Congressional Record

SEVENTY-THIRD CONGRESS, SPECIAL SESSION OF THE SENATE

SENATE

SATURDAY, MARCH 4, 1933

JOHN NANCE GARNER, of Texas, Vice President of the United States, to whom the oath was administered at the close of the last regular session of the Seventy-second Congress, called the Senate to order at 12 o'clock meridian.

The Chaplain, Rev. ZeBarney T. Phillips, D.D., offered the following

PRAYER

Eternal God and Heavenly Father, before whose face the generations rise and pass away, who through all the ages hast led Thy children with the fire and cloud; hearken to our prayer and turn the heart of every citizen of the Republic unto Thee in this fateful hour of our own and the world's great need. Bestow Thy choicest blessings upon these Thy servants, who under Thee have been called to be President and Vice President of the United States. Give unto them the grace of true humility, the heart that knows no guile, the courage born of innocency of life, the gentle patience of the Christ, and, above all, the spirit of love that believes and hopes and endures, that they may be true leaders of Thy people.

Bless every Member of the Congress and all others in authority, that they may be a glorious company, the flower of men, to serve a model for this mighty world and to be the fair beginning of a time when, with every root of bitterness cast out, the good of all shall be the goal of each. Let Thy blessing rest upon the retiring President, Vice President, and Members of the Congress, to whom we pay our loving tribute. Bring the nations of the world, through an ever-increasing sense of fellowship, into one great family; hasten the time when war shall be no more, and may we never be content with any peace save that of Him who won His peace by making this world's ills His own, Jesus Christ our Lord. Amen.

PROCLAMATION

The VICE PRESIDENT. The clerk will read the proclamation of the President convening the Senate in extraordinary session.

The Chief Clerk (John C. Crockett) read the proclamation of the President, as follows:

CONVENING THE SENATE IN SPECIAL SESSION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas public interests require that the Senate of the United States be convened at 12 o'clock on the 4th day of March, 1933, to receive such communications as may be made by the Executive:

Now, therefore, I, Herbert Hoover, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Senate of the United States to convene at the Capitol, in the city of Washington, on the 4th day of March next, at 12 o'clock noon, of which all persons who shall at that time be entitled to act as Members of that body are hereby required to take notice.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 14th day of February, in the year of our Lord nineteen hundred and thirty-three, and of the independence of the United States of America the one hundred and fifty-seventh.

HERBERT HOOVER.

By the President:
[SEAL]

HENRY L. STIMSON,
Secretary of State.

ADDRESS BY VICE PRESIDENT GARNER

The VICE PRESIDENT. Senators, this is my first and possibly it may be my last opportunity to address the Senate. I am particularly anxious to ingratiate myself into your favorable consideration. Knowing from some observation the disposition of the Senate not to discuss any matter unless it is important and under particular consideration, I deem it inappropriate to say more than that I come as your Presiding Officer to cooperate, to be helpful, to do the best I can to help you conduct the proceedings of the Senate.

In carrying out that idea which I have, I shall forego saying more than that I am happy to be over here, I am happy to meet you all, and glad of the opportunity to get better acquainted with Senators.

CREDENTIALS

Mr. McKELLAR. Mr. President, I present the credentials of the Hon. NATHAN L. BACHMAN, appointed by the Governor of Tennessee to succeed the Hon. Cordell Hull, and ask that they may be read.

The VICE PRESIDENT. The credentials will be received and read by the clerk.

The Chief Clerk read the credentials, as follows:

THE STATE OF TENNESSEE,
EXECUTIVE CHAMBER.

To all who shall see these presents, greeting:

Know ye, that whereas, under chapter 8, section 3, of the first extra session of the legislature of 1913, the Governor is authorized to appoint a Senator in the Congress of the United States when vacancies occur, and whereas a vacancy has occurred caused by the resignation of Senator Cordell Hull, of Carthage, Tenn., that he might accept the appointment of Secretary of State of the United States tendered him by President-elect Franklin D. Roosevelt; and having confidence in the ability and integrity of Hon. NATHAN L. BACHMAN, of Chattanooga, Tenn.:

Now, therefore, I, Hill McAlister, Governor of the State of Tennessee, by virtue of the power and authority in me vested, do commission Hon. NATHAN L. BACHMAN to fill said office of Senator in the Congress of the United States until his successor is elected and qualified agreeably to the Constitution and laws, during the term, with all the powers, privileges, and emoluments thereunto, appertaining by law.

In testimony whereof, I, Hill McAlister, Governor as aforesaid, have hereunto set my hand and caused the great seal of the State to be affixed at the department in Nashville on this 4th day of March A.D. 1933.

HILL MCALISTER, *Governor.*
[SEAL]
ERNEST N. HASTON,
Secretary of State.

The VICE PRESIDENT. The credentials will be placed on file.

Mr. GLASS. Mr. President, I send to the desk the certificate of the Governor of Virginia attesting the appointment of Hon. HARRY F. BYRD as a Senator from the State of Virginia, and ask that they may be read and that Mr. BYRD may take the oath of office.

The VICE PRESIDENT. The certificate will be read.

The Chief Clerk read the certificate, as follows:

COMMONWEALTH OF VIRGINIA,
GOVERNOR'S OFFICE.

To the PRESIDENT OF THE SENATE OF THE UNITED STATES:

This is to certify that pursuant to the power vested in me by the Constitution of the United States and the laws of the Com-

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monwealth of Virginia, I, John Garland Pollard, Governor of the said Commonwealth, do hereby appoint HARRY FLOOD BYRD a Sentor from the said Commonwealth to represent the said Commonwealth in the Senate of the United States until the vacancy therein, caused by the resignation of Hon. Claude A. Swanson, is filled by election as provided by law.

Given under my hand and under the great seal of the Commonwealth, at Richmond, this 4th day of March A.D. 1933, and in the one hundred and fifty-seventh year of the Commonwealth.

JNO. GARLAND POLLARD, *Governor.*

By the Governor:
[SEAL]

PETER SAUNDERS,
Secretary of the Commonwealth.

The VICE PRESIDENT. The credentials will be placed on file.

ADMINISTRATION OF OATH

The VICE PRESIDENT. The clerk will call the names of the newly elected Senators, and, as their names are called, they will present themselves at the desk and take the oath of office.

The Chief Clerk called the names of Mr. ADAMS, Mr. BACHMAN, Mr. BARKLEY, and Mr. BLACK.

These Senators, escorted by Mr. COSTIGAN, Mr. MCKELLAR, Mr. LOGAN, and Mr. BANKHEAD, respectively, advanced to the Vice President's desk, and the oath of office prescribed by law was administered to them by the Vice President.

The Chief Clerk called the names of Mr. BONE, Mr. BROWN, Mr. BULKLEY, and Mr. BYRD.

These Senators, escorted by Mr. DILL, Mr. KEYES, Mr. FESS, and Mr. GLASS, respectively, advanced to the Vice President's desk, and the oath of office prescribed by law was administered to them by the Vice President.

The Chief Clerk called the names of Mrs. CARAWAY, Mr. CLARK, Mr. DALE, and Mr. DAVIS.

These Senators, escorted by Mr. ROBINSON of Arkansas, Mr. PATTERSON, Mr. AUSTIN, and Mr. REED, respectively, advanced to the Vice President's desk, and the oath of office prescribed by law was administered to them by the Vice President.

The Chief Clerk called the names of Mr. DIETERICH, Mr. DUFFY, Mr. FLETCHER, and Mr. GEORGE.

These Senators, escorted by Mr. LEWIS, Mr. LA FOLLETTE, Mr. TRAMMELL, and Mr. RUSSELL, respectively, advanced to the Vice President's desk, and the oath of office prescribed by law was administered to them by the Vice President.

The Chief Clerk called the names of Mr. HAYDEN, Mr. LONERGAN, Mr. MCADOO, and Mr. MCCARRAN.

These Senators, escorted by Mr. ASHURST, Mr. WALCOTT, Mr. JOHNSON, and Mr. PITTMAN, respectively, advanced to the Vice President's desk, and the oath of office prescribed by law was administered to them by the Vice President.

The Chief Clerk called the names of Mr. MCGILL, Mr. MURPHY, Mr. NORBECK, and Mr. NYE.

These Senators, escorted by Mr. CAPPER, Mr. DICKINSON, Mr. BULOW, and Mr. FRAZIER, respectively, advanced to the Vice President's desk, and the oath of office prescribed by law was administered to them by the Vice President.

The Chief Clerk called the names of Mr. OVERTON, Mr. POPE, Mr. REYNOLDS, and Mr. SMITH.

These Senators, escorted by Mr. LONG, Mr. BORAH, Mr. BAILEY, and Mr. BYRNES, respectively, advanced to the Vice President's desk, and the oath of office prescribed by law was administered to them by the Vice President.

The Chief Clerk called the names of Mr. STEIWER, Mr. THOMAS of Utah, Mr. THOMAS of Oklahoma, Mr. TYDINGS, Mr. VAN NUYS, and Mr. WAGNER.

These Senators, escorted by Mr. MCNARY, Mr. KING, Mr. GORE, Mr. PITTMAN (Mr. GOLDSBOROUGH being absent), Mr. ROBINSON of Indiana, and Mr. COPELAND, respectively, advanced to the Vice President's desk, and the oath of office prescribed by law was administered to them by the Vice President.

ORDER FOR MEETING

Mr. ROBINSON of Arkansas. I move the following order, that at the conclusion of the inaugural address and at the hour of 2 o'clock the Senate reassemble in the Senate Chamber.

The VICE PRESIDENT. The question is on the motion of the Senator from Arkansas.

The motion was agreed to.

LIST OF SENATORS BY STATES

Alabama.—Hugo L. Black and John H. Bankhead.
Arizona.—Henry F. Ashurst and Carl Hayden.
Arkansas.—Joseph T. Robinson and Mrs. Hattie W. Caraway.
California.—Hiram W. Johnson and William Gibbs McAdoo.
Colorado.—Edward P. Costigan and Alva B. Adams.
Connecticut.—Frederic C. Walcott and Augustine Lonergan.
Delaware.—Daniel O. Hastings and John G. Townsend, Jr.
Florida.—Duncan U. Fletcher and Park Trammell.
Georgia.—Walter F. George and Richard B. Russell, Jr.
Idaho.—William E. Borah and James P. Pope.
Illinois.—J. Hamilton Lewis and William H. Dieterich.
Indiana.—Arthur R. Robinson and Frederick Van Nuys.
Iowa.—L. J. Dickinson and Louis Murphy.
Kansas.—Arthur Capper and George McGill.
Kentucky.—Alben W. Barkley and M. M. Logan.
Louisiana.—Huey P. Long and John H. Overton.
Maine.—Frederick Hale and Wallace H. White, Jr.
Maryland.—Millard E. Tydings and Phillips Lee Goldsborough.
Massachusetts.—David I. Walsh and Marcus A. Coolidge.
Michigan.—James Couzens and Arthur H. Vandenberg.
Minnesota.—Henrik Shipstead and Thomas D. Schall.
Mississippi.—Pat Harrison and Hubert D. Stephens.
Missouri.—Roscoe C. Patterson and Bennett Champ Clark.
Montana.—Burton K. Wheeler.
Nebraska.—George W. Norris and Robert B. Howell.
Nevada.—Key Pittman and Patrick McCarran.
New Hampshire.—Henry W. Keyes and Fred H. Brown.
New Jersey.—Hamilton F. Kean and W. Warren Barbour.
New Mexico.—Sam G. Bratton and Bronson Cutting.
New York.—Royal S. Copeland and Robert F. Wagner.
North Carolina.—Josiah William Bailey and Robert R. Reynolds.
North Dakota.—Lynn J. Frazier and Gerald P. Nye.
Ohio.—Simeon D. Fess and Robert J. Bulkley.
Oklahoma.—Elmer Thomas and Thomas P. Gore.
Oregon.—Charles L. McNary and Frederick Steiwer.
Pennsylvania.—David A. Reed and James J. Davis.
Rhode Island.—Jesse H. Metcalf and Felix Hebert.
South Carolina.—Ellison D. Smith and James F. Byrnes.
South Dakota.—Peter Norbeck and W. J. Bulow.
Tennessee.—Kenneth McKellar and Nathan L. Bachman.
Texas.—Morris Sheppard and Tom Connally.
Utah.—William H. King and Elbert D. Thomas.
Vermont.—Porter H. Dale and Warren R. Austin.
Virginia.—Carter Glass and Harry Flood Byrd.
Washington.—C. C. Dill and Homer T. Bone.
West Virginia.—Henry D. Hatfield and M. M. Neely.
Wisconsin.—Robert M. La Follette, Jr., and F. Ryan Duffy.
Wyoming.—John B. Kendrick and Robert D. Carey.

INAUGURATION OF THE PRESIDENT OF THE UNITED STATES

The VICE PRESIDENT. The Deputy Sergeant at Arms will carry out the order of the Senate for the inauguration of the President of the United States on the east front of the Capitol.

The President-elect, Franklin D. Roosevelt, escorted by the Chief Justice of the Supreme Court of the United States and the Associate Justices of the Supreme Court of the United States, accompanied by the Joint Committee on Arrangements, followed by the members of the Diplomatic Corps, the Chief of Staff of the Army, the Chief of Naval Operations, and the Commandant of the Marine Corps, the Members of the Senate, preceded by the Vice President, the Deputy Sergeant at Arms (J. Mark Trice), and the Secretary of the Senate (Edwin P. Thayer), the Members of the House of Representatives, and other guests of the Senate

proceeded to the inaugural platform at the east front of the Capitol.

The oath of office having been administered to the President-elect by the Chief Justice of the United States, he delivered the inaugural address.

INAUGURAL ADDRESS OF PRESIDENT FRANKLIN D. ROOSEVELT

I am certain that my fellow Americans expect that on my induction into the Presidency I will address them with a candor and a decision which the present situation of our Nation impels. This is preeminently the time to speak the truth, the whole truth, frankly and boldly. Nor need we shrink from honestly facing conditions in our country today. This great Nation will endure as it has endured, will revive and will prosper. So, first of all, let me assert my firm belief that the only thing we have to fear is fear itself—nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance. In every dark hour of our national life a leadership of frankness and vigor has met with that understanding and support of the people themselves which is essential to victory. I am convinced that you will again give that support to leadership in these critical days.

In such a spirit on my part and on yours we face our common difficulties. They concern, thank God, only material things. Values have shrunken to fantastic levels; taxes have risen; our ability to pay has fallen; government of all kinds is faced by serious curtailment of income; the means of exchange are frozen in the currents of trade; the withered leaves of industrial enterprise lie on every side; farmers find no markets for their produce; the savings of many years in thousands of families are gone.

More important, a host of unemployed citizens face the grim problem of existence, and an equally great number toil with little return. Only a foolish optimist can deny the dark realities of the moment.

Yet our distress comes from no failure of substance. We are stricken by no plague of locusts. Compared with the perils which our forefathers conquered because they believed and were not afraid, we have still much to be thankful for. Nature still offers her bounty, and human efforts have multiplied it. Plenty is at our doorstep, but a generous use of it languishes in the very sight of the supply. Primarily this is because the rulers of the exchange of mankind's goods have failed, through their own stubbornness and their own incompetence, have admitted their failure, and abdicated. Practices of the unscrupulous money changers stand indicted in the court of public opinion, rejected by the hearts and minds of men.

True they have tried, but their efforts have been cast in the pattern of an outworn tradition. Faced by failure of credit, they have proposed only the lending of more money. Stripped of the lure of profit by which to induce our people to follow their false leadership, they have resorted to exhortations, pleading tearfully for restored confidence. They know only the rules of a generation of self-seekers. They have no vision, and when there is no vision the people perish.

The money changers have fled from their high seats in the temple of our civilization. We may now restore that temple to the ancient truths. The measure of the restoration lies in the extent to which we apply social values more noble than mere monetary profit.

Happiness lies not in the mere possession of money; it lies in the joy of achievement, in the thrill of creative effort. The joy and moral stimulation of work no longer must be forgotten in the mad chase of evanescent profits. These dark days will be worth all they cost us if they teach us that our true destiny is not to be ministered unto but to minister to ourselves and to our fellow men.

Recognition of the falsity of material wealth as the standard of success goes hand in hand with the abandonment of the false belief that public office and high political position are to be valued only by the standards of pride of place and personal profit; and there must be an end to a conduct in banking and in business which too often has given to a sacred trust the likeness of callous and selfish wrongdoing. Small wonder that confidence languishes, for it thrives only on honesty, on honor, on the sacredness of obligations, on faithful protection, on unselfish performance; without them it can not live.

Restoration calls, however, not for changes in ethics alone. This Nation asks for action, and action now.

Our greatest primary task is to put people to work. This is no unsolvable problem if we face it wisely and courageously. It can be accomplished in part by direct recruiting by the Government itself, treating the task as we would treat the emergency of a war, but at the same time, through this employment, accomplishing greatly needed projects to stimulate and reorganize the use of our natural resources.

Hand in hand with this we must frankly recognize the overbalance of population in our industrial centers and, by engaging on a national scale in a redistribution, endeavor to provide a better use of the land for those best fitted for the land. The task can be helped by definite efforts to raise the values of agricultural products and with this the power to purchase the output of our cities. It can be helped by preventing realistically the tragedy of the growing loss through foreclosure of our small homes and our farms. It can be helped by insistence that the Federal, State, and local Governments act forthwith on the demand that their cost be drastically reduced. It can be helped by the unifying of relief activities which to-day are often scattered, uneconomical, and unequal. It can be helped by national planning for and supervision of all forms of transportation and of communications and other utilities which have a definitely public character. There are many ways in which it can be helped, but it can never be helped merely by talking about it. We must act and act quickly.

Finally, in our progress toward a resumption of work we require two safeguards against a return of the evils of the old order; there must be a strict supervision of all banking and credits and investments; there must be an end to speculation with other people's money, and there must be provision for an adequate but sound currency.

These are the lines of attack. I shall presently urge upon a new Congress in special session detailed measures for their fulfillment, and I shall seek the immediate assistance of the several States.

Through this program of action we address ourselves to putting our own national house in order and making income balance outgo. Our international trade relations, though vastly important, are in point of time and necessity secondary to the establishment of a sound national economy. I favor as a practical policy the putting of first things first. I shall spare no effort to restore world trade by international economic readjustment, but the emergency at home can not wait on that accomplishment.

The basic thought that guides these specific means of national recovery is not narrowly nationalistic. It is the insistence, as a first consideration, upon the interdependence of the various elements in and parts of the United States—a recognition of the old and permanently important manifestation of the American spirit of the pioneer. It is the way to recovery. It is the immediate way. It is the strongest assurance that the recovery will endure.

In the field of world policy I would dedicate this Nation to the policy of the good neighbor—the neighbor who resolutely respects himself and, because he does so, respects the rights of others—the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbors.

If I read the temper of our people correctly, we now realize as we have never realized before our interdependence on each other; that we can not merely take but we must give as well; that if we are to go forward, we must move as a trained and loyal army willing to sacrifice for the good of a common discipline, because without such discipline no progress is made, no leadership becomes effective. We are, I know, ready and willing to submit our lives and property to such discipline, because it makes possible a leadership which aims at a larger good. This I propose to offer, pledging that the larger purposes will bind

upon us all as a sacred obligation, with a unity of duty hitherto evoked only in time of armed strife.

With this pledge taken, I assume unhesitatingly the leadership of this great army of our people dedicated to a disciplined attack upon our common problems.

Action in this image and to this end is feasible under the form of government which we have inherited from our ancestors. Our Constitution is so simple and practical that it is possible always to meet extraordinary needs by changes in emphasis and arrangement without loss of essential form. That is why our constitutional system has proved itself the most superbly enduring political mechanism the modern world has produced. It has met every stress of vast expansion of territory, of foreign wars, of bitter internal strife, of world relations.

It is to be hoped that the normal balance of executive and legislative authority may be wholly adequate to meet the unprecedented task before us. But it may be that an unprecedented demand and need for undelayed action may call for temporary departure from that normal balance of public procedure.

I am prepared under my constitutional duty to recommend the measures that a stricken nation in the midst of a stricken world may require. These measures, or such other measures as the Congress may build out of its experience and wisdom, I shall seek, within my constitutional authority, to bring to speedy adoption.

But in the event that the Congress shall fail to take one of these two courses, and in the event that the national emergency is still critical, I shall not evade the clear course of duty that will then confront me. I shall ask the Congress for the one remaining instrument to meet the crisis—broad Executive power to wage a war against the emergency, as great as the power that would be given to me if we were in fact invaded by a foreign foe.

For the trust reposed in me I will return the courage and the devotion that befit the time. I can do no less.

We face the arduous days that lie before us in the warm courage of national unity; with the clear consciousness of seeking old and precious moral values; with the clean satisfaction that comes from the stern performance of duty by old and young alike. We aim at the assurance of a rounded and permanent national life.

We do not distrust the future of essential democracy. The people of the United States have not failed. In their need they have registered a mandate that they want direct, vigorous action. They have asked for discipline and direction under leadership. They have made me the present instrument of their wishes. In the spirit of the gift I take it.

In this dedication of a Nation we humbly ask the blessing of God. May He protect each and every one of us. May He guide me in the days to come.

After the President's inaugural address,

The Senate met at 2 o'clock p. m., on the expiration of the recess, and the Secretary of the Senate (Edwin P. Thayer) called the Senate to order.

Mr. PITTMAN. I ask unanimous consent that the Senate take a recess for 15 minutes.

The SECRETARY. Is there objection? There being no objection, it is so ordered.

Thereupon the Senate took a recess for 15 minutes, when it reassembled and the Vice President resumed the chair.

MESSAGES FROM THE PRESIDENT

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries.

Mr. ROBINSON of Arkansas. Mr. President, I ask that the messages from the President be laid before the Senate.

Mr. LA FOLLETTE. I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

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

Adams	Bailey	Black	Brown
Ashurst	Bankhead	Bone	Bulkley
Austin	Barbour	Borah	Bulow
Bachman	Barkley	Bratton	Byrd
Byrnes	Glass	McAdoo	Russell
Capper	Goldsborough	McCarran	Schall
Caraway	Gore	McGill	Sheppard
Carey	Hale	McKellar	Smith
Clark	Harrison	McNary	Steiwer
Coolidge	Hastings	Metcalf	Stephens
Copeland	Hatfield	Murphy	Thomas, Okla.
Costigan	Hayden	Neely	Thomas, Utah
Couzens	Hebert	Norbeck	Townsend
Dale	Johnson	Norris	Trammell
Davis	Kean	Nye	Tydings
Dickinson	Kendrick	Overton	Vandenberg
Dieterich	Keyes	Patterson	Van Nuys
Dill	King	Pittman	Wagner
Duffy	La Follette	Pope	Walcott
Fess	Lewis	Reed	Walsh
Fletcher	Logan	Reynolds	Wheeler
Frazier	Lonergan	Robinson, Ark.	White
George	Long	Robinson, Ind.	

Mr. SHEPPARD. My colleague the junior Senator from Texas [Mr. CONNALLY] is unavoidably detained on account of illness. This announcement may stand for the day.

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

EXECUTIVE SESSION

Mr. ROBINSON of Arkansas. 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.

The VICE PRESIDENT. The Chair lays before the Senate the following messages from the President of the United States.

Mr. McNARY. Mr. President, this is a procedure that is sanctioned by practice and is a courtesy frequently extended incoming administrations. I have no objection to it, and so far as I am concerned the confirmation of the nominations may take place this afternoon. However, it must be said that upon the objection of one Senator the nominations would have to be referred to committees. I repeat, however, that so far as I am concerned I have no objection to this procedure.

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

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

Mr. McNARY. I yield.

Mr. REED. Are we to understand that these nominations are only of Cabinet officers?

Mr. McNARY. They are of Cabinet officers only.

Mr. ROBINSON of Arkansas. Mr. President, everyone, I think, understands the necessity for the new President, President Roosevelt, having the advice and assistance of his Cabinet. Many of the present Cabinet have already prepared to leave the city, and in any event they cannot function. It is for that reason that this session was called. The custom has been to take prompt action respecting nominations of Cabinet members. I, therefore, ask unanimous consent for the present consideration of the nominations relating to the President's Cabinet.

The VICE PRESIDENT. Is there objection? The Chair hears none. The clerk will state in order the nominations transmitted by the message of the President.

SECRETARY OF STATE

The Chief Clerk read the nomination of Cordell Hull, of Tennessee, to be Secretary of State.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

SECRETARY OF THE TREASURY

The Chief Clerk read the nomination of William H. Woodin, of New York, to be Secretary of the Treasury.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to this nomination?

Mr. COUZENS. Mr. President, I have every desire to cooperate in the confirmation of the President's Cabinet, but I should like to ask some Member of the Senate who is close enough to the President or to Mr. Woodin to give the Senate some idea as to what the investments and holdings of Mr. Woodin are, because in the past it is well known that we have had considerable controversy, as the Senator from Pennsylvania will recall, with respect to holdings of other

Secretaries of the Treasury, and if it is possible for anyone on the other side of the Chamber to advise us in that respect, I should like to know before we confirm Mr. Woodin.

Mr. COPELAND. Mr. President, I have known Mr. Woodin for a great many years. There is no finer example of an outstanding, loyal, devoted citizen than we find in this splendid character. He is a man of large interests. He has, for a long time, been president of the American Car & Foundry Co. I am advised that Mr. Woodin has divested himself of any office, association, or holding which would embarrass him in the least in holding the office of Secretary of the Treasury or which would interfere with his immediate confirmation.

Mr. REED. Reserving the right to object, I should like an answer to my question, because, if these are only Cabinet nominations, I agree with the Senator that they should be confirmed at once.

Mr. ROBINSON of Arkansas. I shall not ask for the consideration of other nominations, at least at this time.

Mr. McNARY. I was about to reply to the Senator from Pennsylvania, and to say that it was the understanding that none other than Cabinet nominations should be considered at this time.

Mr. WAGNER. Mr. President, I can only add to what my colleague [Mr. COPELAND] has said by stating that my information is that Mr. Woodin has divested himself of all his business interests that might raise any question. I have known Mr. Woodin for some years. He is regarded as one of our most distinguished industrialists, a man of great capacity, and of very high character.

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

Mr. WAGNER. I yield.

Mr. COUZENS. Will the Senator from New York advise us of the manner in which Mr. Woodin has divested himself of the interests to which his colleague just referred?

Mr. WAGNER. My information is derived from what I have read in the newspapers. I am sure that if there should be any embarrassment at all because of his holdings he will divest himself of those holdings. The character of the man is such that I think the country is very fortunate and the President is very fortunate in securing the services of Mr. Woodin in these grave days.

Mr. GLASS. Mr. President, I think perhaps I feel authorized to say that Mr. Woodin fully understands that he was compelled to divest himself of those business interests which come within the meaning of the statute of prohibition, including all his bank stock and all interests that would identify him as being engaged in commerce. I do not get it from the newspapers; I get it from Mr. Woodin, with whom I had a personal conversation on that particular subject. I am sure that has been done. As to the manner of doing it I do not pretend to say.

Mr. STEIWER. Mr. President——

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

Mr. GLASS. I yield the floor.

Mr. STEIWER. I do not care to interrupt the Senator from Virginia; but the Members of the Senate may recall, and those who have served upon the Judiciary Committee most certainly will recall, that the question of eligibility of the Secretary of the Treasury was submitted to the Judiciary Committee some time since under the resolution of the Senator from Tennessee [Mr. McKELLAR].

The report presented from that committee disclosed the opinion of the majority of the committee to be that mere ownership of stock in a corporation did not render the nominee ineligible for the position of Secretary of the Treasury. So that if Mr. Woodin has divested himself of his position as director and as an executive officer, even though he has retained certain stock ownership, that in and of itself, within the opinion of the majority of the committee, would not render him ineligible.

Mr. GLASS. I felicitate myself on being such a good lawyer, though not a member of the Judiciary Committee. I told Mr. Woodin exactly that at his interview with me. When it came to the matter of his bank stock, I do not know whether he followed the example of another Secretary of the Treasury on one occasion and has given it to his wife, or whether his wife will follow the example of the wife of another Secretary of the Treasury and refuse to give it back to him. [Laughter.]

Mr. COUZENS. Mr. President, I desire to ask the Senator from Virginia a question, because I have a very high regard for his opinion as to the ethics of the matter, as well as the technical legal construction. The question is, In the opinion of the Senator from Virginia, would it be of the utmost propriety for a Secretary of the Treasury to hold large amounts of stock in car and foundry institutions selling to railroads that come under governmental jurisdiction, or does the Senator think that that situation would be at least unethical?

Mr. GLASS. I venture the opinion that it would be lawful for him to do that. I can not answer about a question of ethics for other people; there are so many different opinions as to that.

I feel perfectly convinced that Mr. Woodin has done everything that is required by the statute. As to the question of good taste, that is a matter for him to determine for himself. I may add, however, that I am sure the Senator from Michigan will agree with me that the proposed new Secretary of the Treasury could not be any greater offender in that respect than we have had heretofore.

Mr. COUZENS. Mr. President, I think it is unnecessary for me to repeat what I have said over and over again about the situation to which the Senator from Virginia has just referred. I desire to say, however—and I say it without personal acquaintance with Mr. Woodin or any of his past record—that I should consider it most unethical and improper, whether legal or otherwise, for any Secretary of the Treasury to hold large amounts of railroad stock, or of the stock of car and locomotive manufacturers who are selling to railroads, when it is perfectly obvious that there is a very close relation now, both financially and in a regulatory way, between the railroads and the Government; and I should hope that with Mr. Woodin's confirmation he would think, as I am sure the Senator from Virginia thinks, and I think, that it would at least be most unethical, even if legal.

Mr. NORRIS. Mr. President, the Senator from Oregon [Mr. STEIWER] referred to an investigation made by the Judiciary Committee. I did not intend to say anything in this connection, and would not have done so if it had not been for that reference; but I had quite an intense feeling on that subject at the time, because when the resolution proposed by the Senator from Tennessee [Mr. McKELLAR] was before the Senate I opposed its adoption. I did not want the question referred to the Judiciary Committee. While it propounded a strictly legal question, I knew that political feeling would creep into it, and that it would be practically impossible to divest the question of the political considerations that would enter into it. I do not charge anybody on the committee with doing anything that he did not believe was correct. Nevertheless, human beings are human beings, and often they can not divest themselves of the political prejudice and the partisan feeling that gets into those things.

I was one of the committee that wrote a minority report, joined in by others, in which we held that the then Secretary of the Treasury was disqualified under the law. With me it was not a question of what was ethical conduct. I thought the law went farther than the law ought to go; but when, over my objection, the matter was referred to the committee, I went into it in good faith and gave it a great deal of attention. There was, as I remember now, no majority report. There were four or five reports, all minority reports. The report in which I joined, I think, had the names of more members attached to it than any other report that was presented.

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

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

Mr. NORRIS. I do.

Mr. STEIWER. I am quite certain there was a majority report. I had the honor of presenting it on behalf of the

committee. It was subscribed to, I think, by nine members. Then, there were two or three minority reports.

Mr. NORRIS. The Senator may be right. I have not the reports before me, and I have not thought of the matter for a year or so; but I was laboring under the impression that no majority report was made. I realize that I was human, like everybody else, but I do not believe that I had any prejudice in the matter when I commenced the study of it. I commenced the investigation of it rather with the belief that the then Secretary of the Treasury was qualified under the law; but the law is very severe, as I remember it now, and it seemed to me under that law that he was clearly disqualified.

Mr. COSTIGAN. Mr. President——

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

Mr. NORRIS. In just a moment.

The Senate took no action on any of those reports; so we at least have the question undecided as far as the Senate is concerned. I do not want, without our taking up the matter in the regular way, to have any of the reports approved that were made by the Judiciary Committee. It seems to me it should not be done until they are fully discussed. So I do not believe it is correct to say that this question has been settled by action of the Senate or settled by action of any of its committees.

I yield to the Senator from Colorado.

Mr. COSTIGAN. Mr. President, in view of the references to the statute or statutes touching the qualifications of the Secretary of the Treasury, may I ask the able Senator from Nebraska whether he has before him the language of the law?

Mr. NORRIS. I have not it before me. If I had known that this matter was coming up I would have had it here; but the statute is copied in the report which I made to the Senate in the preceding Congress.

Mr. COSTIGAN. May I request that the statute be incorporated as part of today's proceedings?

Mr. NORRIS. If the report may be sent for and obtained, I shall be glad to accommodate the Senator at once, because I am sure the statute is copied in the report.

Mr. REED. Mr. President, will the Senator permit an interruption?

Mr. NORRIS. I will.

Mr. REED. May I suggest that there are two statutes involved. One is with relation to the qualifications of the Secretary of the Treasury and forbids him to be engaged in commerce. It was the result of agitation over Robert Morris, as I recall. The other is a general statute relating to members of the Federal Reserve Board and forbids them to own bank stocks. Both those statutes apply to the Secretary of the Treasury.

Mr. NORRIS. Yes. I will say to the Senator from Pennsylvania that the statute under which the dispute really arises is not the one referred to by the Senator in regard to the Federal Reserve Board. I do not think there is any dispute about that. That is plain.

Mr. REED. I think the Senator is right about that, because its terms are so plain; but the phrase "carrying on the business of trade or commerce," as used in the other act, has always been in doubt.

Mr. NORRIS. Yes; that is true.

Mr. BORAH. Mr. President, I desire to ask the Senator a question.

Mr. NORRIS. I yield to the Senator from Idaho.

Mr. BORAH. Am I not correct when I say that first a subcommittee was appointed?

Mr. NORRIS. Yes; the Senator is correct.

Mr. BORAH. That subcommittee consisted of the Senator from Nebraska [Mr. NORRIS], the Senator from Montana [Mr. Walsh], and myself.

Mr. NORRIS. Yes. I do not remember about the personnel of the subcommittee, but the matter was first considered by a subcommittee.

Mr. BORAH. The Senator from Nebraska and the Senator from Montana came to one conclusion, which was that the Secretary of the Treasury was ineligible.

Mr. NORRIS. Yes.

Mr. BORAH. And the Senator from Idaho reached a different conclusion.

If the opinions are printed, I should like to have both opinions put in the RECORD.

Mr. COPELAND. Mr. President——

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

Mr. NORRIS. Unless the Senator desires to ask me a question, let me make one statement; then I will yield the floor.

Mr. COPELAND. I will wait until the Senator is through.

Mr. NORRIS. None of these opinions, as I remember, were printed in the RECORD; but they are all printed in a Senate document. They are all in one pamphlet.

Mr. ROBINSON of Arkansas. Mr. President, will the Senator yield?

Mr. NORRIS. I yield to the Senator from Arkansas.

Mr. ROBINSON of Arkansas. Was there a report of the subcommittee to the full committee?

Mr. NORRIS. Yes.

Mr. ROBINSON of Arkansas. Did the full committee take any action and report to the Senate?

Mr. NORRIS. Yes; action was taken by the full committee.

Mr. ROBINSON of Arkansas. Did it make a report on the construction of the statute?

Mr. NORRIS. It did; and that report was filed with the Senate, and no action was ever taken.

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

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

Mr. NORRIS. I do.

Mr. KING. The Senator will recall that the Senator from Idaho [Mr. BORAH] and one other Senator whose name I have forgotten and I took a position adverse to the position taken by the Senator from Nebraska.

Mr. NORRIS. No; I think the Senator is wrong. The Senator from Idaho did not join with the Senator from Oregon in that opinion, as I remember. He gave a separate opinion of his own, a very short one. The Senator from Oregon made a report joined in by several other Senators. The report that I made was joined in by the Senator from Montana [Mr. Walsh], as I remember now, the Senator from Wisconsin [Mr. BLAINE], and some others. The Senator from Arizona [Mr. ASHURST] himself made a minority report that was very short.

Mr. KING. This situation, of course, illustrates the infirmity of the human mind; but I feel quite sure that the Senator from Idaho and one other Senator—I do not say it was the Senator from Oregon—and I took a position quite in harmony with the position taken by the Senator from Virginia [Mr. GLASS], and those associated with him. We held that there was no disqualification of Mr. Mellon to hold office, provided that he was not directly concerned in the activities of a corporation, in which he held stock, that was operating in Canada.

Mr. WAGNER. Mr. President, I want to ask the Senator whether there is any suggestion that Mr. Woodin is the owner of securities.

Mr. NORRIS. Oh, no; I have no personal information about Mr. Woodin.

Mr. WAGNER. I am relying on my general knowledge of Mr. Woodin. I know he is a man of high character and has a very high conception of public office. I am willing to rely on him.

Mr. REED. Mr. President, will the Senator from Nebraska yield?

Mr. NORRIS. I yield.

Mr. REED. It occurs to me that we are off the question somewhat. The Senator from Virginia [Mr. GLASS] has told us that he has discussed these statutes with Mr. Woodin.

Mr. Woodin knows what the law is. We have no evidence before us to show that he has not scrupulously complied with the law, and until we have some such evidence, or until the charge is made, it seems to me that we should not hesitate to confirm him. If he has done wrong, he will be subject to impeachment; he will be subject to prosecution. I am sure, from what I am told of Mr. Woodin, he would not lay himself open to such a charge to be made truthfully against him. Therefore I suggest that we go ahead and act upon the confirmation now.

Mr. NORRIS. Mr. President, in reply to what the Senator from Pennsylvania has said, I know nothing about this nominee whatever; but if there is any doubt about it, if any Senator thinks it ought to be gone into by a committee, I suggest that the matter be referred to a committee. It would be no disrespect to Mr. Woodin. I would not like to have the Senate dissatisfied with its action afterward. As far as I am concerned, I know nothing about Mr. Woodin, and have no objection to the immediate confirmation of his nomination.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

Mr. NORRIS subsequently said: Mr. President, I now have the report made in regard to the qualifications of Secretary Mellon, and I find that the majority report, which was made by the Senator from Oregon [Mr. STEIWER], was concurred in by Senators Overman, Deneen, Gillette, Robinson of Indiana, Stephens, Waterman, Hastings, and Burton.

The first minority report was made by myself, concurred in by Senator Caraway, Senator Walsh of Montana, and Senator Blaine, of Wisconsin.

Senator Blaine, in addition to concurring in that opinion, added a page or so of opinion of his own.

Senator Walsh of Montana, who concurred in the report I had submitted, filed his individual views at considerable length.

Senator BORAH, Senator KING, and Senator DILL joined in another minority report.

Senator ASHURST submitted another minority report.

Mr. President, in the report is included the statute which has been discussed, so that by the printing of these various reports Senators will be enabled to see the statute and to follow the reasoning through of the various members of the committee who considered the question.

I ask unanimous consent that Report No. 7, a Senate document of the Seventy-first Congress, first session, be printed in the RECORD.

I ask, also, that a supplemental report, which I did not know the Senator from Oregon [Mr. STEIWER] had made, but which I find here, may be printed also in the RECORD.

If Senators want to read these various legal arguments, they will find them in the Senate documents to which I have referred.

There being no objection, the documents were ordered to be printed in the RECORD, as follows:

[Senate Report 7, part 1, Seventy-first Congress, first session]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. STEIWER, from the Committee on the Judiciary, submitted the following report (pursuant to S.Res. 2):

On March 5, 1929, the Senate of the United States passed the following resolution:

"*Resolved*, That the Committee on the Judiciary be, and it is hereby, directed to inquire into and report to the Senate—

"1. Whether the head of any department of the Government may legally hold office as such after the expiration of the term of the President by whom he was appointed.

"2. Whether in view of the provisions of the laws of the United States Andrew W. Mellon may legally hold the office of Secretary of the Treasury, reference being made to section 243 of title 5 of the Code of Laws of the United States of America, as follows:

"'SEC. 243. Restrictions upon Secretary of Treasury: No person appointed to the office of Secretary of the Treasury, or Treasurer, or Register, shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one half the aforesaid penalty of $3,000, when recovered, shall be for the use of the person giving such information.'

"And to section 63 of title 26 of the Code of Laws of the United States, as follows:

"'SEC. 63. Interest in certain manufactures or production of liquors by revenue officers prohibited: Any internal-revenue officer who is or shall become interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer who becomes so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than $500 nor more than $5,000. The provisions of this section shall apply to internal-revenue agents as fully as to internal-revenue officers.'"

Pursuant to said resolution, the Committee on the Judiciary has held numerous meetings and has gathered certain information and has made careful examination of the provisions of section 243 of title 5 and section 63 of title 26 of the Code of Laws of the United States.

The Committee on the Judiciary, to whom the said resolution was referred, having fully considered the same, now report thereon as follows:

Answering question 1 of the resolution, it is the opinion of the committee that the head of any department of the Governmen may legally hold office as such after expiration of the term of the President by whom he was appointed. In the consideration of this matter the committee assumed that the words "head of any department" are intended to embrace the heads of the executive departments, which make up the President's Cabinet. The committee further assumed that the question was to be regarded as limited to those offices not specially governed by statute, and the foregoing opinion, therefore, has no application to the tenure of office of the Postmaster General.

Answering question 2 of the resolution, the committee is of the opinion that Andrew W. Mellon may legally hold the office of Secretary of the Treasury under the requirements of section 243, title 5, and section 63 of title 26 of the Code of Laws. It is a well-known fact that Mr. Mellon was appointed Secretary of the Treasury by President Harding and was confirmed by the Senate in 1921, and that he has held office for more than 8 years. The question asked the committee is whether he may legally hold the office. This question we have answered in the affirmative.

The question presented requires an interpretation of section 243, the significant language of which is as follows:

"No person appointed to the office of Secretary of the Treasury * * * shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce."

It is contended by certain members of the committee, who are not parties to this report, that mere ownership of stock in a corporation which is engaged in trade or commerce is a violation of the law and that such ownership disqualifies the Secretary of the Treasury.

It is clear to the signers of this report that the statute condemns only an interest or concern, direct or indirect, "in carrying on the business of trade or commerce". With respect to a corporation this means that the Secretary of the Treasury shall not hold office as a director or as an officer and that he shall not by any means, either direct or indirect, participate in any activity in carrying on the business of a corporation if the corporation is engaged in trade or commerce. This, in our opinion, is a reasonable, proper, and correct interpretation of the statute.

This interpretation is supported by the fact that numerous Secretaries of the Treasury have owned stock in corporations engaged in trade. It is inconceivable that all these Secretaries willfully violated the law, and equally inconceivable that the Presidents under whom they served would have appointed men of known ineligibility, or that the Senate would have confirmed ineligible appointees. Obviously it has been thought in many official quarters that the section referred to did not apply to mere ownership of corporate stock.

Contemporaneous and subsequent departmental and executive construction is entitled to great weight. Moreover, as the statute is a penal statute, its meaning may not be extended by construction, but in case of doubt should be given a restricted construction. We feel that the construction which we have placed on the act is not only thoroughly consistent with its language but is compelled by the ordinary rules of statutory construction, as well as long-established practice.

Some of those agreeing to this report question the jurisdiction of the committee to proceed in this inquiry beyond an interpretation of the statute in question, on the ground that it would be a judicial inquiry and is not in aid of any legislative function of the Senate, and that there is no legislation pending or proposed which would bring the investigation within the lawful power of the Senate or of the Committee on the Judiciary. They believe

that it is improper for the Senate to prosecute this investigation because by the Constitution the initiative has been vested in another body.

The committee did not subpena witnesses. It considered certain information and data which were presented to the committee. With full knowledge that the facts may not all have been ascertained, we have answered question 2 literally in the language of Senate Resolution 2, viz, that Mr. Mellon "may legally hold the office of Secretary of the Treasury." In addition, it is our opinion, upon the facts which the committee has considered, that Mr. Mellon does legally hold the office, and it is also our opinion that no contrary conclusion can properly be reached except through duly instituted criminal proceedings or impeachment proceedings originating in the House of Representatives.

Relative to section 63 of title 26 of the Code of Laws, the committee finds nothing in Mr. Mellon's business relations that would make him ineligible under this section. The facts obtained by the committee disclose the only concern in which Mr. Mellon was ever interested, which was engaged in the production, rectification, or redistillation of distilled spirits, ceased such activities long before the adoption of the eighteenth amendment and long before Mr. Mellon assumed office as Secretary of the Treasury.

This committee report is concurred in by a majority consisting of the following-named members: Overman, Deneen, Gillett, Robinson of Indiana, Stephens, Steiwer, Waterman, Hastings, and Burton.

[Senate Report 7, part 2, Seventy-first Congress, first session]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. NORRIS, from the Committee on the Judiciary, submitted the following minority views (pursuant to S.Res. 2):

The undersigned members of the Committee on the Judiciary, being unable to agree with the conclusions reached by the majority of said committee on Senate Resolution 2, relative to the tenure of office of heads of departments and the right of Andrew W. Mellon to hold the office of Secretary of the Treasury, beg leave to submit herewith our views upon the questions asked by the Senate in said Senate Resolution 2.

The resolution reads as follows:

"*Resolved*, That the Committee on the Judiciary be, and it is hereby, directed to inquire into and report to the Senate—

"1. Whether the head of any department of the Government may legally hold office as such after the expiration of the term of the President by whom he was appointed.

"2. Whether in view of the provisions of the laws of the United States Andrew W. Mellon may legally hold the office of Secretary of the Treasury, reference being made to section 243 of title 5 of the Code of Laws of the United States of America, as follows:

"'SEC. 243. Restrictions upon Secretary of Treasury: No person appointed to the office of Secretary of the Treasury, or Treasurer, or Register, shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, of another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one half the aforesaid penalty of $3,000, when recovered, shall be for the use of the person giving such information.'

"And to section 63 of title 26 of the Code of Laws of the United States, as follows:

"'SEC. 63. Interest in certain manufactures or production of liquors by revenue officers prohibited: Any internal-revenue officer who is or shall become interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer who becomes so interested in any such manufacture or production, rectification, or redistillation, or in the production of fermented liquors, shall be fined not less than $500 nor more than $5,000. The provisions of this section shall apply to internal-revenue agents as fully as to internal-revenue officers.'"

The first question submitted to the Judiciary Committee by the Senate is, Can the head of any department of the Government legally hold office as such after the expiration of the term of the President by whom he was appointed?

The appointment of the heads of departments by the President is provided for by section 2, article II, of the Constitution of the United States; but the Constitution nowhere fixes the length of the term of such officials, and it therefore follows that they can hold their respective positions indefinitely unless removed by the President.

Congress passed no law relating to the length of the tenure of office of any of the heads of the departments until it passed the act of March 2, 1867 (14 Stat. 430). This act, known as the "Tenure of Office Act," provided that the Secretaries of State, of the Treasury, of War, of the Navy, and of the Interior, the Postmaster General, and the Attorney General, "shall hold their offices respectively for and during the term of the President by whom they may have been appointed and for 1 month thereafter, subject to removal by and with the advice and consent of the Senate."

Two years later Congress amended this act by the act of April 5, 1869 (16 Stat. 6). This act repealed the section of the act of March 2, 1867, relating to the tenure of office of the heads of departments, and enacted, in lieu thereof, the following:

"That every person holding any civil office to which he has been or hereafter may be appointed by and with the advice and consent of the Senate, and who shall have become duly qualified to act therein, shall be entitled to hold such office during the term for which he shall have been appointed, unless sooner removed by and with the advice and consent of the Senate, or by the appointment, with the like advice and consent, of a successor in his place, except as herein otherwise provided."

The balance of the act from which the above quotation is made in no way modifies or changes the portion above quoted.

The section last above quoted afterward became section 1767 of the Revised Statutes of 1878. This section of the Revised Statutes (sec. 1767) was afterward, by the act of March 3, 1887 (24 Stat. 500), expressly repealed, leaving, with one exception (hereinafter noted), nothing in the statutes relating to the tenure of office of heads of departments.

This exception was that relating to the tenure of office of the Postmaster General. The original act establishing the Post Office Department and providing for a Postmaster General to be the head thereof was the act of May 8, 1794 (1 Stat. 357). This act contained no provision whatever as to the tenure of office of the Postmaster General, but, by the act of June 8, 1872 (17 Stat. 283), revising the laws relating to the Post Office Department, the tenure of office of the Postmaster General was fixed "for and during the term of the President by whom he is appointed, and for 1 month thereafter, unless sooner removed." This provision afterward became section 388 of the Revised Statutes and is now section 361, title 5, of the United States Code.

As the law now stands, the Postmaster General is the only head of a department whose tenure of office is definitely fixed by law, although, as will appear hereafter, the laws relating to the tenure of office of the Secretary of Commerce and likewise of the Secretary of Labor are different from the statutes relating to the office of the heads of any other executive departments.

It may be interesting and perhaps instructive to give a brief legislative history of the establishment of the various executive departments of the Government and the provisions made in such statutes for the heads of these departments.

DEPARTMENT OF STATE

The Department of State was established by the act of July 27, 1789 (1 Stat. 28), and was denominated the "Department of Foreign Affairs," with a head to be known as the "Secretary for the Department of Foreign Affairs." Later, by the act of September 15, 1789 (1 Stat. 68), the name of the Department was changed to "Department of State" and the name of the head of the Department was designated as "Secretary of State." There was no provision in either of these acts as to the tenure of office of the Secretary of State. These provisions of law later became section 199 of the Revised Statutes and now constitute section 151 of title 5 of the United States Code.

DEPARTMENT OF WAR

The War Department was created by the act of August 7, 1789 (1 Stat. 49), which also provided that the head of the Department should be known as the "Secretary for the Department of War." This statute afterward became section 214 of the Revised Statutes and is now section 181 of title 5 of the United States Code. None of these statutes contained any provisions relating to the length of the term of office of the head of this department.

DEPARTMENT OF THE TREASURY

The Department of the Treasury was established by the act of September 2, 1789 (1 Stat. 65). It was provided in such act that the head of the Department should be known as "Secretary of the Treasury," but nothing was said in the act as to the tenure of office of the Secretary. The act, without change in this respect, afterward became section 233 of the Revised Statutes, and is now section 241 of title 5 of the United States Code.

DEPARTMENT OF JUSTICE

The original act creating the Department of Justice was passed June 22, 1870 (16 Stat. 162). The first act providing for the office of Attorney General was the act of September 24, 1789 (1 Stat. 93), but the Attorney General was not the head of a department until the creation of the Department of Justice in 1870, nearly 100 years later. Neither of these acts, however, contained any provision fixing a definite term of office for the Attorney General. The act of 1870, creating the Department, became section 346 of the Revised Statutes, and is now section 291 of title 5 of the United States Code.

POST OFFICE DEPARTMENT

The Post Office Department was established and provision made for the appointment of a Postmaster General by the act of May 8, 1794 (1 Stat. 354), but this act contained no provision as to the length of the term of office of the Postmaster General. In 1872 an act was passed to revise the statutes relating to the Post Office Department (17 Stat. 283), in which it was provided that the Postmaster General "shall be appointed by the President, by

and with the advice and consent of the Senate, and who may be removed in the same manner; and the term of office of the Postmaster General shall be for and during the term of the President by whom he is appointed, and for 1 month thereafter, unless sooner removed."

This statute is the existing law. It became section 388 of the Revised Statutes, and is now section 361 of title 5 of the United States Code.

It will be observed that the term of office of the head of this Department is definitely fixed and that the consent of the Senate is necessary to his removal as well as to his appointment. It should be stated, however, in this connection, that Congress has no constitutional authority to deprive the President of the power of removal of executive officers where they have been appointed by the President by and with the advice and consent of the Senate. (See *Myers, Administratrix,* v. *United States,* 272 U. S. 52.) It will be observed, also, that with the possible exceptions of the Secretary of Commerce and the Secretary of Labor (hereinafter noted) it is the only instance where existing law makes any provision for the term of office of any of the heads of departments.

DEPARTMENT OF THE NAVY

The Navy Department was established by the act of April 30, 1798 (1 Stat. 553). It was provided that the head should be designated as the "Secretary of the Navy," but nothing was said in the act regarding the tenure of office of the Secretary and no later act has in any way modified the original one. This act later became section 415 of the Revised Statutes and is now section 411 of title 5 of the United States Code.

DEPARTMENT OF THE INTERIOR

The Department of the Interior was created by the act of March 3, 1849 (9 Stat. 395), and provision was made in the act for the Secretary of the Interior as the head of the Department. Unlike the other acts establishing the other departments, this act specifically provided that the Secretary "shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and who shall hold his office by the same tenure and receive the same salary as the Secretaries of the other executive departments."

Under this act it would probably have required the consent of the Senate for the removal of the Secretary, but when the Revised Statutes were enacted the act was changed and all reference to the method of appointment of the head of the Department and his tenure of office was omitted (Rev. Stat., sec. 437). This section of the Revised Statutes is now section 481 of title 5 of the United States Code.

DEPARTMENT OF AGRICULTURE

The Department of Agriculture was established with a Commissioner of Agriculture as the head by the act of May 15, 1862 (12 Stat. 387). This act provided in section 2, "That there shall be appointed by the President, by and with the advice and consent of the Senate, a 'Commissioner of Agriculture,' who shall be the chief executive officer of the Department of Agriculture, who shall hold his office by a tenure similar to that of other civil officers appointed by the President, and who shall receive for his compensation a salary of $3,000 per annum." The law was afterward changed by the act of February 9, 1889 (25 Stat. 659). The amendatory act changed the name of the head of the Department to that of "Secretary of Agriculture" and reenacted the provision as to the method of appointing the head, but omitted entirely the provision relating to his tenure of office; hence, as the law now stands, there is no statute making any reference to the term of office of the Secretary of Agriculture. The statute covering the subject is now found in sections 511 and 512 of title 5 of the United States Code.

DEPARTMENTS OF LABOR AND OF COMMERCE

The legislative histories of these two Departments are considerably intermingled. The Department of Labor was first established by the act of June 13, 1888 (25 Stat. 182). The head of the Department was designated as a Commissioner of Labor, and it was provided that he "shall be appointed by the President, by and with the advice and consent of the Senate; he shall hold his office for 4 years, unless sooner removed, and shall receive a salary of $5,000 per annum." By the act of February 14, 1903 (32 Stat. 825), the Department of Commerce and Labor was established, and the Department of Labor as theretofore existing was merged with the new Department thus created. It was provided that the head of this new Department should be the "Secretary of Commerce and Labor." This act provided that the head of the Department "shall be appointed by the President, by and with the advice and consent of the Senate, who shall receive a salary of $8,000 per annum, and whose term and tenure of office shall be like that of the heads of the other executive departments." This provision as to the method of appointment of the head of the Department and as to his term and tenure of office has not been changed by Congress since its original enactment. It is now contained in section 591 of title 5 of the United States Code, the act establishing the Department of Commerce.

This remained the law, and the Department of Commerce and Labor remained as one Department until the passage of the act of March 4, 1913 (37 Stat. 736), when the Department of Commerce and Labor was separated by the creation, for the second time, of a Department of Labor. In this act the head of the Department of Commerce remained as the "Secretary of Commerce," and it was provided that the head of the new Department of Labor should be designated as the "Secretary of Labor." This act separating the Departments and creating the Department of Labor as a separate Department contained the same provision as to the tenure of office of the Secretary of Labor as is contained in the law providing for the tenure of office of the Secretary of Commerce, to wit: "* * * who shall be the head thereof, to be appointed by the President, by and with the advice and consent of the Senate, * * * and whose tenure of office shall be like that of the heads of the other executive departments."

It will be seen, therefore, that the laws in regard to the tenure of office of the Secretary of Commerce and of the Secretary of Labor are indefinite. They fix the terms of office of these two Secretaries by reference to the terms of office of other heads of departments, wherein, with the exception of the Postmaster General, no term is fixed by law. It would hardly be reasonable to suppose that Congress intended, in these two instances, when it said "and whose tenure of office shall be like that of the heads of the other executive departments," that it had reference to the tenure of office of the Postmaster General when that office was the only one of the entire list where the law specifically fixed the term of office. It is not reasonable to suppose that Congress, in the passage of these two acts, had in mind the exception rather than the general rule, and since the tenure of office as to all of the heads of departments except the Postmaster General is not fixed by statute, it would follow that Congress, in enacting these statutes applying to the Departments of Commerce and Labor, did not fix any tenure of office for the heads of those two Departments.

The Constitution nowhere fixes the terms of office of the heads of departments and, with the exception of the Postmaster General, there is no law of Congress fixing any of these terms. We, therefore, conclude that with the exception of the Postmaster General, the heads of all the executive departments of the Government may legally hold office as such after the expiration of the term of the President by whom appointed.

HISTORICAL PRECEDENTS

An examination of the precedents discloses that heads of executive departments have continued to hold office as such, after the expiration of the term of the President by whom they were appointed, in a total of 110 instances.

During the second term of President Washington, Timothy Pickering, of Pennsylvania, was appointed Secretary of State. He held the position during the remainder of Washington's term and continued, without reappointment, after the inauguration of John Adams. After he had served as such Secretary of State during 3 years of Adams' administration, he was asked to resign and refused to do so. He was dismissed by President Adams on May 12, 1800.

It would appear from this that the statesmen of the early days who had much to do with the framing of the Constitution, many of whom actively participated in the framing of that instrument, were of the opinion that unless Congress definitely fixed a term of office for the heads of departments, such officials would remain in office indefinitely. The case of Mr. Pickering seems to be important as showing the opinion of men who were actively administering the affairs of government soon after the Constitution was adopted.

The practice of holding over without reappointment was general until the passage of the act of March 2, 1867, limiting the term of heads of departments to 4 years and 1 month. This provision of law was in force only 2 years when it was repealed. While the practice since that time has not been uniform, it has been sufficiently so to clearly show that all those in authority took it for granted that with the exception of the Postmaster General the heads of all executive departments of the Government held their respective positions indefinitely, subject to removal at any time by the President.

The following table, prepared by Mr. Cozier, assistant clerk of the Judiciary Committee, shows the instances where heads of departments have held office without reappointment, after the expiration of the term of the President by whom they were appointed:

Table showing instances where heads of departments have held office, without reappointment, after the expiration of the term of the President by whom they were appointed

Washington, 1793, Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, and Postmaster General	5
Adams, 1797, Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, and Postmaster General	5
Jefferson, 1801, Secretary of the Treasury, Secretary of the Navy, and Postmaster General	3
Jefferson, 1805, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, and Postmaster General	5
Madison, 1809, Secretary of the Treasury, Secretary of the Navy, Attorney General, and Postmaster General	4
Madison, 1813, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6
Monroe, 1817, Secretary of the Navy, Attorney General, and Postmaster General	3
Monroe, 1821, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6

Table showing instances where heads of departments have held office, without reappointment, after the expiration of the term of the President by whom they were appointed—Continued

Adams, 1825, Secretary of the Navy, Attorney General, and Postmaster General	3
Jackson, 1829, Postmaster General	1
Jackson, 1833, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6
Van Buren, 1837, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6
Harrison, 1841	None.
Tyler, 1841, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Attorney General, and Postmaster General	6
Polk, 1845	None
Taylor, 1849	None
Fillmore, 1850	None
Pierce, 1853	None
Buchanan, 1857	None
Lincoln, 1861	None
Lincoln, 1865, Secretary of State, Secretary of War, Secretary of the Navy, Secretary of the Interior, Attorney General, and Postmaster General	6
Johnson, 1865, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Secretary of the Interior, Attorney General, and Postmaster General	7
Grant, 1869	None
Grant, 1873	None
Hayes, 1877	None
Garfield, 1881	None
Arthur, 1881, Secretary of War, Secretary of the Navy, and Secretary of the Interior	3
Cleveland, 1885	None
Harrison, 1889	None
Cleveland, 1893	None
McKinley, 1897	None
McKinley, 1901	None
Roosevelt, 1901, Secretary of State, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, and Postmaster General	8
Roosevelt, 1905	None
Taft, 1909	None
Wilson, 1913	None
Wilson, 1917, Secretary of State, Secretary of War, Secretary of the Treasury, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, and Attorney General	9
Harding, 1921	None
Coolidge, 1923, Secretary of State, Secretary of War, Secretary of the Treasury, Secretary of the Navy, Secretary of the Interior, Secretary of Agriculture, Secretary of Commerce, Secretary of Labor, Attorney General, and Postmaster General	10
Coolidge, 1925, Secretary of the Treasury, Secretary of War, Secretary of the Navy, Secretary of the Interior, Secretary of Commerce, and Secretary of Labor	6
Hoover, 1929, Secretary of the Treasury and Secretary of Labor	2
Total	110

NOTE.—Table does not include instances where officers held over for only a few weeks or less.

IS SECRETARY MELLON LEGALLY QUALIFIED TO HOLD THE OFFICE OF SECRETARY OF THE TREASURY?

The second question asked by the Senate resolution relates to the qualifications of Secretary Mellon to hold the office of Secretary of the Treasury. This question, it is obvious on its face, is a mixed question of fact and law.

To ascertain the facts, the committee accepted without question the statements made by Secretary Mellon in a letter which he addressed to Senator DAVID A. REED, and which was by him read to the committee. Other statements made by Senator REED before the committee, supplementing the letter, were likewise accepted by the committee as a true outline of the facts so far as they are necessary to construe the law. These facts, so far as they apply to the inhibitions contained in section 243 of title 5 of the Code of Laws, are in substance as follows:

AGREED STATE OF FACTS

Prior to taking the office of Secretary of the Treasury in March 1921 Mr. Mellon resigned every office which he then held in any corporation engaged in the business of trade or commerce, and resigned all his directorates in such corporations, and he has not been since that time, and is not now, a director or officer in any such corporation. He did not, however, dispose of his stock in such corporations and is still the owner of stock in many corporations engaged in the business of trade or commerce.

Mr. Mellon likewise not only resigned every office he held in any national bank, trust company, or other banking institution but he sold all the shares of stock which he owned in such banking institutions.

At the time Mr. Mellon took the office of Secretary of the Treasury he owned, and still owns, a substantial amount of stock in the Gulf Oil Corporation of Pennsylvania, the Aluminum Co. of America, the Standard Steel Car Co., and various other business corporations, all of which are engaged in the business of trade or commerce. He does not own a controlling interest in the stock of any of these corporations. The stock which he does own, in connection with the stock owned by members of his family and close business associates, does, however, in many cases, constitute a majority of the stock of the corporation, and, in some instances, including some of the corporations above mentioned, constitutes ownership of practically the entire outstanding capital stock.

Since Mr. Mellon has been Secretary of the Treasury he has not controlled or directed the business operations of any of these corporations and has not taken part in the adjudication or settlement of any Federal taxes assessed against such corporations.

It is conceded that Mr. Mellon has not purchased by himself, or another in trust for him, any public lands or other public property; that he has not been concerned and is not now concerned in the purchase or disposal of any public securities of any State or of the United States; and that he has not at any time taken or applied to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department.

THE LEGAL QUESTION INVOLVED

The statute cited in the Senate resolution, in so far as it applies to the question now under discussion, reads as follows:

"No person appointed to the office of the Secretary of the Treasury * * * shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be the owner in whole or in part of any sea vessel." * * *

Under these admitted facts, the questions presented to the committee are: (1) Is ownership of a substantial amount of stock by the Secretary of the Treasury, in a corporation engaged in carrying on the business of trade or commerce, a violation of the statute? (2) Is the ownership of a substantial amount of stock by the Secretary of the Treasury in a corporation owning a sea vessel a violation of the statute? Both of these questions must be answered in the affirmative.

The first question might be simplified by asking: Is a person owning stock in a corporation even indirectly concerned or interested in the business of such corporation? In this simplified form the question answers itself.

To deny that the owner of stock in a corporation is interested in the business of such corporation is a violation of all logic and reason; and to assert that the owner of such stock is not even indirectly "concerned or interested" in the business of the corporation must impress the minds of honest people as being ridiculous. When we add to this the proposition that the ownership of stock in a corporation is substantial and that in connection with the stock owned by relatives and close business associates it constitutes a controlling interest in the corporation, and in some cases constitutes the ownership of practically all the outstanding stock of the corporation, we have reached a point where no reasonable mind, by any possibility, can conceive that the owner of such stock is not only indirectly but directly and positively interested in the business of the corporation. By no legal or judicial legerdemain or method of reasoning can any conclusion be reached in such a case except that the owner of such stock must be, and necessarily is, interested in the business of the corporation. There is positively no way for such person to avoid such interest or to disassociate his interest from such corporation except, in good faith, to dispose of his stock therein.

It is common knowledge that the Gulf Oil Corporation of Pennsylvania, the Aluminum Co. of America, and the Standard Steel Car Co. are among the largest business corporations of the United States. Their business operations annually run into the millions. A person who owns a "substantial" amount of the stock of these corporations and who, in connection with members of his family and close business associates, can ordinarily control the operations of such corporations, is not only interested but has it in his power to affect and control some of the most important business operations of the world. To say that such a person is not interested in the business operations of any of these corporations is to offend the reasoning process of all logical minds.

Several years ago, when the law provided that the amount of income taxes paid by any citizen should be public, it became known that the income tax paid by Mr. Mellon exceeded $1,000,000. From the agreed state of facts he must have a vast fortune tied up in stock ownership of some of the greatest business corporations in the country, and his income to a large extent, if not entirely, must come from his ownership of stock in these corporations. Can it be asserted with any reason or logic that he is not interested in the business which they transact? Can it be honestly claimed that he is not even "indirectly interested" or that he is not even "indirectly concerned"? These questions are too simple and the answers are too self-evident to admit of discussion or doubt.

GULF OIL CORPORATION OF PENNSYLVANIA

The Gulf Oil Corporation, referred to above, and which, it is admitted, Mr. Mellon and members of his family and close business associates completely dominate and control, is one of the largest, if not the largest, corporation of its kind in the world. We give the following information from Moody's Manual for 1927:

"Through its subsidiaries which it owns it operates thousands of oil wells producing several hundred thousands of barrels of crude oil per day. It owns several thousand miles of pipe lines and large refineries in different parts of the world. It owns and operates ocean-going steamers, barges, and tugs, together with harbor barges, etc. It has bulk distributing stations located on

Gulf of Mexico and Atlantic seaboard, including Galveston, New Orleans, Mobile, Tampa, Jacksonville, Savannah, Charleston, Bayonne, Philadelphia, New York, Providence, and Beverly. From these points oil is marketed through over 1,500 sales stations. Net production in 1926, after deducting all royalties and working interests, was over 44,000,000 barrels of crude oil. Deliveries in 1926 were 46,900,000 barrels. Some of these subsidiaries are as follows:

"Eastern Gulf Oil Co.: Properties located in Kentucky. Capital stock, $50,000.

"Gulf Pipe Line Co.: Located in Texas. Capital stock, $3,500,000.

"Gulf Pipe Line Co. of Oklahoma: Capital stock, $1,000,000.

"Gulf Production Co.: Producers of petroleum. Owns leases on thousands of acres in Texas. Capital stock, $2,250,000.

"Gulf Refining Co.: Transports and sells petroleum and by-products. Refineries located at Port Arthur, Fort Worth, Tex., and Bayonne, N.J. Total capacity, 150,000 barrels daily. Capital stock, $15,000,000.

"Gulf Refining Co. of Louisiana: Sells petroleum products. Capital stock, $1,000,000.

"Gypsy Oil Co.: Properties located in Oklahoma and Kansas. Capital stock, $500,000.

"Mexican Gulf Oil Co.: Incorporated in Delaware to prospect for and produce petroleum in Mexico. Capital stock, $200,000.

"South American Gulf Oil Co.: Incorporated in Delaware: engaged in exploration and development work in South America. Capital stock, $25,000.

"Venezuela Gulf Oil Co.: Incorporated in Delaware to produce oil in Venezuela and other South American countries. Capital stock, $50,000."

These are only a portion of the subsidiaries owned by this great corporation. A full list, with more detailed information, can be found in Moody's Manual of Investments for 1927.

It should be added that through these subsidiaries this corporation has often done business with the Government of the United States and is a bidder upon contracts let by the Government for supplies in which these various subsidiaries deal.

THE OWNER, IN WHOLE OR IN PART, OF A SEA VESSEL, IS DISQUALIFIED FROM HOLDING THE OFFICE OF SECRETARY OF THE TREASURY

The statute we are construing says that "no person appointed to the office of Secretary of the Treasury * * * shall * * * be owner in whole or in part of any sea vessel * * *."

The corporation above named, according to Moody's Manual, an accepted authority, owns "25 ocean-going steamers, 7 barges, 6 tugs, and 2 motor ships, together with harbor barges, etc."

There is no opportunity here to quibble over the meaning of "business" or "carrying on business" or being directly or indirectly concerned or interested in "carrying on the business of trade or commerce." The statute specifically states that anyone owning, in whole or in part, a sea vessel, shall be disqualified from holding the office of Secretary of the Treasury. This is independent of "business" or of "carrying on business." The thing which the statute interdicts is the ownership, in whole or in part, of a sea vessel.

Regardless of any construction which by any method of reasoning is put upon the other portion of the statute, it must be admitted that the statute disqualifies any person from holding the office of Secretary of the Treasury who is the owner of a sea vessel.

It certainly will not be contended that "ocean-going steamers" are not sea vessels. On the other hand, it seems plain that the object of Congress in the early days in prohibiting the ownership of a sea vessel applies with equal force to the present day and with increasing force when applied to a man of Secretary Mellon's national and international business connections.

It seems clear that either Mr. Mellon must be held to be disqualified or we must close our eyes to the plain provision of a definite statute. Neither can it be claimed that the law does not apply to him because these vessels are owned by a corporation in which he is a substantial stockholder. It might be argued that he does not himself personally own the entire interest of these ocean-going vessels, but it must be admitted that to the extent of his stock ownership in the corporation he is at least a part owner, and the statute interdicts the ownership in part as well as the entire ownership.

ALUMINUM CO. OF AMERICA

The Aluminum Co. of America is the largest corporation of its kind in the world. Its primary business is the smelting of aluminum from its ore. This business is carried on at Niagara Falls and Massena, N.Y.; Alcoa, Tenn.; Badin, N.C.; Shawinigan Falls and Arvida, Province of Quebec; and in Norway. For the purpose of its business the company utilizes more than 500,000 horsepower. Hydroelectric plants for the development of electric power are either owned by the company or controlled under long-term leases. In addition, the company owns several undeveloped water powers which, when developed, will more than double its present supply of power. The company also does an extensive fabricating business, producing aluminum sheets, rod, wire, tubes, castings, and other similar forms. Mills are located at Alcoa, Tenn.; New Kensington, Pa.; Edgewater and Garwood, N.J.; Buffalo, Niagara Falls, and Massena, N.Y.; Cleveland, Ohio; Detroit, Mich.; Fairfield, Conn.; Toronto, Ontario; and Shawinigan Falls, Province of Quebec. The company owns its own bauxite mines in Arkansas, South America, and several European countries and has its plant for the preliminary refining of bauxite at East St. Louis, Ill. The corporation not only does business direct but it owns a large number of subsidiaries. Among them may be mentioned the following: St. Lawrence Water Co., Demerara Bauxite Co., United States Aluminum Co., St. Lawrence River Power Co.

This corporation also owns the Aluminum Co. of Canada and has leased property of the Aluminum Manufacturers (Inc.) for 25 years from July 1, 1922. In addition, the Aluminum Co. of America owns the entire capital stock of the Alton & Southern Railway Co.

Further detailed information can be obtained from an examination of Moody's Manual, 1927, from which the above data are quoted.

It is common knowledge that the Aluminum Co. of America deals principally in products which are highly protected by the tariff. Mr. Mellon, as Secretary of the Treasury, controls the administration of the tariff laws, and, in their administration, he is dealing with his own corporation in which he has a substantial interest and in which, as a stockholder, he, together with his close associates, has a dominating control.

STANDARD STEEL CAR CO.

The Standard Steel Car Co., incorporated under the laws of Pennsylvania, manufactures steel and composite (steel and wood) cars. It has plants located at Butler, Middletown, and New Castle, Pa.; Hammond, Ind.; and Baltimore, Md. This corporation controls the Middletown Car Co. and the Baltimore Car & Foundry Co. In 1925 it purchased the Siems-Stembel Co., covering 25 acres in St. Paul and Minneapolis, Minn. In 1926 it obtained an interest in the Columbia Steel Co. at Elyria, Ohio. It owns the Forged Steel Wheel Co. at Butler, Pa. It has an authorized capital stock of $50,000,000.

These are only samples of Mr. Mellon's stock ownership in various kinds of corporations, all actively engaged in trade and commerce. Their operations cover nearly the entire civilized world. He and his associates, under the admitted facts, are interested in and control some of the most gigantic financial operations in the world. They are interested directly in the tariff, in the levying and collection of Federal taxes, in the shipping of products upon the high seas. Most of the products of these corporations are protected by our tariff laws, and Mr. Mellon has direct charge of the enforcement of these laws.

It is not necessary that it be shown that he has taken advantage of his position to give preference to these corporations in which he has a direct interest. The law does not state that before its inhibitions apply the Secretary of the Treasury must be found guilty of malfeasance in office in the way of giving invaluable favor to corporations in which he has a direct interest. It is sufficient under this statute to disqualify Mr. Mellon that it appear that he is either directly or indirectly interested in the business of trade or commerce. It would perhaps be impossible to find in the United States a single citizen who has a greater interest in the business of trade or commerce. In the financial world Mr. Mellon has perhaps more at stake in the carrying on of trade or commerce than any other one citizen of the United States. He is not only "interested" but, under the admitted facts, he is one of the dominating and controlling influences in the business world.

A stockholder of a corporation shares in the profits of the corporation. He suffers financially when the operations of the corporation are unprofitable. Upon dissolution of the corporation he has a right to share in the assets. All of these things conclusively imply that he is necessarily interested in the business of the corporation. If the corporation engaged in business is successful, he makes a profit. If its business operations are failures, he suffers a loss. The property which it acquires in its business operations, upon dissolution of the corporation, belongs to the stockholders, and this property is great or small in proportion to the success or failure of the corporation in its business transactions. He is interested not only indirectly but directly in every transaction of the corporation. He can not dissociate himself from such interest, except to part title with the ownership of his stock. These propositions, without exception, have been upheld and reasserted time and again by judicial determination. (*Gibbons* v. *Mahon* (1890), 136 U.S. 590; *Eisner* v. *Macomber* (1920), 252 U.S. 189; *R.I. Trust Co.* v. *Doughton* (1926), 270 U.S. 69; *Collector* v. *Hubbard* (1871), 12 Wall. 1; *Lynch* v. *Thurrish* (1918), 247 U.S. 221.)

A STOCKHOLDER'S INTEREST IN A CORPORATION IS AN INSURABLE INTEREST

It has been held that a stockholder's interest in corporate property is an insurable interest, not based on legal title, but on the right to gains or profits, etc. (*Seaman* v. *Enterprise Fire & Marine Insurance Co.*, 21 Fed. 778, 784; *Warren* v. *Davenport Insurance Co.* (1871), 31 Iowa 464.)

In the case of *Seaman* v. *Enterprise Fire & Marine Insurance Co.*, above cited, it is stated in the syllabus as follows:

"An owner of stock in a corporation has an insurable interest in the corporate property in proportion to the amount of his stock."

In the other case cited (*Warren* v. *Davenport Insurance Co.*, 31 Iowa 464), where the question was distinctly presented, the Supreme Court of Iowa affirmed that a stockholder did have an insurable interest.

A STOCKHOLDER IN A CORPORATION IS DISQUALIFIED TO ACT AS JUDGE

Stockholders have a direct interest in the business of the corporation, and such interest, it has been held, disqualifies a stockholder to act as a judge or juror in a suit in which such corporation is interested. (In re *Honolulu Consolidated Oil Co.*, C.C.A. 9th cir. 1917, 243 Fed. 348.)

The syllabus of this case, in so far as it applies to this question, reads as follows:

"* * * a judge owning stock in one of such oil companies is disqualified to sit on the trial of such a suit against another of such oil companies, under Judicial Code (act March 3, 1911, ch. 231), providing that, whenever it appears that the judge of any district court is in any way concerned in interest in any suit pending therein, it shall be his duty to enter the fact on the records and certify an authenticated copy thereof to the senior judge for the circuit."

As applying to the disqualifications of the judge on account of being a stockholder in a corporation involved in litigation before such judge, we cite the following: *State* v. *Mach* (1902), 26 Nev. 430; *First National Bank* v. *McGuire* (1899), 12 S.D. 226; *Queens-Nassau Mortgage Co.* v. *Graham* (1913), 142 N.Y. Supp. 589; *Anderson* v. *Commonwealth* (Ky. 1909), 117 S.W. 364; *Adams* v. *Minor* (1898), 121 Calif. 372; *King* v. *Thompson* (1877), 59 Ga. 380.

In the case of *Queens-Nassau Mortgage Co.* v. *Graham*, above cited, it was held by the Supreme Court of Iowa that where a judge is a stockholder in a corporation he is interested in any case in which the corporation is a party, and even the consent of the parties to the action cannot qualify him to sit in such a case.

A STOCKHOLDER IN A CORPORATION IS DISQUALIFIED TO ACT AS JUROR

A person called as a juror is disqualified from acting as such in a case where he is a stockholder in the corporation which is a party involved in the litigation. (*Martin* v. *Farmers Mutual Fire Ins. Co.* (1905), 139 Mich. 148; *Peninsular Ry. Co.* v. *Howard* (1870), 20 Mich. 18; *Sovereign Camp W.O.W.* v. *Ward* (1916), 196 Ala. 327.)

In the case of *Martin* v. *Farmers Mutual Fire Ins. Co.* the Supreme Court of Michigan distinctly held that in an action against a mutual fire-insurance company the members thereof are interested and are incompetent to sit as jurors in any case in which a mutual insurance company is a party, and this is true even where the jurors upon oath declare that they "were free from bias and prejudice." In this case the court, in the opinion, said:

"The disqualification of a judge or juror to sit in a case is a question of vital interest to more than the parties to a suit. It involves the administration of justice before disinterested, unprejudiced, and impartial tribunals."

CONTRACT OF CORPORATION WITH MUNICIPALITY IS VOID IF MAYOR OR MEMBERS OF CITY COUNCIL ARE STOCKHOLDERS

Most States have statutes which prohibit officers of any municipality from being interested in contracts with such municipality. Under such statutes it is universally held that where the mayor or members of the city council are stockholders in a corporation such interest is sufficient to invalidate any contract between the municipality and the corporation. It is universally held that stock ownership in a corporation getting a contract from a municipality by a member of the council falls under the condemnation of such a statute. (II, Dillon on Municipal Corporations (5th ed.), sec. 773, p. 1147; III, McQuillan on Municipal Corporations, sec. 1354; *San Diego* v. *San Diego*, 44 Cal. 106; *Noble* v. *Davidson*, 177 Ind. 19; 28 Cyc. 653; 44 C.J. 93.)

In *Noble* v. *Davidson* (177 Ind. 19), above cited, the court canvasses at length the principle involved and gives its reasons for holding that such "interest" invalidates the contract.

A STOCKHOLDER IN A CORPORATION IS DISQUALIFIED AS A WITNESS

Where the statute makes a witness incompetent if he is interested in the result of the suit, the court held that a stockholder of a corporation is an incompetent witness where the corporation is interested as a party to the case. In the case of *Dickenson* v. *Columbus State Bank* (Nebr. 1904, 98 N.W. 813) the Supreme Court of Nebraska, in passing upon this question, said:

"Plaintiff objected to the evidence of defendant's president, Gerrard, as to transactions had with the deceased, Murdock, as being excluded by section 329, Code of Civil Procedure. It was testimony of an interested party as to transactions with a deceased person against an assignee of the deceased. Unless testimony as to such transactions had been introduced by the other side, it was inadmissible. There seems no doubt that Mr. Gerrard's interest as a stockholder of the bank is a 'direct legal interest,' and disqualified him under the terms of the statute."

To the same effect is the decision in *Tecumseh National Bank* v. *McGee* (61 Nebr. 709, 85 N.W. 949).

It is also quite generally held that a stockholder of a corporation has such an "interest" that he can not take the acknowledgment of a conveyance to such corporation. (*Southern Iron & E. Co.* v. *Voyles*, 41 L.R.A. (N.S.) 375; see also notes there cited.)

STOCKHOLDER'S INTEREST SUFFICIENT TO MAKE HIM LIABLE FOR TAXES

Under section 3251 of the Revised Statutes, persons interested in the use of a distillery were held liable for taxes on it. This section says:

"* * * Every person in any manner interested in the use of any still, distillery, or distilling apparatus shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom."

It was held by the Solicitor General of the United States (April 23, 1876) that under this statute a stockholder in a distilling corporation not otherwise liable for the debts of the corporation beyond the amount of his stock therein, was liable individually for such taxes, and that his individual property in no way connected with the business of such corporation could be seized and restrained for taxes due on spirits produced by the corporation.

In the case of *United States* v. *Wolters et al.* (C.C.S.D.Calif., 1891, 46 Fed. 509), it was held that stockholders of a corporation engaged in operating a distillery are liable for taxes under the statute which declares, "and every person in any manner interested in the use of" a distillery shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom. In this case the court said:

"The holder of stock in a corporation organized for and engaged in the business of distilling spirits, if not the proprietor or possessor of the distillery within the meaning of the statute, is certainly 'interested in the use of' the distillery operated by the corporation of which he is a stockholder. He has a direct, pecuniary interest in the business of distilling—the purpose for which the distillery is used—as well as in the property itself. The amount of such interest, whether large or small, is of no consequence. The statute declares that every person so interested shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom." (See also to the same effect: (*Richter* v. *Henningson* (1895), 110 Calif. 530; 15 Op.A.G. 559; 16 Op.A.G. 10.)

INTEREST OF STOCKHOLDER ENTITLES HIM TO BRING SUIT

The interest of stockholders has been recognized in their right to bring suit on behalf of the corporation when the proper officers neglect a duty to enforce its rights, and to bring suit to restrain ultra vires acts. (*Kelly* v. *Dolan*, D.C.E.D.Pa., 1914, 218 Fed. 966; *Leo* v. *U. P. Ry. Co.*, C.C.S.D.N.Y., 1884, 17 Fed. 273; *Siegman* v. *Electric Vehicle Co.*, C.C.D.N.J., 1905, 140 Fed. 117.)

There was submitted, on behalf of the contention of Mr. Mellon, a brief written by Messrs. Faust and Wilson, attorneys, which was printed in the CONGRESSIONAL RECORD of March 31, 1924 (p. 5246), and also an opinion by Hon. William D. Mitchell, the present Attorney General of the United States. The opinion of the Attorney General was prepared at the request of the President of the United States. The writers of these briefs have reached the conclusion that under the statute heretofore quoted and the agreed state of facts above set forth, Mr. Mellon is not disqualified from holding the office of Secretary of the Treasury. The Attorney General, in reaching his conclusion, as did also Messrs. Faust and Wilson, placed great stress upon the case In re *Deuel* (127 App. Div. 640), to the effect that the ownership of stock in a corporation does not constitute carrying on the business of the corporation.

These eminent attorneys are led into a false theory which has no application whatever to the case of Secretary Mellon. No one claims that Mr. Mellon is carrying on any trade or business. It is frankly admitted that he is not engaged in business and is not carrying on business. There is a vast difference—one that is clearly defined by the courts—between carrying on business or being engaged in business and having an interest in any trade or business.

A person is engaged in business and is carrying on business when he has something to do with the management of the same; but he may be interested in any trade or business and be interested or concerned in the carrying on of such trade or business, without having anything to do in the way of management or direction of the business. In fact, the person who is not managing a trade or business may be much more directly "interested or concerned" in the business than the one who is actually at the head of the concern, directing it. This is particularly true in the case of corporations. The stockholders, after all, are the ones who are most directly and vitally interested in the business of the corporation and in the way and manner in which it is carried on. The manager or director may have no interest except in the position which he holds, while the stockholder may have the savings of a lifetime invested in the corporation and may, in fact, be much more concerned and more deeply interested than the hired man who manages the business.

In the case last cited the New York court was construing a statute which provided that no justice should carry on any business, and an attempt was made to disqualify Judge Deuel from holding office on the ground that he was carrying on a business. It was admitted on the trial that the judge was a stockholder in a corporation and that he was vice president of such corporation, but, in the syllabus of the case the court says that, as such vice president, he was not charged with any specific duties, was not actively engaged in the conduct of the business, was not responsible to the corporation or its stockholders for the conduct or the management of the business, and was not actively interfering in any way in relation to it, and, therefore, he had not violated the statute which forbade a justice to carry on any business.

The statute relating to the duty of the justice provided, among other things:

"Nor shall any such justice hold any other public office, or carry on any business * * * but each such justice shall devote his whole time and capacity, so far as the public interests demand, to the duties of his office."

The object of the law seems to have been to require the justice to devote his time and abilities to his official duties, and in order to do this it was provided that he should not carry on any other business.

In the body of the opinion the court said:

"It would serve no useful purpose to analyze this voluminous testimony, and I shall attempt to do no more than to state the conclusion at which I have arrived. I do not find it proved that this relator accepted any office in this corporation that imposed upon him any active duties in relation to the corporation

itself or the business that it conducted. He was vice president of the corporation, but charged with no specific duties in relation to it. There is no evidence that he actively engaged in the conduct of the business of the corporation; that he was responsible, either to the corporation or to its stockholders, for the conduct or management of the business, or that he actively interfered in any way in relation to it. In fact, the evidence is all the other way. Certainly if no one did anything more for this business than the respondent did, or was under obligation to do, the business would not have been carried on at all, and the conclusion that I have arrived at is that the charge of a violation of section 1416 of the charter is not sustained."

It should be noted in passing that in this case there was nothing pending before the judge in the way of litigation in which the corporation, of which he was a stockholder, was a party.

If this corporation in which he was a stockholder had been a party to a suit pending before him, and the court had held that such "interest" did not disqualify the judge from sitting, then there would be some reason for citing the case in support of the contention that Mr. Mellon's ownership of stock does not in any way constitute an interest; but, from the admitted facts of the case, it is perfectly plain that it has no application whatever to the question pending before the Committee on the Judiciary.

The Attorney General, in his opinion, also relies upon the case In re *Levy* (198 App. Div. 326) as sustaining his contention. A careful examination of this case will convince anyone that it has no application to the case of Secretary Mellon. The court decided in that case, as it did in the Deuel case, that the ownership of stock in a corporation did not constitute an offense upon the part of the judge such as would make him liable to removal from office. This decision was a construction of the same statute as was passed on in the Deuel case, and the court only held that the ownership of stock in a corporation, where the owner of the stock had nothing whatever to do with the management of the corporation, was not an officer or manager in any way, and was not "engaged in any other business or profession," did not offend the statute.

This case and the other case cited by the Attorney General in his opinion on this branch of the subject only demonstrates that the Attorney General and Messrs. Faust and Wilson have devoted considerable of their time and their great abilities in an attempt to show that the ownership of stock in a corporation is not, in and of itself, the carrying on of a business or profession—a proposition, as stated before, about which there is no contention and which has no bearing upon the question involved in the case before the committee as to whether the owner of stock in a corporation is "interested" in the business of the corporation.

The cases cited in these briefs, with the one apparent exception hereinafter noted, are all based on the imaginary claim that it is sought to disqualify Secretary Mellon because he is "engaged in business" or is "carrying on a business." They have no bearing upon the question of being "interested" in a business, and, therefore, they have no application or bearing upon the question submitted by the Senate to its Judiciary Committee. The question of whether the ownership of stock in a corporation constitutes the carrying on of business is not necessarily involved in the matter before us.

The exception above referred to is the case of *United States* v. *Delaware & Hudson Co.* (213 U.S. 366). In this case the Supreme Court of the United States was called upon to place a construction upon the commodities clause of the Hepburn Act. There were several cases involved in this decision. They were all cases between the United States and various railroad companies. These defendants were all engaged in the mining of coal as well as in its transportation in interstate commerce. The clause in the Hepburn Act under consideration in these cases reads as follows:

"From and after May 1, 1908, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier."

The constitutionality of the act was at issue. A careful reading of this very lengthy and laborious opinion will convince anyone that the Court was extremely anxious not to declare the act null and void as being in contravention to the Constitution of the United States.

These railroads, it was conceded, had for many years been engaged in the mining of coal, as well as in its transportation. They had been encouraged to invest in coal mines and to go into the business by the State legislature. In accordance with the laws of the State and the constitution of the State they had been carrying on this business for many years and, if the Court had given effect to the restrictive clause which would ordinarily be given by a careful student, it would have been compelled to nullify the laws of the State and would have necessarily confiscated many millions of dollars worth of property which the railroad companies had invested in accordance with their charters and in accordance with the constitution and laws of the State. In describing this condition that had arisen under State laws prior to the passage of the Hepburn Act, the Court said:

"The general situation is that for half a century or more it has been the policy of the State of Pennsylvania, as evidenced by her legislative acts, to promote the development of her natural resources, especially as regards coal, by encouraging railroad companies and canal companies to invest their funds in coal lands, so that the product of her mines might be conveniently and profitably conveyed to market in Pennsylvania and other States. Two of the defendant corporations, as appears from their answers, were created by the Legislature of Pennsylvania, one of them three-quarters of a century ago and the other a half century ago, for the expressed purpose that its coal lands might be developed and that coal might be transported to the people of Pennsylvania and of other States. It is not questioned that pursuant to this general policy investments were made by all the defendant companies in coal lands and mines and in the stock of coal-producing companies, and that coal production was enormously increased and its economies promoted by the facilities of transportation thus brought about. As appears from the answers filed, the entire distribution of anthracite coal in and into the different States of the Union and Canada for the year 1905 (the last year for which there is authoritative statistics), was 61,410,201 tons; that approximately four-fifths of this entire production of anthracite coal was transported in interstate commerce over the defendant railroads, from Pennsylvania to markets in other States and Canada, and of this four-fifths, from 70 to 75 per cent was produced either directly by the defendant companies or through the agency of their subsidiary coal companies.

"It also appears from the answers filed that enormous sums of money have been expended by these defendants to enable them to mine and prepare their coal and to transport it to any point where there may be a market for it. It is not denied that the situation thus generally described is not a new one, created since the passage of the act in question, but has existed for a long period of years prior thereto, and that the rights and property interests acquired by the said defendants in the premises have been acquired in conformity to the constitution and laws of the State of Pennsylvania, and that their right to enjoyment of the same has never been doubted or questioned by the courts or people of that Commonwealth, but has been fully recognized and protected by both."

In discussing the constitutional questions presented to the Court, the Chief Justice, in writing the opinion, used the following language:

"With these concessions in mind, and despite their far-reaching effect, if the contentions of the Government as to the meaning of the commodities clause be well founded, at least a majority of the court are of the opinion that we may not avoid determining the following grave constitutional questions: 1. Whether the power of Congress to regulate commerce embraces the authority to control or prohibit the mining, manufacturing, production, or ownership of an article or commodity, not because of some inherent quality of the commodity, but simply because it may become the subject of interstate commerce. 2. If the right to regulate commerce does not thus extend, can it be impliedly made to embrace subjects which it does not control, by forbidding a railroad company engaged in interstate commerce from carrying lawful articles or commodities because, at some time prior to the transportation, it had manufactured, mined, produced, or owned them, etc.? And involved in the determination of the foregoing questions we shall necessarily be called upon to decide: (a) Did the adoption of the Constitution and the grant of power to Congress to regulate commerce have the effect of depriving the States of the authority to endow a carrier with the attribute of producing as well as transporting particular commodities, a power which the States from the beginning have freely exercised, and by the exertion of which governmental power the resources of the several States have been developed, their enterprises fostered, and vast investments of capital have been made possible? (b) Although the Government of the United States, both within its spheres of national and local legislative power, has in the past for public purposes, either expressly or impliedly, authorized the manufacture, mining, production, and carriage of commodities by one and the same railway corporation, was the exertion of such power beyond the scope of the authority of Congress, or, what is equivalent thereto, was its exercise but a mere license, subject at any time to be revoked and completely destroyed by means of a regulation of commerce?"

In discussing the duty of the Court, when presented with such question, the following language was used:

"It is elementary when the constitutionality of a statute is assailed, if the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity. (*Knights Templars Indemnity Co.* v. *Jarman*, 187 U.S. 197, 205.) And unless this rule be considered as meaning that our duty is to first decide that a statute is unconstitutional and then proceed to hold that such ruling was unnecessary because the statute is susceptible of a meaning which causes it not to be repugnant to the Constitution, the rule plainly must mean that where a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter." (*Harriman* v. *Interstate Com. Comm.*, 211 U.S. 407.)

The Chief Justice then refers to what he regards as inconsistent provisions in the commodities clause itself:

"Recurring to the text of the commodities clause, it is apparent that it disjunctively applies four generic prohibitions; that is, it forbids a railroad carrier from transporting in interstate commerce articles or commodities, 1, which it has manu-

factured, mined, or produced; 2, which have been so mined, manufactured, or produced under its authority; 3, which it owns in whole or in part; and, 4, in which it has an interest, direct or indirect.

"It is clear that the two prohibitions which relate to manufacturing, mining, etc., and the ownership resulting therefrom, are, if literally construed, not confined to the time when a carrier transports the commodities with which the prohibitions are concerned, and hence the prohibitions attach and operate upon the right to transport the commodity because of the antecedent acts of manufacture, mining, or production. Certain also is it that the two prohibitions concerning ownership, in whole or in part, and interest, direct or indirect, speak in the present and not in the past; that is, they refer to the time of the transportation of the commodities. These last prohibitions, therefore, differing from the first two, do not control the commodities if at the time of the transportation they are not owned in whole or in part by the transporting carrier, or if it then has no interest, direct or indirect, in them. From this it follows that the construction which the Government places upon the clause as a whole is in direct conflict with the literal meaning of the prohibitions as to ownership and interest, direct or indirect. If the first two classes of prohibitions as to manufacturing, mining, or production be given their literal meaning, and therefore be held to prohibit, irrespective of the relation of the carrier to the commodity at the time of transportation, and a literal interpretation be applied to the remaining prohibitions as to ownership and interest, thus causing them only to apply if such ownership and interest exist at the time of transportation, the result would be to give to the statute a self-annihilative meaning. This is the case since in practical execution it would come to pass that where a carrier had manufactured, mined, and produced commodities, and had sold them in good faith, it could not transport them; but, on the other hand, if the carrier had owned commodities and sold them it could carry them without violating the law. The consequence, therefore, would be that the statute, because of an immaterial distinction between the sources from which ownership arose, would prohibit transportation in one case and would permit it in another like case. An illustration will make this deduction quite clear: A carrier mines and produces, and owns coal as a result thereof. It sells the coal to A. The carrier is impotent to move it for account of A in interstate commerce because of the prohibition of the statute. The same carrier at the same time becomes a dealer in coal and buys and sells the coal thus bought to the same person, A. This coal the carrier would be competent to carry in interstate commerce. And this illustration not only serves to show the incongruity and conflict which would result from the statute if the rule of literal interpretation be applied to all its provisions, but also serves to point out that as thus construed it would lead to the conclusion that it was the intention, in the enactment of the statute, to prohibit manufacturing and production by a carrier and at the same time to offer an incentive to a carrier to become the buyer and seller of commodities which it transported."

Further on in the opinion the Court said:

"Looking at the statute from another point of view the same result is compelled. Certain it is that we could not construe the statute literally without bringing about the irreconcilable conflict between its provisions which we had previously pointed out, and therefore some rule of construction is essential to be adopted in order that the statute may have a harmonious operation. Under these circumstances, in view of the far-reaching effect to arise from giving to the first two prohibitions a meaning wholly antagonistic to the remaining ones, we think our duty requires that we should treat the prohibitions as having a common purpose, that is, the dissociation of railroad companies prior to transportation from articles or commodities, whether the association resulted from manufacture, mining, production, or ownership, or interest, direct or indirect. In other words, in view of the ambiguity and confusion in the statute we think the duty of interpreting should not be so exerted as to cause one portion of the statute which, as conceded by the Government, is radical and far-reaching in its operation if literally construed, to extend and enlarge another portion of the statute which seems reasonable and free from doubt if also literally interpreted. Rather it seems to us our duty is to restrain the wider, and as we think, doubtful prohibitions so as to make them accord with the narrow and more reasonable provisions, and thus harmonize the statute."

When the Court came to a discussion of the words "in which it is interested directly or indirectly," included in the commodities clause, it examined the proceedings had in Congress when the Hepburn Act was under consideration. It must be remembered that the cases which the Court was deciding involved the construction of a statute which prohibited the common carrier, among other things, from transporting, in interstate commerce, commodities "in which it may have any interest, direct or indirect." The railroad company was transporting coal owned by a separate corporation in which the railroad company owned stock, and the question was whether this ownership constituted such an interest in the commodity as to prohibit the railroad company from transporting it in interstate commerce.

In an examination of the CONGRESSIONAL RECORD it was found that in the Senate, where the commodities clause originated, an amendment, in specific terms stating that stock ownership should be held to be such prohibitory interest, was defeated; and that another amendment, expressly declaring that interest, direct or indirect, was intended, among other things, to embrace the prohibition of carrying a commodity owned by a corporation in which the railroad company was interested as a stockholder, was offered and was likewise defeated.

The Court, therefore, reached the conclusion that the very point was directly pending before the Senate of the United States and that the Senate, as a law-making body, had expressed itself on the record to the effect that the ownership of stock in such a corporation by the railroad should not be a prohibitive interest. On this point the Court said:

"Certain, it is, however, that in the legislative progress of the clause in the Senate, where the clause originated, an amendment in specific terms, causing the clause to embrace stock ownership, was rejected, and immediately upon such rejection an amendment, expressly declaring that interest, direct or indirect, was intended, among other things, to embrace the prohibition of carrying a commodity manufactured, mined, produced, or owned by a corporation in which a railroad company was interested as a stockholder, was also rejected (1906, vol. 40, CONGRESSIONAL RECORD, pt. 7, pp. 7012–7014). And the considerations just stated, we think, completely dispose of the contention that stock ownership must have been in the mind of Congress, and therefore must be treated as though embraced within the evil intended to be remedied, since it cannot in reason be assumed that there is a duty to extend the meaning of a statute beyond its legal sense upon the theory that a provision which was expressly excluded was intended to be included. If it be that the mind of Congress was fixed on the transportation by a carrier of any commodity produced by a corporation in which the carrier held stock, then we think the failure to provide for such a contingency in express language gives rise to the implication that it was not the purpose to include it. At all events, in view of the far-reaching consequences of giving the statute such a construction as that contended for, as indicated by the statement taken from the answers and returns which we have previously inserted in the margin, and of the questions of constitutional power which would arise if that construction was adopted, we hold the contention of the Government not well founded."

It seems perfectly plain, not only from a reading of the entire opinion but from the direct statement of the Court in the quotation last above cited, that the conclusion was reached that the Senate, the law-making body, had placed its own construction upon this language and that it explicitly stated by its negative action on the proposed amendments that it was not the intention of the law-making body to permit the ownership of stock by a railroad company in a corporation owning the commodity, to exclude the railroad company from carrying such commodity in interstate commerce.

DISSENTING OPINION OF JUSTICE HARLAN

It is important also to note that Justice Harlan, whose opinions, and even dissenting opinions, have not only commanded universal respect but have given encouragement to many struggling hearts in their hope for the perpetuity of democratic government, did not agree with the Court in the conclusions reached.

The opinion of the Court from which we have been quoting covers more than 50 pages. Justice Harlan, in a dissenting opinion of less than a page, has gone to the very heart of the question involved and plainly and logically stated the reasons which controlled him in the conclusion which he reached. We quote his opinion in full:

"As these cases have been determined wholly on the construction of those parts of the Hepburn Act which are here in question, and as Congress, if it sees fit, may meet that construction by additional legislation, I deem it unnecessary to enter upon an extended discussion of the various questions arising upon the record, and will content myself simply with an expression of my nonconcurrence in the view taken by the Court as to the meaning and scope of certain provisions of the act. In my judgment the act, reasonably and properly construed, according to its language, includes within its prohibitions a railroad company transporting coal, if, at the time, it is the owner, legally or equitably, of stock—certainly, if it owns a majority or all of the stock—in the company which mined, manufactured, or produced, and then owns, the coal which is being transported by such railroad company. Any other view of the act will enable the transporting railroad company, by one device or another, to defeat altogether the purpose which Congress had in view, which was to divorce, in a real, substantial sense, production and transportation, and thereby to prevent the transporting company from doing injustice to other owners of coal."

We think it can be fairly stated that the opinion by the majority of the Court in this case we have been considering was in effect modified by several subsequent decisions of the Supreme Court—at least the dominating reason moving the Court to hold that stock ownership in a corporation was not such an interest as to bring upon the railroad company the condemnation of the law is definitely explained in a subsequent opinion rendered by the Court. In the case of *United States* v. *Delaware, Lackawanna & Western Railroad Co.* (238 U.S. 516), in the body of the opinion (pp. 526, 527), it is stated:

"But mere stock ownership by a railroad, or by its stockholders, in a producing company can not be used as a test by which to determine the legality of the transportation of such company's coal by the interstate carrier. For, when the commodity clause was under discussion, attention was called to the fact that there were a number of the anthracite roads which at that time owned stock in coal companies. An amendment was then offered which, if adopted, would have made it unlawful for any such road to transport coal belonging to such company. The amendment, however, was voted down; and, in the light of that indication of con-

gressional intent, the commodity clause was construed to mean that it was not necessarily unlawful for a railroad company to transport coal belonging to a corporation in which the road held stock."

Further on in this opinion the Court said:

"Taking it as a whole and bearing in mind the policy of the commodity clause to dissociate the railroad company from the transportation of property in which it is interested and that the Sherman Antitrust Act prohibits contracts in restraint of trade, there would seem to be no doubt that this agreement violated both statutes.

"The railroad company, if it continues in the business of mining, must absolutely dissociate itself from the coal before the transportation begins. It can not retain the title nor can it sell through an agent."

As before stated, in *United States* v. *Delaware & Hudson Co.* a large number of railroads were involved, all of which were engaged in one way or another, either directly or indirectly, in the mining of coal and its transportation. Practically all of these cases came into the Supreme Court again after the decision in the Delaware & Hudson case, and in every case, so far as we are able to find, the Court, while not expressly reversing itself in the Delaware & Hudson case, always found a reason for declaring these combinations illegal. *The United States* v. *Lehigh Valley Railroad Co.* (1911) (220 U.S. 257) is one of these cases. Another one is *The United States* v. *Reading Co.* (253 U.S. 26).

In the Reading Co. case one of the railroad companies owned eleven-twelfths of the capital stock of the coal company, and the Court said that such conduct fell within the condemnation of the commodities clause of the Hepburn Act and it ordered that the relation thus existing between the railroad company and the coal company should be dissolved.

It seems logical, therefore, to say that the decision in the Delaware & Hudson case, even if not modified by subsequent decisions, has at least been explained away so far as that decision tends to hold that the ownership of stock in a corporation does not constitute an interest either direct or indirect on the part of the stockholder in the business of the corporation.

The conclusion is irresistible that Secretary Mellon, under the section of the statute which we are now considering, is not qualified to hold the office of Secretary of the Treasury.

Attorneys Faust and Wilson in their opinion say:

"Such a construction is repugnant to common sense and would tend to eliminate the men best qualified by training and experience to administer the intricate business of the Treasury."

And the Attorney General in his opinion says such a construction would—

"* * * exclude from the office a great majority of the men most competent to hold and administer it efficiently without accomplishing any good."

We are not at present concerned with the result of our conclusion. We have not been asked by the Senate whether the law is a good one or a bad one. We have not been asked to express any opinion as to whether it should be amended or absolutely repealed. The constitutionality of the act has not been questioned. These questions are all outside of the record and all outside of the duty imposed upon the committee by the Senate.

We are asked a simple question, although it may be a difficult one. The law which we are asked to construe is specifically stated in the resolution and, regardless of consequences, it becomes our duty to answer the question without considering the effect or without considering the reasonableness of the statute. Perhaps the statute should be repealed. Perhaps it should be modified. That is not for the committee to determine in the performance of the duty imposed upon it by the Senate. Nevertheless, we feel constrained to call the attention of the Senate to some historical matters and legal opinions which contradict the position taken by these eminent attorneys.

The case of A. T. Stewart, who was appointed by President Grant as Secretary of the Treasury, has a direct bearing. Mr. Stewart was nominated for that office and was formally confirmed by the Senate. The prohibiting statute was apparently not called to the attention of President Grant or the Senate. After Mr. Stewart had been confirmed, the President's attention was called to this statute (the same law now under consideration in the Senate resolution). It was conceded that under this statute Mr. Stewart, on account of the business in which he was engaged, was disqualified. Thereupon, President Grant sent a message to the Senate calling the attention of the Senate to the statute, and in this message he officially asked Congress to pass an amendatory act which would, in effect, exempt Mr. Stewart from its provisions.

Opposition to the change or the repeal of the statute at once developed. The President, under the circumstances, sent another message to the Senate, withdrawing the name of Mr. Stewart, who, although confirmed, had not been commissioned as Secretary. The President then submitted the name of Mr. George Boutwell to be Secretary of the Treasury, and he was later confirmed by the Senate.

A bill was introduced to change this law, but it never made any headway. Congress apparently at that time was satisfied with the law and took no action toward its modification or repeal.

This law applying to the qualifications of the Secretary of the Treasury has been in force practically from the beginning of the Government. The records of the House of Representatives show:

"Mr. Burke gave notice that he meant to bring in a clause to be added to the bill to prevent any of the persons appointed to execute the offices created by the bill from being directly or indirectly concerned in commerce, or in speculating in the public funds, under a high penalty, and being deemed guilty of a high crime or misdemeanor." (House proceedings, Monday, June 29, 1789; 1 Annals, 611.)

The next day, the records show that the following occurred:

"Mr. Burke introduced his additional clause, which, after some alteration and addition proposed by Mr. Fitzsimons and others, was made a part of the bill." (House proceedings, Tuesday, June 30, 1789; 1 Annals, 615.)

The purpose of the provision contained in this law has been referred to in the Attorney General's opinions and in the opinion of the Supreme Court noted below.

In holding that certain officers of the Treasury Department, whose appointments were authorized by section 3 of the act of March 3, 1817, were subject to the prohibitions and restrictions of section 8 of the act of September 2, 1789, Attorney General Clifford made the following statement with respect to the purpose of the latter section:

"One of the principal objects of the restriction was to withdraw from the accounting officers of the Treasury every motive of private interest in the performance of their public duties and to guard the Nation from the consequences frequently to be apprehended when the business affairs of public officers are suffered to lie commingled with the financial concerns of the country.

"To prevent the public mischief within the true intent and meaning of the law, it is as necessary to apply its restraining influence to the additional officers of the Treasury, authorized by the third section of the act of 1817, as it was in the first instance to those designated in the original act * * *." (4 Op. Atty. Gen. 555.)

In an opinion by Solicitor General Hoyt, approved by Secretary of the Treasury Knox, relating to the question whether there was any legal objection to the Treasurer receiving the principal and interest of certain Philippine bonds and distributing same to the holders of the securities, there is the following statement with respect to section 243 of the Revised Statutes (the section quoted in the Senate resolution):

"Section 243, Revised Statutes, forbids the Secretary of the Treasury, the Treasurer, and the Register, among other officers, to be concerned or interested directly or indirectly in the purchase or disposal of public securities of the United States or of any State. The obvious purpose of that law, as shown throughout the section, is to prohibit personal interest in such bond issues and certain other affairs and business, and private emoluments or gain in the transaction of any business in the Treasury Department." (25 Op. Atty. Gen. 99.)

In *Ex parte Curtis* (1882) (106 U.S. 371), in which the Supreme Court upheld the constitutionality of the act of Congress of August 15, 1876, prohibiting political campaign contributions between certain officers and employees of the United States, the Court stated (p. 372):

"The act now in question * * * rests on the same principle as that originally passed in 1789 at the first session of the First Congress, which makes it unlawful for certain officers of the Treasury Department to engage in the business of trade or commerce, or to own a sea vessel, or to purchase public lands or other public property, or to be concerned in the purchase or disposal of the public securities of a State or of the United States * * *."

After enumerating certain other statutes of a similar character, the Court continued (p. 373):

"The evident purpose of Congress in all this class of enactments has been to promote efficiency and integrity in the discharge of official duties, and to maintain proper discipline in the public service."

With the exception of the bill which was introduced at the request of President Grant to modify this law, no attempt, so far as we are able to ascertain, has ever been made, either in Congress or out of it, to change the qualifications of the Secretary as therein set forth.

In the Federal Reserve Act Congress provided by law that no member of the Federal Reserve Board should be an officer in any banking institution; neither should any such member be a stockholder. In order for any person to be qualified to be a member of this board, it is not sufficient that he resign official positions and his directorates on banking institutions, but he must absolutely dispose of any stock he may own in any banking institution.

This act was passed in 1921. It provided in words that a member of the Federal Reserve Board should not be a stockholder in a bank. Under the reasoning of Attorneys Faust and Wilson this is "repugnant to common sense," and, in the opinion of our Attorney General, such a law must "exclude from the office a great majority of the men most competent to hold and administer it efficiently."

In the case of Mr. Mellon, in order to qualify himself for the office which he now holds, he not only resigned the offices which he held in banks, but he disposed of all of his stock in such banking institutions and, at the present time, he is not the owner of any bank stock.

In the same way, and in the same manner, would it not be as logical for him to dispose of his stock in business institutions as well as in banking institutions?

The objections set out in these briefs referred to claim that if the construction above given is applied to this law, competent men can not be secured for the office, and yet, during all the time that the Federal Reserve Act has been in effect, we have never heard any complaint on the part of anyone that the provision of that

law which prohibits a member of the board from owning stock in a bank has had the effect claimed by the Attorney General and Attorneys Faust and Wilson.

It would be just as easy for Mr. Mellon to sell his stock in the Gulf Oil Corporation or the Aluminum Co. of America as it was for him to sell his stock in the Mellon National Bank at Pittsburgh.

As late as February 1927, Congress passed an act for the regulation of radio communications, and in this act it provided that no member of the commission therein set up for the control of the business shall be "financially interested" in the manufacture or sale of radio apparatus or in the transmission or operation of radio messages or broadcasting.

It seems that in our own day Congress, in passing laws and providing officials for the administration of the same, has done the same as our forefathers did more than 100 years ago and has been particular in providing that the public official shall not be financially interested in the corporations coming under his control in his official capacity.

In the radio act above referred to it is not specifically stated that a member shall not be a stockholder in the radio corporation. In the act we are asked to construe by the Senate it is not specifically stated that the Secretary of the Treasury shall not be a stockholder in a corporation engaged in trade or commerce, but it is stated that such Secretary shall not be either directly or indirectly interested in the business of trade or commerce. In the radio act we have provided that members of the commission shall not be "financially interested." The language in the radio act is not nearly so broad as in the act which we are construing, and yet the Senate is so careful in seeing that the radio act is administered in good faith that it requires nominees for places on the commission to absolutely dispose of all stock owned in the corporations to be regulated before it will confirm such nominees. There has been an instance of this kind during the present session, wherein the President sent to the Senate a nominee for a place on the Radio Commission, and before the confirmation took place the nominee was required to actually and in good faith sell stock which he owned in some of the corporations to be regulated.

It seems, therefore, that even the present Congress had not regarded such statutes as foolish or as excluding from office "a great majority of the men most competent to hold and administer it efficiently."

This law which the Senate has asked us to construe has been on the statute books for more than 100 years. If it is not going to be repealed or modified, it ought to be enforced.

LAW ENFORCEMENT

Just at the present time a great deal is being said about law enforcement. From the public press it is learned that the President of the United States has appointed, or is about to appoint, a commission to study the subject with a view of bringing about better enforcement of our laws. If we expect to enforce the law generally as to the citizens of our country, why have we not the same right to ask that our statesmen and our public officials should be weighed in the same balance? And is it not true that the ordinary citizen will not have the same respect for law generally if he understands that a plain statute is being violated by those in control of the Government itself? Why not begin our law enforcement at the top?

This idea of general law enforcement and respect for all law was recently very beautifully portrayed by a great statesman. He said:

"I have accepted this occasion for a frank statement of what I consider the dominant issue before the American people. Its solution is more vital to the preservation of our institutions than any other question before us. That is the enforcement and obedience of the laws of the United States, both Federal and State.

"I ask only that you weigh this for yourselves, and if my position is right, that you support it—not to support me but to support something infinitely more precious—the one force that holds our civilization together—law. And I wish to discuss it as law, not as to the merits or demerits of a particular law but all law, Federal and State, for ours is a government of laws made by the people themselves.

"A surprising number of our people, otherwise of responsibility in the community, have drifted into the extraordinary notion that laws are made for those who choose to obey them. And in addition our law-enforcement machinery is suffering from many infirmities arising out of its technicalities, its circumlocutions, its involved procedures, and too often, I regret, from inefficient and delinquent officials * * *.

"Life and property are relatively more unsafe than in any other civilized country in the world. In spite of all this we have reason to pride ourselves on our institutions and the high moral instincts of the great majority of our people. No one will assert that such crimes would be committed if we had even a normal respect for law and if the laws of our country were properly enforced. * * *

"What we are facing to-day is something far larger and more fundamental—the possibility that respect for law as law is fading from the sensibilities of our people. Whatever the value of any law may be, the enforcement of that law written in plain terms upon our statute books is not, in my mind, a debatable question. Law should be observed and must be enforced until it is repealed by the proper processes of our democracy. The duty to enforce the law rests upon every public official, and the duty to obey it rests upon every citizen.

"No individual has the right to determine what law shall be obeyed and what shall not be enforced. If a law is wrong, its rigid enforcement is the surest guaranty of its repeal. If it is right, its enforcement is the quickest method of compelling respect for it. I have seen statements published within a few days encouraging citizens to defy a law because that particular journal did not approve of the law itself. I leave comment on such an attitude to any citizen with a sense of responsibility to his country.

"In my position, with my obligations, there can be no argument on these points. * * *

"It is unnecessary for me to argue the fact that the very essence of freedom is obedience to law; that liberty itself has but one foundation, and that is in the law." (President Hoover, in an address before the Associated Press, New York City, April 22, 1929.)

This beautiful sentiment so eloquently expressed should be our guiding star. But it is not enough to state our ideas in beautiful generalities. We must practice what we preach. It is not sufficient that those at the top should remind the common citizen of his duty, but the high official, the appointing power, must obey the same law for which he demands obedience of the citizen. When the law is strictly and honestly obeyed and followed by the official, the respect of the common citizen for all law will be greatly increased. If corruption in official life had not been so universal during the last few years, or if such crimes when exposed had been publicly denounced by high officials in our Government, this disrespect for law, charged by the President to be almost universal, would have been much lessened, if not entirely eliminated.

Most of us have a very high admiration for Alexander Hamilton, the first Secretary of the Treasury. His ability and his statesmanship are lauded and praised by his countrymen more than a century after he has passed away, and yet this great statesman held the office of Secretary of the Treasury under President Washington while this particular law, now before us for consideration, was on the statute books. It seemed, in that day, that there was no danger such as is pointed out in the briefs of the Attorney General and Messrs. Faust and Wilson.

When President Grant appointed a Secretary of the Treasury who was disqualified under this act, he formally withdrew the nomination and sent in another name.

We feel, therefore, that the danger to the country if Mr Mellon be disqualified from holding the office of Secretary of the Treasury has been greatly exaggerated. If, however, the country has reached the condition where only men owning millions of stock in business corporations are qualified to hold the office of Secretary of the Treasury, then instead of trying to nullify the law and set a precedent before the people we should amend or repeal it so that at least we could truthfully say that those whose duty it is to enforce the law are not themselves looking for technical means by which the law can be nullified.

There only remains for our consideration in connection with the resolution before the committee the question involved in section 63 of title 26 of the Code of Laws. This section reads as follows:

"Any internal-revenue officer who is or shall become interested, directly or indirectly, in the manufacture of tobacco, snuff, or cigars, or in the production, rectification, or redistillation of distilled spirits, shall be dismissed from office; and every officer who becomes so interested in any such manufacture or production, rectification or redistillation, or in the production of fermented liquors, shall be fined not less than $500 nor more than $5,000. The provisions of this section shall apply to internal-revenue agents as fully as to internal-revenue officers."

Under the stipulated facts before the committee, Mr. Mellon at one time owned stock in the A. Overholt & Co., a corporation engaged in the manufacture and distillation of spirituous liquors. Before he became Secretary of the Treasury this corporation was put in liquidation in the hands of a trustee. The trustee had full discretion as to the liquidation of the assets. In accordance with this trusteeship, the company has been fully liquidated and the former owners, including Secretary Mellon, have been paid for their interests, and Secretary Mellon has at this time no further connection with or interest in that enterprise or any other enterprise of a similar nature.

Although the corporation went out of business so far as the manufacture, production, rectification, or redistillation of distilled spirits was concerned, the complete liquidation of the assets of the corporation did not take place until after Mr. Mellon became Secretary of the Treasury. We do not believe there was any violation of this section in the appointment of Mr. Mellon as Secretary of the Treasury or in his holding such office. It will be noted that at the time he went into office, and since he has held the office, this corporation has not been engaged in the "production, rectification, or redistillation of distilled spirits" and, therefore, there has been no violation of this law.

CONCLUSION

In conclusion, therefore, we answer the questions submitted by the Senate specifically as follows:

First. The head of any executive department of the Government, except the Postmaster General, may legally hold office as such after the expiration of the term of the President by whom he was appointed.

Second. Secretary Mellon, under section 243 of title 5 of the Code of Laws of the United States, is disqualified from holding the office of Secretary of the Treasury.

Third. The appointment of Mr. Mellon as Secretary of the Treasury and his holding such office do not constitute a violation of section 63 of title 26 of the Code of Laws of the United States.

G. W. NORRIS.
T. H. CARAWAY.
T. J. WALSH.
JOHN J. BLAINE.

[Senate Report 7, part 3, Seventy-first Congress, first session]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. Blaine, from the Committee on the Judiciary, submitted the following additional views (pursuant to S.Res. 2):

Mr. Blaine presents the following additional views:

1. I concur in the opinion of the committee to the effect that the head of a department may legally hold office as such after the expiration of the term of the President by whom he was appointed.

2. I concur in the opinion of the minority to the effect that the prohibition contained in section 243, title 5, of the United States Code, applies to a Secretary of the Treasury who owns a "substantial" amount of stock of corporations "carrying on the business of trade or commerce" or who, in connection with members of his family and close business associates, has a substantial control of the operations of any such corporations.

3. A Secretary of the Treasury who owns, in whole or in part, a whisky distillery, but which distillery is not engaged in the production, rectification, or redistillation of distilled spirits, does not come within the prohibition of section 63 of title 26 of the United States Code.

However, section 243 is offended against if a Secretary of the Treasury is at any time during his term of office concerned or interested, directly or indirectly, in the disposal of liquor stock in trade or commerce or in the proceeds or profits of the business involved in the sale of whisky.

The Attorney General of the United States, William D. Mitchell, states "that at one time he (Andrew W. Mellon) held a partnership interest in a firm (A. Overholt & Co.) which distilled whisky," and "before March 4, 1921, the entire property of the firm was conveyed to a trustee under an irrevocable trust with full authority in the trustee to dispose of the property free from any control of those who were members of the partnership, but without power to operate the distillery," and that between March 4, 1921, and October 2, 1928, the whisky so held was sold.

It is not in dispute that Mr. Mellon was a beneficiary under such trust agreement and received his share of the proceeds and profits from the sale of the whisky while he was Secretary of the Treasury. It is presumed that the whisky was sold lawfully, and under the national prohibition act it could only have been sold as a commodity in trade and commerce.

The trustee, while having absolute control over the sale of the whisky, acted in no other capacity than as an agent for Mr. Mellon and his copartners, while Mr. Mellon retained his beneficial interest in such whisky and received the proceeds and profits therefrom, and such beneficial interest was a substantial amount.

Under these facts the Secretary of the Treasury was directly interested in carrying on the business of trade or commerce by a trustee, who through the trust agreement was substituted as his agent.

Clearly such transaction offends against said section 243.

The question arises, therefore, whether or not the Secretary of the Treasury could, by any such device, give himself an "immunity bath" by substituting an agent to act for him, though retaining the beneficial interest and receiving the proceeds and profits. The act of the agent (in this case the trustee) is the act of the principal. That is axiomatic, and it would not seem necessary to go into further discussion of that question in demonstrating that the Secretary of the Treasury stands as an offender against section 243.

4. Section 243 is not a self-operating law. A person who offends against such law "shall * * * forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States." However, in this case the President has the power to remove Mr. Mellon from office by the simple process of appointing another person to such office.

The President also has the power to direct the Attorney General's department to bring an action against Mr. Mellon for the collection of the forfeiture provided by section 243. In such case his conviction would make him incapable of holding the office even if the President were delinquent in failing to name his successor.

The responsibility is solely upon the President to determine whether or not he will permit technicalities, the circumlocutions of the law-enforcement machinery, and its involved procedures (which the President has so emphatically denounced) to control his actions in this case and thereby defeat the objects and purposes of the law.

JOHN J. BLAINE.

[Senate Report 7, part 4, Seventy-first Congress, first session]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. Walsh of Montana, from the Committee on the Judiciary, submitted the following individual views (pursuant to S.Res. 2):

That the Senate may be advised more fully of the proceedings had before the Committee on the Judiciary, acting under Senate Resolution 2, of the Seventy-first Congress, special session, it is apprised:

(1) That there was presented to the committee a letter from Andrew W. Mellon, Secretary of the Treasury, a copy of which is herewith attached, marked "Exhibit A."

(2) It was represented to the committee that one George D. Haskell brought suit against the Aluminum Co. of America and the representative of the Duke estate, alleging a combination between the said company and one James B. Duke, or a company represented by him, for the production of aluminum in a plant to be erected on or near the Saguenay River in Canada, where Duke had developed or was developing a large water-power plant, the electricity to be generated by it to be used in the aluminum plant. In that suit the deposition of Mr. Mellon was taken, a copy of which is hereto attached, marked "Exhibit B." From the deposition it appeared that the enterprise, which contemplated the issuance of stock to the amount of some hundreds of millions of dollars, was the subject of conference between him, his brother, Mr. R. B. Mellon, and Mr. Arthur Davis, president of the company, and that by arrangement Duke and an associate by the name of Allen, and Davis had dinner with Andrew W. Mellon at his apartment in the city of Washington, in which the proposal to unite in the enterprise was under consideration for some hours. Later A. W. Mellon joined a party which visited the plant in Canada. In the deposition Mr. Mellon testified as follows, referring to the Aluminum Co. of America:

"A. Yes. I should say for over 20 years at least I have not been in touch with the affairs of the business other than occasionally seeing Davis when something would come up in conversation. But I was not generally consulted. Of course, if there was anything of importance in the way of policy or something that way I think I usually was. I am talking now of the last 20 years" (pp. 5–6).

(3) In a suit brought in the Court of Claims of the United States by the administratrix of the estate of John H. Murphy against the United States, claiming that Murphy had a contract with the United States through Hon. John W. Weeks, Secretary of War, by which the said Murphy was commissioned to make or undertake to make a sale of certain cars belonging to the United States, then in Europe, the deposition of Peter F. Tague, formerly a Member of Congress from the tenth Massachusetts district, being taken, he testified concerning conversations between Secretary Weeks and himself and Mr. Murphy, in the course of which the witness testified, among other things, as follows:

"120. Question. What did Mr. Murphy say, if anything?

"Answer. Mr. Murphy—you mean at this interview in September?

"121. Question. The second interview in September.

"Answer. He told Secretary Weeks of the amount of work that he had put in in trying to sell these cars, of how he had been to almost every country in Europe, and that the men in Europe, his associates, had been around Europe trying to sell these cars, and that they had been unable to do so, and that he was positive this concern couldn't sell these cars in France. He then asked Secretary Weeks to tell him, if it wasn't a breach of confidence, to whom the option had been given, inasmuch as he had other people in New York peddling these cars and they were anyone's to sell. He told him. I don't remember exactly the words, but in substance he said, 'Now, John, you've got me in an embarrassing position. I didn't intend to tell, but I have given this option to Secretary Mellon, for the Standard Pressed Steel Car Co.' And he said that they had a large organization and that if anyone could sell these cars they could. Mr. Murphy then emphasized that he didn't believe they could sell them. He then said, 'Let this matter lay a little longer, and you come back to see me; and if they haven't sold them I will give you an opportunity to sell the cars.'

"122. Question. Did Mr. Murphy tell the Secretary where he could sell them?

"Answer. He told him he could sell them in Poland.

"123. Question. Does that exhaust your recollection of that interview?

"Answer. I believe Mr. Murphy told the Secretary at that interview that Poland had already bought some of these cars and had paid—I forget the price—but had paid a large price for them; that they were using the cars, and that they could take these cars over with practically no alteration and use them immediately, and that they needed the cars; and that he believed that an arrangement could be made with Poland so that they would be in a position to finance the sale.

"124. Question. Did the Secretary say anything about what he would do with regard to an investigation of the Polish situation?

"Answer. Yes; he said he wished to discuss with the State Department or the Treasury Department the condition of their finances in relation to the last sale of cars, and that he wanted to be in position to know their financial standing and whether they would be competent to take on this (pp. 28–29)."

The action was brought by Murphy during his lifetime, and his administratrix substituted after his death. His deposition being taken, he testified, among other things, as follows:

"157. Question. Will you state the conversation that took place between you at that time?

"Answer. I told the Secretary that I had received a proposition for these cars for Poland. I told him that the price offered me was $1,200 by Major De Grass, of the General Equipment Co., of New York City. I told him that I found the cars were being freely offered for sale. I meant by that, by word of mouth freely advertised. And I told him if such was the case that I knew I could

sell these cars. I told him that Poland was the only country in the world, in my opinion, that would buy the cars. I told him that in the other countries, where changes were required, the cost was all the way from $500 to $1,300, and that the freight, cost of erection, and so on, made it practically prohibitive; that these cars could not be sold in other countries unless sold at a greatly reduced rate. I told him that Poland needed the cars. I told him that they had Baldwin locomotives with Baldwin air-brake equipment. I told him no changes had to be made. I told him they had their own erection yards in Danzig, where they had 4,600 cars from the United States of America and had paid $1,800 previously. I told him that in my opinion Poland was absolutely the only country where they could expect to sell these cars. I said, 'Now, Senator, I would like the privilege of going over to try to sell these cars for you.' He said, 'Now, John, you have got me in a very embarrassing position.' He said, 'I didn't intend to tell you the name of the man I have given the option to, but now I will tell you.' He told me the man was Mr. Mellon, and that 'Mr. Mellon has a very powerful'—no; I asked him, 'Senator, would you mind telling me what countries he has got the option for?' He says, 'France.' I says, 'He will never sell these cars in France. We have gone over France with a fine-tooth comb, and not only France but her colonies.' I says, 'France already has 27,000 more cars than she needs. You can see them on the railroad tracks all the way from Paris down to Sofia.' I says, 'He will never sell these cars to France.' He says, 'John, that might be, but I must keep my word with him,' and he said, 'You come back and see me again.' So I left the Secretary, and I believe I returned again to New York and Boston.

"177. Question. Does that comprise what you recall of that conversation?

"Answer. Practically. I do not recall at this time whether it was at this conference or at the conference of October 10 that the Secretary told me that Mr. Mellon had failed in his efforts to sell the cars to France (pp. 66, 69)."

(4) A Washington dispatch appearing in the Journal of Commerce of date August 29, 1928, was read to the committee. It gave the information that the Gulf Refining Co. had been awarded contracts to supply the requirements of the Shipping Board Emergency Fleet Corporation at all Gulf and Atlantic ports with fuel oil, the contract calling for deliveries amounting to approximately 8,000,000 barrels annually. Copy of the article is herewith attached, marked "Exhibit C."

EXHIBIT A

TREASURY DEPARTMENT,
Washington, April 18, 1929.

DEAR SENATOR REED: I understand that the Senate Judiciary Committee wishes to know whether I am now concerned in carrying on "trade or commerce" in violation of the law which makes such action a high misdemeanor, and that the committee has asked you to meet with it at its session to-morrow morning.

Before I took office as Secretary of the Treasury, in March 1921, I resigned every office that I then held in any corporation and resigned all my directorates in such corporations, and I have not since that time been, nor am I now, a director or officer in any corporation for profit. I am a trustee or director of the University of Pittsburgh, the Carnegie Institute, and of several hospitals and charitable corporations, none of which, however, is engaged in trade or commerce or in any business conducted for profit.

Before I became Secretary of the Treasury I sold every share of stock which I owned in any national bank, trust company, or other banking institution, and I have not since then owned, nor do I now own, any stock in such corporations. I owned then and I now own a substantial amount of stock in the Gulf Oil Corporation, the Aluminum Co. of America, the Standard Steel Car Co., and other business corporations, but in every case my holding is very much less than a majority of the voting stock of such company. As far as these companies are concerned, my active connection with them was severed in 1921 as completely as if I had died at that time. I have not concerned myself with their affairs, and I have not endeavored to control or dictate their operations in any way. It should be needless to add that I have in no way taken part in the adjudication or settlement of any Federal taxes upon such companies, and I have consistently refrained even from inquiring about their tax affairs.

Senate Resolution 2 mentions also the prohibition against an internal-revenue officer being interested in the production of distilled spirits, as if to imply that there was some question of my having violated that statute. As you know, I had an interest in A. Overholt & Co., but that company discontinued the manufacture of distilled spirits several years before the prohibition amendment was adopted. The company was put in liquidation in the hands of a trustee before I became Secretary of the Treasury, the trustee having full discretion as to the liquidation of the assets. This company has been fully liquidated, the former owners, including myself, have been paid for their interests, and I have no further connection or interest in that enterprise or any other of that nature.

All the foregoing facts have been so often stated publicly that I had not supposed there was the slightest question about them in the minds of any person interested, but I should be glad to have you explain the situation to any member of the committee who is not familiar with them.

Yours very truly, A. W. MELLON.

Hon. DAVID A. REED,
United States Senate.

EXHIBIT B

GEORGE D. HASKELL *v.* WILLIAM R. PERKINS ET AL., EXECUTORS OF THE LAST WILL AND TESTAMENT OF JAMES B. DUKE, DECEASED

NEW YORK, *July 2, 1928.*

Met pursuant to agreement, in room 640, Hotel Biltmore.

Present: The notary, Mr. Whipple, Mr. Park, and Mr. McClennen.

The taking of this deposition was noticed by the plaintiff for the city of Washington, District of Columbia, but by agreement of counsel, for their mutual convenience, finding Mr. Mellon in New York, it is taken in New York before Rowland W. Philips as commissioner.

ANDREW W. MELLON, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by Mr. WHIPPLE:

Q. Will you state your full name, Mr. Mellon?—A. Andrew William Mellon.

Q. And your residence?—A. Pittsburgh, Pa.

Q. I assume the court will take judicial notice that you are now, and have been for several years, Secretary of the Treasury and residing temporarily in Washington.—A. Since 1921, which is about 7 years and 4 months.

Q. And you have been continuously Secretary of the Treasury since then?—A. Since that time.

Q. Are you familiar with a corporation known as the Aluminum Co. of America?—A. I am.

Q. You know of it as a corporation organized and having its principal office at Pittsburgh, Pa.?—A. I do.

Q. How long have you been interested in the corporation?—A. Almost since the inception of the corporation; I do not recall just how many years ago that is—what year I became interested in it.

Q. Was your brother also interested—Mr. R. B. Mellon?—A. Yes.

Q. Equally with you?—A. Yes.

Q. And has been from the beginning?—A. Yes.

Q. Were you at any time a director of the corporation?—A. I was.

Q. Approximately between what dates?—A. From the time I speak of until I went to Washington or shortly before the time I went to Washington, in March 1921. I then resigned.

Q. Was your brother a director covering the same period of time?—A. Yes.

Q. And he did not resign but has continued since as a director?—A. He has continued since.

Q. Have your financial relations with your brother during this whole period of time been very close and intimate?—A. Yes.

Q. I have seen it stated and I will ask you to verify it that in all business matters in which you are interested he also is equally interested, or in practically all.—A. No; but in a great many investments and properties that we have, we have them together, but not all.

Q. But you acquired equal interests at the same time in the Aluminum Co. of America?—A. Yes.

Q. And have continuously held equal interests since that time? I limit it up to 1925.—A. Yes.

Mr. MCCLENNEN. Mr. Whipple, as we know, but to avoid any misunderstanding later, when you say the Aluminum Co. of America you mean whatever its name was. At the beginning it was the Pittsburgh Reduction Co.

The WITNESS. The Pittsburgh Reduction Co.

Mr. WHIPPLE. Yes.

The WITNESS. The same business.

Mr. WHIPPLE. It may be understood that in speaking of the Aluminum Co. of America I refer to the present organization and also that or those which it succeeded—I mean the original company.

Mr. MCCLENNEN. It was merely a change in name?

Mr. WHIPPLE. Yes.

Q. Do you object to stating the stock holdings of your brother and yourself in, say, January 1925, in the Aluminum Co. of America?—A. I do not recall the exact number of shares. Generally speaking, it was about 15 per cent; something over, but thereabouts.

Q. That is your combined holdings or each?—A. No; the combined holdings were twice that.

Q. Yes; I was not quite sure which you meant, whether it was that or not. Did you meet at about the time you went into it the president of the corporation, Arthur V. Davis?—A. Well, he was not president at the beginning. Captain Hunt—Alfred B. Hunt—was then president.

Q. Was Mr. Davis connected with it when you became interested in it?—A. He was.

Q. And you have known him ever since?—A. Ever since.

Q. Have your business relations with him been what might be called close or intimate?—A. Yes.

Q. Was this one of the corporations in which you felt some personal interest and had some personal knowledge of its affairs?—A. In the early days I was closely in touch with it, but later on I was very much occupied, even before I went to Washington, with other undertakings, and so I did not keep an active connection with the company in the sense of knowing all the trades that were made or the developments. For a good many years I sort of dropped out, because I was too much absorbed with other investments.

Q. It would be fair to say that you gave up that attention to what might be called the details?—A. Yes.

Q. That you had been able to give attention to before?—A. Yes. I should say for over 20 years at least I have not been in touch with the affairs of the business other than occasionally seeing

Davis when something would come up in conversation. But I was not generally consulted. Of course, if there was anything of importance in the way of policy or something that way I think I usually was. I am talking now of the last 20 years.

Q. Did your brother continue, so far as you observed, in active participation in the affairs of the company or care of details?—A. No. To an extent he was familiar with what was going on, but he was not at all active in the affairs of the company.

Q. But he continued as director?—A. He continued as director.

Q. Can you remember who the directors were other than your brother at the time you resigned?—A. Well, I remember some of them.

Q. There was Mr. Davis, of course?—A. There was Mr. Davis, and I think his brother was also a director at that time; and there was a man who has now retired and is living up at Williamstown; what was his name?

Mr. McCLENNEN. Was it Mr. Laurie?

The WITNESS. Mr. Laurie, and there was Gillespie, D. L. Gillespie. That is all I can think of just now.

Q. Did you know Mr. Gillespie pretty well, and Mr. Laurie?—A. Oh, yes.

Q. Had you other business connections or contacts with them?—A. With Mr. Gillespie some other business contacts and investments, but not with Mr. Laurie other than the aluminum business.

Q. Did you at some time meet the late James B. Duke?—A. I met him, I think it was, in 1922, in Washington. I had under consideration a man from Winston-Salem, Mr. Blair, for the position of Commissioner of Internal Revenue. He had been recommended and one of the references or one of the parties who it was stated to me was acquainted with Mr. Blair was Mr. Duke. I was not acquainted with Mr. Duke but I asked over the telephone or in some way—perhaps I wrote to him, I do not recall—about Mr. Blair. He said that he was going to New York and would stop in Washington to see me, which he did; and he brought with him a man who he said knew Mr. Blair better than he did, and that man died on the way to Washington, dropped dead on the train, and he had quite a time in Washington when he got there. That was all in relation to Mr. Blair. And the next time and the only other time——

Q. If you will pardon me, as to that, perhaps you have answered it. You had no conversation with Mr. Duke at that time except with reference to Mr. Blair?—A. No.

Q. Then the next time you saw him?—A. The next time was at my apartment in Washington, when Mr. Duke and Mr. Allen with him, and Mr. Davis came to dinner. Mr. Davis had made the engagement, had spoken to me of Mr. Duke, and he wanted to make an arrangement for Mr. Duke to meet me, and I suggested that they come to dinner.

Q. In the meantime, I take it, that you had not talked with Mr. Duke at all?—A. No.

Q. And had not met him?—A. No.

Q. And I suppose you then remembered him as the person who dropped in at Washington and spoke about Mr. Blair?—A. Oh, yes.

Q. Do you know a man by the name of George G. Allen?—A. Yes.

Q. When did you first meet him?—A. He came with Mr. Duke to the dinner I speak of. That is the first meeting.

Q. Had you ever heard of him before that?—A. I do not think so. I do not recall it.

Q. You say that Mr. Davis arranged the meeting?—A. Yes.

Q. Do you know that at some time later a merger was negotiated and arranged between a corporation known as the Quebec Aluminum Co., Ltd., and the Aluminum Co. of America?—A. You mean before this dinner?

Q. No; after this interview.—A. I knew afterwards. I do not just recall the name of the company.

Q. Well, I am reminded that it is the Canadian Manufacturing & Development Co., although the correspondence or negotiations that I refer to were on the part of Mr. Davis, on the one side, and Mr. Duke, on the other, representing, respectively, the Aluminum Co. of America and the Quebec Development Co.—A. Well, I knew that Mr. Davis had been in negotiation with Mr. Duke at the time of this dinner. It was on account of Mr. Duke's interests in Canada, the water-power interests, and, as I understood, he wanted to connect up with the Aluminum Co. and negotiate an alliance there so that he would have a market for his water power.

Q. You knew that before the meeting?—A. Yes.

Q. From whom did you learn it?—A. Mr. Davis.

Q. How long before the dinner at Washington did you learn it?—A. Not a very great while; I suppose a month or two or something like that; not very distant.

Q. How did you learn it—I mean was it in writing or telephone or personal interview?—A. No; I was just thinking where; I think it was when I was out in Pittsburgh that Davis spoke to me about it.

Q. Can you fix approximately the date when you were out in Pittsburgh?—A. No; I could not do that.

Q. But it was within two months prior to the dinner?—A. My recollection is it was not a long time before it. It may have been several months, not very long, though.

Q. Well, possibly it would assist you somewhat if I called your attention to the fact that there is in existence and has been put in evidence a telegram dated January 13, 1925, about the dinner?—A. Yes.

Q. And to refresh your recollection perhaps or to assist your memory I will read it to you.—A. Yes.

Q. It is a telegram from Mr. Davis to Mr. Allen; this same Allen I spoke of a moment ago. It reads as follows:

"Mr. Mellon has just telephoned me to ask if Mr. Duke will take dinner with him on Friday night and says that he will arrange the dinner at whatever time fits in with the arrival of the train. Mr. Mellon added that he would be alone at dinner so that we can come direct from the train to his house. It was arranged that I was to let Mr. Mellon know what time we would arrive. Can you figure on the train schedule a little? And I will telephone you the first thing tomorrow morning from New York, so that I can let Mr. Mellon know as promptly as possible."

Now, that is a telegram which was put in evidence as exhibit 105. You think that refers to the dinner that you have spoken of?—A. Oh, yes; undoubtedly.

Q. That would fix it as Friday after January 13, 1925?—A. Yes.

Q. Which is——

Mr. McCLENNEN. January 16, I think.

Q. Which we will accept for the moment as on January 16, the exact date being not of the slightest consequence.—A. Yes.

Q. We will speak of it then as the January 16 dinner. Now you said a moment ago that it was your best memory that you had heard of what I may speak of as negotiations perhaps a couple of months before that.—A. Yes.

Q. And does that accord with your memory?—A. Yes.

Q. I may state perhaps for your information that Mr. Davis, in his testimony, has fixed the date when those negotiations opened as about November 6, which would be just 2 months and 10 days before the dinner.—A. Yes.

Q. Then, I will ask you, did Mr. Davis, in his first talk, speak of negotiations as having been opened or as something that he was going to look into?—A. It was rather tentative, or, rather, that Mr. Duke was desirous of making an alliance with the Aluminum Co. on account of this water power.

Q. Did he say that he had seen Duke, do you remember?—A. Well, I would infer that he had seen Duke; he had been negotiating with him.

Q. And this occasion when the first information was given you, you think was at Pittsburgh?—A. I would not be certain. It may have been. I just have a recollection of seeing Davis at Pittsburgh, and it is likely that that is when. It might possibly have been by telephone. I think likely the arrangement for the dinner was over the telephone.

Q. Yes; the arrangement for the dinner, but you think before that at some interview at Pittsburgh Mr. Davis had mentioned something to you about it?—A. Yes; I think so.

Q. And then was the first you learned about the project?—A. Yes.

Q. Had you ever heard before that of Duke's having a water power?—A. I do not recall that I had.

Q. Or that he had any notion or desire to join forces with the Aluminum Co. in any way?—A. Not before the period I speak of.

Q. That was your first information about it?—A. Yes.

Q. Or that Mr. Davis had desired to get in touch with Mr. Duke?—A. No; I had not.

Q. Nothing of that sort?—A. I had not any information on that score.

Q. Appreciating it was a long time ago and that you have had many things to pass through your mind since, I still would like to have you state as fully as you can that first or initial conversation with Mr. Davis in which he gave you this information.—A. It has pretty nearly been covered by what I have said already. I do not know of anything further than that—that Duke had this large water power and wanted to negotiate with the Aluminum Co.

Q. Did he say anything about Mr. Duke's having organized or having in mind to organize an aluminum company?—A. No.

Q. Did you hear at some time that Mr. Duke had caused to be organized a corporation known as the Quebec Development Co., Ltd.?—A. I had no knowledge of that.

Q. You think Mr. Davis did not tell you that he either intended to or had at some time——A. Not to my recollection.

Q. Do you remember whether you said anything at this initial interview at which Davis told you what you say Duke wanted?—A. Well, it was something that was not very definite, very tangible at all; there was no plan or arrangement suggested. It was just in general that they had had conversation on the subject.

Q. Did he mention Allen at that time?—A. I do not recall. He may have, but I do not recall it.

Q. Or any engineers that had conferred on the subject?—A. No.

Q. But you inferred that he had himself had a talk with Duke personally?—A. Yes.

Q. Did he at that time say anything about your seeing Duke?—A. No; I do not think so. I think that came afterwards.

Q. Did he keep you informed after that and up to January 1925 of what was going on between himself and Duke?—A. No; I have not——

Q. What is your recollection of the next talk or the next thing you heard?—A. I think the next communication from Mr. Davis was regarding a meeting with Mr. Duke.

Q. Have you any letters on the subject?—A. No.

Q. Did you receive any?—A. No.

Q. Were you in the habit of keeping such letters as came to you from Mr. Davis?—A. Oh, yes; all my letters go in the files.

Q. And have you caused your files to be examined?—A. Yes.

Q. To see if there were any on this subject?—A. On the occasion that this question of having my testimony taken as to the date

of that dinner, I had my secretary then look up to see if he had anything that showed the date of the dinner, and there was something, I have forgotten exactly, that gave the date of that dinner, but that was the only thing.

Q. Did you ask him to examine to see whether there were letters from Mr. Davis or copies of letters you sent to him?—A. Well, he naturally would have found them. I asked him to see if he could locate that date. But my own recollection is that I never—I do not recall receiving any letters from Davis during all this time I have been in Washington, although I have had communications from Davis which have been usually on the telephone, and he has been in Washington and I have seen him when I was at Pittsburgh.

But there were other matters; for instance, we got into a controversy in the last campaign over the tariff question. Mr. Davis, who was the Democratic candidate, attacked me or criticized me in the position I held in—that in that position I used my influence to obtain high tariff rates for the company, and I had to answer some of those things. Mr. Davis and Mr. Hunt and some of the others came down to Washington on that. That was one thing. There have been subjects of that nature that have brought the contact, but I do not just recall of any letters between us.

Q. In the subpena that was served, were you asked to bring any letters or copies of letters?—A. Yes.

Q. And I had hoped and was assured by Mr. Bond, the Assistant Secretary of the Treasury, that you would have someone make diligent search in your files to see if there were any such letters. Do you really know whether that has been done?—A. That has been done by my secretary.

Q. By whom?—A. My secretary.

Q. What is his name?—A. Mr. Sixsmith.

Q. Did he report to you that he had made a careful examination?—A. Yes.

Q. Did he say whether he found any letters from Mr. Davis concerning this matter?—A. He found only something that indicated that date of the dinner.

Q. What was that?—A. I have forgotten; it was something. I won't be sure, but I think it was an answer to a request for an appointment out of Washington, and I said that I had an engagement and mentioned this dinner. Now, I think that is it. I would not be sure. He showed it to me, but——

Q. Do you know when he made a search of the files?—A. At the time this question came up of having my testimony taken.

Q. You say that when letters come, they are put in the files. Did you have any files with regard to the Aluminum Co. or Mr. Davis?—A. Yes; there was the file that had matters in connection—all this relating to the statement that was made on the question of the tariff and all that—those are all in that file.

Q. What is the earliest date of any communication in the file, do you remember?—A. I could not say.

Q. Did you receive any letters on the subject from your brother?—A. No.

Q. Any letter or letters?—A. No.

Q. Did you have any consultations with him or conference or conversations with him—I mean prior to this dinner?—A. No; other than I think he was present at the time Davis spoke to me in Pittsburgh.

Q. Had he mentioned it before then?—A. No.

Q. Oh, he was present at the time?—A. Yes.

Q. What did your brother say to Mr. Davis in Pittsburgh when he spoke of Duke's proposition, or if I may call it, desire?—A. I do not recall any expression used.

Q. Did you make any remark about it?—A. I do not recall it exactly. You see, it was not anything that was at all before us to decide in any way on anything; there was nothing definite spoken of.

Q. Did Davis make any comment about it? Did he say he was going to follow it up or anything of that sort?—A. I have no doubt he did.

Q. But you can not remember anything else that he said?—A. I do not recall the conversation very clearly. I recall the occasion and have an impression about it.

Q. Did he tell you about how much water power Duke had?—A. I think he did.

Q. And what is your memory about it in a general way?—A. Well, I knew it was a very large power.

Q. Did Davis tell you that?—A. Who?

Q. Davis.—A. Oh, yes.

Q. Well, what did he tell you about the water power? Perhaps that is a better way to put it.—A. Well——

Q. Did he tell you where it was?—A. Yes; and that it was a very large potential power that Mr. Duke had acquired. I think I recall he said that Duke had been working on this since 1911. I just have that in my mind.

Q. Did he speak of Price or the Prices in connection with it?—A. No; Mr. Davis did not speak of Mr. Price as far as I can recall. He may have. I remember that Mr. Duke spoke of Price or the Prices.

Q. Did Mr. Davis tell you to what extent Duke had proceeded with the development?—A. Yes; I think he did in a general way; he spoke of this power development.

Q. Did he tell you where it was?—A. Yes; on the Saguenay River.

Q. Did he speak of the upper and lower development?—A. No; it was just a general reference to the project and the scope of it.

Q. Can you remember how he happened to mention it—what the occasion was of the meeting?—A. In Pittsburgh?

Q. Yes.—A. Well, it was just an occasion when he brought this matter up.

Q. I mean had you dropped in to see him when you were there or had he dropped in to see you and your brother?—A. I think it was rather that he is a director in our bank, and I make my headquarters in the bank, and he was there.

Q. Was it at an interview that had been arranged, or one that was accidental?—A. Well, it had not been arranged. I happened to be in Pittsburgh, and Mr. Davis usually came to see me. I do not go very often to Pittsburgh.

Q. And your brother was also there, you think, rather accidentally?—A. Yes.

Q. Were any other directors of the Aluminum Co. there?—A. No; not to my memory.

Q. Did Mr. Davis say whether he had talked to other directors who were there?—A. It is possible that Roy Hunt was there, because he is also a director in the Mellon National Bank. He may have been present at that conversation. I do not just recall.

Q. But it was not a meeting of the directors of the bank?—A. There is a daily meeting there, and Davis comes to that daily meeting, and that is usually the time I see him.

Q. So you saw him practically every day you were there?—A. I don't think I was there more than a day at the time. Since I have been in Washington I do not think I have been in Pittsburgh more than—well, I have been there over the week-end, but not to be at the bank.

Q. Then it would be true that being there only one day, if that was all, he saw you every day that you were there?—A. Yes.

Q. But on this single occasion. Now, can you tell us what you said, what the conversation was which led up to the dinner, if that was the next time that the thing was called to your attention?—A. Well, I recall that he said that Mr. Duke would like to come to Washington and talk this business over in Washington.

Q. With you?—A. Mr. Duke had said that he would.

Q. He would like to talk it over with you?—A. Yes; and I said that I would be glad to have him come to dinner and discuss it.

Q. Was that all?—A. I think that was all.

Q. What business did he say Duke wanted to talk over?—A. His water-power business.

Q. That is a combination or merger or something?—A. Yes; whatever it might lead to.

Q. And you remember nothing more of the conversation that occurred before the dinner?—A. No; that was substantially all.

Q. Who were present at the dinner?—A. Mr. Duke, Mr. Allen, Mr. Davis, and myself—the four of us.

Q. Was not your brother there?—A. No.

Q. No other director was there?—A. No.

Q. How long was the conversation on this matter on account of which they were there?—A. They came about dinner time. There was no conversation, as I recollect, immediately before dinner. We had dinner and sat up quite late; I should say we were there—yes—until about 1 o'clock. I think there was a 1:30 train that Duke's car was to go back to New York on, and we sat there until, my recollection is, about the time that they were to return.

Q. Did Mr. Duke bring Mr. Davis down in his private car?—Did they come together?—A. Well, I suppose so. I do not know.

Q. At any rate they went away together, the three of them?—A. They went away together.

Q. Can you tell us what was said by the different people on this subject during that interview?—A. The conversation was principally, almost wholly, on the part of Mr. Duke with me. I do not recall excepting what Mr. Davis might join in on something, or something casual, but the conversation was chiefly between Mr. Duke and myself.

Q. Will you tell us as best you can what was said by Mr. Duke and what was said by you?—A. Well, I have tried to refresh my memory on what was said. You see, it is difficult to remember clearly that length of time, when there have been so many other things all the time in my mind. But he described the water power and his acquisition of it and spoke a great deal of the paper industry. He seemed to want to interest me in that feature of it, the great possibilities of it, the great area that there was in paper and this power business and the Duke-Price business. He talked of that and the water power and the advantage that it would be to the Aluminum Co. to have that connection, to be interested in that power.

Q. What did he say of the advantages to the Aluminum Co. to have that power?—A. The future of the aluminum business would require great quantities of power; and I remember, too, he said that the Aluminum Co.—and that we ought to lay a basis for a broader and greater business on account of the developments that would make use of aluminum and that——

Q. That is, the great demand in the future, was that what he said?—A. Yes.

Q. The broadening demand for aluminum?—A. Yes; broadening demand, and that we ought to lay the basis for that; we ought to look ahead and have this power so that we could expand.

Q. Did he say he had been in the aluminum business?—A. No.

Q. How did he say that he knew of this great necessity there was going to be for water power?—A. Well, that was his vision.

Q. Well, what did he know about the aluminum business, or how had he learned about it?—Oh, well——

Q. Did he tell you?—A. Of course, he knew about the aluminum business; he knew that it was a consumer of power.

Q. Did he say how he had learned that?—A. No.

Q. What did he say as to how he had learned about this great prospective expansion of the business?—A. Oh, well, that was his speculation or imagination of the future of the business.

Q. Did he say he had looked into it at all?—A. He did not say that he had looked into the business; but just generally that

here we had this great business with its possibilities in regard to aviation and everything else, and there would be a great future to it.

Q. Did he mention that the Aluminum Co. of America was the only company of the size, or substantial size, manufacturing aluminum in America?—A. No; I do not think he mentioned that. That was generally known.

Q. But here was a man, as I observe, who never had any experience in the aluminum business telling to yourself and Mr. Davis his views in regard to what you ought to do in your business.—A. Well, that had not any significance. He had the power and wanted a customer for the power.

Q. Well, of course, there was always the possibility of his going into the business?—A. Yes.

Q. Did you speak of that?—A. No, no.

Q. But you understood it, that is, with all this great power, that it was adapted to the manufacture of aluminum?—A. Well, that was not discussed at all.

Q. I was wondering whether you appreciated that this great potential water development that he had that it was adapted to going into the aluminum business?—A. Oh, yes; I understood that, of course.

Q. Did he tell you that he had organized or caused to be organized in the December prior a company called an aluminum company?—A. No.

Q. The Quebec Aluminum Co.?—A. Not anything of that nature at all.

Q. Well, did you ask him?—A. No.

Q. Then, as I get it——A. It never occurred to me that he had been considering anything like that.

Q. Did he seem to be pretty well informed upon the aluminum industry?—A. Well, he did not talk much of the aluminum industry other than in the direction I speak of—that it had a great future. He was stressing the value of this power and the value of the Duke-Price business in connection with it.

Q. Was there any talk about bauxite deposits at that interview?—A. No.

Q. You knew bauxite was necessary?—A. Oh, yes; but there was nothing said of bauxite at all. We were not discussing the business.

Q. Well, as you have pointed out, he was discussing what he thought were magnificent opportunities for expansion in your business?—A. Yes.

Q. That is the aluminum business?—A. Yes.

Q. You did not ask him how he knew that, how a man, a stranger to the aluminum business, should be calling to the attention of a man who had been in it a great many years——A. Oh, no; that was a perfectly natural thing for him to speak of. Almost everybody has the same idea of the aluminum business, as having a very great future. It is one of these—to a certain extent it is a new business, in a sense, and a new metal, comparatively speaking, and it has——

Q. Tremendous possibilities of development and profit?—A. Yes.

Q. And you knew that Duke was a man of sizable fortune?—A. Oh, yes.

Q. And that if he wanted to go into the aluminum business he could?—A. Oh, yes; there was no doubt about that.

Q. He had the water power?—A. Yes.

Q. Which is one of the great fundamentally essential requisites?—A. Yes.

Q. Provided he could get bauxite. That is the other?—A. Well, I did not know that, but I was not particularly——

Q. Well, did you know that bauxite was the other great fundamental requisite of the business?—A. Oh, yes; I understand the situation in the industry very well, but——

Q. Did you understand where there were bauxite deposits that had not been acquired by the Aluminum Co. or some of its subsidiaries?—A. Yes; I knew that there are a great many sources of bauxite other than those owned by the Aluminum Co.

Q. Where?—A. Abroad; some in Italy and in Austria and Yugoslavia, and then in South America, and also to some extent in this country, although there is very little in this country of the grade of metallic content that would make it profitable.

Q. Did Mr. Duke in the course of this conversation, which I suppose went on intermittently from perhaps 8 o'clock in the evening until 1 or so in the morning——A. Yes.

Q. Tell you that he had been spending considerable sums in investigating the feasibility or practicability of going into the aluminum business?—A. No; he did not mention that.

Mr. McCLENNEN. I think, Mr. Whipple, that perhaps in your assumption you have forgotten from your experience in Washington that you cannot talk in the dwelling part of Washington until 1 o'clock and have a private car hitched to a 1:10 train.

Mr. WHIPPLE. I thought it was a 1:30 train.

The WITNESS. I do not recall how long they were there. I just recall that there came a time when they had to go and they went. It was at least 12 o'clock, but——

Q. Well, call it that. During that time did Mr. Duke let drop that he had spent or caused to be spent very considerable sums of money in investigating the practicability of the aluminum industry?—A. No, no; he never said on that score.

Q. And I don't suppose it entered your head that possibly he might with his water power and bauxite which he could get hold of, of course—that he might possibly go into the industry or into the business?—A. Well, of course, I am positive that I had not any knowledge of any activity or anything in that direction upon the part of Mr. Duke. I am sure of that.

Q. Well, had anything been said on that subject——A. Nothing.

Q. Between you and Mr. Davis?—A. No.

Q. Suppose you were always more or less on the look-out for possibilities of competition?—A. Well, as far as I was concerned, I was not on the look-out or thinking of the business. So far as the aluminum business is concerned, for a great many years I have depended entirely on Mr. Davis and I was——

Q. Well, I should perhaps have put it that you understood Mr. Davis was on the look-out for those possibilities?—A. Well, I was not troubling my mind about Mr. Davis' lacking in resourcefulness so far as looking after the interest of the business is concerned. You might say he was practically the whole business and we depended upon him.

Q. Did Mr. Duke during the course of his suggestions as to what would be wise for the Aluminum Co. to do in respect of the development of his business point out the adaptability of his water power up there for an aluminum enterprise?—A. That is what he was speaking of, the advantage that it would be to the Aluminum Co.

Q. Did he speak of the geographical advantages, or what were the advantages that he pointed out?—A. Well, the large quantity of power, the largest power development in the world or in America, I believe it was, or something of that kind.

Q. Did he say why he asked to see you about it?—A. I don't know; he may have.

Q. I beg pardon?—A. I do not recollect of his having given any explanation of why.

Q. Was anything said either by Mr. Davis or Mr. Duke about further interviews that they had since Mr. Davis' talk with you in Pittsburgh?—A. No. As a matter of course, this dinner had come about through the conversations of Mr. Duke and Mr. Davis. There was not anything particularly said of that.

Q. You mean after the talk in Pittsburgh?—A. You are speaking of whether at this dinner anything was said about conversations?

Q. Yes.—A. No; there was nothing.

Q. I mean were you told how far the negotiations had gotten along, whether they were any further along than they were in November?—A. No; according to my recollection there was not anything said of a particular plan or arrangement; it was a rather general conversation, and it was all in the hands of Mr. Davis as far as any negotiations with Mr. Duke were concerned, so he did not take up anything of that nature with me.

Q. Well, I do not quite see yet why, if it was all in Mr. Davis' hands, he wanted to talk with you.—A. Well, I suppose he recognized whatever was done would be—that I would be a factor in it, whatever it was.

Q. He did not propose anything particularly, did he?—A. No. When you say he did not propose anything, he suggested——

Q. Or did he?—A. He suggested taking in all of this property and taking an interest in the Aluminum Co.; that is, that we make some arrangements by which it would all be put together; just a suggestion of the advantages of the business and the power there, the advantage that it would be to us, and the advantage it would be to expand and have all this power for the future.

Q. But he had that; Mr. Davis had told you as much as that in Pittsburgh?—A. Oh, yes.

Q. Well, how much further did they get at this dinner?—A. I do not think that we got any further. There was no conclusions at all arrived at.

Q. Had you made any objection to Davis' going in?—A. Had I made any objection?

Q. Yes.—A. No; I do not recall having made any objection. I did not know what the negotiations might develop into. I may have suggested, and I suppose I did to Davis, that if we could acquire the power, buy the power, that we ought to consider that for the Aluminum Co.

Q. Was that in the Pittsburgh interview?—A. No; I do not think so—well, I think perhaps it was in Pittsburgh. That was on the question of policy of acquiring the Duke-Price power project, and I said, "Well, he has not any market for the power and would he sell the property."

Q. Well, that is what Davis told you Duke had proposed—that is, that he wanted to sell it or put it into the Aluminum Co.—was it not?—A. No; but my suggestion was that if we could buy it without regard to the use for the Aluminum Co., that it would be a fine property for the Aluminum Co. to own.

Q. Oh, you suggested that at the Pittsburgh interview?—A. I think so.

Q. And what you wanted to do was to buy it instead of taking Duke in?—A. Yes; that perhaps he would sell his power.

Q. Well, what did Duke say about that, or what did Davis tell you?—A. I don't think when I talked with Duke I suggested that. I was depending entirely on Davis as far as the negotiations were concerned.

Q. But I do not quite see now the object of the dinner and the interview in Washington, unless the thing had developed so that the gentleman whom they recognized as having really something to say about it was ready for something to be proposed.—A. Well, I did not consider that it was a meeting to discuss any plan or any actual business in connection with it. It was——

Q. Had you asked to see Duke?—A. Oh, no. It came altogether just as has been stated.

Q. That makes me inquire what Davis said to you was the object of meeting him.—A. That Mr. Duke wanted to meet me and talk this power proposition over with me.

Q. Yes; and, having met you, the only thing you can definitely remember is that he said he had a very large water power and that there was ahead a great expansion of business in which the Aluminum Co. was engaged, and that he thought you ought to get the water power, or that in substance.

Mr. McCLENNEN. You have seemingly summarized what has gone before rather than ask any question, and you have omitted from the summary Mr. Duke's references to the paper business, and that as a potentially great user of power also.

The WITNESS. Yes.

Q. Yes; well, putting that in, that is the substance of all he said; that is, that he had a great water power, that the aluminum business had a great future, and that you ought to be on guard and look out for it?—A. Oh, no——

Q. And prepare yourself with water power?—A. As I recall this conversation, Mr. Duke was a very interesting man, and he started in and described his work up there in getting this property together; it had taken him a long time; and I remember he spoke of the different steps that he had to take and then about the nature of this power; that with this large lake—Lake St. John—that he had the right to raise the lake; I remember him speaking about the square miles of water, the franchise to raise the water 17 feet above what it then was, and this would make a continuous supply of power of approximately a million horsepower. And he described the country up there, and then this paper business, and how this paper business was like the water power itself—yes; I remember it was the next thing to perpetual motion. He said now this water power—the rain falls over this country, and the water collects in Lake St. John, and so forth, and if we develop the power and use the water, it goes down the river and is evaporated into clouds and comes down from the clouds again, and he says that is perpetual motion. Then he linked the paper business up with this perpetual motion; that this Duke-Price concern had so many square miles or great areas of this timber; some of it they owned and some of it—well, anyhow, they had this available supply, and in cutting over it—that when they got it cut over the beginning of the cut would have grown up again to a place that they could start over again, and they had for all time to come a supply of this pulpwood through the growth and the area of what they had. And he was picturing that industry. Now, we would take that industry, become interested; he seemed to desire to have us interested in his water power and the Duke-Price industry and in the aluminum business in connection with it, and we would have such a great future.

Q. Had you ever had anything to do with the paper-pulp business?—A. No.

Q. Had he?—A. I don't know.

Q. I beg pardon?—A. I do not know, other than the Duke-Price interests.

Q. You never knew of his having had anything to do with it?—A. No.

Q. And, therefore, although this man, as it appears now, had organized the Quebec Aluminum Co., and, as it appears now, had been spending considerable sums of money in investigating the aluminum business and had sought to talk with you, the thing that you can remember most is that he talked about a business that you had never been in—that is, the paper and pulp business—nor he, either. May I ask if that accords with your memory?

Mr. McCLENNEN. Just note on the record an objection to that question as unintentionally argumentative rather than interrogative, and as assuming facts not in evidence and leading, and not the proper question to put to one's own witness.

Mr. WHIPPLE. Read the question.

(The question was read, as follows:)

"Q. And, therefore, although this man, as it appears, now had organized the Quebec Aluminum Co., and, as it appears now, had been spending considerable sums of money in investigating the aluminum business"——

The WITNESS. Well, I had no knowledge of any organization of his.

Q. No; but——

Mr. McCLENNEN. I think the witness ought not to be interrupted in his answer, and it is intensified by your assuming things not of his knowledge and not in evidence.

Q. I did not mean to interrupt you, Mr. Mellon.

Mr. McCLENNEN. I thought you almost, involuntarily, without meaning it, had interrupted him. I think we had better go back and let him complete the statement that he was making.

Mr. WHIPPLE. Let us complete the question first and then make your answer in full instead of making it as you go along.

(The previous question was then read by the reporter.)

The WITNESS. Well, I would not say that I remembered it most. I have just given that as part of the conversation. Most of the conversation was this water power and the great extent of it.

Q. But are you quite sure upon reflection that he did not mention that he had been looking into the aluminum business and knew really a little something about it?—A. I am quite sure that there was nothing said to that effect.

Q. I beg pardon?—A. I am quite sure that nothing was said to the effect that he had been looking into the aluminum business.

Q. When next was this matter called to your attention after this dinner?—A. I am not very clear when or how long it may have been after that that I learned that Davis and Duke were approaching an agreement for the exchange of power with the Aluminum Co. I am not sure just how long it may have been afterward.

Q. Of course, you recognize that if the Aluminum Co. acquired this water power that no competitor or potential competitor could acquire it?—A. Well, there is no monopoly in water power. Canada is full of it. But this was a particularly desirable power.

Q. And particularly adapted to the aluminum business?—A. Well, of course, any power is adapted to the aluminum business.

Q. But this was the greatest in the United States?—A. So he said.

Mr. McCLENNEN. You do not want to put it that way, do you?

The WITNESS. In Canada.

Q. The greatest in North America?—A. I do not recall just whether he said it was the greatest in North America, but it was undoubtedly a great power.

Q. Did you talk with your brother about this at all after this interview?—A. Yes; on this question of making the reappraisement of the aluminum property and making an exchange with Duke.

Q. Where was that talk?—A. I think that that was pretty much over the telephone.

Q. Did he come to Washington to see you about it at any time?—A. No; I do not recall that he came to Washington to see me about it.

Q. Do you remember anything that Mr. Davis said at this dinner in Washington or Mr. Allen?—A. I do not recall their part in the conversation. Mr. Duke, I know, kept up the conversation; he did most of the talking.

Q. Now, it may possibly refresh your recollection if I call to your attention the fact that on March 23, 1925, which was a little more than 2 months later, you see, after the dinner—A. Yes.

Q. Mr. Davis wired to Mr. Allen as follows:

"On arrival in Pittsburgh this morning I found Mr. R. B. Mellon had unexpectedly gone last night to Washington to confer with Mr. A. W. Mellon, returning to Pittsburgh tomorrow morning. I am therefore not able to make any progress today but will see Mr. Mellon tomorrow morning."

That is exhibit 148 in the case. Do you remember that your brother did see you in Washington about it?—A. I have no recollection of my brother having come to Washington on this subject. I cannot just recall. He may have.

Q. Did Davis come to Washington to talk about it?—A. I do not think so. I have no recollection that Davis came to Washington.

Q. Let me call your attention to the fact that 2 days later Davis wired Allen as follows: "My Washington visit is postponed until next week, so I will be at your office tomorrow morning." (Exhibit 149.) That would indicate that Davis had arranged to go to Washington.—A. He may have.

Q. Do you remember about his coming or his planning to come?—A. I have not a recollection of Davis coming nor of my brother coming, but I would not say that they had not been there. My brother has been there at times, and Mr. Davis has been there at times. But on this Duke power matter my nearest recollection is that my brother talked to me over the telephone about it, but he may have come to Washington.

Q. Then on April 7 Davis wired Allen in part as follows:

"Mr. A. W. Mellon and Mr. R. B. Mellon very much prefer the prior preference and straight-preference plan that I outlined to you yesterday, as they think it is a much better set-up for the future company and equally satisfactory if not a little more so to the stockholders than the original plan." (Exhibit 185.)

Do you remember having expressed your views on that subject?—A. I think I remember something of a plan of organization that was not the same as that which afterward was arrived at, that I was consulted about. I can not recall just the particulars of it.

Q. Did you see any of the papers that were being drafted or being considered between the parties?—A. Yes; I remember I had sort of a typewritten set-up or something of that kind.

Q. Who furnished you with that?—A. I think that came from my brother.

Q. When?—A. Possibly it came from—well, it must have come from Pittsburgh.

Q. When?—A. I do not know. It must have been—that, of course, was along during this negotiation after the time we had the dinner.

Q. Have you that with you?—A. No; I have not thought of that until now. I had forgotten that there was such a thing. I will see if I can find whatever that was.

Q. That is a set-up of the proposed merger?—A. It was in connection with the reorganization of the Aluminum Co.'s structure, and there was something before we arrived at that which was concluded upon the 150,000,000 preferred and 150,000,000 common; there was something before that, since it has been brought to my attention, but I do not recall a great deal about it, except that it is just my impression now that it appeared to be something not very clear but rather a complicated arrangement, whatever it was.

Q. Did you hear at any time the suggestion that in the reorganized company Duke should have one ninth and the Aluminum Co. should have eight ninths?—A. Yes.

Q. Were papers——A. That was the basis that was finally arrived at.

Q. When did you first hear that discussed?—A. Well, that was along during that period. There was the dinner in Washington and the next time was when I went on a trip up to Canada with the Aluminum people.

Q. That was not until July, I believe?—A. That was in July; yes. Now, it was along in that period somewhere that this occurred that I am speaking of.

Q. I think the letter in which that was stated was April 15.—A. Which? April 15?

Q. Yes.—A. Yes.

Q. How long before that had you heard about Duke's having one ninth and the Aluminum Co. eight ninths of the stock of the company?—A. I could not say just when.

Q. Did you see the——A. I only thought of it when it was brought to my attention at any time, and I do not recollect just the dates.

Q. Who told you about that?—A. It was either Mr. Davis or my brother.

Q. Well, did they show you the paper when drafted?—A. Yes; they either showed it to me or sent it to me. I just recall seeing the paper.

Q. Was that agreed on at the dinner?—A. Oh, no.

Q. Mentioned?—A. No, no; there was no definite mention of any percentage or anything in that direction.

Q. Now I understand that you did see the letter or proposed agreement in which this one ninth and eight ninths was referred to?—A. Yes.

Q. But you have not that among your papers with you?—A. I suppose so.

Q. Are they here?—A. No; I have not any papers here, and I do not know whether I have in Washington. It may have been that my brother showed that to me, possibly in Washington or possibly in Pittsburgh, and I may have a copy. I will look that up, but I could not say now.

Q. I will ask you to look at exhibit 191, which is a copy, or which purports to be a copy, of an original paper that was furnished while Mr. Davis was testifying; and I want to call particular attention to this paragraph on the third page:

"The proposal is that you and I (this is written by Duke and accepted by Davis) will cause, with reasonable promptness, a merger of such United States Corporation with the Aluminum Co. of America or the corporation to which all of its property and assets will be transferred, whereby the resulting corporation will own all of the rights, franchises, and properties of both of said companies, correspondingly assuming all of their engagements, debts, and liabilities; and have authorized and made distribution of the capitalization as set forth in schedule B hereto annexed as a reorganization of said two companies by way of such merger, the ultimate outcome being that of each class of the securities issued by the resulting corporation eight ninths will be issued pro rata to the shareholders of the Aluminum Co. of America, and one ninth will be issued pro rata to the shareholders of such United States Corporation."

A. Yes.

Q. Do you remember that?—A. Yes; that is what was arrived at. I knew that, but I never saw this; I never read any of the papers in connection with the negotiation.

Q. Just look at that letter and see if a copy of that was not furnished or shown to you.—A. No; I am quite sure I never read any of the papers connected with this. It was just sort of a tentative outline of the figures that was shown to me. I was not taking any responsibility for the carrying out of this arrangement or in the negotiation.

Q. But you remember that that was the conclusion that was reached?—A. That is—what I was saying is that I never read any of the papers connected with this agreement.

Q. But you knew that of the securities of the new company one ninth was to go to Duke?—A. Yes.

Q. Or Duke and his associates, as you said?—A. Yes.

Q. And eight ninths to the Aluminum Co. You remember that?—A. Yes.

Q. Then do you remember that there was certain stock that was to be issued to Davis at $5 a share?—A. You mean the employees' stock?

Q. Well, was it employees' stock?—A. There was something about making some provision. I don't know of any special stock to Davis.

Q. Did you not know there was an agreement whereby a good many shares of stock were to be issued by the new company to Davis at $5 a share?—A. No.

Q. In plaintiff's exhibit 239 or a copy of it, which is entitled "Agreement of Merger and Consolidation," which is dated July 9, 1925, between the Aluminum Co. of America and the Canadian Manufacturing & Development Co.—A. The which?

Q. The Canadian Manufacturing & Development Co., which was the new company organized, and which was signed by the Aluminum Co. of America by Arthur V. Davis, president; and by G. G. Allen, president of the Canadian Development Co. of America; and by all the directors of the Aluminum Co., including R. B. Mellon; and by all the directors of the Canadian Development Co., being Allen, Perkins, and Ingersoll, there is this provision on page 9:

"There shall also be issued upon such merger and consolidation 147,262 additional shares of the common stock of the merged company, which stock shall be sold by the merged company at $5 per share to such person or persons (including the president of the merged company) and in such amounts to each as the president of the merged company shall determine, whether or not such person shall be stockholders in the Aluminum Co. or in the development company or in the merged company."

Did you know that; do you remember that provision in the merger agreement?—A. No. That agreement, I suppose, is the agreement which was signed on the train when we were up in Canada. It was in another car, and I went in from Mr. Duke's car; I was with him in there, and they were all together, and I signed the agreement with the others. I did not read the agreement. I supposed, of course, that it was the agreement that had been under negotiation and that in a general way I was familiar with, but I did not read it and I do not know exactly the application of that which you speak of unless it is that which I was speaking of, that there was an arrangement for a certain amount of stock that was going to be divided. I think there was something of that kind.

Q. This does not say anything about employees?—A. No. There was no discussion of anything of that kind on the train at all. It was only that this agreement had been reduced to writing and was there to be executed and we executed it.

Q. Who reduced it to writing?—A. I do not know. I suppose Mr. Davis was concerned in it, because I was relying entirely—and my brother also—on Mr. Davis.

Q. Who were the counsel of the company?—A. I can not recall whether Mr. Gordon was the counsel, but he was not on that trip up there. I do not recall that any of the counsel of the company were there.

Q. No; but did you know who drafted the agreement or looked it over as counsel in behalf of the Aluminum Co.?—A. I do not. As I say, I was depending entirely on Davis.

Q. Here were 147,262 additional shares to be issued at $5 a share.—A. I see.

Q. Now——A. Well, as I recall, $5 a share was about the asset value of the common shares at that time.

Q. Was it?—A. That was the book value. I knew that, but I do not recall what this part of the agreement means or what it provides.

Q. This is a copy of the paper. Would you like to see what I read and see where its relation comes in exhibit 239?—A. Yes; I would.

(Exhibit 239 handed to the witness.)

Q. That is a copy of the agreement of merger and consolidation of the companies.—A. Yes. As I said before, I never looked at this—I did not read it. They had it there and I knew of what was being done and went in and signed it.

Mr. McCLENNEN. Why don't you make sure that this is the one he speaks about? Of course, there is nothing to show that.

Q. I am calling your attention to that and——A. I never examined any of the papers. Where was this particular paper executed?

Q. It was on the 9th of July.—A. What date was this trip we had, do you know?

Mr. WHIPPLE. What date was it, Mr. Park?

Mr. PARK. It was about the 9th.

Mr. McCLENNEN. Yes; but whether it included the 9th I would not dare to say.

Mr. WHIPPLE. That is on the 9th of July.

Mr. PARK. I think the photograph was taken up there on July 11, 1925.

The WITNESS. Oh, well, then; but the photograph was taken on our way down and this agreement was signed on the way up in Canada, but after we had left Montreal, I think.

Q. I do not find your signature attached at all.—A. There was something that struck me that they had this in another car or in a car that had the dining room and on the table was this and I thought——

Q. Was there something you had signed besides this?—A. I thought I had signed it. I went in there, I know, and I thought I had signed something. My brother was there also. He was with them.

Mr. McCLENNEN. Has this Mr. R. B. Mellon's signature on it?

Mr. WHIPPLE. Yes.

Mr. McCLENNEN. But not Mr. A. W. Mellon?

Mr. WHIPPLE. I do not think I ever heard of one before with Mr. A. W. Mellon's signature on it.

The WITNESS. Well, it is possible that I was not required to sign anything. I looked upon it as a matter that had been settled and they were all there and I supposed they were executing this paper.

Mr. McCLENNEN. Do the signatures on this exhibit purport to be of the stockholders or of directors?

Mr. WHIPPLE. Of directors.

The WITNESS. Well, then, I was not a director.

Q. No; you were not a director.—A. Then I did not sign it.

Q. But if you have a memory of signing something, I would very much like to see it.—A. I would not be positive that I signed anything, but I was present there when they were signing the paper.

Q. I think it is quite likely that where one hundred and forty-seven thousand and odd shares were to be issued under the circumstances to persons not named but persons to be designated by the president that they might have been anxious to have had so important a stockholder sign by way of approval, but we have not found your signature anywhere.—A. Well, I do not know. I have not any recollection.

Q. Because if you have now discovered that for the first time, you might wonder what became of so many shares.—A. Well, I do remember that there was an amount of stock that was to go to Davis and a lot of others there in the company. I took it as employees. I do not mean perhaps the working men and others in that way, but those connected with the company.

Q. Did you regard Mr. Duke as one of the employees in that sense?—A. No. Of this 147,000 shares, was Mr. Duke a participant in that?

Q. We very much suspect he was.—A. Well, may this not have been——

Mr. McCLENNEN. I ask to have that statement of Mr. Whipple's suspicions stricken out as not founded on any fact and not being any part of this deposition.

The WITNESS. Might it not be this: On the basis of this reorganization which was made, there was a certain amount of unissued stock of the old company, you know, that had not been issued and was in the treasury? It was, you might say, treasury stock; and that this represented that treasury stock, and if it did, would not Mr. Duke be entitled to his one ninth of that treasury stock? If that is what the explanation of it is, or something on that line——

Q. Well, you see this agreement for merger gives one ninth to the Canadian company which included Mr. Duke and his associates.—A. Yes.

Q. And eight ninths to the Aluminum Co.—A. Yes.

Q. Then, besides that there are one hundred and forty-seven thousand and odd shares that went to Mr. Davis for him to do with as is pointed out there, you see, to give them to such—will you let me read just what it is in order to be accurate—well, you read it.—A. "There shall also be issued upon such merger and consolidation 147,262 additional shares of the common stock of the merged company, which stock shall be sold by the merged company at $5 per share to such person or persons (including the president of the merged company) and in such amounts to each as the president of the merged company shall determine, whether or not such persons shall be stockholders in the Aluminum Co. or in the development company or in the merged company."

Q. Yes. You see, they could all be sold to the president if he said so.—A. Well, of course, I do not know what the purport of it is at all; but what occurs to me is that unissued stock that it took to round this thing out would likely have been issued in this way and a certain proportion of it was the stock that we contemplated giving to others who were not stockholders; that is, to officers of the company and all that, and then perhaps a portion of that also to go to the stockholders and to Mr. Duke. It may have been a provision of that kind.

Q. Do you remember anything about it?—A. I do not recall anything of it; no. But I do recall there was the question of this surplus stock and dividing a certain amount, which I said would be agreeable, to divide among those as a sort of bonus stock or something, to those people. Now, there was something of that kind in this; there was some stock used in that way.

Q. Did you get any of it?—A. I may have. I don't know.

Q. Did your brother?—A. If I got any, he did also.

Q. Do you know whether there was a provision whereby Mr. Duke should get something that his so-called associates in the Canadian company or the development company did not get?—A. No; I do not know that.

Q. You see the one ninth under that merger agreement that was to be distributed was to go to the stockholders of the development company, and that included Price and Duke and his associates.—A. Well, I did not know that, but it only occurred to me that might be an explanation. I should not go in, when I know nothing about it, and make suggestions.

Q. And eight ninths was to be distributed to the stockholders of the Aluminum Co.?—A. Yes.

Q. Now, did the officers of the Aluminum Co. get some bonus stock besides that?—A. I do not know. If they did——

Q. Well, that was your suggestion a moment ago, was it not?—A. Well, as I say——

Q. As a theory?—A. That was a theory, because you raised something here that I knew nothing about, and I was casting about in my mind to see if I could offer any explanation for it. But I do not know anything in connection with this at all.

Q. Do you want to try again on an offer of an explanation, any different from what you have?—A. I do not know of anything else.

Q. Well, when you spoke about knowing as to some bonus stock.—A. In our conversations there was a tentative suggestion that we use some of this stock for these officers and workers in the company. I just recall that.

Q. Like whom, for instance?—A. Well, Roy Hunt and Withers, and so forth, and the engineers and such.

Q. Bonuses?—A. Yes.

Q. That would be something not distributable to the stockholders of the company in general, but would go as bonuses to them?—A. Oh, entirely.

Q. Some of it to the president?—A. Yes.

Q. And some to the people who had been influential in bringing about the merger, or something like that?—A. Oh, no; nothing of that kind. It was for the work that they had done.

Q. What work?—A. Work in carrying on the aluminum business. They were employees.

Q. But that would not include Duke?—A. Oh, no. But when I was suggesting a theory in regard to Duke, as I say, I ought not to suggest any of these things, but it was just a theory that possibly this treasury stock that I speak of, this stock that had never been issued, and yet it was owned by the company; I think it had been issued, but there might be something whereby Duke would have a right to a share in it.

Q. Well, why Duke rather than the Canadian company?—A. Well, I don't know that.

Q. Because, you see, he was acting for the Canadian company?—A. Well, then, I would say it would be the Canadian company entirely, but I would have to——

Q. Were you told that Duke had a private arrangement with Davis for the distribution of some of this stock?—A. No; I never heard of that at all.

Q. Have you ever talked with Mr. Davis about the distribution of any of that 147,000 shares of $5 stock?—A. No; this is the first time I have thought of it, seeing it there.

Q. You will notice that that letter of April 15 which I handed you a few minutes ago was a proposal by Duke and accepted by Davis.—A. The letter of April 15?

Q. Yes; and that it was in behalf of their respective companies?—A. I see.

Q. Now, you see it begins, "I own a majority (that would be Duke) of the issued stock of the Quebec Development Co., hereinafter called the Quebec Co., a corporation organized under the companies act," and so forth, and then the Duke-Price Power Co., Ltd., which was constructing what was known as the Isle Maligne station on the Saguenay River. Then, there is a statement—will you refer to that where it says they are both acting for the respective companies? I guess we can agree that is in there. Then, on page 3, as I called your attention to it, "The proposal is that you and I will cause with reasonable promptness"—and so forth.—A. "And make distribution of the capitalization as set forth in schedule B hereto annexed, as a reorganization of said two companies by way of such merger, the ultimate outcome being that of each class of the securities issued by the resulting corporation eight ninths will be issued pro rata to the shareholders of the Aluminum Co. of America and one ninth will be issued pro rata to the shareholders of such United States corporation."

Q. That is, there was a United States corporation to be organized, which was the Canadian Manufacturing & Development Co. finally; is that right?—A. Yes. I do not recall that I ever heard those names.

Q. Well, that represented the Duke interests, and you see the agreement was that eight ninths should go to the stockholders of the Aluminum Co.—A. Yes.

Q. And one ninth of the new shares to the stockholders of what we will call the Duke Co., which was to be organized, representing himself and his associates. Now, what I want to ask is whether you knew that on the same day another letter was written by Duke to Davis in which Davis agreed to sell and deliver to Duke shares of the common stock of the resulting corporation at $5 a share in sufficient number so that when taken in connection with the shares of such stock received by himself and associates through such merger will constitute 15 per cent of the total issue of the stock?—A. I see. What is that?

Q. I will ask you to just read that and see if you knew of any such letter as that being written, which was to give to the Duke Co. stockholders one ninth, just as stated in the agreement, but to give enough more to Duke personally so that their total holdings should be 15 per cent?—A. No; I had no knowledge of this letter nor of either of these letters.

Q. Did not Duke tell you about it?—A. No.

Q. Did Davis on this trip when you met them, the trip to Canada?—A. No; I have no knowledge of it. Does this mean that Duke and his associates obtained 15 per cent of the Aluminum Co. instead of one ninth?

Q. No; it does not mean, as I construe it, any such thing. It means that on April 15 one agreement was made whereby Duke and his associates were to get one ninth for distribution among Duke and his associates, one ninth of the shares of the new company, and Davis or the Aluminum Co. were to get eight ninths for distribution among their stockholders; but that at the same time Davis promised Duke that he should get hold of enough shares, although the way is not there pointed out, at $5 a share, to give Duke personally, not for himself and his associates, another 4 per cent of the total shares of the Aluminum Co., since you have asked me.—A. Yes.

Mr. McCLENNEN. Just note an objection to the explanation as not an accurate statement of the letter which has been shown the witness, and which I take it is the one which purports to be characterized by the description given.

Mr. WHIPPLE. Will you point out in what respect it is not an accurate statement of that letter?

Mr. McCLENNEN. Well, it would best be pointed out when the text of the letter becomes a part of the record.

Q. Were you aware of any such arrangement as that between Duke and Davis as was represented by that letter?—A. I have no recollection.

Q. Did you ever hear of any such thing as that?—A. Not to my recollection.

Q. Did you ever hear that Duke and his associates were to get for distribution one ninth of the total issue of the shares of the new company, but that through an arrangement between Davis and Duke in some way Duke was personally to get 4 per cent of the total capitalization more and in addition to the one ninth?—A. I have no recollection of that additional percentage that you speak of.

Q. Did you consciously approve any such plan?—A. Well, I do not know; I do not know anything of it.

Q. I say, did you consciously approve at the time of a certain percentage of the new shares going to Duke and his associates and through an arrangement between Davis and Duke written on

the same day enough to make up 15 per cent of the shares were to be given to Duke?—A. I just—if there was anything of that said to me I have forgotten it, that is all. I have not a recollection of it.

Mr. WHIPPLE. I am going to have this paper which I used marked for identification.

(The paper was marked "Plaintiff's Exhibit No. 311 for identification, July 2, 1928, R. W. P.")

Q. Mr. Mellon, have you brought any papers at all on from Washington—correspondence or copies of correspondence?—A. No.

Q. And you have not personally looked for any among your files?—A. Not personally.

Q. Just what did you tell your secretary that you would like to have him look for?—A. It was to fix the date that Mr. Duke came to dinner.

Q. And was that all?—A. Well, I asked him for anything in connection with the Aluminum papers, to bring them to me, and he did not bring any so I——

Q. Did you ask him specifically to bring all the correspondence or copies of correspondence that you had had with either Duke or your brother or Davis in relation to this transaction with Duke?—A. I do not recall. I asked him to bring all the files for me to look at, and I just looked over them and I do not recall seeing anything there having to do with this.

Q. What I specifically asked for in the subpena was for copies of correspondence passing between yourself and Mr. Davis, and yourself and your brother, and I think yourself and Mr. Duke.—A. Well, there was not any intention at all of leaving anything or not making a thorough search, but I have not any recollection of correspondence. I did not think there was anything in the files in connection with it.

Q. I was not suggesting any intentional purpose. I was merely trying to find out what instructions you gave to your secretary, and I was especially anxious to find out about it because in the case of Mr. Davis, he, trusting to his secretary or somebody else, neglected to produce in my deposition with him as far as I had gone what we regarded as a somewhat important letter or copy of a letter, and I wanted to be very sure——A. From me?

Q. No; from Duke.—A. Oh.

Q. And I wanted to be very sure that there was no mischance in reference to your instructions to your secretary so that your secretary might have overlooked his duty in that connection.

Mr. MCCLENNEN. Will you just note a motion to strike off the record Mr. Whipple's assertion as not germane to the deposition that is now being taken, not conceded fully accurate, and uncalled for so far as interrogating this witness is concerned, and irrelevant, incompetent, and immaterial and otherwise improper?

Q. Therefore I want to ask, Mr. Mellon, whether you specifically asked your secretary to look for and produce for you to bring here——A. You mean whether I was——

Q. Whether you did do it, copies of letter or letters passing between yourself and your brother either way, yourself and Mr. Davis either way, or yourself and Mr. Duke, if any did pass, on the subject matter of this merger or any of the facts which lead up to it.—A. Well, before coming away at this time it did not occur to me—and I do not think there is anything—but it did not occur to me that there was anything to bring away; but it had occurred to me before in looking this up. I had the files brought in and looked over them, and I did not see anything that had to do with this transaction, and I do not think I have anything. When I go back I shall have a search made for them and see if there is anything.

Q. That would greatly oblige me, if you would.—A. Yes; I shall do that.

Q. And you see what I want particularly?—A. Yes.

Q. And that is correspondence or copies of correspondence or letters or memoranda of telephone conferences between yourself and Mr. Davis.—A. Yes; I shall do that.

Q. Yourself and your brother.—A. Yes.

Q. And yourself and Mr. Duke, and yourself and anyone else covering this period of time with reference to this merger or the negotiations which led up to it.—A. Exactly. I shall do that and bring anything, if there is anything, to your attention.

Q. Well, if you would.—A. Yes.

Q. And I should be glad to have a statement from your private secretary as to the care with which that search has been made.—A. Yes.

Q. I am not asking you to make it, and I am not intimating in the slightest that you have overlooked anything, but, you see, if instructions are given to a private secretary there might be a mistake, and that I want to avoid.—A. Yes. I am sorry that I did not go into it so I could say I had made a thorough search, but it did not occur to me to do it. But I did not recall and I never read any of these papers at all.

Mr. WHIPPLE. As far as I am concerned, I am not going to keep Mr. Mellon any longer. That is all.

Mr. MCCLENNEN. I think I have no questions. I want to put in evidence as a part of Mr. Mellon's deposition this exhibit 311 for identification, so if you will just strike off the identification it may became exhibit 311.

(The paper was marked "Exhibit No. 311, July 2, 1928, R.W.P.")

By Mr. WHIPPLE:

Q. There is a question which I omitted. Did you ever hear of one George D. Haskell, of Springfield, Mass., or of any other place?—A. He is the man who has brought suit?

Q. Yes.—A. Yes. Well, I have read—not during all this time; I have not heard of him, but I have read of the suit in the papers.

Q. Against the Aluminum Co.?—A. Against the Aluminum Co., and I inquired of Mr. Davis what it meant, and he explained it to an extent.

Q. And very likely you heard of him as bringing suit against Mr. Duke.—A. Yes.

Q. Or the Duke estate?—A. Yes.

Mr. WHIPPLE. That is all.

(It is stipulated by and between the respective counsel hereto that the signing of this deposition by the witness, Andrew W. Mellon, is waived.)

EXHIBIT C

The Gulf Refining Co., of Pittsburgh, has been awarded the contract to supply the bunker fuel oil requirements of the Shipping Board Merchant Fleet Corporation vessels at Charleston, Savannah, Jacksonville, and Tampa over a 3-year period, in accordance with its proposal submitted July 30, it was learned here to-day. All other proposals, including bids of several oil companies for furnishing requirements at Boston, were rejected by the Shipping Board.

Terms of the contract call for supplying the estimated maximum requirements of 100,000 barrels per month at the four South Atlantic and Gulf ports for 93 cents per barrel at Charleston, Savannah, and Jacksonville, and for 90 cents per barrel at Tampa during the 3-year period commencing January 1, 1929. These fixed prices are for terminal delivery with an additional charge of 5 cents per barrel for barging.

HOLDS ALL CONTRACTS

With its contract for furnishing oil requirements at these ports, the Gulf Refining Co. now will supply about 8,000,000 barrels annually for Government vessels at all Atlantic and Gulf ports, since on July 10 it was awarded the first contract under the new 3-year period terms devised by the Shipping Board for fulfilling the needs at New York, Philadelphia, New Orleans, Galveston, and Port Arthur. The Pittsburgh company's contract on this calls for oil supply at an average rate of 92 cents per barrel for terminal delivery at New York and Philadelphia, with still lower average fixed prices at the other ports.

By virtue of these two contracts the Gulf Refining Co. will supply all oil requirements for Government vessels at Atlantic and Gulf ports. The maximum estimated requirement of the Government vessels at these ports is approximately 875,000 barrels monthly.

Bids for supply requirements at Boston will not be reinvited, it was announced by the Board. The bunkering of Government vessels making port at Boston will be shifted to New York or Philadelphia.

[Senate Report 7, part 5, Seventy-first Congress, first session]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Messrs. BORAH, KING, and DILL, from the Committee on the Judiciary, submitted the following views (pursuant to S.Res. 2):

The committee, as we understand, is not in disagreement in any respect except as to question 2 submitted by Senate Resolution 2.

The controversy, or differences of view, arise over the construction to be given to section 243, title V, of the laws of the United States. This section reads as follows:

"No person appointed to the office of Secretary of the Treasury, or Treasurer, or Register shall, directly or indirectly, be concerned or interested in carrying on the business of trade or commerce, or be owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law; and every person who offends against any of the prohibitions of this section shall be deemed guilty of a high misdemeanor and forfeit to the United States the penalty of $3,000, and shall upon conviction be removed from office, and forever thereafter be incapable of holding any office under the United States; and if any other person than a public prosecutor shall give information of any such offense, upon which a prosecution and conviction shall be had, one-half the aforesaid penalty of $3,000, when recovered, shall be for the use of the person giving such information."

The view we entertain is that a person may be interested in the business of trade or commerce—may, for illustration, be a stockholder in a corporation engaged in the business of trade or commerce, without becoming ineligible to the office of the Secretary of the Treasury. His interest alone or his ownership of stock alone does not render him ineligible under this statute.

It seems to be contended by some that the statute should be construed as if the statute read:

"No person appointed to the office of the Secretary of the Treasury * * * shall, directly or indirectly, be concerned or interested in the business of trade or commerce."

It is argued that the words "carrying on" may be treated as surplusage, to be given no meaning, or force, or effect; a bad example of tautology. We do not so construe the statute. The words "carrying on" must be construed in connection with the other language in the section. The statute as a whole must be construed as a whole, if under any rule of reason you may do so. Under no rule of construction with which we are familiar are we justified in excluding this language as having no meaning or

significance at all. The language was evidently placed in the statute for a purpose. The framers evidently had some object in mind, and therefore it should be given consideration in construing the statute. If the framers of the statute had desired to exclude everyone from this office who was interested in the business of trade or commerce, the plain, simple, language by which that would have been accomplished would have been as follows: "No person appointed to the office of Secretary of the Treasury * * * shall, directly or indirectly, be interested in the business of trade or commerce." But evidently they did not intend to exclude everyone who might have an interest in such businesses. Evidently they intended to exclude only those who were directly or indirectly concerned or interested in "carrying on" the business, or who participated in managing or running the business, or in counseling and advising in reference to the management of the same.

We have not found any decisions of the courts construing this statute or a statute identical in terms. This leaves us to search for construction among decisions which, while not decisive or controlling, may be deemed instructive or persuasive. In addition to such decisions as may be found along that line, we are permitted to consider such practical constructions as may have been placed upon the statute by those departments of the Government having to do with the execution or maintenance of the statute.

The laws of the State of New York at one time provided:

"That no person shall be appointed to the office of justice of the court of special sessions unless he shall be a resident * * * no such justice shall receive to his own use any fees or perquisites of office; nor shall any such justice hold any other public office or carry on any business."

The words "carry on" were construed by the supreme court (appellate division) of that State. The court said:

"He can hold no other public office, can carry on no business, but is required to devote his whole time and capacity to the duties of his office. In the Standard Dictionary to 'carry on' is defined: 'To keep up; keep going; maintain; manage.' And in the Century Dictionary: 'To manage or be engaged in; continue to prosecute; keep in progress.' And I think to bring a person within the prohibition against carrying on a business there must be such relation to the business as imposes upon the person charged an obligation or responsibility to it, a responsibility for its management, the assumption of its control, or an obligation to perform duties in relation to it. The term 'to carry on a business' implies such a relation to the business as identifies the person with it and imposes upon him some duties or responsibility with its management." (*Matter of Deuel*, supreme court, appellate division, vol. 127, p. 632.)

The same principle was announced in the case entitled "*Matter of Levy*." (Supreme court, appellate division, vol. 198, p. 326.) We quote from the syllabus of the case:

"The term 'to carry on a business' implies such relation to the business as identifies the person with it and imposes upon him some duty or responsibility in connection with its management."

In the above case the respondent held 10 percent of the capital stock of a business corporation.

We do not refer to the foregoing opinions as conclusive upon the question here, but they are persuasive. The court clearly holds that carrying on a business has a significance and a meaning wholly aside from a mere interest in the business, such as that of a stockholder; that it implies much more and something different from an interest in the business or concern in the business. It must be concluded from these cases that the court was of the opinion that the ownership of stock is not sufficient to constitute a violation of the statute which provided against having an interest in carrying on a business. In other words, "to carry on a business" there is an obligation, a responsibility, an authority with the one that is in no sense a part of the other, a mere interest in the business.

The violation of law, however, long continued, and regardless of the high standing of the parties, will not, of course, change the law nor exempt those who repeat the violation from the penalties of the law. But when a construction of the law is involved and the meaning is in doubt it has always been considered proper to take into consideration the practical construction placed upon it by those brought in touch with it. And even acquiescence upon the part of those having responsibility in the acts or conduct of parties operating under the law may be considered.

The records will bear out the contention that never has a mere interest or the mere ownership of stock in the business of trade or commerce been regarded as rendering a party ineligible to the office of Secretary of the Treasury. From Alexander Hamilton to the present incumbent, Secretaries of the Treasury have been interested or have been stockholders in corporations engaged in the business of trade or commerce. We do not know, because the records are not available, whether all Secretaries have been so interested. But we do know that a great number of them have been. Secretary after Secretary, men of the highest and most sensitive regard for the integrity of official conduct, have been holders, and in some instances large holders, of stock in corporations engaged in trade or commerce. This fact has been known to the different departments of the Government, including the House and the Senate. Such interests have been held without challenge from anyone as to the eligibility or fitness of the incumbent. Thus by long practice has a construction been placed upon the statute which we are entitled to consider in our effort to arrive at the true meaning of the law.

The Supreme Court of the United States, in the Midwest Oil case (236 U.S.), in passing upon the power of the Executive to make temporary withdrawals of public land, took into consideration the silence of Congress as to the practice of the Executive and the legality of such withdrawals. Reasoning upon the same principle, it will throw some light upon the proper construction of this statute to take into consideration the acts of the Executive, the different Secretaries of the Treasury, in conjunction with the acquiescence if not affirmative approval of the Congress.

When we take into consideration, therefore, the language of the statute itself, distinguishing as we think it does, between an interest in and the carrying on of the business, when we take into consideration the practical construction placed upon the statute through these years, together with the opinions of the courts in cases involving the construction of statutes of a similar import, we have no doubt that a fair and reasonable construction of the statute does not deny an incumbent the right to hold stock in a corporation engaged in trade or commerce.

It should be borne in mind also that when Mr. Mellon was being considered for the office of the Secretary of the Treasury he took advice of able counsel relative to the meaning of the statute. These lawyers, including ex-Senator Knox, were of the opinion that an interest in the business or the holding of stock did not render Mr. Mellon ineligible to the office. It was after careful consideration of all the facts and of the law that Mr. Mellon received his appointment, was confirmed by the Senate, and has since been continued by two subsequent Presidents in the Secretaryship of the Treasury. He has served eight years, and during that time the fact that he was a stockholder in large corporations engaged in trade or commerce was known to all, known to the different departments of the Government, known to the Senate and House of Representatives, the executive department, including the legal department of the Government.

The most noted incident arising under this law is that in reference to the appointment of A. T. Stewart, the great dry-goods merchant in New York City. President Grant named Stewart Secretary of the Treasury. He was promptly confirmed. Objections were made immediately thereafter based upon his ineligibility under the act now before us for construction. Stewart immediately sought legal advice. He was advised that as he was heavily interested and actively conducting a large business in trade and commerce he could only avoid the statute by retiring from the business. Stewart stated that it would be impracticable, if not impossible, to get out of the business inside of 5 years. The President sought a joint resolution exempting Stewart from the operations of the law and sent a message to Congress to that effect. But there was objection to the resolution, also objection to repealing the law. In fact, it now developed that there were objections to Stewart upon the part of the high protectionists, Stewart being a free-trader. Someone proposed that Stewart enter into an agreement to give the profits of his business to charity—an irrelevant suggestion from the standpoint of the law. It was also claimed that Stewart had constantly large claims for heavy drawbacks on duties. On March 8, in an editorial in the New York Times, it was said:

"The most direct and unobjectionable mode of meeting the difficulty would be for the newly appointed Secretary to retire from the commercial business which brings him within the prohibitions of the law; but in Mr. Stewart's case this seems to be impossible. His business is so extensive and so complicated that, as he himself is reported to have said, it would take him 5 years to withdraw from it."

Finally, on March 9, 1869, Stewart sent in his resignation. In his resignation, among other things, he said:

"The business relations of my firm in its connection with others largely interested in their continuance are such that they can not be severed summarily, nor can my interest in it be wholly and absolutely disposed of without great embarrassment and loss to those with whom I have been connected."

Manifestly, Stewart under any construction of the law was ineligible. He had the largest trade in dry goods in the United States. He was in the immediate, active management of the business, giving it his personal attention and direction. As he felt he could not justify getting out of the business, he resigned.

But while an interest or the holding of stock will not alone render a person ineligible to the office the terms of this statute are such as to exact from the holder of such interests or stock the most scrupulous observance of the difference between an interest or ownership of stock and the management or carrying on of the business. Undoubtedly the purpose of the law was to divorce the Secretary of the Treasury from all attachment to his private interests, to the detriment of the public business. Responsibility for his private interests were not to be permitted to conflict with the responsibilities attaching to his public office. His time, his mind, his concern were to belong to the public, to his office. The distinction between the ownership of stock and concern or interest in carrying on the business is so narrow that it can only be measured in many instances by a keen sense of honor and propriety upon the part of the official.

If he counsels, or advises, or directs—although he may not be a director or officer of the corporation—still he would, it seems to us, be directly or indirectly engaged in the business of carrying on trade or commerce. And in considering these matters, one would have to take into consideration also the amount and the extent of his interest in the business. This may seem to render the law antiquated and unreasonable under modern business conditions. It may be contended that such an interpretation of the law would

make it difficult to find a competent party to fill this office. But the answer to all such contentions is at hand and is full and complete—amend or repeal the law.

Our personal views are that the law is sound in principle, but it is poorly expressed in the light of modern methods of carrying on business. As it is now written, it is susceptible of abuse, both by those who hold the office and by those who would criticize the official. The law should be made plain by specifying what interests, if any, the official may have and what constitutes "carrying on the business." The principle and the purpose of the law no doubt have a wise foundation. But it ought to be adapted in its language to present circumstances and conditions. It should be expressed in language which would constitute a clear rule of guidance and conduct for the official and also a definite measure by which the public could gage and protect its interests.

We do not consider that such facts and circumstances have been placed before the committee in detail as would permit us to form an opinion whether as a stockholder Mr. Mellon has actually counseled or advised or been interested in the carrying on of the business in which he is a stockholder. We therefore content ourselves, as we feel we must, to a construction of the law as we understand it.

WM. E. BORAH.
WILLIAM H. KING.
C. C. DILL.

[Senate Report 7, part 6, Seventy-first Congress, first session]

ELIGIBILITY OF HON. ANDREW W. MELLON, SECRETARY OF THE TREASURY

Mr. ASHURST, from the Committee on the Judiciary, submitted the following individual views (pursuant to S.Res. 2):

The Senate has no power to institute and commence impeachment proceedings; that power is by the Constitution committed to the House of Representatives.

A concise discussion of this question will be found by reading the remarks of Hon. GEORGE W. NORRIS, Senator from Nebraska and Chairman of the Senate Committee on the Judiciary, delivered in the Senate on March 5, 1929, when this resolution was considered. The substance of what Senator NORRIS then said is as follows:

"Mr. NORRIS. Mr. President, * * *. The Constitution of the United States confers exclusive jurisdiction upon the House of Representatives to impeach officials who are guilty of misdemeanors or high crimes. The House would have to decide, the same as a prosecutor would have to decide in a case in court, whether the defendant, or whether, as in this case, the respondent, was guilty of a misdemeanor. The Senate ought to hold itself aloof, because in case the House should impeach it would become necessary for the Senate to try the impeachment.

"It seems to me, having exclusive jurisdiction of such trials, we ought not to consider this matter, first, because we have no impeachment jurisdiction; and, second, we should not express in advance an opinion, either as to fact or law, on the action of a public official who, under the Constitution, is liable to impeachment by the House and trial by the Senate.

"To me it seems perfectly clear that that part of the resolution ought to be eliminated. Suppose, for instance, we should agree to the resolution, and the Judiciary Committee should report, after looking up the law, that in its judgment the Secretary of the Treasury had not violated any law, and let us suppose that the Senate approved that decision. We would have gone on record then officially upon a question that, so far as any effect is concerned, we would have no jurisdiction to try until an impeachment proceeding came regularly before us.

"Suppose that afterwards the House began impeachment proceedings against Mr. Mellon and found that he was guilty and impeached him and the articles of impeachment came to the Senate as a court to try Mr. Mellon. We would have already gone on record on the merits of a question upon which, regardless of how we should find, we could not act unless the official were impeached, and we should be trying him for a violation of the law. It would at least put the Senate in rather an embarrassing position.

"Suppose we find the reverse of what I have suggested and the Judiciary Committee holds, upon hearings, that Mr. Mellon is guilty and that he has violated the law, what are we going to do about it? We can not try him. We can not both impeach him and try him. We are at the end of the string so far as the Senate is concerned. We have held that he is not guilty. We have in reality taken the place of the House of Representatives."

When a tribunal discovers that it has no jurisdiction, the only order it may then properly enter is the order declaring that it has no jurisdiction.

Respectfully submitted.

HENRY F. ASHURST.

[Senate Report 7, part 7, Seventy-first Congress, first session]

ELIGIBILITY OF ANDREW W. MELLON AS SECRETARY OF THE TREASURY

Mr. STEIWER, from the Committee on the Judiciary, submitted the following supplemental report (pursuant to S.Res. 2):

The report of the Committee on the Judiciary, heretofore made pursuant to Senate Resolution 2, on the eligibility of Andrew W. Mellon to serve as Secretary of the Treasury, did not include any data or information upon which it was based. In view of the fact that certain of the minority reports were supported by considerable data, the majority of the committee deem it desirable to present, as supporting their views, the following tabulated information:

Secretary of Treasury	Term of service	Administration	Name of corporation	Nature of business	Authority
Alexander Hamilton	Sept. 11, 1789, to Jan. 31, 1795.	Washington	Bank of New York, 1½ shares, at a value of $750, while holding office.	Conducted a banking business and exchange transactions with London, Amsterdam, and others in connection with trade or commerce. It was not unusual for banks in the colonial days to engage in the business of trade or commerce. For example, the Bank of North America was organized in 1780 and dealt in flour, beef, pork, sugar, coffee, salt, and other goods, which it would invest in and store in large quantities and from time to time forward to the Revolutionary Army. (History of the Bank of North America, 1781-1881, by Lawrence Lewis, Jr., p. 4, et seq.)	Statement received from Bank of New York & Trust Co., New York, Apr. 29, 1929.
Do	do	do	5 shares of Ohio Co. stock	London corporation engaged in buying and selling land.	The Intimate Life of Alexander Hamilton, by Allan McLane Hamilton, p. 418. See also Three Select Essays in Anglo-American L. H. 195 or 236.
Do	do	do	New York Manufacturing Society—a joint-stock association organized in 1789.	Formed for the purpose of establishing useful manufactures in the State of New York and furnishing employment for the honest, industrious poor. There were 246 subscribers, including Alexander Hamilton, who took 380 shares at 10 pounds each. A large brick building was constructed in Vesey Street and stocked with reels, looms, carding machines, spinning jinnies, and with every other machine necessary and complete for carrying on the cotton and linen manufacture. The concern was incorporated Mar. 16, 1790.	Essays in the Earlier History of American Corporations, No. IV, Eighteenth Century, by Jos. Stancliffe Davis, Cambridge, 1917, pp. 274-275. See also An Address Delivered Before the New York Historical Society, by Gen. James Grant Wilson, Dec. 3, 1901, New York, 1902; John Pintard, pp. 18-21.
Salmon P. Chase [1]	Mar. 7, 1861, to June 30, 1864.	Lincoln	Cleveland & Pittsburgh Railroad Co.	Railroad business	Life of Salmon Portland Chase, by S. P. Chase, p. 617.
Lyman J. Gage	Mar. 6, 1897, to Sept. 14, 1901.	McKinley	First National Bank of Chicago.	Banking	History of the First National Bank of Chicago, by Henry C. Morris, pp. 76-89.
Do	Sept. 15, 1901, to Jan. 31, 1902.	Roosevelt			Telegram May 6, 1929, from bank to Senator Steiwer.
Leslie M. Shaw	Feb. 1, 1902, to Mar. 3, 1907.	do	While in office was the largest stockholder in a corporation.	Not stated except that it was a "producing" corporation; but admits it was engaged in trade or commerce.	Letter of May 1, 1929, from Mr. Shaw to Senator Steiwer.

[1] Salmon P. Chase was at one time Governor of Ohio and later United States Senator. He was also later appointed Chief Justice of the Supreme Court of the United States by Lincoln, and was one of the great lawyers of his day. On page 488 of "Life of S. P. Chase" by Schuckers, Lincoln is reported to have said of Chase: "Of all the great men I have ever known Chase is equal to about one and a half of the best of them."

Secretary of Treasury	Term of service	Administration	Name of corporation	Nature of business	Authority
Daniel Manning	Mar. 8, 1885, to Mar. 31, 1887.	Cleveland	The Argus Co.	Publishers of the Argus newspaper and general printers. Also contracted for furnishing public printing to State government. Selling product of the printing business.	Telegram of May 1, 1929, from Mr. M. V. Dolan, Albany, N. Y., to Senator Steiwer.
Do	do	do	Albany Electric Illuminating Co., Albany, N. Y.	Production and sale of electricity	Not authorized to disclose name of informant
George B. Cortelyou	Mar. 4, 1907, to Mar. 7, 1909.	Roosevelt	Held dividend-paying stocks in corporations.	Corporations not named; but advice given that they were local public utilities.	Telegrams Apr. 30, 1929, and May 6, 1929, from Mr. Cortelyou to Senator Steiwer.
Franklin MacVeagh	Mar. 8, 1909, to Mar. 5, 1913.	Taft	Continental Illinois Bank & Trust Co.	Banking and trust	Telegram, May 1, 1929, from Mr. MacVeagh to Senator Steiwer.
Do	do	do	Illinois Central R. R. Co.	Railroading	
William G. McAdoo	Mar. 6, 1913, to Dec. 15, 1918.	Wilson	Doubleday, Page & Co. (10 shares preferred stock).	Publishers	Telegram, May 3, 1929, from Mr. McAdoo to Senator Steiwer.
Do	do	do	General Gas & Electric Co. (10 shares preferred and common stock; value, $4,000).	Producers and sellers of gas and electricity	
Do	do	do	Shares in Donald Steamship Co.; sold in latter part of 1916; that is, after Mr. McAdoo had been in office 3 years.	Company owns 4 steamers, 3 of which are employed under charter to Atlantic Fruit Co. "in trade between West Indies, Central America, and the United States." The company also transacts a general freight business between Canada, West Indies, and United States ports and does a general shipping and brokerage business. (Poor's Manual of Industrials, 1917.)	
David F. Houston	Feb. 2, 1920, to Mar. 3, 1921.	do	Owned a number of stocks in domestic corporations while holding office.		Telegrams of Apr. 30, 1929, and May 3, 1929, from Mr. Houston to Senator Steiwer.
			Turner Falls Power & Electric Co. (20 shares).	Producers and sellers of electric power	
			Merrimac Chemical Co. (20 shares).	Unknown; presumably production of chemicals.	
			Ludlow Manufacturing Co. (15 shares).	Poor's Manual of Industrials, 1917, shows the Ludlow Manufacturing Associates as successor to Ludlow Manufacturing Co. That company manufactured jute and linen carpet yarns, bagging for covering cotton, jute and hemp twines.	
Do	do	do	General Electric Co. (15 shares).	The business of that company is well known. In Poor's Manual of Industrials, 1917, this company is shown to be the manufacturer of electric railway, lighting, and power apparatus, and all kinds of electrical supplies, and is said to be the largest manufacturer of electrical machinery and apparatus in the world.	
Hugh McCulloch	Mar. 9, 1865, to Apr. 16, 1865.	Lincoln	Old National Bank, Fort Wayne, Ind.	Banking	Telegram of May 7, 1929, from Mr. J. R. McCulloch.
	Apr. 16, 1865, to Mar. 3, 1869.	Johnson			
Carter Glass	Dec. 16, 1918, to Feb. 1, 1920.	Wilson	2 newspapers and one of the largest stockholders in an industrial enterprise in his home town.		Interview given to newspapers by Senator Glass.
Andrew W. Mellon	Mar. 4, 1921, to Aug. 2, 1923.	Harding	Gulf Oil Corporation; Aluminum Co. of America; Standard Steel Car Co.; various other corporations.	Engaged in business of trade or commerce	Letter of Apr. 18, 1929, by Secretary Mellon to Senator Reed.
Do	Aug. 2, 1923, to Mar. 3, 1929.	Coolidge			
	Mar. 4, 1929	Hoover			

[Telegram]

NEW YORK, *April 30, 1929.*

Hon. FREDERICK STEIWER,
United States Senate, Washington, D.C.:

During my incumbency of the office of Secretary of the Treasury I held dividend-paying stocks in corporations, but, of course, had no connection directly or indirectly with national banks or with any concerns doing business with Treasury Department. Such stock ownership was not regarded as in the slightest degree a disqualification. Legal advice upon this point was definite and, to my mind, conclusive.

GEORGE B. CORTELYOU.

[Telegram]

NEW YORK, *May 6, 1929.*

Hon. FREDERICK STEIWER,
United States Senate, Washington, D.C.:

Your telegram received. The stockholdings referred to in my telegram to you of April 30, 1929, were in public utilities doing a local, not interstate, business.

GEORGE B. CORTELYOU.

[Telegram]

NEW YORK, *April 30, 1929.*

Hon. FREDERICK STEIWER,
United States Senate:

I note that one question raised before your committee is whether one may be Secretary of the Treasury who owns stock in domestic corporations. I have been asked if while I was Secretary of the Treasury I was the owner of any such stocks. I was. I did own a number of stocks of small aggregate value; I regret to say, very much too small. Every good citizen should try to save and invest in good securities including stocks of his Nation's industries. I imagine it would be very difficult to secure a competent person for Secretary of the Treasury who is not the owner of stocks.

DAVID F. HOUSTON.

[Telegram]

NEW YORK, *May 3, 1929.*

Hon. FREDERICK STEIWER,
Washington, D.C.:

Stocks held by me when Secretary of the Treasury are as follows: Twenty shares Turner Falls Power & Electric; 20 shares Merrimac Chemical Co.; 15 shares Ludlow Manufacturing Co.; 15 shares General Electric Co.

DAVID F. HOUSTON.

[Telegram]

CHICAGO, ILL., *May 1, 1929.*

Hon. FREDERICK STEIWER,
United States Senate:

Two companies in which I was stockholder when I became Secretary of the Treasury and have continued to be are the Continental Illinois Bank & Trust Co., as now named, and the Illinois Central Railroad Co. My wholesale grocery business controlled by me I disposed of to conform to the old law.

FRANKLIN MACVEAGH.

[Telegram]

CHICAGO, ILL., *April 30, 1929.*

Hon. ANDREW W. MELLON,
Treasury Department:

I did not dispose of any stocks when I was appointed Secretary of Treasury. It never entered my mind to do so, nor did I at any time hear the point raised that the old law now being quoted ever contemplated stock shares. It would be very unfortunate if any such law did.

FRANKLIN MACVEAGH.

[Telegram]

LOS ANGELES, *May 1, 1929.*

Hon. FREDERICK STEIWER,
United States Senate:

Secretary Mellon requests me to wire you whether or not I owned any dividend-paying stocks while holding the office of Secretary of the Treasury. I did not own or hold any stocks, dividend-paying or otherwise, except shares in a few companies, the aggregate market value of which was about $10,000, when I was Secretary.

W. G. MCADOO.

[Telegram]

LOS ANGELES, *May 3, 1929.*

Hon. FREDERICK STEIWER,
United States Senate:

I have no objection to giving you names of corporations as requested. I held 10 shares preferred stock in Doubleday Page & Co.; preferred and common shares of General Gas & Electric Co. (market value about $4,000); shares in Donald Steamship Co. sold for about $5,000 in latter part of 1916. If I can be of any further service, command me.

W. G. MCADOO.

WASHINGTON, D.C., *May 1, 1929.*

Senator FREDERICK STEIWER,
Senate Chamber, Washington, D.C.

DEAR SENATOR STEIWER: Your letter of April 30 asking, as a member of the Judiciary Committee, whether, while serving as Secretary of the Treasury, I was a stockholder in any company either directly or indirectly in trade or commerce, is before me.

While Secretary of the Treasury I remained the senior member of my law firm and an active producer of farm products of many kinds, which made me interested in trade and commerce, and during the five years of my incumbency I acquired a half interest in a copartnership and became the largest stockholder in a corporation, both producers, and therefore both interested in State and interstate commerce; but I was careful not to violate the time-honored statute which prohibits the Secretary of the Treasury from being "directly or indirectly interested in the business of trade or commerce."

The fact that we had to sell what we produced did not change the nature of our business from that of producer to that of trade or commerce. Trade and commerce, with us, and with me, was an incident to the business of production.

I was familiar with the statute, the manifest purpose of which I approve, and if I had become directly or indirectly interested in the "business of trade or commerce," again to quote the exact language of the statute, I should have expected the House to have impeached me, and the Senators of that period, without having first disqualified themselves as impartial triers of the issue, undoubtedly would have convicted me.

The statute needs no elucidation from me, and yet I suggest that the Members of the First Congress evidently thought it would be unwise, perhaps imprudent, to have a tradesman Secretary of the Treasury. Hence the statute, and hence the admirable wording thereof. It is careful not to prohibit producers, either farmers or manufacturers, though both are necessarily interested in trade. The inhibition is made to apply only to those interested in "business of trade or commerce."

Yours, with great respect,

LESLIE M. SHAW.

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

I, Arthur V. Davis, being first duly sworn according to law, do depose and say that I am the chairman of the board of directors of the Aluminum Co. of America, and reside at Pittsburgh, county of Allegheny, State of Pennsylvania.

That I am thoroughly acquainted with all transactions that took place between representatives of the Aluminum Co. of America and the Quebec Development Co. and/or Canadian Manufacturing & Development Co., and in connection with which Mr. Andrew W. Mellon testified before Rowland W. Philips, commissioner, in New York on July 2, 1928, on account of a private suit brought by George D. Haskell against the Duke estate and the Aluminum Co. of America, and, further, that I was president of the Aluminum Co. of America at the time these transactions took place.

That Mr. Andrew W. Mellon has not been a director of the Aluminum Co. of America at any time while holding the office of Secretary of the Treasury; and I, as chairman of the board of directors of the Aluminum Co. of America, and the other directors of the corporation handled all of the negotiations and consummated all agreements for and in behalf of the Aluminum Co. of America.

That I have examined the merger agreement referred to in said testimony and find that Mr. Andrew W. Mellon did not sign the same; and that not only did he not sign the said agreement but I know of my own knowledge, as well as from the records of the corporation, that he did not execute any other agreement or memorandum in connection with the said transactions.

During all the time that Mr. Mellon has been Secretary of the Treasury I have been intimately acquainted with all of the affairs of the Aluminum Co. of America and I further depose and say that since March 4, 1921, Mr. Andrew W. Mellon has not participated in or been connected with the management or the carrying on of its business, nor with the determination of its policies.

The original agreement mentioned in the testimony and referred to herein is submitted herewith.

ARTHUR V. DAVIS.

Subscribed and sworn to before me this 30th day of April 1929.

J. J. DEMSKIE, *Notary Public.*

My commission expires March 7, 1931.

MAY 18, 1929.

Hon. FREDERICK STEIWER,
United States Senate.

MY DEAR SENATOR STEIWER: Among the various minority reports from the Committee on the Judiciary, pursuant to Senate Resolution No. 2, I notice a reference to testimony in a suit brought in the United States Court of Claims by the administratrix of the estate of one John H. Murphy against the United States, in which Mr. Peter F. Tague is reported to have said that former Secretary of War, Mr. Weeks, now deceased, had told him that I had been given on behalf of the "Standard Pressed Steel Car Co.," an option for the sale of certain cars belonging to the United States Government.

When this testimony was called to my attention, it was the first intimation I ever had regarding the sale by the War Department of such cars, or an option given by it to sell the same. I think you should also be advised that I was not given an option for the sale of cars by former Secretary Weeks, nor by any other Government department, either on my own behalf or on behalf of the Standard Steel Car Co., or any other concern or individual. Moreover, I have never discussed the matter of an option for the sale of such cars, either with former Secretary Weeks or with the Standard Steel Car Co., or with anyone connected with that company, nor do I have any recollection of former Secretary Weeks' ever speaking to me regarding the matter.

Furthermore, I have inquired of those in charge of the affairs of the Standard Steel Car Co. and am informed that that company never received an option for the sale of such cars, nor did it ever buy or dispose of the same. The officers of the company have advised me that they will be glad to submit affidavits to this effect. Incidentally, while I am a stockholder in the Standard Steel Car Co., I do not know of any company called the "Standard Pressed Steel Car Co." There is a company known as the Pressed Steel Car Co., in which I have never been a stockholder, but I have furnished you this information on the assumption that the Standard Steel Car Co. was referred to. A question arises in my mind as to whether or not such an informal offer of this kind would have been made by the Secretary of War to a mere stockholder of a company, and whether such an option would have been legal if made.

It is unnecessary for me to repeat here, in view of my letter of April 18 to Senator REED, that I have not concerned myself in the affairs of the companies in which I own stock nor have I dictated their affairs in any way since holding the office of Secretary of the Treasury. But, in view of the fact that Senator Walsh has printed as part of his report excerpts from the testimony above referred to and has made particular reference to certain testimony in the suit of George D. Haskell against the Aluminum Co. of America (p. 1033 CONGRESSIONAL RECORD, May 9, 1929), I feel that you should be in possession of the facts as stated in this letter and also in my two letters of May 1, 1929, to Senator REED. These letters, I understand, were submitted to the Committee on the Judiciary but appear not to have been included in Senator Walsh's report.

In those letters I stated that I was not a party to the negotiations being carried on by Mr. Davis, the president of the Aluminum Co., with Mr. James B. Duke, to which reference was made by Senator Walsh in his report. I stated specifically that I did not take part in those negotiations and that while Mr. Davis and Mr. Duke visited me in Washington in 1925, their visit was of no importance and was not essential in any way to the business transactions of the Aluminum Co. Furthermore, that in joining the Aluminum Co.'s party for their trip to Canada, I did so while on vacation at Southampton merely as a matter of pleasure and recreation and that I had no business responsibility of any kind while on the trip.

Neither on that occasion nor at any other time have I participated in the management, the carrying on of the business, or the determination of the policies of the Aluminum Co. of America since I assumed the office of Secretary of the Treasury on March 4, 1921. Mr. Davis, the former president of the Aluminum Co. of America and now chairman of the board of directors, submitted an affidavit to that effect, which I understand was placed before the Committee on the Judiciary but also appears to have been omitted in Senator Walsh's report.

Sincerely yours,

A. W. MELLON.

AFFIDAVIT

STATE OF PENNSYLVANIA,
County of Allegheny, ss:

I, William Bierman, being first duly sworn according to law, do depose and say:

That I am secretary of he Standard Steel Car Co. and reside at Pittsburgh, County of Allegheny, State of Pennsylvania.

That I have examined the records of the Standard Steel Car Co., particularly for the year 1921, and find no record indicating that Mr. Andrew W. Mellon received an option for the sale of certain cars belonging to the United States, referred to in the testimony given by Mr. Peter F. Tague, and Mr. John H. Murphy, deceased, in the suit brought in the Court of Claims of the United States by the administratrix of the estate of John H. Murphy, nor do the records of this corporation indicate that it received any such option either directly or through the medium of Mr. Mellon. Furthermore, I was connected with the Standard Steel Car Co. during the year 1921, and am thoroughly acquainted with the transactions had by that company during said year, and I further depose and say of my own knowledge, as well as from the records of the corporation, that the corporation did not have an option for the sale of said cars, nor were there any negotiations between the company or its representatives and the War Department, or Secretary Weeks, looking toward the company's obtaining an option on said cars, nor did it purchase or dispose of any of the cars referred to in said testimony.

WILLIAM BIERMAN.

Subscribed and sworn to before me this 21st day of May 1929.
[SEAL] G. R. LANDERS, *Notary Public.*

My commission expires March 9, 1931.

CITY OF WASHINGTON,
District of Columbia, ss:

I, Dwight E. Rorer, being first duly sworn according to law, do depose and say:

1. That I am an attorney at law with offices at 915 Southern Building, Washington, D. C., having resigned from the Attorney General's office on February 15, 1929, as attorney for the United States in the Court of Claims division of the Department of Justice.

2. That from on or about September 1921 to February 15, 1929, I was an attorney in the office of the Attorney General of the United States and was in direct charge of the defense on behalf of the United States of the case of M. Grace Murphy, administratrix of the estate of John H. Murphy, deceased, against the United States, No. D-921, in the Court of Claims of the United States.

3. That my attention has been called to the report of the Committee on the Judiciary of the Senate of the United States pursuant to Senate Resolution No. 2 as contained in Report No. 7 of the United States Senate, and in particular to pages 38 and 39 thereof, wherein certain questions and answers are set out which have been taken from pages 28 and 29 and pages 66 and 69, respectively, from the record in the case of M. Grace Murphy, administratrix of the estate of John H. Murphy, deceased, against United States, No. D-921, in the Court of Claims of the United States. The questions and answers referred to relate to the testimony of Peter F. Tague and John H. Murphy (now deceased). This testimony purports to show that in September 1921 the said Tague and Murphy interviewed Secretary of War John W. Weeks at his office in Washington with respect to certain surplus Army railroad rolling stock and equipment.

4. That in this testimony the said Murphy and Tague testified that Secretary Weeks said that he (Secretary Weeks) had given an option "to Secretary Mellon, for the Standard Pressed Steel Car Co.," for the sale of this rolling stock to France.

5. That on March 5, 1925, as special assistant to the Attorney General and as attorney in charge of the case above referred to, I interviewed Secretary Weeks in his office in Washington with a view to calling him as a witness for the United States in the said case. In that interview I called the attention of Mr. Weeks to the testimony of the said Tague and Murphy as herein referred to, and asked him if he had given any option to Secretary Mellon for the Standard Pressed Steel Car Co., or if he had given any option to Secretary Mellon or any other person or corporation with respect to this rolling stock. He told me he had not given any option of any character to Secretary Mellon or to any other person or corporation. I further interviewed Mr. Weeks with respect to numerous other matters not directly concerned with the question of this alleged option. He agreed to appear and testify as to the statements he had made to me, including his statement that he did not give any option to Secretary Mellon or to any other person or corporation, and accordingly his deposition was arranged to be taken on April 20, 1926, and plaintiff's counsel was so notified. On or about April 17, 1926, the Attorney General's office was notified that upon advice of his physician Secretary Weeks would be unable to give his deposition on April 20, 1926. Accordingly the date was left open until such time as Mr. Weeks was physically able to appear and testify. Unfortunately, however, Mr. Weeks became seriously ill and died before he could be examined as a witness.

6. That had Secretary Weeks been called as a witness, I would have questioned him with respect to this alleged option. I might state in passing that the existence of the alleged option was immaterial to any issue involved on the merits of the suit, but the United States had intended to examine Mr. Weeks with respect to same with a view to attacking the credibility of the plaintiff.

DWIGHT E. RORER.

Subscribed and sworn to before me this 25th day of May 1929.
[SEAL] NELLIE MAE SPATES, *Notary Public.*

AFFIDAVIT

STATE OF MARYLAND,
City of Baltimore, ss:

I, George M. Shaw, being first duly sworn according to law, do depose and say:

That I am now connected with the Baltimore Car & Foundry Co., Baltimore, Md., and that I reside in Baltimore, Md.

That in 1921 I was connected with the Standard Steel Car Co., and acted as the Washington representative of that corporation.

That while representing the Standard Steel Car Co. in Washington I was charged with the responsibility and had to do with any or all transactions between that corporation and the United States Government.

That I am thoroughly acquainted with any and all transactions that took place between the Standard Steel Car Co. and the United States Government during the year 1921, and that if any option had been given to the Standard Steel Car Co. for the purchase, sale, or disposal of the cars mentioned in the testimony given by Peter F. Tague, or John H. Murphy, deceased, in the suit brought by the administratrix of the estate of John H. Murphy, in the Court of Claims of the United States, such fact would have come to my attention.

That I have no knowledge of any such option's being given to the Standard Steel Car Co. nor do my records show that any such option was given to said corporation or to Mr. Andrew W. Mellon for said corporation.

GEO. M. SHAW.

Subscribed and sworn to before me this 21st day of May 1929.
[SEAL] SARAH V. BLANCHARD, *Notary Public.*

My commission expires May 4, 1931.

SECRETARY OF WAR

The Chief Clerk read the nomination of George H. Dern, of Utah, to be Secretary of War.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

ATTORNEY GENERAL

The Chief Clerk read the nomination of Homer S. Cummings, of Connecticut, to be Attorney General.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

POSTMASTER GENERAL

The Chief Clerk read the nomination of James A. Farley, of New York, to be Postmaster General.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

SECRETARY OF THE NAVY

The Chief Clerk read the nomination of Claude A. Swanson, of Virginia, to be Secretary of the Navy.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

SECRETARY OF THE INTERIOR

The Chief Clerk read the nomination of Harold L. Ickes, of Illinois, to be Secretary of the Interior.

Mr. LEWIS. Mr. President, I take it that there may be many Senators who do not know the gentleman who has been presented for Secretary of the Interior by the President. I will not disguise from the Senate even in the slightest degree that, for myself, I was anxious that any appointment that came from the State of Illinois would go to what we speak of as a Democrat. But I am pleased to inform the Senate that if the President has found it agreeable, for reasons satisfactory to himself, to name Mr. Ickes, I will assure the Senate that he is an able lawyer, a man who has given a great deal of attention to public benefactions, has led a life touching on reforms of politics, and in point of integrity he is a gentleman who represents a scrupulous standard, worthy of the position to which he has been named. I am pleased to present to the Senate this credential.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the appointment?

The nomination was confirmed.

SECRETARY OF AGRICULTURE

The chief clerk read the nomination of Henry A. Wallace, of Iowa, to be Secretary of Agriculture.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

SECRETARY OF COMMERCE

The Chief Clerk read the nomination of Daniel C. Roper, of South Carolina, to be Secretary of Commerce.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

SECRETARY OF LABOR

The Chief Clerk read the nomination of Frances Perkins, of New York, to be Secretary of Labor.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination?

The nomination was confirmed.

Mr. ROBINSON of Arkansas. Mr. President, I ask that the President be notified of the confirmations of the respective nominations.

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

The Senate resumed legislative business.

HOUR OF DAILY MEETING

Mr. ROBINSON of Arkansas. Mr. President, I submit a resolution, and ask for its immediate consideration.

The VICE PRESIDENT. The Secretary will report the resolution.

The Chief Clerk read the resolution (S.Res. 1), as follows:

Resolved, That the hour of daily meeting of the Senate be at 12 o'clock meridian unless otherwise ordered.

The resolution was agreed to.

RECESS

Mr. ROBINSON of Arkansas. Mr. President, the exercises in the Senate in memory of the late Senator Walsh, of Montana, being fixed for 10 o'clock Monday morning, I move that the Senate be in recess until 9:45 o'clock Monday morning.

The motion was agreed to; and the Senate (at 2 o'clock and 55 minutes p.m.) took a recess until Monday, March 6, 1933, at 9:45 o'clock a.m.

NOMINATIONS

Executive nominations received by the Senate March 4, 1933

SECRETARY OF STATE

Cordell Hull, of Tennessee, to be Secretary of State.

SECRETARY OF THE TREASURY

William H. Woodin, of New York, to be Secretary of the Treasury.

SECRETARY OF WAR

George H. Dern, of Utah, to be Secretary of War.

ATTORNEY GENERAL

Homer S. Cummings, of Connecticut, to be Attorney General.

POSTMASTER GENERAL

James A. Farley, of New York, to be Postmaster General.

SECRETARY OF THE NAVY

Claude A. Swanson, of Virginia, to be Secretary of the Navy.

SECRETARY OF THE INTERIOR

Harold L. Ickes, of Illinois, to be Secretary of the Interior.

SECRETARY OF AGRICULTURE

Henry A. Wallace, of Iowa, to be Secretary of Agriculture.

SECRETARY OF COMMERCE

Daniel C. Roper, of South Carolina, to be Secretary of Commerce.

SECRETARY OF LABOR

Frances Perkins, of New York, to be Secretary of Labor.

CONFIRMATIONS

Executive nominations confirmed by the Senate March 4, 1933

SECRETARY OF STATE

Cordell Hull to be Secretary of State.

SECRETARY OF THE TREASURY

William H. Woodin to be Secretary of the Treasury.

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George H. Dern to be Secretary of War.

ATTORNEY GENERAL

Homer S. Cummings to be Attorney General.

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James A. Farley to be Postmaster General.

SECRETARY OF THE NAVY

Claude A. Swanson to be Secretary of the Navy.

SECRETARY OF THE INTERIOR

Harold L. Ickes to be Secretary of the Interior.

SECRETARY OF AGRICULTURE

Henry A. Wallace to be Secretary of Agriculture.

SECRETARY OF COMMERCE

Daniel C. Roper to be Secretary of Commerce.

SECRETARY OF LABOR

Frances Perkins to be Secretary of Labor.

SENATE

MONDAY, MARCH 6, 1933

(Legislative day of Saturday, Mar. 4, 1933)

The Senate met at 9:45 o'clock a.m., on the expiration of the recess.

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

The VICE PRESIDENT. The clerk will call the roll.

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

Adams	Costigan	Keyes	Reynolds
Ashurst	Couzens	King	Robinson, Ark.
Austin	Dale	La Follette	Robinson, Ind.
Bachman	Dickinson	Lewis	Russell
Bailey	Dieterich	Logan	Schall
Bankhead	Dill	Lonergan	Sheppard
Barbour	Duffy	Long	Smith
Barkley	Fess	McAdoo	Steiwer
Black	Fletcher	McCarran	Stephens
Bone	Frazier	McGill	Thomas, Okla.
Borah	George	McKellar	Thomas, Utah.
Bratton	Glass	McNary	Townsend
Brown	Goldsborough	Metcalf	Trammell
Bulkley	Gore	Murphy	Tydings
Bulow	Hale	Neely	Vandenberg
Byrd	Harrison	Norbeck	Van Nuys
Byrnes	Hastings	Norris	Wagner
Capper	Hatfield	Nye	Walcott
Caraway	Hayden	Overton	Walsh
Carey	Hebert	Patterson	Wheeler
Clark	Johnson	Pittman	White
Coolidge	Kean	Pope	
Copeland	Kendrick	Reed	

Mr. SHEPPARD. I wish to announce that my colleague [Mr. CONNALLY] is absent on account of illness.

Mr. NORRIS. My colleague [Mr. HOWELL] is necessarily detained from the Senate by reason of illness.

Mr. FESS. I wish to announce the necessary absence of Mr. SHIPSTEAD by reason of illness.

The VICE PRESIDENT. Ninety Senators have answered to their names. A quorum is present.

Mr. ROBINSON of Arkansas. Mr. President, I ask unanimous consent that at the conclusion of the memorial ceremonies in memory of the late Senator Walsh, of Montana, the Senate take a recess for 15 minutes.

The VICE PRESIDENT. Is there objection? The Chair hears none, and it is so ordered.

FUNERAL OF SENATOR THOMAS J. WALSH, OF MONTANA

The casket containing the body of the dead Senator had previously been brought into the Senate Chamber and placed in the area in front of the Secretary's desk.