the gentleman from New York has expired. The gentleman from Minnesota [Mr. VOLSTEAD] is recognized.

Mr. VOLSTEAD. I yield to the gentleman from Maine [Mr. HERSEY].

Mr. HERSEY. Mr. Speaker, this bill exempts farmers' cooperative marketing associations from the provisions of the Sherman antitrust law and the Clayton Antitrust Act.

It provides, in substance, that persons engaged in the production of agricultural products, as farmers, planters, ranchmen, dairymen, and nut and fruit growers, may act together in associations, corporate or otherwise, with or without capital stock, in collective processing, preparing for market, handling, and marketing in interstate and foreign commerce such products of persons so engaged; that they may maintain marketing agencies in common and such associations as may be necessary to make contracts and agreements for their mutual benefit.

They are, however, subject to the following conditions and requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein.

Second. That the association can not pay dividends on stock or membership capital in excess of 8 per cent per annum.

There is also a provision that if the Secretary of Agriculture shall find that any such association monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, that he shall serve notice upon such association directing them to cease and desist therefrom. If the association neglects after 30 days the Secretary may appeal to the Department of Justice, who may issue a writ of injunction forbidding such association from violating the order of the Secretary of Agriculture.

To understand fully the provisions of this bill it is well to remember the present antitrust laws.

The chief provisions of the Sherman antitrust law are as follows:

(1) Every contract, combination, in form of trust or otherwise, or conspiracy, in the restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor.

(2) Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor.

The principal provisions of the Clayton Antitrust Act are as follows:

Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purpose of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

It will be noted that existing law does not allow farmers' organizations to have or issue capital stock or conduct their organizations for profit.

It is very apparent that farm organizations formed under existing law are useless, powerless, and impotent to carry out the purposes of their organizations, unless they can issue stock and conduct their business for a profit. This bill permits these organizations to issue capital stock, but each member can have only one vote, and the profits of the organization are limited to 8 per cent per annum, which per cent is deemed sufficient to pay the expenses of the organization.

The value of such farm organizations to the producers of agricultural products is beyond estimate. By such organizations the farmers of this country can work and think together. It creates a civic force in large farming communities which protects the farmers, both for the present and for the future. They can thereby operate together in buying seed, fertilizer, farm machinery, and everything needed for the conduct of the farm.

They can work and act together in marketing their products, both in the local and in all markets of the world. The small farmer is assisted in his efforts to hold or market his crops. It does away with the middleman, the speculator, and the importer; in brief, it enables the producers to act together for their mutual interests in the planting, care, and marketing of agricultural products.

Prof. Gabriel, of Yale, in a very able article in the May number of the North American Review, suggests some of the benefits that will arise to the farmers of this Nation from such organizations as is contemplated in this bill. He says:

The men of the soil have taken their cue from modern commercial and industrial enterprise. Cooperation and, at times, combination have modified certain forms of competition. There are many agrarian leaders who look forward to a day not far distant when farmers' cooperative organizations of nation-wide scope will bring about fundamental modifications in our distributive system for food products and when the middleman will be reduced to a factor of minor importance and the middleman's profit divided between the producer and the consumer.

So important have these cooperatives become that the Nation has taken cognizance of them. Their defense against the operation of the Sherman antitrust law is one of the most important political problems of the farmer. The penalty for failure in this is serious. The farmer manages his enterprise on a small margin of profit in spite of the fact that it is an occupation subject to the hazards of the weather as well as those of the law of supply and demand. The smallness of this profit plus the character of rural living conditions has caused a considerable movement from the farms to the cities. This has operated against American agriculture more than the mere numbers would imply, because, in general, it has been the more able men who have left the farmer group to live in the cities and to try their fortune in enterprises offering greater margins of profit. The farmers' cooperative movement has for its object the making of farming more profitable. If the National Government breaks up the farmers' cooperatives, it destroys the most important single economic factor tending to hold the abler younger men on the farms. Such action would menace the food supply of the Nation, which now must be increased by better and more intelligent farming instead of by an increase in the farming area.

Our farmers to-day face most serious problems, questions which affect the vital prosperity of this country. The crops of 1920 were raised and produced at a loss to the farmers estimated at $5,000,000,000. This has been brought about by certain conditions which Congress can so change by legislation that they

will not occur in the future. Our farmers to-day stand naked in the presence of their enemies.

The first enemy of the farmer is the importer. Agricultural products of other nations have in the last two years been dumped into this country free of duty, and the result has been that these importations have been sufficient to supply the American market even if our farmers had produced nothing. In other words, by reason of cheap foreign labor and the difference in the value of our currency in contrast with other lands, the foreigner through the importer has been able to market his agricultural products in America at a profit, while our farmers have not been able to sell their products except at a loss. Potatoes are rotting in my State. Wheat can not be sold in the great West. Corn is being used for fuel. American sheep and wool have no market. Cotton planters can not compete with Asia. All the products of our farmers, planters, dairymen, and ranchmen are being sold at a loss, while all the benefits of the American market go to the foreign nations. This must all be changed by a permanent and a high tariff that will give the necessary protection to the American farmer.

The second enemy of our farmers is high freight rates, which must be lowered to save the home market for the farmers of the United States.

The producers of agricultural products have their troubles in obtaining farm help. The boys have left the farm. The farmers' sons who went to the late war have returned to the cities, attracted by the "Great White Way," and have lost their interest in the farm. One-half of the inhabitants of this country are living in the cities, where the problem of housing has become acute, and the further problem of how to obtain employment has become a menace in our land.

Labor from the cities must go back to the farm before we can have prosperity, and it will never go back unless the farmer is so protected in his rights and so allowed to organize and cooperate that the farm may become productive and profitable, as well as attractive to those engaged in agricultural pursuits.

The farmer is not and never has been a profiteer. He knows no 8-hour day. He is not asking for daylight saving. He has always been at the mercy of the middleman, the speculator, the importer, and the free trader. This must all be changed before the country can have its old-time prosperity, and the way to change it is to allow the farmer more freedom, more relief from burdensome laws, with the right to organize, to market his own products without the aid of the middleman, to have his representative in the markets of the world, to deal directly with the consumer, to have such rates of transportation that he may quickly and cheaply reach the consumer with his products, receiving thereby a profit without increasing the cost to the consumer. This can only be brought about by the Congress of the United States doing full justice to the farmer by protecting him against the importer and creating a home market.

The only objection against this bill comes from those who live in the large cities and who represent the importer and stand for free trade and who believe that legislation which allows the farmer a better price for his products or a profit from the farm will thereby increase the cost to the consumer. This is the veriest nonsense. To deprive the farmer of profit and force him to grow only what is needed for his own use would throw open the markets of America to the foreign importer and the consumer will then be at his mercy. He will fix the price and at such a figure as would destroy and ruin the farms of this Nation.

The further objection that this exemption of the farmer is unconstitutional, that it is class legislation, is hardly worthy of passing attention. All the courts have held that in the making of criminal statutes Congress has the power to make exemptions of persons or organizations engaged in certain industries or occupations.

In the case of the farmer it is impossible for him through these farm organizations and under this bill to create a trust or monopoly such as is contemplated by antitrust laws. He could not, if he would, so defy the law.

Too long have the farmers of America been neglected by national legislation. He has hitherto submitted to all kinds of restrictions and regulations.

His interests have been neglected in nearly every bit of legislation. The consumer has been the only one in the thoughts of the legislators. What the consumer will say, what he desires, how he will vote, have been sufficient to obtain for him legislation at the expense of the farmer. From this hour all this must be changed. The producer must stand on an equal footing with the consumer, and both must have the equal protection of our laws.

Last year the two great political parties of our Nation met in national conventions, and having in view the vote of the farmer, each wishing to obtain it, made certain pledges which it is well for us now to recall, and I now call your attention to these campaign pledges.

The Republican Party, which has the majority in this Congress, in their convention said in their platform:

> The Republican Party believes that this condition can be improved by practical and adequate farm representation in the appointment of Government officials and commissions, the right to form cooperative associations for marketing their products, and protection against discrimination.

One week later the Democratic Party met in national convention and said:

> We favor such legislation as will confirm to the primary producers of the Nation the right of collective bargaining and the right of cooperative handling and marketing of the products of the workshop and the farm and such legislation as will facilitate the exportation of our farm products.

Standing by one or the other of these party platforms, Members who compose this House of Representatives have been elected, and the question to-day is, Shall Congress keep faith with the farmers? We can only do so by voting for the passage of this bill. [Applause.]

Mr. VOLSTEAD. Mr. Speaker, I want to occupy the few minutes remaining in saying something in reference to section 2.

Mr. STEVENSON. Will the gentleman yield for a question before he starts?

Mr. VOLSTEAD. No; I can not yield, for I have only five minutes.

Section 2 has the entire approval of the farm organizations. It has been submitted to the attorneys for these organizations, and they have expressed not only an entire willingness that it go into the bill, but they have expressed their desire that it remain in the bill. I want this House to understand that whoever votes to strike out section 2 will vote against what the farmers want; and it is perfectly evident to any lawyer that it is an advantage to the farmers to have section 2 in the bill, not only for the reason expressed by the gentleman from Texas [Mr. SUMNERS] a minute ago, but because in the event that there is a complaint against them they will not be subject to criminal prosecution if their organization is permitted by this bill, but an investigation will be had before the Secretary of Agriculture, who is given power to deal with the matter. Corporations are very seldom indicted but proceeded against in a civil action substantially the same as we authorize against these associations. I have consulted with representatives of the various farm organizations, and the question has been carefully discussed by them and their lawyers, and there is no question but that a man who votes against section 2 votes against what the farmers of this country want. I believe section 2 ought to stay in this bill, not only because they want it, but because without that section the bill would be unfair to the public, and we ought not to pass anything that would be unfair to the public. With that provision in the bill, it seems to me it will give to these organizations a status of equality with other business concerns, and that is all the farmers ask. They will take care of themselves if you will give them that.

Mr. Speaker, I move the previous question on the bill.

Mr. SUMNERS of Texas. Will the gentleman withhold that motion just a moment?

Mr. VOLSTEAD. Yes.

Mr. SUMNERS of Texas. I want to ask the gentleman from Minnesota if he thinks that without section 2 this bill has any chance to pass the Senate?

Mr. VOLSTEAD. I do not think so, and I do not think it ought to.

Mr. DOMINICK. Will the gentleman withhold his motion for a moment to allow me to offer my amendment?

Mr. VOLSTEAD. I will not. I move the previous question on the bill.

Mr. WINGO. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. WINGO. Have the two hours been used?

The SPEAKER. They have.

Mr. WINGO. The gentleman does not intend to permit any amendments?

Mr. VOLSTEAD. No; I do not intend to.

Mr. WINGO. Or even consideration of them?

Mr. VOLSTEAD. I desire a vote on the bill in its present form.

Mr. HILL. I should like to offer a verbal amendment if it is in order.

The SPEAKER. It will be in order if the previous question is voted down; but if the House orders the previous question, then no amendment is in order. The question is on ordering the previous question.

The question being taken (on a division demanded by Mr. BLANTON and others) there were—ayes 95, noes 64.

Accordingly the previous question was ordered.

The SPEAKER. The question is on the committee amendment, which the Clerk will report.

The Clerk read as follows:

Committee amendment: Page 1, line 4, after the word "dairymen," insert the word "nut."

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

Mr. DOMINICK. Mr. Speaker, I have a motion to recommit.

The SPEAKER. The gentleman will be recognized for that purpose after the bill is ordered to be engrossed and read a third time. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was accordingly read the third time.

The SPEAKER. The question is on the passage of the bill.

Mr. DOMINICK. Mr. Speaker, I have a motion to recommit.

The SPEAKER. The gentleman from South Carolina offers a motion to recommit, which will be reported by the Clerk.

The Clerk read as follows:

Mr. DOMINICK moves to recommit the bill to the Committee on the Judiciary with instructions to report the same back to the House forthwith with the following amendment: On page 2, line 11, strike out all of section 2.

Mr. VOLSTEAD. I move the previous question on the motion to recommit.

The previous question was ordered.

The SPEAKER. The question is on the motion of the gentleman from South Carolina [Mr. DOMINICK] to recommit the bill.

The question being taken, the Speaker announced that the noes appeared to have it.

Mr. GARRETT of Tennessee. Mr. Speaker, I make the point of no quorum present, for the purpose of securing a roll call.

The SPEAKER. The gentleman from Tennessee makes the point of no quorum present. The Chair thinks there is no quorum present. The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members. As many as are in favor of the motion to recommit will, as their names are called, vote "yea," those opposed will vote "nay," and the Clerk will call the roll.

The question was taken; and there were—yeas 97, nays 231, not voting 101, as follows:

YEAS—97.

Almon	Davis, Tenn.	Kindred	Rainey, Ala.
Aswell	Deal	King	Rankin
Bacharach	Dominick	Kunz	Rayburn
Bankhead	Drane	Lanham	Rogers
Bell	Driver	Lankford	Rouse
Black	Dupré	Larsen, Ga.	Sanders, Ind.
Bland, Va.	Fisher	Lee, Ga.	Sandlin
Blanton	Fulmer	London	Sears
Bowling	Garner	Lowrey	Smithwick
Box	Garrett, Tenn.	Mansfield	Steagall
Brand	Garrett, Tex.	Martin	Stedman
Briggs	Glynn	Mead	Stevenson
Brinson	Goldsborough	Merritt	Swank
Buchanan	Hammer	Montague	Ten Eyck
Bulwinkle	Hardy, Tex.	Moore, Va.	Tinkham
Byrnes, S. C.	Harrison	Moores, Ind.	Upshaw
Byrns, Tenn.	Hawes	Nelson, J. M.	Vinson
Cannon	Hudspeth	O'Brien	Walters
Carew	Humphreys	O'Connor	Weaver
Carter	Ireland	Overstreet	Wilson
Collier	Johnson, Ky.	Parker, N. J.	Wingo
Collins	Johnson, Miss.	Parks, Ark.	Wright
Connally, Tex.	Jones, Tex.	Parrish	
Crisp	Keller	Pou	
Cullen	Kincheloe	Quin	

NAYS—231.

Ackerman	Chalmers	Elliott	Graham, Pa.
Andrews	Chindblom	Ellis	Green, Iowa
Arentz	Christopherson	Elston	Greene, Mass.
Atkeson	Clague	Evans	Griest
Barbour	Classon	Fairfield	Griffin
Barkley	Clouse	Faust	Hardy, Colo.
Beck	Colton	Favrot	Haugen
Beedy	Connell	Fenn	Hays
Benham	Connolly, Pa.	Fess	Herrick
Bixler	Cooper, Ohio	Fish	Hersey
Boies	Cooper, Wis.	Fitzgerald	Hickey
Bowers	Coughlin	Focht	Hill
Brennan	Crowther	Foster	Himes
Brooks, Ill.	Curry	Free	Hoch
Brooks, Pa.	Dallinger	Freeman	Huddleston
Brown, Tenn.	Darrow	French	Hull
Burdick	Davis, Minn.	Frothingham	Husted
Burroughs	Dickinson	Funk	Hutchinson
Burtness	Dowell	Gensman	James, Mich.
Burton	Drewry	Gernerd	Jefferis
Butler	Dyer	Goodykoontz	Johnson, S. Dak.
Cable	Echols	Gorman	Johnson, Wash.
Campbell, Kans.	Edmonds	Graham, Ill.	Jones, Pa.
Kearns	McPherson	Radcliffe	Sumners, Tex.
Kelley, Mich.	MacGregor	Raker	Sweet
Kelly, Pa.	Magee	Ransley	Swing
Kendall	Maloney	Reavis	Taylor, N. J.
Ketcham	Mapes	Reece	Temple
Kinkaid	Mason	Rhodes	Thompson
Kirkpatrick	Michaelson	Ricketts	Tillman
Kleczka	Michener	Riddick	Tilson
Kline, N. Y.	Miller	Riordan	Timberlake
Kline, Pa.	Mills	Roach	Tincher
Knight	Millspaugh	Robertson	Towner
Knutson	Montoya	Robsion	Treadway
Kopp	Moore, Ill.	Rodenberg	Tyson
Kraus	Moore, Ohio	Rose	Underhill
Lawrence	Morgan	Rosenbloom	Vaile
Layton	Mott	Rossdale	Vestal
Lazaro	Mudd	Ryan	Voigt
Lea, Calif.	Murphy	Sabath	Volk
Leatherwood	Nelson, A. P.	Sanders, N. Y.	Volstead
Lehlbach	Nolan	Sanders, Tex.	Walsh
Lineberger	Norton	Schall	Ward, N. C.
Linthicum	Ogden	Scott, Mich.	Wason
Little	Oldfield	Scott, Tenn.	Webster
Logan	Olpp	Shelton	Wheeler
Luce	Osborne	Shreve	White, Kans.
Lufkin	Paige	Siegel	White, Me.
Luhring	Parker, N. Y.	Sinnott	Williams
McArthur	Patterson, Mo.	Smith	Williamson
McClintic	Perkins	Speaks	Woodruff
McCormick	Perlman	Sproul	Woodyard
McFadden	Peters	Stafford	Wurzbach
McKenzie	Petersen	Steenerson	Wyant
McLaughlin, Mich.	Porter	Stephens	Yates
McLaughlin, Nebr.	Pringey	Strong, Kans.	Zihlman
McLaughlin, Pa.	Purnell	Summers, Wash.	

NOT VOTING—101.

Anderson	Doughton	Kiess	Rucker
Ansorge	Dunbar	Kissel	Shaw
Anthony	Dunn	Kitchin	Sinclair
Appleby	Fairchild	Kreider	Sisson
Begg	Fields	Lampert	Slemp
Bird	Flood	Langley	Snell
Blakeney	Fordney	Larson, Minn.	Snyder
Bland, Ind.	Frear	Lee, N. Y.	Stiness
Bond	Fuller	Longworth	Stoll
Britten	Gahn	Lyon	Strong, Pa.
Browne, Wis.	Gallivan	McDuffie	Sullivan
Burke	Gilbert	McSwain	Tague
Campbell, Pa.	Good	Madden	Taylor, Colo.
Cantrill	Gould	Mann	Taylor, Tenn.
Chandler, N. Y.	Greene, Vt.	Mondell	Thomas
Chandler, Okla.	Hadley	Morin	Vare
Clark, Fla.	Hawley	Newton, Minn.	Ward, N. Y.
Clarke, N. Y.	Hayden	Newton, Mo.	Watson
Cockran	Hicks	Oliver	Winslow
Codd	Hogan	Padgett	Wise
Cole	Houghton	Park, Ga.	Wood, Ind.
Copley	Hukriede	Patterson, N. J.	Woods, Va.
Cramton	Jacoway	Ramseyer	Young
Dale	James, Va.	Reber	
Dempsey	Kahn	Reed, N. Y.	
Denison	Kennedy	Reed, W. Va.	

So the motion to recommit was rejected.

The following pairs were announced:

Until further notice:

Mr. WINSLOW with Mr. CANTRILL.

Mr. MANN with Mr. KITCHIN.

Mr. LAMPERT with Mr. SISSON.

Mr. CLARKE of New York with Mr. LYON.

Mr. REBER with Mr. SULLIVAN.

Mr. HUKRIEDE with Mr. RUCKER.

Mr. BROWNE of Wisconsin with Mr. PADGETT.

Mr. KENDALL with Mr. JACOWAY.

Mr. BURKE with Mr. COCKRAN.

Mr. LANGLEY with Mr. CLARK of Florida.

Mr. MORIN with Mr. MCSWAIN.

Mr. BLAKENEY with Mr. GILBERT.

Mr. BEGG with Mr. WOODS of Virginia.

Mr. DUNN with Mr. TAGUE.

Mr. ANTHONY with Mr. FLOOD.

Mr. BLAND of Indiana with Mr. DOUGHTON.

Mr. CRAMTON with Mr. PARK of Georgia.

Mr. DENISON with Mr. TAYLOR of Colorado.

Mr. FORDNEY with Mr. HAYDEN.

Mr. FREAR with Mr. WISE.

Mr. GOOD with Mr. FIELDS.

Mr. KIESS with Mr. OLIVER.

Mr. KISSEL with Mr. MCDUFFIE.

Mr. LONGWORTH with Mr. GALLIVAN.

Mr. MONDELL with Mr. STOLL.

Mr. NEWTON of Missouri with Mr. JAMES of Virginia.

Mr. VARE with Mr. CAMPBELL of Pennsylvania.

Mr. CHANDLER of Oklahoma with Mr. THOMAS.

The result of the vote was announced as above recorded.

The doors were opened.

The SPEAKER. The question is on the passage of the bill.

Mr. GARRETT of Tennessee. And on that, Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 295, nays 49, answered "present" 1, not voting 84, as follows:

YEAS—295.

Ackerman	Elston	Lazaro	Ricketts
Almon	Evans	Lea, Calif.	Riddick
Andrews	Fairfield	Leatherwood	Roach
Anthony	Faust	Lee, Ga.	Robertson
Arentz	Favrot	Lineberger	Robsion
Aswell	Fenn	Linthicum	Rose
Atkeson	Fess	Little	Rosenbloom
Bankhead	Fish	Logan	Rossdale
Barbour	Fisher	London	Rouse
Barkley	Fitzgerald	Longworth	Ryan
Beck	Focht	Lowrey	Sanders, Tex.
Beedy	Foster	Luce	Sandlin
Bell	Frear	Luhring	Schall
Benham	Freeman	McArthur	Scott, Mich.
Bixler	French	McClintic	Scott, Tenn.
Black	Fulmer	McCormick	Sears
Bland, Ind.	Funk	McFadden	Shaw
Bland, Va.	Garrett, Tex.	McKenzie	Shelton
Blanton	Gensman	McLaughlin, Mich.	Shreve
Boies	Gernerd	McLaughlin, Nebr.	Sinclair
Bowers	Goldsborough	McLaughlin, Pa.	Sinnott
Bowling	Goodykoontz	McPherson	Slemp
Box	Graham, Ill.	MacGregor	Smith
Brand	Green, Iowa	Magee	Smithwick
Brennan	Greene, Mass.	Maloney	Snell
Briggs	Greene, Vt.	Mansfield	Speaks
Brinson	Griest	Mapes	Sproul
Brooks, Ill.	Hadley	Martin	Steagall
Brooks, Pa.	Hammer	Mason	Stedman
Brown, Tenn.	Hardy, Colo.	Mead	Steenerson
Buchanan	Harrison	Michener	Stephens
Bulwinkle	Haugen	Miller	Stevenson
Burdick	Hawes	Millspaugh	Strong, Kans.
Burroughs	Hawley	Mondell	Summers, Wash.
Burtness	Hays	Montague	Sumners, Tex.
Burton	Herrick	Montoya	Swank
Butler	Hersey	Moore, Ill.	Sweet
Byrns, Tenn.	Hickey	Moore, Ohio	Swing
Cable	Himes	Moore, Va.	Taylor, Colo.
Campbell, Kans.	Hoch	Morgan	Temple
Campbell, Pa.	Houghton	Mott	Ten Eyck
Cannon	Huddleston	Mudd	Thompson
Cantrill	Hudspeth	Murphy	Tillman
Carter	Hull	Nelson, A. P.	Timberlake
Chalmers	Hutchinson	Nelson, J. M.	Tincher
Chindblom	Ireland	Nolan	Towner
Christopherson	James, Mich.	O'Brien	Treadway
Clague	Jefferis	Oldfield	Tyson
Classon	Johnson, Ky.	Olpp	Upshaw
Clouse	Johnson, S. Dak.	Osborne	Vestal
Collins	Johnson, Wash.	Overstreet	Vinson
Colton	Jones, Tex.	Paige	Voigt
Connell	Kearns	Park, Ga.	Volstead
Connolly, Pa.	Kelley, Mich.	Parker, N. Y.	Ward, N. C.
Cooper, Ohio	Kelly, Pa.	Parks, Ark.	Wason
Cooper, Wis.	Kendall	Parrish	Watson
Coughlin	Ketcham	Patterson, Mo.	Weaver
Crisp	Kincheloe	Perkins	Webster
Crowther	King	Peters	Wheeler
Curry	Kinkaid	Petersen	White, Kans.
Dallinger	Kirkpatrick	Porter	White, Me.
Darrow	Kleczka	Pou	Williams
Davis, Minn.	Kline, N. Y.	Pringey	Williamson
Davis, Tenn.	Kline, Pa.	Purnell	Wilson
Deal	Knight	Quin	Wingo
Dickinson	Knutson	Radcliffe	Woodruff
Dowell	Kopp	Rainey, Ala.	Woodyard
Drane	Kraus	Raker	Wright
Drewry	Lanham	Ramseyer	Wurzbach
Driver	Lankford	Rankin	Wyant
Dunbar	Larsen, Ga.	Ransley	Yates
Dupré	Larson, Minn.	Reavis	Young
Dyer	Lawrence	Reece	Zihlman
Elliott	Layton	Rhodes	

NAYS—49.

Bacharach	Gorman	Lufkin	Stafford
Bond	Graham, Pa.	Merritt	Taylor, N. J.
Byrnes, S. C.	Hardy, Tex.	Michaelson	Tinkham
Carew	Hill	Mills	Underhill
Collier	Humphreys	Moores, Ind.	Valle
Connally, Tex.	Husted	Norton	Volk
Cullen	Johnson, Miss.	Parker, N. J.	Walsh
Dominick	Jones, Pa.	Perlman	Walters
Edmonds	Keller	Riordan	Winslow
Frothingham	Kindred	Rogers	Wood, Ind.
Garner	Kissel	Sabath	
Garrett, Tenn.	Kunz	Sanders, Ind.	
Glynn	Lehlbach	Siegel	

ANSWERED "PRESENT"—1.

Echols

NOT VOTING—84.

Anderson	Copley	Gilbert	Langley
Ansorge	Cramton	Good	Lee, N. Y.
Appleby	Dale	Gould	Lyon
Begg	Dempsey	Griffin	McDuffie
Bird	Denison	Hayden	McSwain
Blakeney	Doughton	Hicks	Madden
Britten	Dunn	Hogan	Mann
Browne, Wis.	Ellis	Hukriede	Morin
Burke	Fairchild	Jacoway	Newton, Minn.
Chandler, N. Y.	Fields	James, Va.	Newton, Mo.
Chandler, Okla.	Flood	Kahn	O'Connor
Clark, Fla.	Fordney	Kennedy	Ogden
Clarke, N. Y.	Free	Kiess	Oliver
Cockran	Fuller	Kitchin	Padgett
Codd	Gahn	Kreider	Patterson, N. J.
Cole	Gallivan	Lampert	Rayburn
Reber	Sanders, N. Y.	Strong, Pa.	Tilson
Reed, N. Y.	Sisson	Sullivan	Vare
Reed, W. Va.	Snyder	Tague	Ward, N. Y.
Rodenberg	Stiness	Taylor, Tenn.	Wise
Rucker	Stoll	Thomas	Woods, Va.

So the bill was passed.

The Clerk announced the following additional pairs:

On the vote:

Mr. RAYBURN (for) with Mr. SULLIVAN (against).

Mr. FREE (for) with Mr. COCKRAN (against).

Until further notice:

Mr. CHANDLER of Oklahoma with Mr. THOMAS.

Mr. APPLEBY with Mr. DOUGHTON.

Mr. HICKS with Mr. MCDUFFIE.

Mr. KAHN with Mr. FLOOD.

Mr. MADDEN with Mr. GALLIVAN.

Mr. PATTERSON of New Jersey with Mr. GRIFFIN.

Mr. REBER with Mr. O'CONNOR.

Mr. REED of West Virginia with Mr. STOLL.

Mr. TILSON with Mr. WISE.

Mr. KREIDER with Mr. JACOWAY.

The result of the vote was announced as above recorded.

On motion of Mr. VOLSTEAD, a motion to reconsider the vote by which the bill was passed was laid on the table.

BOUNDARY LINE BETWEEN PENNSYLVANIA AND DELAWARE.

The SPEAKER. Has the Committee on the Judiciary any further business?

Mr. VOLSTEAD. Yes. Mr. Speaker, I call up House joint resolution 82.

The SPEAKER. The gentleman from Minnesota, on behalf of the Committee on the Judiciary, calls up House joint resolution 82, which the Clerk will report.

The Clerk read as follows:

House joint resolution (H. J. Res. 82) ratifying the reestablishment of the boundary line between the States of Pennsylvania and Delaware.

Resolved, etc., That the Congress hereby consents to the reestablishment of the boundary line between the States of Pennsylvania and Delaware, as heretofore agreed upon by said States, and as reestablished and confirmed, fixed, and determined according to the terms of an act of the General Assembly of the Commonwealth of Pennsylvania entitled "An act providing for the acceptance, approval, and confirmation of the report of the commission appointed in pursuance of the act approved the 4th day of May, anno Domini 1889, authorizing the examination, survey, and reestablishment of the circle of New Castle as the boundary line between Pennsylvania and Delaware," approved June 22, 1897, and an act of the General Assembly of the State of Delaware entitled "An act providing for the acceptance, approval, and confirmation of the report of the commission appointed in pursuance of the act of the General Assembly of the State of Delaware, approved the 25th day of April, anno Domini 1889, authorizing the examination, survey, and reestablishment of the circle of New Castle as the boundary line between Pennsylvania and Delaware," approved March 28, 1921.

Mr. VOLSTEAD. I yield 10 minutes to the gentleman from Maine [Mr. HERSEY].

Mr. HERSEY. Mr. Speaker and gentlemen of the House, this is a joint resolution giving consent to the establishment of a boundary line between Pennsylvania and Delaware. These two States have met and agreed to establish a certain line between their States. This has been established as far as they are concerned by the Legislatures of the several States of Pennsylvania and Delaware by proper legislation. The Constitution of the United States provides that no State is permitted to enter into any agreements or compacts with another State without securing the consent of Congress to such agreement or compact. The first case, or the precedent for this case, is found in Virginia against Tennessee, where a like line was established between these States, and the Legislatures of Virginia and Tennessee assented to the establishment of that line by their commissioners. Congress gave its consent in a joint resolution like the one before us to the establishment of that line. It came before the courts in Virginia *v.* Tennessee (148 U. S. Reports, p. 503) in which the court held—I will read from the headnotes of the case:

An agreement or compact as to boundaries may be made between two States, and the requisite consent of Congress may be given to it subsequently, or may be implied from subsequent action of Congress itself toward the two States; and when such agreement or compact is thus made, and is thus assented to, it is valid.

The committee reporting this bill followed the precedent set down in Virginia against Tennessee, followed the form in the joint resolution of Congress made at that time which has been approved by the highest court of the land. We can see no objection why this resolution should not receive your unanimous support.

Mr. MCCLINTIC. Will the gentleman yield?

Mr. HERSEY. I will.

Mr. MCCLINTIC. Does the gentleman think that this resolution authorizes the Government to appropriate money to take care of the salaries of those who will be engaged as members of the commission?

Mr. HERSEY. No, sir.

Mr. BUTLER. They are paid by the two States.

Mr. VOLSTEAD. Mr. Speaker, I move the previous question.

The previous question was ordered.

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

On motion of Mr. VOLSTEAD, a motion to reconsider the vote by which the joint resolution was passed was laid on the table.

AMENDING THE CODE OF THE DISTRICT OF COLUMBIA.

Mr. VOLSTEAD. Mr. Speaker, I call up the bill H. R. 4586.

The SPEAKER. The gentleman from Minnesota calls up the bill which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 4586) to amend the act entitled "An act to establish a code of law for the District of Columbia, approved March 3, 1901," and the acts amendatory thereof and supplementary thereto.

Be it enacted, etc., That the act to establish a code of law for the District of Columbia, approved March 3, 1901, and the acts amendatory thereof and supplementary thereto, constituting the code of law for the District of Columbia, be, and the same are hereby, amended as follows:

Strike out section 833a and insert in lieu thereof:

"SEC. 833a. Whoever, being in possession of personal property received upon a written and conditional contract of sale, with intent to defraud, sells, conveys, conceals, or aids in concealing the same, or removes the same from the District of Columbia without the consent of the vendor, before performance of the conditions precedent to acquiring the title thereto, shall be punished by a fine of not more than $100, or by imprisonment for not more than 90 days."

Mr. VOLSTEAD. Mr. Speaker, I yield 10 minutes to the gentleman from Iowa [Mr. BOIES].

Mr. BOIES. Mr. Speaker and gentlemen of the House, it will require but a moment to explain the provisions of this bill.

The bill H. R. 4586 is offered for the purpose of amending section 833a of the act to establish a code of law for the District of Columbia, approved March 3, 1901, and acts amendatory and supplementary thereto.

Said section 833a reads as follows:

SEC. 833a. Whoever, being in possession of personal property received upon a written and conditional contract of sale, with intent to defraud, sells, conveys, conceals, or aids in concealing the same, or removes the same from the District of Columbia without the consent of the vendor, before performance of the conditions precedent to acquiring the title thereto, shall be punished by a fine of more than $100, or by imprisonment for not more than 90 days.

Evidently, through clerical error, the word "not" was omitted from the next to the last line after the word "of."

On account of this omission the court has ruled that the section, so far as it relates to the imposition of a fine, is so uncertain as to render the same void and of no effect.

This bill supplies the word "not" in the proper place and will render the section effectual. This bill accomplished this by striking out section 833a and reenacting the identical language of the old section with the word "not" properly inserted.

Mr. SANDERS of Indiana. Will the gentleman from Minnesota yield me two minutes before he moves the previous question?

Mr. VOLSTEAD. I will yield two minutes to the gentleman from Indiana.

Mr. SANDERS of Indiana. Mr. Speaker, I just ask for this time to make an inquiry about the form of this amendment. In line 8 on the first page, the bill says, "Strike out section 833a and insert in lieu thereof" and then it sets out what is to be inserted. Ordinarily I think that the language used is, "That section 833a be amended to read as follows." But aside from that point I want to call the chairman's attention to the fact that the language used in your former amendments to this code in all these cases was this, "By striking out section so and so and inserting in lieu thereof the following," which I think is much better language in the bill. The form the gentleman has used in this bill is the form used in a motion, and not the form used in the law itself. In other words, if it is to be amended in a certain way it is to be amended by striking out section 833a and inserting in lieu thereof the following. But all of the different sections put in the act of April 19, 1920, are preceded by that statement, "By striking out section 20 and inserting in lieu thereof the following." I would suggest the chairman of the committee ought to make a change in this bill.

Mr. VOLSTEAD. I do not think it is very material. I think it accomplishes exactly the same thing.

I will yield five minutes to the gentleman from Texas [Mr. BLANTON].

Mr. BLANTON. Mr. Speaker, I am heartily in favor of this bill, but I want to discuss an incidental feature that would grow out of the violation of this law or any other law here in the District. I learn that there is a system carried on in the District that is even worse than the abuses of the pawnbroker's shop, concerning which we have read a good deal lately in the papers. Say, for instance, where anyone is charged with crime and is called upon to give bond as an alternative to going to jail. There are professional bondsmen here in the District that take advantage of these poor devils every single day that passes here in the District of Columbia. The law requires that one to be a bondsman must own real estate in the District, and these men who have qualified themselves to go on bonds take advantage of it. I have learned that they make a charge of 5 per cent cash. A poor young fellow who is from my district here was charged with some offense about a week ago and placed under a $3,000 bond. It could result in a most trivial kind of a case, but in order to make a bond and keep from going to jail that night, though he claims to be absolutely innocent, he had to pay one of these professional bondsmen $150 just to make his bond, as he was not permitted to find me to assist him.

These professional bondsmen ought to be looked into. Now, the Judiciary Committee looks after the change of laws here in the District, I understand. Surely that abuse should not be permitted to longer exist here. I do not believe anybody in this House believes more strongly than I do in the strict enforcement of every law. I want to see laws strictly enforced, not with excessive punishments, because excessive punishments do not stop the breaking of laws, but it is the certainty of prosecution and of punishment that stops crime. And it is one of the guaranties and safeguards to every citizen that excessive bail shall not be required of a man, but that every reasonable facility shall be granted for giving bail to one charged with crime.

Mr. BARBOUR. Is not that the same condition that exists in practically every large city of the United States?

Mr. BLANTON. It is an abuse that ought to be stopped.

Mr. BARBOUR. Has the gentleman anything to recommend in the way of stopping it?

Mr. BLANTON. I have not had time to give much thought to the question. I am trying to start the machinery in motion now. There are men here who have had experience in such matters, as has the gentleman. He mentions a fact indicating that he has some knowledge of this abuse existing in the big cities. It ought to be stopped. Surely we can find some way to require proper bonds and yet not permit these professional bondsmen to take advantage and make a living off of the necessities of poor devils charged with crime, some of whom may be innocent. It is not every man charged with crime who is guilty. Some are innocent. I have seen men tried in courts who were absolutely innocent of the charges brought against them, and surely in behalf of such men, at least, we ought to make proper provisions.

Mr. VOLSTEAD. Mr. Speaker, I move the previous question.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed.

On motion of Mr. VOLSTEAD, a motion to reconsider the vote by which the bill was passed was laid on the table.

AMENDMENT TO SECTION 858, REVISED STATUTES.

Mr. VOLSTEAD. Mr. Speaker, I call up the bill H. R. 2376.

The SPEAKER. The gentleman from Minnesota calls up a bill, which the Clerk will report.

The Clerk read as follows:

A bill (H. R. 2376) to further amend section 858 of the Revised Statutes of the United States.

Be it enacted, etc., That section 858 of the Revised Statutes of the United States as heretofore amended by the act entitled "An act to amend section 858 of the Revised Statutes of the United States," approved June 29, 1906, be, and the same is hereby, further amended so as to read as follows:

"SEC. 858. The competency of a witness to testify in any civil or criminal action, suit, or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the court is held."

Mr. VOLSTEAD. Mr. Speaker, a similar bill to this was passed at the last session of Congress. It reenacts the section of the statute defining competency of witnesses in civil cases. This amendment simply adds the words "or criminal," so as to apply the same rule in criminal cases as is now applied in civil cases. Under existing law, in the Federal courts a wife can not be a witness for or against her husband, and a person convicted of a felony can not be a witness in that court. Nearly every State has modified that old common-law rule that prohibited witnesses that were presumed to have an interest from testifying, and leaves the matter of interest to be considered by the jury in determining the creditability of witnesses. It seems to me the time has come for this change. If a man is tried in my State, I think he ought to be tried under the same general rules as to the competency of witnesses, whether it is in the Federal court or in the State court. And I think that that is a proper rule to apply in every State. That old law was a cruel one. It trusted no one. It did not believe anybody

would tell the truth if he had an interest. It seems to me this country ought to try to keep up with modern evolution; it ought not to still adhere to that old policy of absolute distrust of a man because he may have some interest in an issue. And it seems to me that it is high time that we changed this statute so that the Federal courts may administer law a little like civilized countries are doing.

Mr. MILLER. Is it not in the law in most of the States that a wife can testify for the husband or the husband for the wife?

Mr. VOLSTEAD. Yes; no doubt everywhere.

Mr. MILLER. How will this work in cases where we have extraterritorial jurisdiction?

Mr. VOLSTEAD. The common law would apply.

Mr. MILLER. This does not apply in countries where we have extraterritorial jurisdiction?

Mr. VOLSTEAD. No.

Mr. MILLER. What test is given to a witness in court where we have extraterritorial jurisdiction?

Mr. VOLSTEAD. The common law is supposed to prevail in China, where we have extraterritorial jurisdiction.

Mr. MILLER. In those cases the wife can not be a witness in behalf of the husband or the husband in behalf of the wife?

Mr. VOLSTEAD. I do not think that is possible, as I am not aware of any Federal statute that would authorize anything of the kind.

Mr. CLOUSE. I would like to ask a question for information. Under this resolution would the wife be made competent as a witness to testify in behalf or against her husband in any State which has not given the right to her to testify in the State courts?

Mr. VOLSTEAD. No, sir; it would not. It only applies the State law to the Federal courts, so that if a wife is made competent in a State court in criminal cases she will be able to testify in the Federal court in that State.

Mr. BLANTON. How would this affect such a right in the District of Columbia?

Mr. VOLSTEAD. I think the District of Columbia is taken care of. I do not know.

Mr. BLANTON. Can the wife testify in behalf of her husband in the Federal courts here?

Mr. VOLSTEAD. I do not know.

Mr. BLANTON. I was going to suggest to the gentleman that no other law can apply here in the District, and while the gentleman is giving wives and husbands this right in various States, why not do it in the District of Columbia?

Mr. VOLSTEAD. I am not sure but they have that right. We have quite an extensive code in this District, which has been enacted from time to time.

Mr. BLANTON. The gentleman would not object to such a provision?

Mr. VOLSTEAD. I would object to it unless I knew that there was some necessity for it.

Mr. BLANTON. The same necessity for it exists in the District that exists in the gentleman's State or in my own State.

Mr. VOLSTEAD. I do not know what the law here is.

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

Mr. VOLSTEAD. Yes.

Mr. MILLER. Why would it not be wise to make the laws in this District as they are in the States, that the wife should be competent to be a witness with the consent of her husband?

Mr. VOLSTEAD. I think this bill will meet the necessity generally.

Mr. HILL rose.

Mr. VOLSTEAD. I yield to the gentleman from Maryland.

Mr. HILL. Mr. Speaker and gentlemen of the House, this is a bill to change the competency of witnesses in criminal cases which are tried in the criminal courts of the United States.

Since the foundation of this Government there has been a definite system as to the competency of witnesses and as to testimony in the United States courts which is entirely different in criminal matters from the system applying in civil matters. In civil cases the laws of evidence of the States apply, but always in criminal cases the common law of England, as modified by the acts of this Congress, only are allowed to apply.

Now, this bill proposes that the United States shall give up its sovereign right of prescribing the laws of evidence in its own criminal prosecutions, and makes that law the plaything of every State legislature in the country. In other words, by this bill the Congress of the United States gives up its right to change or modify the criminal law procedure in its own courts. I say to you, gentlemen, that if you will look at the report of the committee you will find in that report the remarks of the court given in 207 Federal Reporter, which shows that system. In other words, it is the purpose of the criminal laws of the United States that the same laws shall apply throughout the United States.

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

Mr. HILL. In a minute. If you adopt this amendment, this will happen: Take, for instance, the violation of the Mann White Slave Act. You will try a man under a different system of testimony if he is tried in the District of Columbia or if he is tried in the Federal district of Maryland. I do not think the Congress wants that done, and I am sure the Department of Justice does not want that done. Let me quote to you the decision in the report of the committee, to which I will ask your attention. It is at the bottom of the page. I read:

> The section above quoted was merely intended to confer on the courts of the United States the jurisdiction necessary to enable them to administer the laws of the States.

That is in civil matters. A and B make a contract in Maryland, and evidence in relation to that in the United States court is by State law, but the laws of the United States are one law for every criminal in this country and not a different law for every State. I read further:

> But it could not be supposed, without very plain words to show it, that Congress intended to give to the States the power of prescribing the rules of evidence in trials for offenses against the United States.

Now, your bill overrules the decision in this case, and here is what the court says as to its reason, and this is my reason, which I am about to read to you, that it changes the criminal law of evidence which has been in vogue since the foundation of United States courts:

> This construction would in effect place the criminal jurisprudence of one sovereign State under the control of another. It is evident that such could not be the design of Congress.

Now, gentlemen, if the Congress of the United States wants to change the law in criminal cases, put it in your act here and change the code of the United States; but do not put it in the power of the State of Maryland, or the State of New York, or the State of Texas, or the State of California to hamper the administration of the procedure under the criminal act.

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

Mr. HILL. Yes.

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

Mr. VOLSTEAD. Mr. Speaker, I yield to the gentleman five minutes more.

The SPEAKER. The gentleman from Maryland is recognized for five minutes more.

Mr. RAKER. This would make it uniform in the trial of all criminal cases where the court is sitting in a State. The law applicable to that State would apply in the trial of the case in the Federal court under this amendment.

Mr. HILL. I think I understand the gentleman's question. For instance, in the Federal judicial district of Maryland the same rule of competency of testimony would apply in both civil and criminal cases.

Mr. RAKER. Just as in Maryland now in a trial in a State court.

Mr. HILL. In some States a child can not testify in court under the age of 8 or 9, whatever it may be. In the United States courts any child can testify, but its credibility is a matter for the jury.

Mr. RAKER. Mr. Speaker, will the gentleman yield for another question?

Mr. HILL. Certainly.

Mr. RAKER. We have the same effect in the statute which is repealed in regard to the acts of administrators and executors. In certain States there are certain rules. We have a statute, which we are repealing now, to make it general. Is it not better to make it general, so as to let the trial in the district court proceed under the procedure of that State where the case is tried, and do we not get better results?

Mr. HILL. I think not, and for this reason: I might say I am only moved to speak of this because for five years I was United States district attorney for Maryland, and these matters as to competency of witnesses continually came up.

Mr. RAKER. Right there, being familiar with the laws of Maryland in regard to the trial of civil cases and suits in equity and criminal cases, the gentleman can go into the district court and know exactly where he stands and try the cases as they ought to be tried, without applying the Federal laws with respect to evidence.

Mr. HILL. Under the present procedure the Attorney General in Washington knows that there is a certain definite law of evidence applying in all the Federal districts, the 86 Federal districts in the United States.

Mr. RAKER. That is a presumption.

Mr. HILL. No; he knows it.

Mr. RAKER. I say it is a presumption.

Mr. HILL. No. He knows it. It could not be otherwise. The United States has at present its Penal Code, which Penal Code prevails in every portion of the United States. It is absolutely uniform. It has its own criminal system of evidence, which is uniform. This bill proposes to leave the criminal code alone in the United States, but makes its enforcement subject to the rules of the legislature of every State in the country.

Mr. RAKER. While the Attorney General may direct the original prosecution of the case, the crux of the matter, where the people are interested, is back in the State where the United States district attorney tries the case; and if that man is a competent lawyer, familiar with the rules of evidence, you are going to try the case as it ought to be tried instead of relying upon what the Federal statute might be. But here you make it uniform and you give the man a chance in the court.

Mr. HILL. Does the gentleman want me to comment upon that?

Mr. RAKER. Yes.

Mr. HILL. This is the practical effect of that: It comes up in the review of criminal cases in the Supreme Court of the United States. For instance, if a man is convicted in the Federal court in Texas under the pure food and drug act, if this bill passes he may be convicted under different rules of evidence from those which would govern if he were tried in the Federal district of New York. Now, there are 86 Federal districts——

Mr. VOLSTEAD. If the gentleman will yield, is that any justification for refusing to grant, what almost every civilized country grants to-day, the right to have a witness testify regardless of the fact that he may have some interest in the case?

Mr. HILL. Answering the gentleman's question, the Constitution provides that the laws of the United States shall be uniform throughout the United States.

Mr. VOLSTEAD. It does not do anything of that kind. We do not propose to have them uniform throughout the United States. If the gentleman will pardon me, this very section recognizes a dissimilarity in the various States as to civil evidence. The competency of evidence in civil cases is governed to-day by the law of the State in which the trial takes place.

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

Mr. VOLSTEAD. I will yield to the gentleman five minutes more.

Mr. HILL. In answer to the gentleman from Minnesota [Mr. VOLSTEAD] I should like to say that the criminal laws of the United States are enforced in a totally different way from the civil laws. For instance, in a criminal case we must have a jury. Juries are not required in all civil cases. In a United States district court at the present time, even if the matter involves the smuggling of five pairs of shoes, worth $2 apiece, we must take the time of the court to try the case with a jury unless the defendant pleads guilty. Now, it is not so in civil cases. It looks on the face of it as though this bill ought to be passed, but it changes the decision in this case, which your committee quotes. In other words, I am indebted to the report of the committee for the authority which I cite against this bill.

Mr. BLANTON. Will the gentleman yield?

Mr. HILL. Yes.

Mr. BLANTON. In the State of Texas the Federal courts and the State courts have concurrent jurisdiction to enforce the prohibition law, which the gentleman the other day said was so dear to the hearts of all the people. Under the State law it is a felony, and under the Federal law it is a felony in certain instances. A man prosecuted there in the State court for violation of the prohibition law is permitted to have his wife testify as a competent witness in his behalf. If, unfortunately for the man, the Federal authorities get hold of him first and jurisdiction is obtained by the Federal court, he is denied the right to have his wife testify as a competent witness in his behalf. In the interest of uniform practice and in the interest of justice, does not the gentleman think the same rules for determining the competency of witnesses should apply there in the Federal court as in the State courts?

Mr. SANDERS of Indiana. Will the gentleman yield?

Mr. HILL. I should like to answer the question of the gentleman from Texas. That question is one which brings out very clearly the effect of this bill. Personally I should be glad to vote for an amendment to the Federal laws of evidence and procedure which would allow a wife to testify for her husband. I would be glad to vote for any specific piece of legislation of that sort which seemed to be proper. However, it seems to me it is more important from the general point of view of the enforcement of the law that there should be a uniform rule of determining the competency of evidence in all the Federal courts. And I may say to the gentleman that in opposing this bill I am not interested in any special piece of legislation. I am not considering especially its effect on the enforcement of the national prohibition act, although I rather imagine that the proponents of the national prohibition act have suggested the passage of this bill. [Laughter.]

Mr. VOLSTEAD. This suggestion came to me long before I ever knew of any national prohibition act.

Mr. HILL. I am not opposing this bill as it relates to any special thing. I am only opposing it because it takes away from the United States its one uniform and coherent law of evidence and substitutes for it whatever the legislature of a State may choose to adopt. Take for instance this case: Happily for those of us who live in Maryland that State has no national prohibition enforcement act. Therefore those of us who come within the toils of the national prohibition act will be entirely under the jurisdiction of the Federal court and under the jurisdiction of the Federal rules of evidence. But that is no reason why I should be in favor of putting the United States court in Maryland under the jurisdiction of the Maryland Legislature. The Maryland Legislature might go dry sometime and enact drastic laws, whereas now the Maryland Legislature is wet.

Mr. BARBOUR. If the gentleman will allow me, with that situation existing in Maryland it would be easier to convict if the State law was followed than it would be if the Federal law as it now exists was followed, would it not?

Mr. HILL. No.

The SPEAKER. The time of the gentleman has again expired.

Mr. SANDERS of Indiana. Will the gentleman from Minnesota yield to me?

Mr. VOLSTEAD. I yield five minutes to the gentleman from Indiana.

Mr. SANDERS of Indiana. Mr. Speaker, I think this bill ought to be defeated. It proposes to give to the State legislatures throughout the United States the absolute authority to determine the competency of the evidence in criminal cases tried under Federal law.

Mr. MAPES. The competency of witnesses.

Mr. SANDERS of Indiana. The competency of witnesses, which may amount to dealing with the competency of the testimony.

Mr. CLOUSE. Will the gentleman yield?

Mr. SANDERS of Indiana. I yield to the gentleman from Tennessee.

Mr. CLOUSE. Is it not one of the rules of Federal practice, promulgated by the Supreme Court of the United States, that the district courts shall follow the rules of evidence in the various States?

Mr. SANDERS of Indiana. In civil cases; yes.

Mr. CLOUSE. Now, if that is true in civil cases, how does this enlarge it, further than just to qualify the witnesses, but relating not to the introduction or to the competency of the testimony?

Mr. SANDERS of Indiana. It makes it cover criminal cases.

Mr. CLOUSE. I understand, but it only makes the witnesses competent and does not relate to the competency of their testimony.

Mr. SANDERS of Indiana. I can not yield further.

Mr. CLOUSE. I will ask for an extension of the gentleman's time.

Mr. SANDERS of Indiana. Is it possible that the Federal Government is going to give over to the State governments the power of determining the competency of witnesses in criminal cases? If you do that, gentlemen, you will find the State legislatures in this country where Federal laws are obnoxious to them—you will find legislatures passing laws relating to the competency of witnesses that will defeat the criminal laws of the United States. It certainly gives them the power to do it; there can be no question about that; you give the power to any State legislature to defeat any criminal law passed by Congress.

Take the prohibition law. Suppose the State of Maryland wanted to defeat the Federal prohibition law or the enforcement of it. By making drastic laws with reference to the competency of witnesses in liquor cases they can absolutely prevent a conviction in any case. That is merely illustrative, and they could do the same thing as to any other Federal law. On the surface of it it looks as if it would be just as well to have the State laws govern in criminal cases as in civil, but once you analyze it it is certainly clear that the sovereignty of the Federal Government ought not to yield to the State legislatures the power to enable them if they so desire to defeat any criminal law. [Applause.]

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

Mr. VOLSTEAD. Mr. Speaker, I yield five minutes to the gentleman from South Carolina [Mr. STEVENSON].

Mr. STEVENSON. Mr. Speaker, I know something about the practice of law, and I want to ascertain what the meaning of this is. I do not construe this to be such a measure as the last two gentlemen have seemed to construe it. As I understand it, this merely deals with the competency of witnesses. It makes no change as to the competency of evidence. For instance, in South Carolina a witness convicted of petty larceny is incompetent to testify in a State court. In the United States courts he must be convicted of a felony in order to render him incompetent. Therefore, the man who has been convicted of petty larceny is incompetent to testify in a State court but is competent to testify in a criminal case in the United States court. Now, the proposition here is to fix it so that the question of competency shall be determined by the law of the State.

Another case that arose is, can the wife testify against her husband? In my State she can not, but in some she can. In the United States courts she can not in a criminal case, nor can a husband testify against his wife, because under the common law they never could testify against each other.

As I understand it, this law simply provides that the wife or the husband can testify for or against each other in a criminal case in a United States court where that is done in the State court, and that is all. As to the question of the relevancy or competency of the testimony, I understand the committee does not propose to change the law a particle.

Mr. SANDERS of Indiana. Will the gentleman yield?

Mr. STEVENSON. Yes.

Mr. SANDERS of Indiana. Suppose the State of Maryland should pass a law providing that whenever a witness had appeared in a State court and testified respecting a subject matter relating to prohibition that witness should not be competent to testify in another court?

Mr. STEVENSON. I would not suppose that any State would do as foolish a thing as that; but if it did, I question seriously whether that would be held to be a constitutional enactment, because that would deprive a man, without being convicted, of his right guaranteed to him under the Constitution.

Mr. VOLSTEAD. Will the gentleman yield?

Mr. STEVENSON. Yes.

Mr. VOLSTEAD. That would not cut him out at all, because if he was competent to testify in the State court he would be competent to testify in the Federal court.

Mr. STEVENSON. Now, as to the competency of the testimony itself let me make an illustration. In South Carolina it was the law, and I guess it is now, that if a man was found with as much as a quart of liquor in his possession he was presumed to be a dealer in contraband liquor. I do not think that until the Volstead Act was passed there was any such rule of evidence in the Federal court. But this act would not make that testimony competent, even if you passed it, because that is dealing with the rule of evidence and not dealing with the competency of witnesses. That is what I understand by this act, that they are not changing the law relating to evidence. If I thought that this undertook to change the competency of evidence or the rule of evidence in cases in the Federal court, I would be decidedly opposed to it. But this is only to make it uniform in each State and goes to the competency of the witnesses and not to the competency of the testimony.

Mr. BOWLING. Will the gentleman yield?

Mr. STEVENSON. Yes.

Mr. BOWLING. If this becomes a law, under its operation can a wife be compelled to give testimony against her husband or a husband be compelled to give testimony against his wife?

Mr. STEVENSON. Well, that would depend entirely on the State enactment. If the State makes it compellable, he would be compelled to testify.

The SPEAKER. The time of the gentleman has expired.

Mr. VOLSTEAD. Mr. Speaker, I yield five minutes to the gentleman from South Dakota [Mr. WILLIAMSON].

Mr. WILLIAMSON. Mr. Speaker and gentlemen of the House, I have had considerable experience at the bar and upon the bench. It does not seem to me that there is any question but that in many cases great injustice is done to individual defendants in the district courts of the United States. The reason for this is that as a general rule these men are defended by men of the bar who are not trained in Federal procedure nor in our Federal courts, and who are unfamiliar with their practice and rules of evidence. Every man has a right to have his day in court. He has the right to be tried under rules and regulations that obtain in the jurisdiction in which he lives. He has a right to be able to secure attorneys who can defend him under rules with which they are familiar. Any man who has observed the procedure in the Federal courts knows that in many cases men have gone to the penitentiary because the counsel in charge of the case was not particularly familiar with Federal procedure or the rules of evidence where these differ from those used in the State courts.

The Federal courts have been very slow to go forward in the matter of procedure and in the matter of evidence. You to-day have the same old rules that you had 200 years ago. The State courts, everywhere throughout the Nation, almost without exception, have practically uniform laws when it comes to the question of evidence and what is admissible. A man is tried in the district in which he resides. That district is coextensive with or at least does not go beyond the State lines of the State in which he lives. The tendency of our State courts has been toward liberalizing the rules to admit as evidence that which formerly was excluded. There can be no question but that a man's wife ought to be permitted to testify in his behalf and that the husband should be permitted to testify in behalf of his wife. I think every State in the Union with one or two exceptions has that kind of law on its statute books to-day. They have abrogated the common-law rules, but the common-law rule still obtains in our Federal courts.

There can be no possible question as to the propriety or the wisdom of this bill. I have no sympathy with the view that it would embarrass the Federal courts to try cases under State procedure, nor that it would embarrass the Supreme Court of the United States to have cases appealed which have been tried under rules of evidence obtaining in the State. To-day the Federal courts follow the rulings of the State courts of last resort on State statutes. The circuit judges in the several States in the Union are presumed to know the rules and regulations of the cities, their ordinances, and things of that kind. Everyone knows that they are not familiar with them in fact, and everyone knows that those regulations and ordinances are brought into the court and presented at the time of the hearing. The Supreme Court of the United States will not have any trouble about matters as simple as the matters which will be covered by this bill, nor will it be a source of embarrassment to the district Federal judges upon the trial or in the appellate courts. It should not be a source of embarrassment to the United States district attorneys, because they are presumed to be familiar with the laws and rules of evidence in the State from which they are chosen and in which they serve. [Applause.]

Mr. VOLSTEAD. Mr. Speaker, I yield two minutes to the gentleman from Tennessee [Mr. CLOUSE].

Mr. CLOUSE. Mr. Speaker, I think there is some little confusion as to the provisions of this bill. Some gentlemen here are under the impression that it changes the law of evidence, when it is plain to be seen that the only provision of this bill is to qualify a witness that is otherwise incompetent. The intimation has been made on the floor in debate that perhaps this bill is purposed to more effectively enforce some of the prohibition statutes. I am going to try, in the two minutes allotted me, to dissipate that idea from your minds. I happen to be a lawyer and I happen to have had experience along these lines. Speaking especially now with reference to prohibition statutes, I have seen cases frequently brought into the district courts of the different States where the only living witness who knew any material fact in defense of the prisoner was his wife, but she was disqualified to speak and tell the truth. It is not always true that a man who is accused of violating the internal revenue laws is guilty. Cases of this character frequently, and I must say most generally, depend on circumstantial testimony, this little circumstance and another little circumstance linked together, until ultimately you have surrounded the prisoner with a mountain of circumstantial evidence sufficient to convict him before a jury, when if only the wife were permitted to testify the truth might be made known to the court and jury, his innocence established beyond doubt, and justice accordingly administered.

I am going to vote for this bill, not upon the ground that it gives to the Government or to the defendant an undue advantage but because the principle involved is well grounded upon the bedrock of eternal justice and right.

Mr. VOLSTEAD. Mr. Speaker, I yield five minutes to the gentleman from Iowa [Mr. TOWNER].

Mr. TOWNER. Mr. Speaker, I presume the same argument is being made here to-day with regard to this proposition of conforming the rules and procedure of our Federal courts to the procedure of the States that has been made whenever any advance in that direction has been accomplished. It was a long time before we succeeded in making the procedure in the United States courts conform to the procedure in the State courts.

It was still further advanced when we secured the provision of law as it now stands, "That the competency of a witness to testify in any civil action, suit, or proceeding in the courts of the United States shall be determined by the laws of the State or Territory in which the court is held." The argument against this bill was summed up in the decision of the Supreme Court that was cited by the gentleman from Maryland [Mr. HILL] in his address before us to-day, a very able, by the way, and admirable address. The court said, "For this construction would in effect place the criminal jurisprudence of one sovereignty under the control of another."

It will be noticed by members of the committee that this is not the decision of the court, it is merely an opinion. It is entirely obiter dictum as far as the proposition before the court was concerned, and so it has been. I think gentlemen who have had experience in United States courts for years are competent to testify that there has not been a single step of progress made with regard to the procedure in the United States courts that has not been against the objections of gentlemen who still desire to insist upon the operation of the old common-law rule.

Mr. HUSTED. Will the gentleman yield?

Mr. TOWNER. I can not yield, I am sorry to say, if the gentleman will pardon me—so this is only along the same line. Great evils exist in applying the common law at the present time. We have passed beyond that stage in almost if not quite every State in the Union in which we do not allow a wife to testify for her husband. Not a State, as I remember it, but gives that privilege now to the wife. But when we step into the United States court then the wife can not testify, although she may be the only living witness who may be able to explain the circumstances which otherwise might send her husband to the penitentiary. The wife can not testify against the husband, and in many States that is the rule. There could not be a better or more uniform or defensible rule than to say that it shall be as the State in which the offense is committed shall have determined in conformity and uniformity with the procedure of that State as it has been determined by the people of that State. Is it unusual, is it unfair to do this? It seems to me that if gentlemen will examine that proposition they can only arrive at the conclusion that a rule ought not longer to exist that continues the application of the old exclusionary rules of common law which are now utterly indefensible. Why, gentlemen, just consider a case of this kind. Two men are indicted for the commission of a joint crime. One man is apprehended and tried and convicted. The other man escapes. After a few years he is apprehended and brought to trial. The exclusionary common-law rule would not allow the convicted man, although he might be perfectly willing, to testify against the man jointly connected with him in the commission of the crime. Is such a rule as that reasonable? Yet that is the exclusionary rule of the common law now in full force and effect in every Federal court of the United States. No, gentlemen, I think if you will consider for a moment this proposition, if we have found it justifiable to conform as far as we may with the procedure with regard to the practice, with regard to the application of the law, to the laws of the State in civil cases, we have like reason and like ground for doing so in criminal cases.

The SPEAKER. The time of the gentleman has expired.

Mr. CONNALLY of Texas. Will the gentleman yield? I ask that the gentleman have one additional minute.

Mr. VOLSTEAD. I will yield the gentleman one minute.

Mr. CONNALLY of Texas. I understand there is a Federal statute now which permits men in a criminal case to testify in every instance. Now, in some of the States, I understand, the defendant can not testify. Would this act tend to repeal, in so far as those States are affected, the general Federal statute permitting the defendant to testify?

Mr. TOWNER. I think the gentleman must be mistaken in reference to not allowing the defendant to testify.

Mr. CONNALLY of Texas. But some of the States, so the gentleman from Maine, a member of the committee, informs me—and I know that formerly there were some States in which the defendant could not testify.

Mr. TOWNER. Oh, yes; that was a long-time rule of the common law, that no defendant could testify in any of them.

Mr. CONNALLY of Texas. The point I wanted to make is simply that the defendant ought to be permitted to testify in every case, and if this statute repeals the general statute, which does authorize the defendant to testify in Federal courts in those States where he is not allowed to testify, it ought to be amended so as not to have that effect.

Mr. TOWNER. You can not very well reach those individual instances, I will say to the gentleman, in a case of this kind. It occurs to me that this change that we are seeking here, in conformity with other provisions of a like character, is entirely defensible.

Mr. SANDERS of Indiana. We certainly repealed this act in 1878 with respect to the defendant testifying. By this act we are proposing to pass to-day we would repeal that one, which gives him the right to testify at his own request. The law reads:

> That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors in the United States courts, Territorial courts, and courts-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request, but not otherwise, be a competent witness.
>
> And his failure to make such request shall not create any presumption against him. (Mar. 16, 1878.)

I presume it is this statute to which the gentleman from Texas [Mr. CONNALLY] refers. It leaves it to the States to determine.

Mr. TOWNER. The States have determined it. Of course, that would apply only in such cases as would not allow the defendant to testify, if there are such States. I can hardly believe that the people of any State of the Union would allow such a condition to exist.

Mr. VOLSTEAD. Mr. Speaker, I yield one minute to the gentleman from Texas [Mr. SUMNERS].

Mr. SUMNERS of Texas. Mr. Speaker, I ask unanimous consent to revise and extend my remarks in the RECORD on the bill H. R. 2373, the agricultural bill, which we had under consideration.

The SPEAKER. The gentleman from Texas asks unanimous consent to revise and extend his remarks on the bill referred to. Is there objection? [After a pause.] The Chair hears none.

Mr. VOLSTEAD. Mr. Speaker, I yield three minutes to the gentleman from California [Mr. RAKER].

Mr. RAKER. Mr. Speaker, I want to call the attention of the House to the fact that the only amendment to this section that we find in the code is by adding the two words "or criminal," and which is found in line 9, page 1 of the bill. The trial will be held in the Federal court according to the law of evidence of the State in which the case is tried and in accord with the law of the State to which the case might have been committed, if such a thing is possible, by change of venue. As to the competency of witnesses, the same now applies in civil cases—for instance, ministers of the gospel, doctors, priests following their profession, and clerks in an office—and all of those rules apply in the same way in regard to administrators. And all the rules relating to the competency of the witnesses would apply in the trial of a case in the Federal court as now apply in the State court. It seems to me as though counsel—and they are practically all local—that try these cases in the Federal courts are much better prepared to give the court the benefit of their judgment because of their familiarity of the rules of evidence and the practice as to the competency of the witnesses in the trial of criminal cases as well as of civil cases. The counsel knows the competency of witnesses in the trial of a civil case. He goes out of the civil court to-day, and to-morrow he is trying a criminal case in the Federal court, and to-day he has to apply a different rule as to the competency of witnesses. This simply makes it harmonious, so that the counsel representing the public can be better prepared to advise the court and get results than is the case at the present time.

Mr. VAILE. Will the gentleman yield?

Mr. RAKER. I will.

Mr. VAILE. I would like to ask the chairman if the Department of Justice has rendered any report to the Committee on the Judiciary in this bill?

Mr. VOLSTEAD. I do not know whether they have or not. It has been here for some time. It has been recommended by several judges of the Federal courts, saying that these changes ought to be made. They have called my attention to injustices that have been committed because people could not testify who ought to testify under the State law.

Mr. VAILE. I wish to say that the gentleman from California and myself have been criticized because we brought in a bill when the committee's action did not have the approval of the Department of the Interior. I wondered if the same principle applied to this bill.

Mr. VOLSTEAD. We did not do that.

Mr. VAILE. Suppose the State of Maryland, for instance, should pass a statute providing that any person who had purchased liquor from the defendant in an indictment under the Volstead law should not be a competent witness?

Mr. VOLSTEAD. It would not be any good, unless you apply that same law to your own liquor laws in Maryland, or any other State.

Mr. VAILE. They have none there now, as I understand it. Would not the State of Maryland by passing such a statute as that virtually nullify the prohibition law?

Mr. BLANTON. Will the gentleman permit an amendment to be offered?

Mr. VOLSTEAD. I yield two minutes to the gentleman from New York [Mr. HUSTED].

Mr. HUSTED. Mr. Speaker, if I understand this bill correctly, where exactly the same Federal offense was committed in two different States, a man might be convicted through the testimony of witnesses in one State who could not be convicted in the other State because of some rule affecting his competency. I do not believe that that is right, and I do not believe there is any just parallel between civil cases and criminal cases. I think in the case of criminal action not only the rules of evidence should be the same in the different States, but the rule as to the competency of witnesses should be the same.

I think that the provision of the law which has been retained is a wise one, and for that particular reason I shall vote against the bill. [Applause.]

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

Mr. VOLSTEAD. Yes.

Mr. BRAND. In my State a defendant, for instance, is not sworn.

Mr. VOLSTEAD. That has nothing to do with it.

Mr. BRAND. He is allowed to make a statement, but not under oath. Will this legislation affect that?

Mr. VOLSTEAD. If he is a competent witness in the State court he would be competent in the Federal court.

Mr. BRAND. He is not required to testify, but can make a statement.

Mr. VOLSTEAD. Whatever the State law is would apply. It does not affect or change the State law.

Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The question was taken; and the Speaker announced that the ayes seemed to have it.

Mr. MOORES of Indiana. Mr. Speaker, a division.

Mr. HILL. Mr. Speaker, I make the point of no quorum.

Mr. MOORES of Indiana. I demand a division on that vote.

The SPEAKER. The gentleman from Indiana demands a division. The question is on the engrossment and third reading of the bill.

The House divided; and there were—ayes 68, noes 18.

So the bill was ordered to be engrossed and read a third time, and was read the third time.

Mr. BLANTON. Mr. Speaker, I move to recommit.

The SPEAKER. The gentleman from Texas submits a motion to recommit, which the Clerk will report.

The Clerk read as follows:

Mr. BLANTON moves to recommit the bill to the Committee on the Judiciary, with instructions to report the same back to the House forthwith with the following amendment: Page 1, line 11, after the word "held," strike out the period, insert a colon, and insert the following: "*Provided*, That in the District of Columbia either spouse, otherwise competent, shall be a competent witness to testify in behalf of the other."

Mr. WINGO. Mr. Speaker, I make a point of order against that.

The SPEAKER. The gentleman from Arkansas makes a point of order against the motion to recommit. The gentleman will state it.

Mr. WINGO. This is a general bill providing that the rule in Federal courts as to the competency of witnesses shall be made to conform to the rules of State courts. The gentleman's amendment includes the courts of the District of Columbia. It is not germane.

Mr. BLANTON. Mr. Speaker, will the Chair hear me a moment?

The SPEAKER. The Chair will hear the gentleman.

Mr. BLANTON. Mr. Speaker, this is a bill which the chairman of the Committee on the Judiciary stated, in beginning the argument in its favor, was so designed primarily that in the States where the statutes permitted a husband to testify in behalf of the wife, or the wife to testify in behalf of the husband, that then in the Federal courts such a procedure should be had. I take it that practically every State in the United States, if not all of them, now permits either spouse to testify in behalf of the other; not to testify against the other, but to testify in behalf of the other. This bill, then, would permit in every State in the United States either spouse to testify in behalf of the other. It is of a general nature, and an attempt is made by a motion to recommit to provide that it shall be uniform, which is one of its primary purposes. The primary purpose of this bill is to make the law uniform, and therefore an amendment which seeks to carry out that purpose, so that the law shall be uniform in the District of Columbia as well as in all of the States, is germane to the purposes of the bill, I submit to the Speaker.

The SPEAKER. The Chair sustains the point of order made by the gentleman from Arkansas. The question is on the passage of the bill.

Mr. MOORES of Indiana. Mr. Speaker, I make the point of order that there is no quorum present.

Mr. BLANTON. That would not get a vote on the bill. We have not divided on it yet.

ADJOURNMENT.

Mr. MONDELL. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 57 minutes p. m.) the House adjourned until to-morrow, Thursday, May 5, 1921, at 12 o'clock noon.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. TINCHER, from the Committee on Agriculture, to which was referred the bill (H. R. 5676) taxing contracts for the sale of grain for future delivery, and options for such contracts, and providing for the regulation of boards of trade, and for other purposes, reported the same without amendment, accompanied by a report (No. 44), which said bill and report were referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. SINNOTT, from the Committee on the Public Lands, to which was referred the bill (H. R. 1945) for the relief of E. W. McComas, reported the same without amendment, accompanied by a report (No. 41), which said bill and report were referred to the Private Calendar.

Mr. DRIVER, from the Committee on the Public Lands, to which was referred the bill (H. R. 3250) to authorize the Secretary of Commerce to convey to Augustus S. Peabody certain land in Galveston County, Tex., reported the same without amendment, accompanied by a report (No. 42), which said bill and report were referred to the Private Calendar.

Mr. McCORMICK, from the Committee on the Public Lands, to which was referred the bill of the House (H. R. 5511) for the relief of John Cestnik, jr., reported the same without amendment, accompanied by a report (No. 43), which said bill and report were referred to the Private Calendar.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

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

By Mr. APPLEBY: A bill (H. R. 5749) to amend the act approved December 23, 1913, known as the Federal reserve act; to the Committee on Banking and Currency.

By Mr. EDMONDS: A bill (H. R. 5750) to prohibit the prosecution of claims against the United States by former Government employees; to the Committee on the Judiciary.

By Mr. HUDSPETH: A bill (H. R. 5751) for the erection of a public post-office building at Pecos, Reeves County, Tex., and appropriating money therefor; to the Committee on Public Buildings and Grounds.

By Mr. JOHNSON of Mississippi: A bill (H. R. 5752) for the enlargement, extension, and improvement of the post-office building at Hattiesburg, Miss.; to the Committee on Public Buildings and Grounds.

By Mr. KNUTSON: A bill (H. R. 5753) to enlarge and extend the post-office building at St. Cloud, Minn.; to the Committee on Public Buildings and Grounds.

Also, a bill (H. R. 5754) to provide for an additional judge of the District Court of the United States for the District of Minnesota; to the Committee on the Judiciary.

Also, a bill (H. R. 5755) to amend section 110, chapter 134, first session Sixty-fourth Congress, United States Statutes at Large, volume 39, part 1, pages 209, 210, 211, act approved June 3, 1916; to the Committee on Military Affairs.

By Mr. TOWNER: A bill (H. R. 5756) to amend an act entitled "An act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous govern-

ment for these islands," approved August 29, 1916; to the Committee on Insular Affairs.

By Mr. WILLIAMSON: A bill (H. R. 5757) authorizing all retired enlisted men who were on active-duty status during the war with Germany and who were not commissioned to be returned to the retired list and to receive the full pay and allowances of the grade they held during the war; to the Committee on Military Affairs.

By Mr. BRITTEN: A bill (H. R. 5758) to amend section 13 and other sections of naturalization laws so as to prevent actual loss to county and State offices in the administration of the Federal naturalization laws; to the Committee on Immigration and Naturalization.

By Mr. MEAD: A bill (H. R. 5759) to amend section 4438 of the Revised Statutes of the United States in order to maintain discipline aboard ships; to the Committee on the Merchant Marine and Fisheries.

By Mr. SANDERS of Texas: A bill (H. R. 5760) to amend section 1 of the interstate commerce act, as amended by the transportation act of 1920, and expressly recognizing the jurisdiction and power of the several States to regulate intrastate commerce; to the Committee on Interstate and Foreign Commerce.

By Mr. ROSSDALE: A bill (H. R. 5761) granting change of title to laborers employed in the post offices; to the Committee on Reform in the Civil Service.

By Mr. McCORMICK: A bill (H. R. 5762) providing for a municipal park for the city of Butte, Mont.; to the Committee on the Public Lands.

By Mr. GOODYKOONTZ: A bill (H. R. 5763) to provide for the purchase of a site for a public building at Welch, in the State of West Virginia; to the Committee on Public Buildings and Grounds.

By Mr. LANGLEY: A bill (H. R. 5764) to amend an act entitled "An act providing additional hospital facilities for patients of the Bureau of War Risk Insurance and of the Federal Board for Vocational Training, Division of Rehabilitation, and for other purposes," approved March 4, 1921; to the Committee on Public Buildings and Grounds.

By Mr. FOCHT (by request): A bill (H. R. 5765) to amend the charter of the Potomac Insurance Co. of the District of Columbia; to the Committee on the District of Columbia.

By Mr. VINSON: A bill (H. R. 5766) to provide adjusted compensation for veterans of the World War, and for other purposes; to the Committee on Ways and Means.

By Mr. ZIHLMAN: A bill (H. R. 5767) to regulate the transportation of refuse, etc., in the District of Columbia; to the Committee on the District of Columbia.

By Mr. WEAVER: Joint resolution (H. J. Res. 103) authorizing the printing of 200,000 copies of the Special Report on the Diseases of Cattle; to the Committee on Printing.

Also, joint resolution (H. J. Res. 104) authorizing the printing of 200,000 copies of the Special Report on the Diseases of the Horse; to the Committee on Printing.

By Mr. STRONG of Kansas: Concurrent resolution (H. Con. Res. 16) creating a joint commission of agricultural inquiry; to the Committee on Rules.

PRIVATE BILLS AND RESOLUTIONS.

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

By Mr. BEEDY: A bill (H. R. 5768) to amend and correct the military record of Alvah B. Doble; to the Committee on Military Affairs.

Also, a bill (H. R. 5769) to amend and correct the military record of Thomas Decker; to the Committee on Military Affairs.

By Mr. BLAKENEY: A bill (H. R. 5770) for the relief of George F. Jones; to the Committee on Claims.

Also, a bill (H. R. 5771) for the relief of George G. Robinson; to the Committee on Claims.

Also, a bill (H. R. 5772) authorizing the Secretary of War to donate to the town of Hamilton, of Baltimore City, State of Maryland, one German cannon and two trench mortars or, in lieu of two trench mortars, two machine guns; to the Committee on Military Affairs.

By Mr. CLOUSE: A bill (H. R. 5773) granting a pension to Mary A. Duncan; to the Committee on Invalid Pensions.

By Mr. DUNBAR: A bill (H. R. 5774) granting a pension to Johannah Cuff; to the Committee on Invalid Pensions.

By Mr. EDMONDS: A bill (H. R. 5775) for the relief of the Liberty loan subscribers of the North Penn Bank, of Philadelphia, Pa.; Santa Rosa National Bank, Santa Rosa, Calif.; and Mineral City Bank, Mineral City, Ohio; to the Committee on Claims.

By Mr. FOCHT: A bill (H. R. 5776) for the relief of George D. Jones; to the Committee on Military Affairs.

Also, a bill (H. R. 5777) authorizing the Secretary of War to donate to the town of Robertsdale, Pa., one German cannon or fieldpiece; to the Committee on Military Affairs.

By Mr. FORDNEY: A bill (H. R. 5778) granting a pension to George Hetchler; to the Committee on Invalid Pensions.

By Mr. FREEMAN: A bill (H. R. 5779) granting a pension to Ellen B. Lathrop; to the Committee on Invalid Pensions.

Also, a bill (H. R. 5780) granting a pension to Hattie C. Spencer; to the Committee on Invalid Pensions.

Also, a bill (H. R. 5781) granting a pension to Helena Whitney; to the Committee on Invalid Pensions.

Also, a bill (H. R. 5782) granting a pension to Alida Payne; to the Committee on Invalid Pensions.

By Mr. GENSMAN: A bill (H. R. 5783) for the relief of W. F. Doorley; to the Committee on Claims.

By Mr. HOUGHTON: A bill (H. R. 5784) granting a pension to Frederick C. Harlacher; to the Committee on Invalid Pensions.

Also, a bill (H. R. 5785) granting a pension to Thaddeus M. Clarkson; to the Committee on Pensions.

Also, a bill (H. R. 5786) authorizing the Secretary of War to donate to the village of Canisteo, State of New York, one German cannon or fieldpiece; to the Committee on Military Affairs.

By Mr. KEARNS: A bill (H. R. 5787) granting a pension to Laura E. Daniels; to the Committee on Pensions.

Also, a bill (H. R. 5788) granting a pension to Sarah Gaddis; to the Committee on Invalid Pensions.

By Mr. KNUTSON: A bill (H. R. 5789) granting an increase of pension to Annie T. Barclay; to the Committee on Invalid Pensions.

Also, a bill (H. R. 5790) to pay Mike Setula $2,600 for injuries received at the hands of a Government employee; to the Committee on Claims.

Also, a bill (H. R. 5791) for the relief of Robert Russell; to the Committee on Claims.

Also, a bill (H. R. 5792) for the relief of A. C. Goddard; to the Committee on Claims.

Also, a bill (H. R. 5793) granting a pension to Charles Dueber; to the Committee on Pensions.

Also, a bill (H. R. 5794) granting a pension to Richard M. Van Dervort; to the Committee on Pensions.

Also, a bill (H. R. 5795) granting compensation to Charles Fortier; to the Committee on Interstate and Foreign Commerce.

By Mr. LAMPERT: A bill (H. R. 5796) granting an increase of pension to Julius A. Nemitz; to the Committee on Pensions.

By Mr. LINEBERGER: A bill (H. R. 5797) granting a pension to Mina Binder; to the Committee on Pensions.

Also, a bill (H. R. 5798) granting a pension to Sarah A. Dow; to the Committee on Invalid Pensions.

By Mr. LINTHICUM: A bill (H. R. 5799) authorizing the Secretary of War to donate to the town of Irvington, Baltimore, Md., one German cannon or fieldpiece; to the Committee on Military Affairs.

By Mr. LYON: A bill (H. R. 5800) for the relief of Josie N. Styron; to the Committee on Claims.

By Mr. MEAD: A bill (H. R. 5801) authorizing the Secretary of War to donate to the city of Orchard Park, N. Y., one German cannon or fieldpiece; to the Committee on Military Affairs.

Also, a bill (H. R. 5802) granting a pension to Bridget Keating; to the Committee on Invalid Pensions.

Also, a bill (H. R. 5803) granting an increase of pension to Alonzo Sidman; to the Committee on Invalid Pensions.

By Mr. MOORE of Ohio: A bill (H. R. 5804) granting a pension to John Washington Beardmore; to the Committee on Invalid Pensions.

By Mr. PERKINS: A bill (H. R. 5805) authorizing the Secretary of War to donate to the borough of Bogota, State of New Jersey, one German cannon or fieldpiece; to the Committee on Military Affairs.

By Mr. PURNELL: A bill (H. R. 5806) for the relief of Thomas Levi; to the Committee on War Claims.

By Mr. RAMSEYER: A bill (H. R. 5807) granting an increase of pension to Levi F. Howell; to the Committee on Pensions.

By Mr. SCHALL: A bill (H. R. 5808) for the relief of W. M. Carson; to the Committee on Claims.

By Mr. SHREVE: A bill (H. R. 5809) authorizing the Secretary of War to donate to the town of North East, State of Pennsylvania, one German cannon or fieldpiece; to the Committee on Military Affairs.

Also, a bill (H. R. 5810) authorizing the Secretary of War to donate to the town of Union City, State of Pennsylvania, one German cannon or fieldpiece; to the Committee on Military Affairs.

Also, a bill (H. R. 5811) authorizing the Secretary of War to donate to the city of Meadville, State of Pennsylvania, one German cannon or fieldpiece; to the Committee on Military Affairs.

Also, a bill (H. R. 5812) authorizing the Secretary of War to donate to the city of Titusville, State of Pennsylvania, one German cannon or fieldpiece; to the Committee on Military Affairs.

Also, a bill (H. R. 5813) authorizing the Secretary of War to donate to the city of Erie, State of Pennsylvania, one German cannon or fieldpiece; to the Committee on Military Affairs.

Also, a bill (H. R. 5814) authorizing the Secretary of War to donate to the State normal school at Edinboro, Pa., one German cannon or fieldpiece; to the Committee on Military Affairs.

Also, a bill (H. R. 5815) authorizing the Secretary of War to donate to the Elwood Home for Boys, at North Springfield, Pa., one German cannon or fieldpiece; to the Committee on Military Affairs.

Also, a bill (H. R. 5816) authorizing the Secretary of War to donate to the town of Saegertown, State of Pennsylvania, one German cannon or fieldpiece; to the Committee on Military Affairs.

By Mr. TAGUE: A bill (H. R. 5817) for the relief of Mrs. John Hanlon; to the Committee on War Claims.

By Mr. TEN EYCK: A bill (H. R. 5818) authorizing the Secretary of War to donate to the city of Cohoes, State of New York, one German cannon or fieldpiece; to the Committee on Military Affairs.

By Mr. TILSON: A bill (H. R. 5819) granting an increase of pension to Jessie Banta; to the Committee on Invalid Pensions.

By Mr. TREADWAY: A bill (H. R. 5820) to place Albert Hamilton on the retired list of the United States Marine Corps; to the Committee on Naval Affairs.

By Mr. VOLK: A bill (H. R. 5821) granting a pension to Charity L. Wentzel; to the Committee on Invalid Pensions.

Also, a bill (H. R. 5822) granting a pension to Esther A. Potter; 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:

460. By Mr. BLAKENEY: Petition of Grand Lodge of Maryland, Independent Order of Odd Fellows, William A. Jones, grand secretary, urging the passage of the Smith-Towner educational bill; to the Committee on Education.

461. Also, petition of Wilson-Martin Co., packers and provisioners, Baltimore, Md., protesting against the reporting of any packers' legislation out of committees without hearings; to the Committee on Agriculture.

462. Also, petition of the Jacob C. Shafer Co., pork and beef packers, Baltimore, Md., opposing the passage of House bills 14 and 232; to the Committee on Agriculture.

463. By Mr. CHALMERS: Petition of the MacBeth-Evans Glass Co., Toledo, Ohio, protesting against the Haugen bill (H. R. 4981); to the Committee on Agriculture.

464. By Mr. DALLINGER: Resolution of the convention of the diocese of Massachusetts relative to the disarmament question; to the Committee on Foreign Affairs.

465. Also, petition of the Watertown (Mass.) Knights of Columbus, urging relief for the disabled soldiers; to the Committee on Interstate and Foreign Commerce.

466. By Mr. FUNK: Petition of George A. Trapp, member of the Louis E. Davis Post, No. 56, American Legion, Bloomington, Ill., favoring all pending legislation whose aim is for the betterment of disabled soldiers, etc.; to the Committee on Ways and Means.

467. By Mr. GILLETT: Resolutions passed by the Chicago Aquarium Society (Inc.), opposing House bill 12466 and Senate bill 4529; to the Committee on the Public Lands.

468. Also, resolution memorializing the Congress to pass a protective tariff bill on wool, mutton, and lamb, adopted by the Legislature of the State of Minnesota; to the Committee on Ways and Means.

469. Also, petition of Charles L. Wright and others, of the State of Massachusetts, urging a repeal of the 10 per cent tax on yachts; to the Committee on Ways and Means.

470. Also, resolution of Woman's Medical Society of Springfield, Mass., for the relief of the disabled soldiers, sailors, and marines; to the Committee on Ways and Means.

471. Also, petition of Shattuck Men's Club, Methodist Episcopal Church, of Easthampton, Mass., urging relief of the disabled soldiers, sailors, and marines; to the Committee on Ways and Means.

472. By Mr. KISSEL: Petition of Doll and Stuffed Toy Manufacturers' Association, New York City; to the Committee on Ways and Means.

473. Also, petition of John Smith, of Brooklyn, N. Y., urging the recognition of the Irish republic; to the Committee on Foreign Affairs.

474. By Mr. LINTHICUM: Petition of Charles C. Kriel, Jacob C. Shafer Co., and C. Hohman & Sons, all of Baltimore, Md., opposing House bills 232 and 14 and Senate bill 659; to the Committee on Agriculture.

475. Also, petitions of Dr. Howard E. Ashbury, Baltimore, Md., opposing tax on X-ray plates, films, etc.; Joseph J. Scully, Baltimore, Md., opposing sales tax; and George Schafer Cigar Co., Baltimore, Md., protesting against increase of tax on domestic tobacco; to the Committee on Ways and Means.

476. Also, petition of James R. Cadden and Charles C. Masson, both of Baltimore, Md., favoring House bill 172; to the Committee on Military Affairs.

477. By Mr. LUFKIN: Petition of school committee, of Beverly, Mass., favoring the passage of legislation for the benefit of disabled soldiers, sailors, and marines; to the Committee on Interstate and Foreign Commerce.

478. By Mr. RAKER: Petition of the Los Angeles Chamber of Commerce, indorsing the China trade bill; to the Committee on Interstate and Foreign Commerce. Letter from the California Rex Spray Co., protesting against any increase in duty on Canadian lime; to the Committee on Ways and Means. Letter from the California Metal and Mineral Producers' Association, favoring the adoption of the antidumping and foreign exchange features of the emergency tariff bill; to the Committee on Ways and Means. Letter from W. E. Hammond and C. L. Roland, of Sacramento, Calif., indorsing House bill 2332; to the Committee on the Post Office and Post Roads.

479. Also, petition of the San Joaquin Automobile Trade Association, indorsing antidumping legislation; to the Committee on Ways and Means. Telegram from California Metal and Mineral Producers' Association, opposing any import duty on cyanide compounds used in mining; to the Committee on Ways and Means. Letter from F. L. Morgan Co., of San Francisco, Calif., urging protective tariff on greeting cards; to the Committee on Ways and Means. Resolution of San Francisco Chamber of Commerce, regarding tariff legislation; to the Committee on Ways and Means.

480. By Mr. ROSSDALE: Petition of the Bronx Board of Trade, New York City, that the board desires to be once more recorded in favor of the establishment of a national budget system; to the Select Committee on Budget.

481. By Mr. SCHALL: Resolution of Minneapolis Brewing Co., urging repeal of tax on cereal beverages; to the Committee on Ways and Means.

482. By Mr. SINCLAIR: Petition of the Rotary Club, Minot, N. Dak., urging the passage of five measures for the relief of disabled service men; to the Committee on Ways and Means.

483. Also, petition of citizens of Fargo, N. Dak., in mass meeting assembled, calling upon the Government of the United States to recognize the Irish republic; to the Committee on Foreign Affairs.

484. By Mr. VAILE: Petition of 3,617 members of the Sigma Alpha Epsilon Fraternity, asking the Government to secure the release of Xenophon Kalamatiano, an American citizen held prisoner by the soviet rulers of Russia; to the Committee on Foreign Affairs.

485. By Mr. WATSON: Memorial presented by the Bucks County Quarterly Meeting of Friends, held at Wrightstown, Pa., February 2, 1921, in favor of an international conference on disarmament; to the Committee on Foreign Affairs.