

enactment of sections 24 and 25 of H. R. 8278—to the Committee on Commerce.

By Mr. DARGAN: Petition of citizens of Marlborough County, South Carolina, against the passage of the bills regulating the sale of compound lard—to the Committee on Agriculture.

By Mr. DOLLIVER: Petition of Cassius Fairchilds Post No. 431, Grand Army of the Republic, Williams, Iowa, for service-pension bill—to the Committee on Invalid Pensions.

Also, petition of U. S. Harlan and 50 other citizens of Webster County, Iowa, for the more effectual prevention of the circulation of obscene and vicious literature—to the Committee on the Post-Office and Post-Roads.

Also, the petition of Nationalist Club, of Lehigh, Iowa, against the Pacific refunding bill—to the Committee on the Pacific Railroads.

By Mr. DORSEY: Petition from county commissioners of Dakota County, Nebraska, for bridge across Missouri River at Sioux City, Iowa—to the Committee on Commerce.

Also, petition of citizens of Dakota, for same purpose—to the Committee on Commerce.

By Mr. GEAR: Resolutions of 89 ex-soldiers of Jefferson County, Iowa, in regard to a service pension—to the Committee on Invalid Pensions.

By Mr. HAUGEN: Petition of farmers of Pierce County, Wisconsin, for free sugar, binding twines, etc.—to the Committee on Ways and Means.

By Mr. HOLMAN: Remonstrance of P. R. Brady, of Florence, Ariz., one of the oldest citizens of Arizona, against the establishment of a land bill in that Territory—to the Committee on Private Land Claims.

By Mr. LACEY: Resolution favoring widows' pensions from Floris (Iowa) Grand Army Post—to the Committee on Invalid Pensions.

By Mr. McCLELLAN: Petition of Subordinate Union No. 7, Fort Wayne, Ind., of the Bricklayers and Masons' International Union of America, praying for the amendment of the law so as to prevent the employment of aliens upon United States public buildings, navy-yards, fortifications, or other structures, signed by Frederick Kilzemon, president, Lewis Aricon, secretary, under the seal of the order—to the Committee on Labor.

By Mr. MCRAE: Resolutions of the Fort Smith (Ark.) Chamber of Commerce, against the bill H. R. 283 to tax and regulate the sale of compound lard—to the Committee on Agriculture.

Also, petition of W. A. Robinson and 179 others, citizens of Texarkana, Ark., against bill H. R. 283 to tax and regulate the sale of compound lard—to the Committee on Agriculture.

By Mr. MARTIN, of Indiana: Petition of Jefferson Lodge No. 2955, F. M. B. A., of Huntington County, Indiana, and of Hugh S. Maxwell and 32 other members thereof, for legislation authorizing the Federal Government to loan money on farm security—to the Committee on Agriculture.

By Mr. MASON: Memorial from various citizens of Illinois, against House bill 8278—to the Committee on Commerce.

By Mr. O'NEILL, of Pennsylvania: Petition of John M. White, late Company E, Thirteenth Regiment Pennsylvania Cavalry, for the removal of charge of desertion—to the Committee on Invalid Pensions.

Also, affidavit of same party in reference to petition above referred to—to the Committee on Military Affairs.

By Mr. OWENS, of Ohio: Petition of 561 citizens of Sixteenth Congressional district of Ohio, asking for a Sunday-rest law—to the Committee on Labor.

By Mr. PAYNE: Resolutions of Garfield Post, No. 193, Grand Army of the Republic, for increasing pension—to the Committee on Invalid Pensions.

Also of Dwight Post, No. 109, Grand Army of the Republic, New York, for same purpose—to the Committee on Invalid Pensions.

Also of Lockwood Post, No. 175, Grand Army of the Republic, New York, for same purpose—to the Committee on Invalid Pensions.

Also of George C. Stozell Post, No. 153, Grand Army of the Republic, New York, for same purpose—to the Committee on Invalid Pensions.

Also a petition of 39 persons in Twenty-seventh district of New York, for a national Sunday-rest law—to the Committee on Labor.

By Mr. PAYNTER: Petition of Jacob Eckost, Company K, Twenty-third, and Company I, Fifteenth V. and C. Kentucky Infantry Volunteers, for original invalid pension and arrears of pay and bounty—to the Committee on Invalid Pensions.

By Mr. PERKINS: Petition of S. A. Woods and 88 others, of Arkansas City, Kans., and vicinity, asking that a reduction be made in the amount of land set apart for the benefit of Indians educated at the Chillicothe schools in the Indian Territory—to the Committee on Indian Affairs.

Also, a petition of John Horn and 257 others, residents and citizens of Galena, Kans., and vicinity, asking for the free coinage of silver, and the issuing of full legal-tender United States notes, to take the place of retiring national-bank notes—to the Committee on Coinage, Weights, and Measures.

By Mr. PETERS: Resolutions of Board of Trade of Wichita, Kans., favoring the Conger lard bill—to the Committee on Agriculture.

By Mr. ROGERS: Memorial of various citizens of Arkansas, against

the passage of H. R. bill 283 in relation to taxing compound lard—to the Committee on Agriculture.

Also, memorial of Chamber of Commerce of Arkansas, against same measure—to the Committee on Agriculture.

Also, memorial of various other citizens of Arkansas, for same purpose—to the Committee on Commerce.

Also, memorial from various other citizens of Arkansas, for same purpose—to the Committee on Commerce.

By Mr. SANFORD: Petition of 33 residents of Montgomery County, New York, for legislation to increase the import duty on hay from \$2 to \$4 per ton—to the Committee on Ways and Means.

Also, petition of 232 residents of Canajoharie, Montgomery County, New York, for same purpose—to the Committee on Ways and Means.

Also, petition of 57 residents of Rural Grove, Montgomery County, New York, for same purpose—to the Committee on Ways and Means.

By Mr. STEWART, of Vermont: Petition of Helen M. Brownson, for pension to soldiers' widows during life—to the Committee on Invalid Pensions.

By Mr. STUMP: Petition for the relief of the Locust Point Company, of Baltimore—to the Committee on Appropriations.

By Mr. TOWNSEND, of Colorado: Protest against H. R. 8278 to amend an act to regulate commerce—to the Committee on Commerce.

Also, a protest of other citizens of Colorado, for same purpose—to the Committee on Commerce.

By Mr. TURNER, of Georgia (by request): Petition of William Kerssey, R. F. Crittenden, and others, of Shellman, Ga., for the passage of the bill "for the prevention of the manufacture and sale of adulterated lard"—to the Committee on Agriculture.

By Mr. WALKER, of Massachusetts: Papers to accompany H. R. 9039, granting a pension to Charles H. Merrill—to the Committee on Invalid Pensions.

By Mr. WASHINGTON: Petitions asking amendment to section 22, interstate-commerce law—to the Committee on Commerce.

By Mr. WATSON: Petition of Union Veterans' Union of Pennsylvania, for a service pension—to the Committee on Invalid Pensions.

Also, petition of Union veteran soldiers of McKean County, Pennsylvania, to grant medals to certain soldiers—to the Committee on Military Affairs.

By Mr. WHEELER, of Michigan: Petition of 88 persons, members of various unions and others, of the Tenth district of Michigan, for a Sunday-rest law—to the Committee on Labor.

SENATE.

TUESDAY, April 8, 1890.

Prayer by the Chaplain, Rev. J. G. BUTLER, D. D.

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

EXCLUSION OF CHINESE LABOREES.

The PRESIDENT *pro tempore* laid before the Senate the following communication from the Secretary of the Treasury; which was read:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., April 7, 1890.

SIR: I have the honor to acknowledge the receipt of Senate resolution of the 23rd ultimo, as follows:

"Resolved, That the Secretary of the Treasury be directed to transmit to the Senate a statement of the number of arrivals and departures of Chinese persons at the port of San Francisco, monthly and annually, since the 2d day of August, 1882; and that he further transmit any information in his possession respecting the evasion or violation of the laws now in force for the exclusion of Chinese laborers from the territory of the United States, and respecting the neglect or failure of duty of any officer of the United States under said laws."

In compliance with said resolution, I transmit herewith a tabulated statement prepared in the Bureau of Statistics, showing the number of arrivals and departures of Chinese persons at the port of San Francisco, quarterly and annually, since the 2d of August, 1882.

A statement of the number of arrivals and departures monthly can not be furnished.

Respecting that portion of the resolution which directs me to transmit any information in my possession respecting evasions or violations of the laws now in force for the exclusion of Chinese laborers and the neglect or failure of duty of any officers of the United States under said laws, I have to state that an examination of the records and files of this office discloses many allegations of infractions of the law on the part of persons other than Government officers, but that, except in a very few instances, such allegations are not supported by tangible or reliable proof.

The alleged violations appear to consist mainly in the use of fraudulent certificates, in smuggling across the northern and southern frontiers of Chinese laborers, and in the existence of a general system among Chinese residents in this country and Canada for the fraudulent landing of Chinese laborers within the territory of the United States.

No proofs or allegations are on file, so far as I am advised, concerning complicity of officers of the Government in such fraudulent transactions.

Respectfully, yours,

W. WINDOM, Secretary.

To the PRESIDENT of the United States Senate.

The PRESIDENT *pro tempore*. This communication is in response to a resolution offered by the Senator from Iowa [Mr. WILSON].

Mr. WILSON, of Iowa. I move that the communication, with the accompanying papers, be referred to the Committee on Immigration, and printed.

The motion was agreed to.

PENSION AGENTS.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Secretary of the Interior, transmitting, in compliance with a resolution of March 31, 1890, a report of the Commissioner of Pensions in regard to the expediency of an increase of the number of pension agents in the United States; which, on motion of Mr. SHERMAN, was, with the accompanying papers, referred to the Committee on Appropriations, and ordered to be printed.

GEORGE H. BUCKSTAFF.

The PRESIDENT *pro tempore* laid before the Senate a communication from the Attorney-General in further response to a resolution of January 21, 1890, recommending an increase of the amount of balances of pay due to Commissioner George H. Buckstaff for services and expenses from December 1, 1887, to December 31, 1888, inclusive; which was read.

The PRESIDENT *pro tempore*. The previous communication on the same subject having been referred to the Committee on Commerce, this will also be so referred, and printed.

PUBLIC BUILDING AT SALINA, KANS.

The PRESIDENT *pro tempore* laid before the Senate the amendments of the House of Representatives to the bill (S. 595) for the erection of a public building at Salina, Kans.; which were read.

The PRESIDENT *pro tempore*. The amendments of the House of Representatives will be referred to the Committee on Public Buildings and Grounds, if there be no objection.

Mr. SPOONER. I move that the bill and amendments lie on the table.

The motion was agreed to.

HOUSE BILL REFERRED.

The bill (H. R. 2361) for the relief of Asa Ellis, collector of internal revenue for the first collection district of California, was read twice by its title, and referred to the Committee on Finance.

NANCY SMITH.

The bill (H. R. 6073) granting an increase of pension to Nancy Smith was read twice by its title.

The PRESIDENT *pro tempore*. A similar bill has been reported from the Committee on Pensions and is now on the Calendar. This bill will be placed on the Calendar, if there be no objection.

TRUSTS AND COMBINATIONS.

Mr. EDMUNDS. I am sorry my friend from Maine [Mr. HALE], in charge of what is called the census bill, is not in; but I wish now to give notice that as soon as the matter of the Montana Senators is disposed of, whether in the morning hour or at any other time, the Committee on the Judiciary will endeavor to bring before the Senate, if a majority of the Senate is willing, the trust bill, so called, which the committee reported in obedience to an order of the Senate.

PETITIONS AND MEMORIALS.

The PRESIDENT *pro tempore* presented a petition of 178 citizens of Harper, Kans., a petition of the Thirty-third Judicial District Veterans' Association of Kansas, and a petition of 152 citizens of Halstead, Kans., praying for the passage of the service-pension bill; which were referred to the Committee on Pensions.

He also presented petitions of sundry Grand Army posts of Kansas, praying for the donation of the Fort Dodge military reservation for a soldiers' home; which were referred to the Committee on Public Lands.

He also presented a petition of 47 citizens of Logan County, Kansas, and a petition of 58 citizens of Lyon County, Kansas, praying for the free coinage of silver; which were referred to the Committee on Finance.

He also presented a petition of citizens of Logan County, Kansas, praying for an increase in the volume of currency; which was referred to the Committee on Finance.

He also presented a petition of the Commercial Club of Kansas City, Mo., praying for the passage of a national bankruptcy bill; which was referred to the Committee on the Judiciary.

He also presented a petition of the Commercial Club of Kansas City, Mo., favoring the construction of a deep-water harbor at Galveston, Tex.; which was ordered to lie on the table.

He also presented a petition of the Osborne (Kans.) Farmers' Alliance, praying for the abolition of the national-banking system, for the free coinage of silver, etc.; which was referred to the Committee on Finance.

He also presented a petition of the Bricklayers and Masons' International Union of America, of the District of Columbia, praying that aliens may not be allowed to work on the construction of public buildings; which was referred to the Committee on Education and Labor.

Mr. FAULKNER presented a petition of W. P. Green Post, No. 33, Grand Army of the Republic, of West Union, W. Va., signed by F. M. Noble, A. C. Holmes, and John Dye, committee, praying for the passage of the per diem pension bill; which was referred to the Committee on Pensions.

Mr. CALL presented the petition of James L. Enos and 7 other citi-

zens of Enos, Fla., praying for the free coinage of silver; which was referred to the Committee on Finance.

Mr. STOCKBRIDGE presented a petition of 296 citizens of Bay County, Mich., praying for the free coinage of silver; which was referred to the Committee on Finance.

Mr. VEST presented resolutions adopted by the Commercial Club of Kansas City, Mo., favoring the construction of a deep-water harbor at Galveston, Tex.; which were ordered to lie on the table.

He also presented a resolution of the Commercial Club of Kansas City, Mo., favoring what is known as the Torrey bankrupt bill; which was referred to the Committee on the Judiciary.

Mr. COCKRELL presented resolutions of the Commercial Club of Kansas City, Mo., favoring the construction of a deep-water harbor at Galveston, Tex.; which were ordered to lie on the table.

He also presented a resolution of the Commercial Club of Kansas City, Mo., favoring what is known as the Torrey bankruptcy bill; which was referred to the Committee on the Judiciary.

Mr. MITCHELL. I present resolutions adopted by members of the Grand Army of the Republic, Department of Oregon, in encampment assembled at Eugene City, in that State, on the 13th day of March, 1890, in the nature of a petition praying for an amendment to the existing pension laws so as to provide that the pensions received by ex-soldiers shall, in the event of the death of the pensioner from any cause whatever, revert to his family. I move that the petition be referred to the Committee on Pensions.

The motion was agreed to.

Mr. EVARTS presented the petition of Hiram Berdan, praying that the First and Second Regiments of United States Sharpshooters be included in the bill for an appropriation for a monument at Gettysburgh to the regular troops; which was referred to the Committee on Military Affairs.

He also presented a petition of 22 citizens of County Line, N. Y., praying for the free coinage of silver; which was referred to the Committee on Finance.

Mr. WILSON, of Maryland. I present a memorial of the Ministerial Union of Baltimore, in the State of Maryland, embracing the various Protestant denominations of the city and vicinity, remonstrating against the passage by Congress of the proposed canteen law establishing stores or saloons for the sale of wine and beer to the national troops. I move that the memorial be referred to the Committee on Military Affairs.

The motion was agreed to.

Mr. WILSON, of Maryland. I also present a petition from the Ministerial Union of Baltimore, Md., praying for the passage of the proposed law making it unlawful for any person or corporation to convey, carry, ship, or transport intoxicating liquors of any kind from one State, Territory, or the District of Columbia to any other State or Territory of the United States, contrary to and in violation of the law of such States or Territories. I move that the petition be referred to the Committee on Education and Labor.

The motion was agreed to.

Mr. CULLOM presented a petition of Patrons of Husbandry, of Michigan, praying for the passage of the bill (S. 1655) authorizing the Secretary of the Treasury to loan money to farmers of the United States at 2 per cent. per annum; which was referred to the Committee on Finance.

He also presented a petition of citizens of Richland County, Illinois, praying for the prevention of the transmission through the mails of obscene literature; which was referred to the Committee on Post-Offices and Post-Roads.

Mr. SQUIRE. I present a memorial of the Wyoming Conference of the Methodist Episcopal Church, composed of over 200 ministers and representing over 38,000 members, remonstrating against the passage of the bill, which passed the House of Representatives on the 17th ultimo and is now pending in the Senate, which provides that after a certain date Chinese found in this country without a certificate shall be liable to deportation or imprisonment for a term of years. I move that the memorial lie on the table.

The motion was agreed to.

Mr. HOAR presented a memorial of a large number of fishing firms of Gloucester, Mass., remonstrating against the transfer of the Fish Commission to the Department of Agriculture; which was referred to the Committee on Agriculture and Forestry.

He also presented a resolution of the Boston (Mass.) Methodist Preachers' Meeting, approving the amendment offered by Senator HALE to the Army appropriation bill, forbidding the sale of intoxicating liquors in canteens at army posts; which was referred to the Committee on Military Affairs.

Mr. HOAR. I present resolutions, in the nature of a petition, of a committee appointed by a meeting of the Universalist ministers of Boston and vicinity, stating that that body regard with profound regret the defeat in the Senate of the United States of the Blair educational bill; that they can but consider its defeat a calamity to the nation; but they trust the defeat is not final; that the bill may be reconsidered, and that the Senate may at an early day pass an act which embodies its substantial features. They further state that they believe the safety

of the Republic depends upon the education of the voters of every name and race.

The petition is signed by Rev. A. A. Miner, D. D., and E. H. Capen, D. D., president of Taft University, the college established by that denomination in the neighborhood of Boston, and it represents the sense of that denomination.

I move that the petition lie on the table.

The motion was agreed to.

Mr. EVARTS. I present a memorial of the National Temperance Society in the nature of a protest against the bill providing for the sale at military posts without restriction of spirituous liquors. I observe that an amendment to the Army appropriation bill on this subject has been proposed by the Senator from Maine [Mr. HALE], and I am at a loss as to what committee the memorial should be referred.

The PRESIDENT *pro tempore*. Similar memorials have been hitherto referred to the Committee on Military Affairs.

Mr. HALE. The Army appropriation bill contains a clause covering that subject which was debated in the other House, and that bill is now before the Committee on Appropriations of this body. An amendment which I submitted the other day, regulating the conduct and management of these buildings, which are called canteens, was referred to the Committee on Appropriations, which will undoubtedly consider the subject within a day or two.

The PRESIDENT *pro tempore*. Then the memorial should be referred to that committee.

Mr. HALE. I should think so.

The PRESIDENT *pro tempore*. The order by which similar memorials were hitherto referred to the Committee on Military Affairs will be reconsidered, and they will also be referred to the Committee on Appropriations.

Mr. EVARTS. The memorial from the National Temperance Union does not refer in terms to the amendment which the Senator from Maine has proposed, but refers to the legislation, and expresses a desire that a provision shall be made of the effect that has now been proposed. It seems to me, therefore, that the memorial should go to the Committee on Appropriations.

The PRESIDENT *pro tempore*. It will be so ordered.

Mr. HAWLEY. I have no objection to one or two of those memorials going to the Military Committee, because it is a subject about which they would be supposed to know something, and they do. As the matter now goes, the Army appropriation bill comes over containing various matters of legislation. It contains not only the annual appropriation, with which I find no fault, but it comes over here and goes to the Committee on Appropriations, embracing within it legislation of various kinds; in some cases matters that have been considered in the Military Committee and in some cases matters that ought to be, and would be if they were out of the appropriation bill, where they have no right to be, strictly. But I do not object in this case to letting the memorial go to the Committee on Appropriations. The Committee on Military Affairs have some of these papers before them.

Mr. ALLISON. I will say to the Senator from Connecticut, the chairman of the Committee on Military Affairs, that if there is anything in the Army appropriation bill now pending before the Committee on Appropriations in the way of legislation that is not agreeable to the Military Committee, it will be stricken out, so far as my vote is concerned, in the Committee on Appropriations. I think there are a good many matters of legislation on that bill which ought not to be there; and I am glad to hear the Senator from Connecticut express himself in favor of rejecting legislation upon the appropriation bills.

The PRESIDENT *pro tempore*. The memorials will be referred to the Committee on Appropriations.

Mr. PLUMB presented a petition of the Board of Trade of Wichita, Kans., praying for the encouragement and building up of the merchant marine of the United States by subsidizing our own vessels and transportation companies; which was referred to the Committee on Naval Affairs.

He also presented a petition of the Republican Club of Seward Station, Indian Territory, praying for certain legislation in regard to land titles and other matters relating to that Territory; which was referred to the Committee on Indian Affairs.

He also presented a petition of the Board of Trade of Wichita, Kans., praying for the passage of the House bill regulating the manufacture, sale, importation, and exportation of compound lard; which was referred to the Committee on Agriculture and Forestry.

He also presented a petition of the Commercial Club of Kansas City, Mo., favoring the construction of a deep-water harbor at Galveston, Tex.; which was ordered to lie on the table.

He also presented a petition of the Commercial Club of Kansas City, Mo., praying for the passage of what is known as the Torrey bankruptcy bill; which was referred to the Committee on the Judiciary.

He also presented petitions of sundry posts of the Grand Army of the Republic of Kansas, praying for the donation of Fort Dodge military reservation for the purposes of a soldiers' home; which were referred to the Committee on Public Lands.

Mr. JONES, of Arkansas, presented a petition of the Bricklayers and Masons' International Union of America, of Little Rock, Ark.,

praying for the passage of laws securing to citizens of the United States the right to labor on Government works in preference to aliens, especially when such works or structures are let by contract from the Government to firms; which was referred to the Committee on Education and Labor.

He also presented a memorial of citizens of Little Rock and Hot Springs, in the State of Arkansas, remonstrating against the passage of the bill now pending in the House of Representatives proposing to make it unlawful for any common carrier to pay any commission or compensation for procuring or influencing passenger transportation; which was referred to the Committee on Interstate Commerce.

REPORTS OF COMMITTEES.

Mr. FAULKNER, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (S. 2753) granting a pension to Polly McArthur;

A bill (H. R. 3583) to pension Samuel Wyrick for service in the Indian war;

A bill (H. R. 3584) to pension William J. Dunn for service in the Indian war;

A bill (H. R. 5905) to pension Thomas K. Edwards for service in the Indian war; and

A bill (H. R. 3588) to pension Mary J. Mann, widow of John W. Mann, who served in the Indian war.

Mr. MOODY, from the Committee on Pensions, to whom was referred the bill (S. 3348) granting a pension to Mary J. Milroy, reported it without amendment, and submitted a report thereon.

Mr. TURPIE, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 2769) granting a pension to Isaac Clark;

A bill (H. R. 3586) to pension William B. Carter for service in the Indian war;

A bill (H. R. 6825) granting a pension to Mary A. Wood; and

A bill (H. R. 2770) granting a pension to Edwin S. Furman.

Mr. TURPIE, from the Committee on Pensions, to whom was referred the bill (S. 3046) granting a pension to Fanny L. Davis, reported it with an amendment, and submitted a report thereon.

Mr. CULLOM, from the Committee on Interstate Commerce, to whom was referred the bill (S. 3173) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, reported it without amendment.

Mr. SAWYER, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (H. R. 5082) to pension Polly Robinson;

A bill (H. R. 5081) to pension Helen A. Moore; and

A bill (S. 3053) granting a pension to William H. Ballard.

Mr. SAWYER, from the Committee on Pensions, to whom was committed the bill (H. R. 3381) for restoration to the pension-rolls of Nelson G. Edwards, reported it with an amendment.

Mr. PLATT, from the Committee on Territories, to whom was referred the bill (H. R. 3365) approving, with amendments, the funding act of Arizona, reported it with an amendment.

Mr. PLATT. From the Committee on Indian Affairs I report back with an amendment to the bill (S. 2912) providing for a commission to determine the northern boundary line of the Warm Springs Indian reservation, in the State of Oregon, and making an appropriation therefor. As there is necessity for early action upon this bill, I shall, when the bill shall have been printed, and at an early date, ask the indulgence of the Senate to call it up and consider it during the morning hour.

The PRESIDENT *pro tempore*. Meanwhile the bill will be placed on the Calendar.

Mr. BLAIR, from the Committee on Pensions, to whom was referred the bill (S. 2411) granting a pension to Eugenia B. Tabler, reported it with an amendment, and submitted a report thereon.

Mr. DAVIS, from the Committee on Pensions, to whom were referred the following bills, reported them severally without amendment, and submitted reports thereon:

A bill (S. 2917) for the relief of Elizabeth R. Purviance;

A bill (H. R. 3961) to increase the pension of Stephen Cooper;

A bill (H. R. 3962) to increase the pension of Samuel Adams; and

A bill (S. 3342) granting a pension to Andrew Hopper.

Mr. DAVIS, from the Committee on Pensions, to whom was committed the bill (S. 2583) granting an increase of pension to Mrs. Mary H. Nicholson, reported it without amendment, and submitted a report thereon.

Mr. SPOONER, from the Committee on Claims, to whom was referred the bill (S. 2629) for the relief of Catharine Sullivan, asked to be discharged from its further consideration, and that it be referred to the Committee on Military Affairs; which was agreed to.

He also, from the Committee on Claims, to whom was referred the bill (S. 2190) to ascertain and pay for loss of property sustained by Lieut. J. C. Colwell, asked to be discharged from its further consideration.

tion, and that it be referred to the Committee on Naval Affairs; which was agreed to.

He also, from the Committee on Claims, to whom was referred the bill (S. 336) for the relief of Maj. Daniel N. Bash, paymaster United States Army, reported it without amendment, and submitted a report thereon.

He also, from the Committee on Public Buildings and Grounds, to whom was referred the bill (S. 2316) for the erection of a public building at Newburgh, N. Y., reported it without amendment.

ST. LOUIS EXPOSITION OF 1890.

Mr. MORRILL. I am directed by the Committee on Finance to report back favorably the bill (H. R. 5874) to admit free of duty articles intended for the St. Louis exposition in 1890 which may be imported from the Republic of Mexico.

Mr. COCKRELL. I hope the Senator from Vermont will ask for the present consideration of the bill. It is a very short one, and will only take a moment, and is a measure of public importance.

Mr. MORRILL. I ask for the present consideration of the bill.

The PRESIDENT *pro tempore*. The Senator from Vermont asks unanimous consent that the bill may be now considered. It will be read at length for information, subject to objection.

The Chief Clerk read the bill, and the Senate, by unanimous consent, proceeded, as in Committee of the Whole, to its consideration.

Mr. COCKRELL. I should like to suggest a very short amendment which I think will add to the value of the bill. In line 4, after the word "Mexico," I move to insert "and other American republics;" so as to make the bill read:

That all articles which shall be imported from the Republic of Mexico and other American republics, etc.

Mr. MORRILL. That is an amendment the committee were in favor of, but preferred to leave it to the will of the Senators from Missouri, and if they preferred to have the bill amended to give them the right to move the amendment.

The PRESIDENT *pro tempore*. The amendment will be stated.

The CHIEF CLERK. In line 4, after the word "Mexico" and before the comma, insert "and other American republics;" so as to read:

That all articles which shall be imported from the Republic of Mexico and other American republics, being the growth or product thereof, for the sole purpose of exhibition at the St. Louis Exposition, etc.

The amendment was agreed to.

Mr. HOAR. I should like to have the entire section read.

The PRESIDENT *pro tempore*. The bill will be read as amended.

Mr. BLAIR. I wish to move an amendment to the amendment.

The PRESIDENT *pro tempore*. The Senator from Massachusetts asks that the bill may be read as amended. It will be read.

The Chief Clerk read the bill as amended, as follows:

That all articles which shall be imported from the Republic of Mexico and other American republics, being the growth or product thereof, for the sole purpose of exhibition at the St. Louis Exposition to be held in the city of St. Louis during September and October in the year 1890, shall be admitted without the payment of duty or customs fees or charges, under such regulations as the Secretary of the Treasury shall prescribe: *Provided*, That all such articles as shall be sold in the United States or withdrawn for consumption therein at any time after such importation shall be subject to the duties, if any, imposed on the like articles by the revenue laws in force at the date of the importation: *And provided further*, That in case any articles imported under the provisions of this act shall be withdrawn for consumption or shall be sold without payment of duty, as required by law, all the penalties prescribed by the revenue laws shall be applied and enforced against such articles and against the persons who may be guilty of such withdrawal for sale.

Mr. HOAR. I think I should like to move to add as an amendment "and the Dominion of Canada." I do not see, if this is to be a continental exhibition, why Canada should not be included.

Mr. COCKRELL. I have no objection, and I suppose the Committee on Finance would have no objection to that amendment.

The PRESIDENT *pro tempore*. The amendment proposed by the Senator from Massachusetts will be stated.

The CHIEF CLERK. It is proposed to add to the amendment already agreed to the words "and the Dominion of Canada;" so as to read:

That all articles which shall be imported from the Republic of Mexico and other American republics and the Dominion of Canada, being the growth or product thereof, for the sole purpose of exhibition at the St. Louis Exposition, etc.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendments were concurred in.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time, and passed.

The title was amended so as to read: "A bill to admit free of duty articles intended for the St. Louis Exposition in 1890 which may be imported from the Republic of Mexico and other American republics and the Dominion of Canada."

Mr. COCKRELL. I move that the Senate insist upon its amendments and ask for a conference with the House of Representatives upon the disagreeing votes of the two Houses.

The motion was agreed to.

By unanimous consent, the President *pro tempore* was authorized to

appoint the conferees on the part of the Senate, and Mr. MORRILL, Mr. SHERMAN, and Mr. VOORHEES were appointed.

JAMES I. CHRISTIE.

Mr. JONES, of Nevada, from the Committee to Audit and Control the Contingent Expenses of the Senate, reported the following resolution; and it was considered by unanimous consent, and agreed to:

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and directed to pay, out of the miscellaneous items of the contingent fund of the Senate, to Frank A. Christie, the legal representative of James I. Christie, deceased, late acting assistant doorkeeper of the Senate, an amount equal to six months' salary as acting assistant doorkeeper aforesaid, said sum to be considered as including funeral expenses, the expenses of employees of the Senate who accompanied the remains of the deceased to Dover, N. H., and all other allowances.

BILLS INTRODUCED.

Mr. McPHERSON (by request) introduced a bill (S. 3441) supplementary to an act entitled "An act to authorize the construction of the Baltimore and Potomac Railroad in the District of Columbia;" which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. DOLPH (by request) introduced a bill (S. 3442) to amend an act entitled "An act to revive, with amendments, an act to incorporate the Medical Society of the District of Columbia," approved July 7, 1833; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. BATE introduced a bill (S. 3443) to establish the customs district of Tennessee, and for other purposes; which was read twice by its title, and referred to the Committee on Commerce.

Mr. TELLER introduced a bill (S. 3444) for the relief of William Cameron; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Military Affairs.

He also introduced a bill (S. 3445) for the relief of Charles Carlisle; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. PADDOCK introduced a bill (S. 3446) granting a pension to Mary L. Radford, widow of William Radford, rear-admiral United States Navy; which was read twice by its title, and referred to the Committee on Pensions.

Mr. WILSON, of Iowa, introduced a bill (S. 3447) granting an increase of pension to Richard B. Rians; which was read twice by its title, and referred to the Committee on Pensions.

Mr. BLAIR introduced a bill (S. 3448) granting a pension to Clara H. McIntire; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. CAMERON introduced a bill (S. 3449) to increase the pension of Manhattan Pickett; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

He also introduced a bill (S. 3450) granting a pension to Mrs. Elizabeth Stewart; which was read twice by its title, and referred to the Committee on Pensions.

Mr. HOAR introduced a bill (S. 3451) for the relief of Francis S. Davidson; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. JONES, of Arkansas, introduced a bill (S. 3452) to pension Mathew Lambert for service in the Indian war; which was read twice by its title, and referred to the Committee on Pensions.

Mr. BUTLER introduced a bill (S. 3453) providing for the construction of a dry-dock at Port Royal, S. C.; which was read twice by its title, and referred to the Committee on Naval Affairs.

Mr. EDMUNDS introduced a joint resolution (S. R. 71) directing the Librarian of Congress, the Librarian of the Senate, the Librarian of the House of Representatives, and the Librarian of the Department of Justice, respectively, to deliver extra or duplicate copies of law books to the law department of Howard University; which was read twice by its title.

Mr. EDMUNDS. On the question of reference, I think it to be a duty to say now that I have recently heard with astonishment that a law school in this District of Columbia, connected with a college which exists under the authority of the United States, has deliberately, on consideration, refused to allow a person with some African blood, and in every respect a gentleman of extraordinary ability, to attend its law lectures on account of his having African blood in his veins. The Howard University has also a law department, and I have introduced this joint resolution in order that copies of law books which are not needed for the public service may be donated to the Howard University, so that that portion of our fellow-citizens who are denied equal rights in other universities in this District may have a chance to learn some law.

The PRESIDENT *pro tempore*. The joint resolution will be referred to the Committee on the Library.

JUDICIAL OFFICERS IN FLORIDA.

Mr. CALL submitted the following resolution; which was read:

Whereas the newspapers have published statements that Charles E. Swayne, judge of the district court of the United States for the northern district of Florida, and Joseph N. Stripling, district attorney of the United States for said court, have prostituted the judicial powers of that court to serve political and party ends and personal interests, by packing juries with persons selected because of their political affiliations, contrary to the statute of the United States

and the rules of the court and the principles of morality and justice, for the purpose of indicting and trying persons accused of crime; and

Whereas the interests of justice and the pure administration of the law and the honor and good name of the ancient and honorable profession of the law and the respect of the people and of all honest men for the laws and the courts of justice demand that the truth of these charges should be ascertained, and if true that such laws should be enacted as will prevent the use of the courts and the judicial power in the interest of political parties and will prevent the exercise of judicial power by corrupt and dishonorable men for the oppression of the people: Therefore,

Be it resolved, That the Judiciary Committee of the Senate be, and is hereby, instructed to take evidence as to the truth of these statements, and to report to the Senate the facts of the case with the evidence taken by them, and to recommend such legislation as may be necessary to prevent the recurrence of such evils, and that the committee have power to send for witnesses and papers and to employ a stenographer.

Mr. CALL. I ask that the resolution be printed and lie on the table. The PRESIDENT *pro tempore*. It will be so ordered.

Mr. WILSON, of Iowa. What was the order?

The PRESIDENT *pro tempore*. That the resolution be printed and lie on the table.

Mr. HOAR. I rose to suggest the reference of the resolution to the Committee on the Judiciary.

Mr. CALL. I prefer that it should not be referred immediately, Mr. President.

WEIL AND LA ABRA AWARDS.

Mr. VEST submitted the following resolution; which was considered by unanimous consent, and agreed to:

Resolved, That the President be requested to communicate to the Senate, if not in his opinion incompatible with public interests, a copy of any communication or report made to him by the Secretary of State in regard to the propriety of distributing among the persons entitled thereto the funds received from the Mexican Government on account of the Weil and La Abra awards, or either of them, and also copies of any official correspondence between the Committee on Foreign Relations, or any member thereof, and the President or Secretary of State, in addition to the correspondence previously transmitted to the Senate in regard to the said awards, or either of them.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. MCPHERSON, its Clerk, announced that the House had agreed to the amendments of the Senate to the following bills:

A bill (H. R. 2861) for the relief of Helen E. Dewey; and

A bill (H. R. 7010) for the relief of John J. Freeland.

The message also announced that the House had passed the bill (S. 2714) to provide for the purchase of a site and the erection of a building thereon at Aurora, in the State of Illinois, with an amendment in which it requested the concurrence of the Senate.

The message further announced that the House had passed the following bills; in which it requested the concurrence of the Senate:

A bill (H. R. 568) to prevent the enlistment of aliens in the naval service of the United States;

A bill (H. R. 4539) making an appropriation to supply the deficiency occasioned by the defalcation in the office of the late Sergeant-at-Arms;

A bill (H. R. 5939) for the relief of settlers on Northern Pacific Railroad indemnity lands;

A bill (H. R. 7898) to allow right of way through Indian reservations;

A bill (H. R. 8245) to provide for the disposal of the abandoned military reservations in Wyoming Territory;

A bill (H. R. 8347) to authorize entry of the public lands by incorporated cities and towns for cemetery and park purposes;

A bill (H. R. 8295) to authorize the purchase of certain public lands by the city of Buffalo, Wyo., and for other purposes;

A bill (H. R. 8555) to authorize the President of the United States to cause certain lands heretofore withdrawn from market for reservoir purposes to be restored to the public domain subject to entry under the homestead law with certain restrictions; and

A bill (H. R. 8906) requiring purchasers of lands in the Pawnee reservation, in the State of Nebraska, to make payment, and for other purposes.

SENATORS FROM MONTANA.

The PRESIDENT *pro tempore*. If there be no further morning business, that order is closed and the Calendar under Rule VIII is in order.

Mr. HOAR. I desire to call up the unfinished business of yesterday, being the Montana resolutions.

The PRESIDENT *pro tempore*. The Senator from Massachusetts moves that the Senate proceed to the consideration of report No. 538, submitted by him from the Committee on Privileges and Elections, relative to the Montana Senatorial contest.

The motion was agreed to; and the Senate resumed the consideration of the report of the Committee on Privileges and Elections in regard to the Montana Senatorial contest.

Mr. SPOONER. Mr. President, when I yielded the floor yesterday I had brought to the attention of the Senate the fact that the credentials of the Republican members of the Legislature of Montana did not consist simply of the certificate or declaration of the Territorial canvassing board, but that immediately upon the completion of that canvass and the declaration of the result there had been issued by the governor of Montana, under the seal of the Territory and attested by the secretary of the Territory, certificates of election, which were mailed to all

the members of the Legislature declared by the canvassing board to have been elected, with the exception of four Democrats from Silver Bow County, and who were also declared elected by the canvassing board and whose certificates were omitted by mistake.

I had given some reasons which, in my judgment, seemed to warrant the conclusion as a matter of law that the governor had authority to issue those certificates. I do not think they were at all essential to constitute a *prima facie* case for the members of the Legislature declared by that board to have been elected. I do not conceive it to be necessary at all that each member should carry in his pocket with him to the Legislature an individual credential. But the result of the canvass, the certificate of the canvassing board, being there in the hands and in the custody of the proper officer, would constitute for each an adequate credential. But in fact each one possessed a credential from the governor.

Mr. President, the Senator from Delaware asked me if there was any validity as a credential in the certificate issued by the governor of that Territory. I desire to call the attention of the Senator to the fact that the validity of the credentials issued by the governor was passed upon by the supreme court of the State. No other question was before the court in the case to which I allude, and that question in an appropriate proceeding was before the court, was elaborately considered by the court and decided by the court, the chief-justice declining to take any part in the decision because he had been a member of the canvassing board, the validity of whose conduct and canvass was in question. I will not take time to read any considerable portion of this decision or of the papers which were presented to the court.

A member of the Legislature from Silver Bow County, declared elected by the canvassing board and holding a certificate from the governor, applied for a mandamus in the supreme court to compel the auditor to audit his account and pay him for his services as a member. In his petition he stated that he had been a candidate, that he was duly elected, that the votes in his district were canvassed by the Territorial canvassing board, and that the board certified and declared that he was elected. The auditor of the Territory in his reply did not admit the allegation that he was duly elected, but made an issue upon that, and alleged and admitted the action of the Territorial board in declaring him elected, but also alleged that another person claimed the same seat who possessed the certificate of election signed by the county clerk; and the supreme court of the State was confronted therefore with the question of law—for it is purely a question of law—which of those persons held the *prima facie* title. The court states the question—

Mr. GRAY. From what is the Senator reading?

Mr. SPOONER. From the decision in the case of Thompson in the supreme court.

Mr. President, I call the attention of the Senate for one moment—and I shall not take much time this morning—to the statement of the case and of the question by the court as they understood it:

That body, and that alone, having the plenary jurisdiction to try the ultimate right to the office, it must be determined in the case at bar on what character of *prima facie* evidence will courts of justice enforce collateral or incidental rights and privileges belonging to the members of the Legislative Assembly. In other words, as applicable to this case at bar, what constitutes in the view of courts of justice sufficient *prima facie* evidence of his membership in the house of representatives of this State to entitle the relator to the relief which he asks, that is, to have his claim to the emoluments of the office of representative from Silver Bow County audited, settled, and certified?

Under our republican form of government election to this office is made by the votes of the legally qualified electors of the district in the manner prescribed by law, and the result of such election is ascertained in a manner prescribed by law through the returns and canvass of such votes by legally constituted canvassing boards.

No lawyer will challenge the accuracy of that statement as a proposition of law.

The courts have uniformly given credit to the result of an election, as ascertained and declared or certified by the legally constituted canvassing board to whom the law has committed the duty of canvassing the returns of the election and declaring the result, until this evidence of the election has been overborne by the trial and determination of the ultimate right to such office by the tribunal having jurisdiction to try and determine the same.

The title to an elective office, in a large majority of cases, rests on this *prima facie* evidence, because in the great majority of cases there is no adjudication of the right to the office which inquires back of the returns of the proper canvassing board. It is proper to observe here that under well established rules of law, if it was shown that a contest of the election of the relator was pending in the house of which he claims to be a member and to which he holds a certificate of election, then this court would withhold judgment until the case was determined; but no such fact appears.

The relator's certificate of election emanates from a canvassing board composed of the governor, chief-justice, and secretary of Montana Territory, accredited by the signatures of the said governor and secretary and the seal of the Territory.

Here, it will be observed, the court deals only with the certificate of the governor issued and delivered under the seal of the Territory to each of those members, except the four Democrats to whom I have referred:

The other certificate, which is set up in opposition to this, as held by another person, emanates from the county clerk of Silver Bow County, accredited under the hand and official seal of that officer, and this is not denied by the relator.

Mr. BUTLER. May I interrupt the Senator for one moment for information?

Mr. SPOONER. Certainly.

Mr. BUTLER. I understand him to say that the credentials of that member were signed by the governor as one of the members of the canvassing board. Does he mean the governor of the Territory or the governor of the State?

Mr. SPOONER. The governor of the Territory.

Mr. GRAY. Let me call the attention of the Senator from Wisconsin to the passage he just read on page 101. I was not here when the Senator began his remarks this morning and did not have the pleasure of hearing what he said about this matter until a moment ago, but it is interesting as bearing upon the colloquy we had yesterday. The court in this case say, as the Senator has just read it:

The relator's certificate of election emanates from a canvassing board composed of the governor, chief-justice, and secretary of Montana Territory.

This is very pertinent deliverance to the question that was raised yesterday as to whether there was any other certificate in this case to the five members sitting in Iron Hall than that which emanated from this canvassing board.

Mr. SPOONER. That is technical.

Mr. GRAY. It is a technical case.

Mr. SPOONER. That is right; it is a technical case in one respect. There were two certificates. The Senator from Delaware will not deny that the canvassing board not only declared the result of their canvass, but certified that certain persons named were elected, and that certificate is the only one mentioned in the report of the majority of the committee and the only one that was discussed by my friend from Delaware; and I do not question that he was justified in confining his discussion to that. I brought to the attention of the Senate, however, the fact that that was not the only credential, that that was not the only evidence of the action of the canvassing board, and that there had in addition to that been issued a certificate, of whatever value it may be in law, which was delivered to all the members of the Legislature except four Democrats from Silver Bow County who were declared by the canvassing board elected—a certificate signed by the governor, countersigned by the secretary of state, and attested by the seal of the Territory.

Mr. GRAY. The Senator will pardon me again. As he is very amiable about interruptions, I venture to disturb him. It seemed to me that the opinion of the court which the Senator has just read entirely sustains what I said with reference to that decision, and I think I am justified in saying this by quoting its language. This court says, in effect, that the only certificate that these five members had was one emanating "from a canvassing board composed of the governor, chief-justice, and secretary of Montana Territory, accredited by the signatures of the said governor and secretary and the seal of the Territory."

One certificate only, says this court, was possessed by these five members, and that certificate emanated from the canvassing board we have mentioned, and was accredited by the signatures of the governor and secretary of the Territory.

Mr. SPOONER. The certificate of the canvassing board and the declaration of the result was, as I understand it signed and sealed and on file in the office of the secretary where it belonged. I do not understand that certified copies of it had been sent to the different gentlemen who were declared by the canvassing board to have been elected. It does appear that upon the assembling of the Legislature, to the auditor of the Territory there was presented, when the body was called together, and read, this declaration and certificate of the canvassing board.

In addition to that, there were presented by the different members the credential, if it be a credential, as the supreme court seem to think it was, signed by the governor, countersigned by the secretary, and attested by the Territorial seal. Of course it emanated from the canvassing board. It was based upon the action of the canvassing board. It evidenced only the action of the canvassing board. It was a different evidence—that is all I mean to say, speaking as to the fact—it was a different evidence in form of the action of the canvassing board from that afforded by the certificate and declaration of the board itself.

It is immaterial to my argument whether this in law was the only certificate or not. The point which I was endeavoring to make was this: That in a case before the supreme court of the State in which was involved the question who possessed the evidence of title under the constitution and laws of Montana to sit in the Legislature, the court, being advised that two sets of certificates were out, one emanating from this Territorial board, the other from the county clerk, decided that the certificate presented by the relator was the lawful evidence of title, and not that signed by the county clerk. The court says:

The effect of the ordinances upon the statute is to change and modify its provisions so far as is necessary to give the provisions of the ordinance full scope and effect. It follows that the relator's certificate of election emanates from the legally constituted canvassing board, and will be admitted in this action as *prima facie* evidence of his election to the office in question.

I think the Senator will find it difficult to dispose of that decision of the supreme court of the State unless some other reason is given than any which I have heard.

Mr. President, we have then elected undisputed forty-nine members of the Legislature at this point. If the senate and house of representatives of Montana had been convened there would have been, if the senators all attended, sixteen members of the senate as to the election of

no one of whom was there any question, and there would have been forty-nine members, Democrats and Republicans, of the house of representatives as to whom there would have been no question, leaving out the five in dispute.

There was the constitutional tribunal to settle this question. There was a qualified house of representatives elected under the constitution and laws, vested by the constitution with the sole power to determine the elections, qualifications, and return of its members. In that tribunal all of these questions could have been settled, and by that tribunal all of these questions should have been settled. The Senator from Delaware [Mr. GRAY] bows his acquiescence in that proposition. It was a plain duty to convene that Legislature, to put in being as an organized body that house of representatives, in order that all contests as to its members might be adjudicated and finally adjudicated, and the governor of the State seemed to be of that opinion, for—and I ask the attention of the Senators to it—on the 23d of November the governor issued this proclamation:

Whereas on the 8th day of November, A. D. 1889, a proclamation was issued and signed by the President of the United States declaring Montana a State in the Union:

Now, therefore, I, Joseph K. Toole, governor of the State of Montana, by virtue of the power and authority in me vested by the constitution, do hereby convene the first regular session of the Legislative Assembly of the State of Montana, to meet at Helena, the seat of government of said State, on Saturday, November 23, A. D. 1889, at 12 o'clock noon.

In testimony whereof I have hereunto set my hand and caused the seal of the State of Montana to be affixed at Helena, the seat of government of said State, this 11th day of November, A. D. 1889.

JOS. K. TOOLE.

By the governor:

L. ROTWITT, Secretary of State.

That was issued in discharge of a plain constitutional duty and in the exercise of a plain constitutional power. The State just having been admitted into the Union had no capitol building, and so the governor summoned the Legislature to meet at the seat of government. This invitation was to the Legislature; it summoned all who claimed to be members of the Legislature; it called together the body before which and by which all claims of contest were to be settled and decided.

Here, Mr. President, comes an act of executive usurpation which I believe to be unprecedented in the history of any State, an act by which the governor of that State has forever rendered it impossible that it shall be an honor to him to have been the first governor of Montana. My recollections of him are agreeable, and I am not willing to believe that "out of his own head," as a mere matter of partisanship, he performed the act to which I now propose to call the attention of the Senate, susceptible of explanation only upon one hypothesis and that a discreditable one. He had convened the Legislature, but it seems to have occurred to somebody there that if the Legislature were called under that proclamation there would be a house of representatives, leaving out the contested cases, the five Democrats and the five Republicans in dispute from Silver Bow County, which would contain of lawfully elected and uncontested members TWENTY-FIVE Republicans and TWENTY-FOUR Democrats.

I agree with the Senator from Delaware that in a contested-election case of one of those disputed Democrats from Silver Bow County or one of those disputed Republicans from Silver Bow County none of the five should be permitted to vote. I recognize the doctrine stated by the Senator from Massachusetts as a general rule, that a man sitting in a legislative body whose seat is contested is not because of that contest precluded from voting upon a contest of some other member's right to a seat, but in a case like this, where five men with *prima facie* title and the five contestants represent the same constituency, and the result as to one is the result as to all, each one being just as much personally interested in and personally affected by the determination of one as if it were his own case, it would be obnoxious to every one's sense of justice that any one of those men should be permitted to vote upon that point. I agree with the Senator from Delaware as to that.

There would have been—and bear this in mind, because about this fact comes a piece of executive usurpation which, as I said a moment ago, is in my opinion unparalleled in the history of this country, and which I hope may never occur again—25 Republicans and 24 Democrats. Of course it was discovered that the Republicans, being in the majority, might seat the five Republican members from Silver Bow County, settling finally and forever so far as this body was concerned the fact that that was a Republican house and rendering it impossible on any pretext to get up here two sets of Senatorial credentials or to make a contest at all.

Now mark what happened.

Bear in mind that the first proclamation convening the Legislature bore date the 11th day of November, 1889, and the Legislature was to meet on the 23d. On the day before the Legislature was to assemble under this first proclamation the governor issued this proclamation:

PROCLAMATION.

STATE OF MONTANA, EXECUTIVE OFFICE,
Helena, Nov. 22, 1889.

Whereas on the 11th day of November, A. D. 1889, a proclamation was signed and issued convening the first Legislative Assembly of the State of Montana at the seat of government on Saturday, November 23, 1889, at 12 o'clock noon; and Whereas no provision of the constitution or of the laws provide the place in which the said Legislative Assembly shall meet and no person is expressly au-

thorized by the constitution or the laws to designate such place of meeting; and

Whereas it is necessary that some suitable and convenient place of meeting shall be designated and provided; and—

If he had stopped there, if the purposes and object of this supplementary proclamation had simply been to fix a place of meeting, to designate a structure in which the Legislature theretofore invited to assemble should meet, it would be irregular, but it would not be open to the criticism which it now compels. I ask Senators, whatever their political bias or opinions may be, to note what follows:

Whereas it has come to my knowledge that two sets of certificates have been issued to persons claiming to be elected to said Legislative Assembly, each emanating from a different source, and not all to the same persons; and

Whereas it is probable that a conflict may arise between the respective claimants to seats in said body—

There were only ten in dispute—

and in the organization thereof which may imperil the peace of the State; and—

Not the "war of the roses," but the war of the certificates!

Whereas one set of said certificates have been issued and delivered pursuant to section 1033 of the general laws of Montana by the county clerks of the respective counties, and by virtue of section 18 of an act of the Legislative Assembly of the Territory of Montana, entitled "An act to provide for the registration of electors and to prevent fraud at elections," approved March 8, A. D. 1889; and

Whereas by express law the persons holding such certificates are declared to be entitled to membership and deemed to be elected for all purposes of organization of either branch of the Legislative Assembly; and—

Now what follows:

Whereas, when so organized, such Legislative Assembly by the constitution becomes the judge of the qualifications of its own members;

Now, therefore, I, Joseph K. Toole, governor of the State of Montana, do hereby designate the court-house of the county of Lewis and Clarke, at the seat of said government, as the place where said Legislative Assembly, comprising the persons holding and presenting certificates of election from said county clerks, shall meet, to wit: The house of representatives shall meet in the hall formerly occupied by the Territorial house of representatives and the senate shall meet in the chamber formerly occupied by the Territorial council.

For the peaceful observance of this proclamation I invoke the aid of all good citizens, without distinction of party.

In testimony whereof I have hereunto set my hand and caused the seal of the State to be affixed, at Helena, the seat of government of said State, the 22d day of November, A. D. 1889.

JOSEPH K. TOOLE.

By the governor:

LOUIS ROTWITT, *Secretary of State.*

When before in this country has a governor of a State assumed to determine who were *prima facie* entitled to sit in a Legislature and where did Governor Toole possess authority to decide what certificates of election should be recognized and what should not? The constitution of Montana provides that there shall be three co-ordinate departments of the government, after the fashion of all our constitutions, the executive, the judicial, and the legislative. Neither has any right to trench upon the functions and jurisdiction of the other. So careful were the people of Montana that neither should invade the domain of the other that they placed in their constitution a provision not found, so far as I know, in many others, section 1, article 4:

SECTION 1. The powers of the government of this State are divided into three distinct departments—the legislative, executive, and judicial—and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

The governor of Montana had convened at the seat of government the Legislature. Then he issues a proclamation the day before that Legislature was to assemble, designating the court-house as the place where the Legislature whom he had invited to assemble should meet? No; but where the members of the Legislature holding *particular certificates* might meet.

Mr. MORGAN. Will the Senator from Wisconsin allow me to ask him whether the governor of the State of Montana was authorized by any law whatever to designate the place of meeting.

Mr. SPOONER. Not at all. He states in his proclamation that there is no provision made by law for designating the place of meeting.

Mr. MORGAN. Is there any provision of law authorizing him to convene the General Assembly?

Mr. SPOONER. There is a provision of law authorizing the governor to convene the Legislature.

Mr. MORGAN. Is that in the enabling act?

Mr. SPOONER. That is in the constitution of Montana.

Mr. MORGAN. Then that is the only law on the subject, I understand.

Mr. SPOONER. So far as I now remember.

But, Mr. President, think of it! Suppose the President of the United States should issue his proclamation convening Congress, and the day before Congress was to meet he should issue a proclamation inviting the Democratic members of Congress or the Republican members of Congress to meet, excluding so far as he might the others! What would people think of it? That is this case.

Mr. GRAY. If I may be permitted, the Senator does not mean to be underlain in this particular case as saying that only Democratic members or those claiming to be such had certificates of the clerks of the county boards, does he?

Mr. SPOONER. I am informed that all the Democratic members

had certificates from the county boards. I am informed that no Republican members had certificates of the county boards who came from counties in which the county clerk was not a Democrat. I am informed that the Republican members, except in those cases where the county clerk happened to be a Republican, had no certificate from the county clerk.

Mr. GRAY. There ought to be no dispute about the facts in this case and I hope there will be none. The fact on this point, unless I am more mistaken than I ever was in my life, is that there was no hindrance or trouble about any member, Republican or Democrat, who claimed to be a member of the house of representatives having a certificate from the county clerk except as between the two sets from Silver Bow County.

Mr. SPOONER. The Republican members did not want any certificate from the county clerks. They did not need any certificate from the county clerks. They had been elected and declared elected by the ultimate canvassing board, by the Territorial board consisting of the governor, the chief-justice, and the secretary of the Territory; and they had evidence, not only in the certificate or declaration of that board, but each one of them had and carried in his hand to the Legislature the certificate of the governor, and of the secretary of the Territory, attested by the Territorial seal, believed to be a sufficient credential and decided by the supreme court in this case, shortly after it met, to be a sufficient credential; and, as my friend from Massachusetts [Mr. HOAR] suggests, they regarded, and I think justly, the certificate of the county clerks as a mere act of usurpation, and if it had not been for the purpose of preventing, if they could, the election of a Senator, and sending this business back to the governor for appointment (getting up a contesting delegation before this Senate), I think there would have been no county clerk certificates issued at all.

I do not hesitate to say here that in my belief the only possible theory on which that action was taken was to prevent the assembling of a house of representatives which should consist of twenty-five uncontested Republicans and twenty-four uncontested Democrats, who might seat these Silver Bow Republicans and honestly and legally elect, without possibility of contest, Republican Senators to this body from the State of Montana.

What followed? That was too glaring even for the sensibility of the governor, and thereupon he modified this last proclamation. Of course he did not modify it publicly; he did not issue another proclamation changing it or correcting it and enlarging his invitation, but he wrote a note dated "Governor's office, November 23, 1889," the very day the Legislature met. I wish he had given the hour and the minute.

Mr. GRAY. He was not as expert as they are here.

Mr. SPOONER. Well, it was too expert to be creditable. He writes this note:

GOVERNOR'S OFFICE, November 23, 1889.

To Capt. JOHN SMITH.

In charge of the House of Representatives, Helena, Mont.—

Here is the third proclamation on the subject, issued not to the people of the State, not to the members of the Legislature, but—

To Capt. JOHN SMITH, *in charge of the House of Representatives, Helena, Mont.—*

A lineal descendant, I suppose, of Capt. John Smith, of Virginia—

At 12 o'clock noon to-day you will open the doors to the house of representatives and admit no person to the floor except persons claiming to be members of that body.

It is argued that by this note to Capt. John Smith, this proclamation issued to the janitor of the court-house, the restriction contained in the prior proclamation was removed and the invitation contained in it was enlarged.

Capt. JOHN SMITH—

I will read it again—

In charge of the House of Representatives, Helena, Mont.:

At 12 o'clock noon to-day you will open the doors to the house of representatives and admit no person to the floor except persons claiming to be members of that body.

Of course, members holding the certificate of the governor and canvassing board, and relying upon it, would not apply to Capt. John Smith, claiming to him to be members of the Legislature, because the governor had issued his proclamation telling them that they were not invited to that entertainment presided over by Capt. John Smith. The men who were to assemble at that banquet were men holding certificates from the county clerks, and the only representatives in Montana at that time who considered of any consequence whatever, I venture to say, the certificate of the county clerks, were the Democrats. That is evidenced pretty thoroughly by the fact that when Capt. John Smith gathered into his fold the members holding county clerks' certificates every one was a Democrat. The men who held the certificate of the governor did not go to the court-house; I am told that the first public intimation there was of the existence of this proclamation issued to Capt. John Smith was when this body holding the certificates of the county clerks assembled, it was read from the desk. I will read the rest of this in order that it may be preserved in the records of the Government.

When notified by any member whom you have admitted—

"Whom you have admitted!" The governor and Capt. John

Smith were to settle the business of organizing the Legislature. They were to determine what should be the body which was to seat or to unseat members. I denounce it as a violation of the constitution of Montana, as a violation of the duty of that governor, and as an outrage perpetrated upon the people solely and purely for a partisan purpose, to prevent the organization of a house of representatives as to the composition of which there could be no question.

When notified by any member whom you have admitted that the house of representatives has temporarily organized you will turn over your keys to such person as the house may designate. If the auditor of state appears at the door before you are relieved by the person designated by the house of representatives, you will admit him to the floor of the house.

The law of Montana provided that when the house of representatives met on the first instant the auditor of the Territory should be present and preside pending the organization. The law made it his duty to be present pending the organization, but the governor authorized Capt. John Smith to admit him.

If the auditor of state appears at the door before you are relieved by the person designated by the house of representatives, you will admit him to the floor of the house. When you are relieved by such person your employment ceases.

JOSEPH K. TOOLE, Governor.

And here is an affidavit of Capt. John Smith:

At the hour of 12 o'clock noon of said 23d day of November, 1889, I opened the door of the said hall of the house of representatives and permitted all to enter claiming to be members thereof. The auditor of the State did not appear, and the house of representatives having temporarily organized, I delivered the letter of the governor to C. P. Blakely, temporary speaker; the letter was read to the house, and Miles Finlan, temporary sergeant-at-arms, received from me the keys of the hall and I was relieved by him from duty.

J. L. SMITH.

Exit Capt. John Smith from the Montana Senatorial contest.

Mr. MORGAN. Will the Senator from Wisconsin inform me what law of Montana he refers to that requires or authorizes the auditor of the State to be present at the opening of the Legislative Assembly? Where is that law to be found?

Mr. SPOONER. I will find it for the Senator. I cannot at this moment refer to it.

Mr. MORGAN. Is it a Territorial enactment?

Mr. SPOONER. It is a Territorial enactment, brought over when the State was admitted into the Union.

Mr. MORGAN. Is it by virtue of the ordinance of the convention?

Mr. SPOONER. By virtue of the ordinance and by the enabling act.

Mr. MORGAN. I should like to see it.

Mr. SPOONER. I will find it and hand it to the Senator, although at this moment I am not able to refer to it.

Mr. President, the members who held the county clerk's certificates, who were invited by the governor to meet at the court-house, met, including the five Democrats from Silver Bow County, without which persons there were twenty-four members—not a quorum. The members of the Legislature who held the certificates of the governor and the canvassing board and believed they had authority, in other words the Republicans, met at what is called the Iron Hall—twenty-five uncontested and five Republicans from Silver Bow County who held certificates from the governor and the canvassing board.

The auditor of the State, whose duty it was by the statute to preside at the organization of the house, appeared at that hall at the appointed time. The certificate and declaration of the canvassing board was presented, and from it it appeared that every man who was there claiming to be a member of that house and a right to sit there had been declared by the Territorial canvassing board to have been elected, and by the certificate of the governor and the secretary to have been elected. Both credentials were presented and thereupon the oath of office was administered, I believe, by the chief-justice to the members, and they proceeded to organize by the election of a speaker and a clerk.

In what is called the Court-House house of representatives a justice of the peace, the auditor not appearing, administered the oath to the members—just as valid, of course, as if administered by the chief-justice, but not quite so dignified—and they proceeded to organize by the election of a speaker.

Mr. President, I hope the day will come when the public opinion of this country will lash into obscurity with scorpion whips members elected to any legislative body, whatever their politics may be, who find it convenient or who are willing to abdicate their functions, and by a withdrawal or a revolutionary departure from the post of duty to block the legislation and orderly proceeding of a legislative body, whether it be in Montana or in any other State.

Here a majority of twenty-five confessed members met in one hall in that town and a minority of confessed members met in another. Why should not the minority have gone with the majority and formed a house as to the organization and legality of which there should be no question? I have given the reason why.

Mr. President, I insist as a matter of law, and I am willing to hold on the law and the facts as they stood that day, that the thirty men who sat in Iron Hall holding the certificate of the canvassing board and the governor, clothed with *prima facie* right to sit as members of the Legislature, constituted a lawful house of representatives. As to the senate, all the members of the senate, although in Helena, did not attend on the

23d, the day fixed by the governor for the meeting of the Legislature. All of the Republicans were in their places, but none of the Democrats were in theirs. Some days elapsed before the Democratic members saw fit to appear, but ultimately and long before the election of a Senator they did appear, and the senate of Montana was organized, sixteen members being present and answering to their names.

Mr. DAWES. Sixteen out of how many?

Mr. SPOONER. Sixteen was the total. Every member of the senate of Montana was in his place.

Now, Mr. President, there was communication between the two bodies, between the Republicans who occupied Iron Hall and this senate, composed of Democrats and Republicans; messages passed between the two bodies informing each of the appointment of committees. They appointed a joint committee to wait upon the governor and inform him that they were organized and ready for business and invite any communication which he might have to make. In that State they give notice by message, each house to the other, of the introduction of bills as well as of the passage of bills. The record shows that repeatedly such messages were sent from the senate to the house and from the house to the senate, and in some instances they were acted upon, and in one case a bill was passed through the house fixing the terms of the supreme court, and it was messaged into the senate, accepted by the senate on motion, and on a vote referred by the senate to a special committee which was appointed to consider it. The motion was then reconsidered and it was laid upon the table until the standing committees of the senate should have been appointed. This was legislation, this was the transaction of legislative business, and there was a constant communication in due form of law between the senate and this house.

This rump house—I call it that because it consisted of a minority, leaving out the members in dispute; I call it that because it was located and assembled in a court-house by this disgraceful proclamation issued by the governor—never held any communication with the senate of Montana; they were never recognized at all by the senate of Montana; and if you search the record you will not be able to discover any official evidence in the journal of the senate of Montana that this body convened at the court-house had any existence whatever. Am I wrong about that? I ask the Senator from Delaware.

Mr. GRAY. I beg the Senator's pardon. I did not catch his statement.

Mr. SPOONER. My statement was that there was no communication whatever at any time between the senate and the court-house body.

Mr. GRAY. Not that I know of, and there was no lawful communication between the other two bodies.

Mr. SPOONER. The Senator says there was no lawful communication between the other two bodies. That is a *petitio principii*. That begs the question which the Senate is considering. If the supreme court of Montana and the majority of your committee are right in their conclusion as a matter of law that the only lawful evidence or muniment of title to sit in the house of representatives was the certificate of the Territorial board or that of the governor, then my friend is wrong, because there sat in the Iron Hall building a quorum of men clothed by law with the legal right to sit there, only to be overthrown upon a contest by a vote of the house itself.

When the Senator says that there was no lawful communication between these bodies, he simply states, in another way, his conclusion which I have been attempting—and I have occupied too much time in the attempt—to confute. Of course if it were a lawful house the communications between them were lawful. Whether it was a lawful house depends entirely upon the question in issue between us, whether the certificates of the canvassing board clothed them with legal title or whether it was the certificate of the county clerk which evidenced the right to sit in the house, and the latter position I understand the Senator from Delaware himself to abandon, for he did not urge it upon this floor; and, if it were not the lawful house, there was no lawful house.

If it were not the lawful house, one thing is certain, the minority of this committee never can justify here or elsewhere a recommendation or a resolution declaring that the court-house body, never having had any communication with the senate, lawfully elected Messrs. Clark and Maginnis and constituted them the duly elected Senators from the State of Montana. But it was in my opinion a lawful house.

It is said the governor did not recognize them. Well, he did not. He did not invite them, or having invited them he repented of his invitation and canceled it as far as he could and did not recognize them, but the recognition of a legislative body by the governor of a State is not essential at all to make it a Legislature, nor is it essential that it should have legislated. The question is whether it was a body organized, capable, under the constitution and the law, of legislating.

The governor is no part of the Legislature; the President is no part of Congress. Congress would meet whether he took action or not. Congress could legislate whether he obeyed his constitutional duty to transmit information to either house or not. The people never intended, in the nation or in any State, that it should rest with a partisan, capricious, or corrupt executive to block the wheels of legislation and to destroy the power of legislation, especially, as my friend from Massachu-

setts [Mr. HOAR] remarks to me, before the election of a Senator, in order that he might take to himself the power of appointment, in order that he might defeat an election of Senators, etc., in accordance with the will of the people and select them himself.

The governor has a qualified negative upon legislation. A bill which has been passed through both houses and presented to him he may veto. He can not destroy it. He does not interfere, and can not in the slightest degree, with legislative power. He can compel a reconsideration or review of it by the Legislature; he can require under the constitution the assent of a larger number in order to make it a law; but if he refuses to receive it all, if he has a Capt. John Smith at the door of the executive mansion with instruction not to receive a bill which has passed through both houses of the Legislature, that does not affect the validity of the bill, and it would become a law just the same. It will be a sorry day for this country if our system is ever so subverted that it should be declared that a governor of a State, by sending his message or declining to send it, could determine what was or what was not a legislative body. The constitution says that the Legislature shall elect Senators, not the Legislature and the governor. The governor, under the law, the Legislature having elected a Senator, simply registers their decree and sends on to Washington the evidence of it.

At a later day—and I shall not spend time on that—in strict accordance with the act of Congress, they voted in the senate of Montana on the election of Senators and they voted in the house of representatives, the Iron Hall house, the only house, from my standpoint, for the election of Senators. They voted also in Captain Smith's house, the court-house body. At the proper time the Republican senators went with the journal of the senate into the house of representatives, the Iron Hall house, the journals were read and compared, and thereupon they elected Mr. Sanders a Senator of the United States and at a later day elected Mr. Power a Senator of the United States. The Democratic senators went from the senate into the court-house without any journal, without any evidence to that body of what had transpired in the senate and proceeded to elect, or choose, or vote for, as I choose to put it, Messrs. Clark and Maginnis.

Mr. GRAY. "Choose" is the word in the Constitution.

Mr. SPOONER. Well, as it was not a constitutional proceeding I will not use that word in connection with it. They chose Senators in the Iron Hall house. They voted for Senators at the court-house. That, Mr. President, is the end of the proceeding, so far as I shall care to discuss it.

It seems to me plain on the statement of facts—and I think I have made the statement accurately as to material facts—it seems to me perfectly clear that in the Iron Hall was a lawfully organized house of representatives and in the senate a lawfully organized senate which, in obedience to the act of Congress, duly elected, as a majority of this committee declare, Messrs. Sanders and Power United States Senators from Montana.

I am told that subsequent to the date of the election of Senators there passed through the Iron Hall house of representatives five appropriation bills. They were messaged into the senate; they were voted upon in the senate, but they were obliged to be signed in the presence of a quorum before they could become efficient; and the Democratic members of that senate, in order to block legislation, in order to prevent the passage of a law, and in order to prevent evidence that that was by legislation an organized Legislature, withdrew from the senate and fled, as I understand, as if they were fleeing from justice even beyond the confines of this Government.

Now, Mr. President, I should like to say something about Silver Bow precinct 34, although I regard it as utterly immaterial as to the questions of law and fact properly before the Senate, and I refer to it only because it has been made a question. I did not intend to refer to it at all—for I care nothing about it for the purposes of my argument—to the objections made by counsel before the county board as to the canvass of the returns from Silver Bow precinct 34.

The Senator from North Carolina [Mr. VANCE] humorously, but with his accustomed ability—and his speech was an able and original one from the standpoint of the minority—referred to affidavits that were presented there on both sides and to objections in the argument of counsel. I do not claim, as I have said, that that proceeding was a lawful one or that the county board could hear affidavits as to the qualifications of voters or even the conduct of the election.

I will not, either, go into any repetition of the objections to the returns referred to in the report of the committee, and so elaborately discussed on the other side, only saying this, that the explanation made by the Senators of the suspicious circumstance growing out of the alphabetical order in the poll-list is to my mind not an explanation at all, and I think, although it is difficult to show it in such a debate, that if you Senators will read with care the report of the committee and the answer made by the Senators on the other side, although it is the best that can be made, you will be satisfied that the explanation does not explain; but I believe it to be susceptible of absolute demonstration on the conceded facts in this case that the Democratic members from Silver Bow County were not elected and that the Republicans were, and that, too, brushing away the very many technicalities which have been discussed here.

It was found by the court that at precinct 26 and at precinct 34 a large number, I think in one case 126 and in the other 48 men, voted who had made declaration of their intention to become citizens of the United States, but who had not taken the oath to support the Constitution of the United States. If there were any dispute about the facts, as the Senator from Massachusetts says in his carefully and ably drawn report, the committee or the Senate might be called upon to give that point further consideration. But it is not denied here in debate that such was the fact. The Senator from Delaware, so far from denying it, prompted very properly by one of the Democratic applicants here, stated that it had been the practice at that election and all others in that Territory for many years for men to vote who had simply declared their intention to become citizens of the United States. So I think the Senate is warranted in assuming it to be a fact as found by the court that 126 voters, foreigners, voted at precinct 34—I may mix up the precincts—and 48 at precinct 26, or 126 in precinct 26 and 48 in precinct 34, and that eliminating those votes, if they were cast by men who had no right to vote, it changes the result so as to elect the five Republican members.

Mr. GRAY. I do not wish the Senator—

The PRESIDING OFFICER (Mr. MANDERSON in the chair). Does the Senator from Wisconsin yield to the Senator from Delaware?

Mr. SPOONER. Always.

Mr. GRAY. I do not wish the Senator to proceed at this point on the assumption that I admitted that there was any proof before the committee or before the Senate as to whether forty-eight men or whether one man of foreign birth voted at that precinct 34 without having taken the oath to support the Constitution of the United States. I only mean to say that, so far as the argument in this case is concerned, it made no difference whether they did or did not, because under the law of Montana and the practice at elections in Montana for twenty-five years they had voted without regard to the taking of that particular oath, and I do not understand that there is any proof as to the fact before this committee or that the court to which the Senator refers ever admitted any such thing. They merely decided that it was not material to that inquiry, and the Senator who submitted the report and the report of the majority of the committee distinctly say that if it turned upon this point alone, or if what transpired at the election polls at precinct 34 was material to the determination of this case, it would be necessary for the Senate to take some further evidence in that regard.

Mr. SPOONER. I stated that myself; but I say that it is found by the court in the case of John E. Lloyd, contestant, vs. Eugene D. Sullivan, respondent, a contest, I suppose, in *quo warranto* to try the title to the office of sheriff, that—

Forty-eight of the persons who were registered for and who voted at said precinct 34 were not citizens of the United States when they registered and voted, but had each, previous to registering and voting, declared his intention to become such citizen by declaring on oath before a person claiming to be a deputy clerk of the district court of the second judicial district of the Territory of Montana, in and for Silver Bow County, and publicly acting as such deputy under an appointment made by Welling Napton, the then clerk of said court, that it was his bona fide intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which he had heretofore been and was at the time of making such declaration a citizen or subject.

That is what the court find as a fact, and I have a right to assume that the court found the fact. Counsel offered to prove that they had not, in addition to the declaration of intention, taken an oath to support the Constitution of the United States, and the court overruled that offer, declaring that it was immaterial as a matter of law, in order to qualify them as voters, whether they had taken that oath or not.

The court found the same thing as to precinct 26.

At precinct 26, otherwise called McCune's Wood Camp, 190 votes were polled at said election. Respondent received at said precinct 145 votes and contestant 31 votes. One hundred and twenty-six of the votes polled at said precinct 26 at said election were cast by persons who were not citizens of the United States when they registered and voted, but had each previous to registering and voting declared his intention to become such by declaring on oath before one H. S. Clark, who was then publicly acting under an appointment made by Welling Napton, the then clerk of the district court, as a deputy clerk, claiming to be a deputy clerk of the second judicial district court of the Territory of Montana, in and for Silver Bow County, that it was bona fide his intention to become a citizen of the United States.

If we may rely upon the finding of facts (I have a right to assume that the facts as found are the full facts) that these men had done in order to qualify them to vote just what the court found they had done, and nothing more, and my right to make that assumption is increased, confirmed infinitely, by the statement of the Senator from Delaware, the correctness of which I have no reason to doubt, that it had been the practice for twenty years in that Territory for men to vote simply on making the declaration of intention. So I think there is no question in this case, no foundation for question or contest of fact in this case.

Mr. DAWES. They made their Territorial laws.

Mr. SPOONER. Yes; they made their Territorial law, made it by their original Territorial law essential to make a foreigner a voter that he should simply have made a declaration of intention to become a citizen of the United States under the laws of the United States.

Mr. GRAY. That is the law of some of the Western States now.

Mr. SPOONER. The Senator says it is the law in some of the West-

ern States now. So it is. It is the law in my own State; and as to a State it is none of the business of Congress, but it is the business of the State to determine who under the limitations of the Constitution in one particular shall be voters and who shall not be voters; but as to the Territory that is not true.

Mr. HOAR. In the constitution of Montana it was required that voters should be citizens.

Mr. SPOONER. The Senator says it is required in the Montana constitution that they shall be citizens. But that is not essential to the point which I desire to make. The power of Congress to prescribe the qualifications of voters in a Territory can not be disputed, and no Territorial law prescribing the qualifications of voters in the Territory can be valid in so far as it conflicts with an act of Congress upon the same subject.

Mr. GRAY. That is true.

Mr. SPOONER. The Senator agrees with me. That would not be true of a State, and therefore the suggestion that in the States men are permitted to vote simply by declaring their intention to become citizens has no significance.

Now, I assert as a proposition of law that no man had a right to vote in the Territory of Montana at that election simply on a declaration of intention to become a citizen of the United States, and I assert further that no man had a right to vote who took that oath before a clerk of a court away from his office or a deputy clerk of a court away from his office. There are two statutes upon the subject, and I ask the attention of lawyers on the other side of the Chamber, who are generally, whatever question is before the Senate, good listeners, to the fact that under Title XXX—the naturalization law—it is provided:

SEC. 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise.

This relates simply to the manner in which an alien may become a citizen of the United States, not to the manner in which he shall become a voter in a Territory.

First, He shall declare on oath before a circuit or district court of the United States, or a district or supreme court of the Territories, or a court of record of any of the States having common-law jurisdiction and a seal and clerk, two years at least prior to his admission, that it is bona fide his intention—

His intention—

to become a citizen of the United States and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Mr. GRAY. What is the section?

Mr. SPOONER. Section 2165 of the United States Revised Statutes. Under this chapter he does not take an oath to support the Constitution of the United States until having made his declaration of intention he applies to be admitted as a full citizen. He shall at the time of his application to be admitted declare on oath before some one of the courts above specified that he will support the Constitution, and that he absolutely and entirely does renounce allegiance and swear to support the Constitution of the United States. And under that statute that oath must be taken before a court, and not before some wandering clerk or deputy clerk wherever he sees fit to go throughout the district.

Mr. MORGAN. Will the Senator allow me to ask how it was established before the committee—I believe the Senator is a member of the committee—

Mr. SPOONER. Yes.

Mr. MORGAN. How was it established before this committee that any of the persons who had voted at this precinct 34 had not been properly qualified in the respects to which he refers?

Mr. SPOONER. By the finding of the court in the case to which I refer, the finding of the facts by a Democratic court on the question of the election of sheriff laid before us by the contestants.

Mr. MORGAN. I understand the report of the majority was not predicated upon that fact, but they in representing it had before said that there was another matter which if it were alone to decide the cause would require further examination, and perhaps the taking of further testimony. Is that a sedate statement by the committee or do they wish to be understood as joking about it?

Mr. SPOONER. I think it is a fact appearing from this finding of the court and by the statement of the Senator from Delaware and others that it has been the practice for twenty years in that Territory to take the votes without the oath. I think the Senate has a right to assume that that is a fact. What I am attempting to do now is—

Mr. MORGAN. Allow me to ask another question.

The PRESIDING OFFICER (Mr. FAULKNER in the chair). Does the Senator from Wisconsin yield to the Senator from Alabama?

Mr. SPOONER. I always yield.

Mr. MORGAN. Did any one from the time of the beginning of the registration of these voters, or at the time of the election, or at the time of the making of a certificate by the county board of canvassers, or at the time of making the certificate or the examination of the question by the State or Territorial board, ever challenge the right to vote of any one of these people upon that ground?

Mr. SPOONER. I do not know whether they were challenged or not, and I undertake to say that it does not give a man a right to vote and have his vote counted, if he were not a citizen of the United States,

if he did cast it in violation of law, without its being challenged. In the trial of a quo warranto case, in testing the right to an office, the fact is to be gotten at, and wherever it appears in any tribunal passing upon title to an office that a man voted who had no right to vote, whether his vote was challenged or not, that vote is excluded.

Mr. MORGAN. That does not appear anywhere.

Mr. SPOONER. What does not appear?

Mr. MORGAN. That any one of them had no right to vote.

Mr. SPOONER. I am about to show the Senate that upon the facts that do appear they had no right to vote.

Mr. MORGAN. Can the Senator name any voter who had not the right to vote?

Mr. SPOONER. I can not. I hope the Senator will not go out so soon. I had not finished what I was about to say to the Senator. I can not name any voter there who had no right to vote, but I assert from the findings of fact by this court and from what was said by the Senator from Delaware, which I believe to be true, that 126 men in one precinct and 48 men in another, foreigners, voted who had never taken any oath but the oath taken before the deputy clerk, away from his office, of their intention to become citizens.

Mr. MORGAN. I did not so understand the Senator from Delaware.

Mr. SPOONER. And the whole purpose—

Mr. GRAY. The Senator from Wisconsin did not understand me to state as a fact that 48 men at one precinct and 126 at another had not taken the oath?

Mr. SPOONER. Not at all. I have better authority for that than the Senator from Delaware, without meaning any disrespect to him. I have the finding of this court which was on the spot and took the testimony.

Mr. GRAY. Whether my authority is good or bad, I did not say that thing.

Mr. SPOONER. I understood the Senator to say that for years it had been the practice in Montana and was the practice in that election at every poll—and I wish the Senator from Delaware to tell me if I misunderstood him—for foreigners to vote simply upon taking the oath and declaring their intention to become citizens.

Mr. GRAY. The Senator did not misunderstand me in making that statement.

Mr. SPOONER. Very well. Then I have not only the finding of the court as to precisely the oath which these men did take, 126 in one precinct and 48 in another, but I have the admission that it has been the practice for such men to vote on taking just such an oath for twenty years in that Territory. What more is required?

The purpose of my argument is to show that no foreigner could become a voter in the Territory of Montana any more than if he had never crossed the ocean, by merely making the declaration to become a citizen of the United States, and I hope I may not be interrupted until I have had an opportunity to finish the argument upon this point.

I call attention to the fact that in the naturalization chapter an alien may become a citizen of the United States by taking the oath before a court of record and that later, when he applies to be admitted as a citizen, he must take, under section 2165, before a competent court of record, the oath to support the Constitution and to absolutely renounce his allegiance to any prince, potentate, or sovereign to whom it had theretofore been due. Under this chapter it has been always held, as it must be held, that that oath must be taken in open court, and it provides that it shall be taken before a court of record, not before a clerk, and it never ought to have been changed. It is not asking too much of a man when he applies to be admitted to citizenship and to the rights and privileges of citizenship, authorized under the Constitution in many of the States to vote as fully as if he were native born, to go into the open court and take an oath declaring his intention. But in 1876 Congress did change it. They passed this act, and I ask the attention of Senators to it:

That the declaration of intention to become a citizen of the United States—

They are dealing simply with this question of naturalization, observe—

That the declaration of intention to become a citizen of the United States required by section 2165—

The one which I just read which has nothing to do with the qualification of a voter in a Territory, bear in mind—

of the Revised Statutes of the United States may be made by an alien before the clerk of any of the courts named in said section 2165; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.

Mr. BUTLER. What year was that?

Mr. SPOONER. Eighteen hundred and seventy-six. That authorizes the declaration of intention named in section 2165 to be taken before the clerk of the court. Now, while this is not material to my argument, I desire to call attention to the fact that in passing upon this statute in the case of Mrs. Langtry's application to be made a citizen of the United States, the clerk of the court having taken the record out of his office and gone to her apartments, and it was done also in the case of Madame Barrios, where the clerk took the record away from his office and went to a hotel, Mr. Justice Field distinctly announced the opinion that, even as the law stands to-day, the oath, while it may

be taken before a clerk or a deputy clerk, must be taken in the clerk's office, where the records are and where in such case he is to perform the solemn function. But, whether that be the law or not, I ask the Senate now to turn to this other chapter for a moment and then I shall have finished.

I turn now away from the chapter on naturalization which was amended, reference being made to the section itself, to the chapter on Territories, relating to an entirely different subject, and I ask the attention of the Senate to a constitutional enactment by Congress made many years ago and in force to-day, and in my opinion of great value, not relating at all to the manner in which a man shall become a citizen of the United States (not in any wise amended by the legislation relating to naturalization), but prescribing qualifications of voters in the Territories. What is it? It is a special chapter relating to a special subject and to this subject which we now have in hand:

SEC. 1859. Every male citizen above the age of twenty-one, including persons who have legally declared their intention to become citizens in any Territory hereafter organized and who are actual residents of such Territory at the organization thereof, shall be entitled to vote at the first election in such Territory and to hold any office therein, subject, nevertheless, to the limitations, specified in the next section.

Here is the next section:

SEC. 1860. At all subsequent elections, however, in any Territory hereafter organized by Congress, as well as at all elections in Territories already organized, the qualifications of voters and of holding office shall be such as may be prescribed by the Legislative Assembly of each Territory, subject, nevertheless, to the following restrictions on the power of the Legislative Assembly, namely:

Just as strong and forcible a limitation upon the power of a Territorial assembly in prescribing what shall be necessary to constitute a foreigner a voter in the Territory as if it were in the Constitution of the United States instead of being in the statute. Now, hear this:

First. The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years and by those above that age who have declared on oath, before a competent court of record—

Not a clerk, not dealing, mind you, with the question of naturalization, dealing simply with the question of the qualification of voters, declaring who may vote in a Territory—

by those above that age who have declared on oath, before a competent court of record, their intention to become such, and—

And what else?

and have taken an oath to support the Constitution and Government of the United States.

No act of a Territorial Legislature declaring that a person who has simply declared his intention to become a citizen of the United States under section 2165 should be entitled to vote in a Territory would be valid so long as that act stood unrepealed upon the statute-book. Congress declares that a person may become a citizen primarily by declaring his intention to become one and his intention to renounce his former allegiance, leaving it to the State to say whether it will admit him upon that declaration to all the rights and privileges of full citizenship; but as to the Territories it was for Congress to say who should be a voter, and the policy of Congress, enacted, I think, back in 1872—perhaps I am mistaken as to the date—was declared to be that, while a person might, by simply making this declaration of intention to become a citizen and renounce his allegiance to other powers and potentates, become a citizen, he should not become a voter in a Territory until he had gone beyond that and sworn to support the Constitution of the United States, and had taken that oath before a competent court of record.

The Senator from Delaware confirms me in the opinion that this contention is correct by the manner of his answering it. Able as he is, there is no adequate answer to a legal proposition that that Senator does not readily find, and if the Senate will recur to his remarks made on this branch of the case they will find simply the statement that it had been the practice for twenty years in the Territory for men to vote simply on a declaration of intention. Every man who voted simply on a declaration of intention violated the law.

Mr. President, the Senator from North Carolina [Mr. VANCE] said there were three ways to repeal a statute. One was by an express repeal. That is true. Another was by implication, not favored in the law, where the two statutes are inconsistent. And the third was by revision or a superseding, the whole subject having been covered by another statute. There was an attempt to introduce a new method a year or two ago, and that was the theory that a statute was repealed because of its non-observance, because of its continued violation, because it had fallen into a condition of "innocuous desuetude," but the people of the United States never have agreed and never will agree that a violation of a statute, however persistent it may be, can operate to repeal it.

Here we have this statute unamended prescribing the qualifications of voters in that Territory, and I insist upon it, whatever the practice may have been, that any man who voted at that election upon a mere declaration of intention had no more right to vote in Montana than I had to vote there, never having been within the borders of the State, and that if the Senate of the United States should declare elected Messrs. Clark and Maginnis they would overturn the law (and in what I have had to say about conspiracy and all that I wish it distinctly

understood that there is nothing in all these papers that impugns in the slightest degree the personal good faith or integrity of either of them) and would seat men whose title depends upon the votes of those who were no more entitled to vote than they would have been if they had never crossed the ocean.

Mr. President, I have said all I desire to say on the Montana contested-election case. I close, as I commenced my remarks, by confessing what must be obvious to every one, that the right of Senators to seats in this body presents a question of grave import, of great delicacy, and of the highest privilege. I would not for any partisan purpose, upon a question so grave, to be judicially considered, bar the entry of any man to this Chamber whom I thought entitled to come here as the representative of a State, upon any technicality.

But, sir, I firmly believe from the investigation I have given to this case that Messrs. Sanders and Power were duly and lawfully elected Senators of the United States from Montana, and that, in spite of conspiracy; in spite of startling, strange executive usurpation; in spite of the effort to prevent the assembling of the regular and legitimate house; in spite of the abdication of duty, revolutionary in its character, by men chosen and sworn to do their duty as legislators, if the truth and the right prevail against sophistry and subtlety and fraud, the voice of the senate and of the Iron Hall house must be declared by this Senate to be the voice of the people of the State of Montana, and I have no fear, as our friends on the other side have or seem to have, that an adoption by the Senate of the majority report will obscure in the slightest degree the brilliant sparkle of that star upon our flag which is there as the representative of Montana.

My friend from Delaware seemed to fear it. He need not. He may safely leave the honor of Montana with the people who through long years of hardship, privation, and danger have with superb courage and patience so well fitted her for the high status of Statehood.

Mr. PUGH. Mr. President, on account of the inflamed condition of my lungs and throat I have not been able to take part in this debate, but being a member of the Committee on Privileges and Elections I feel it to be my duty to take some risk in making a brief statement of the views I entertain upon this important contest. I shall indulge in no crimination or recrimination. I shall discuss only the fundamental facts and principles upon which I think this case ought to be decided. I shall not discuss non-essential or immaterial questions.

This is the first time that a contest has arisen in the Senate of the United States between rival claimants to seats in this body from a newly admitted State into the Union. All the contests heretofore have grown out of elections by State Legislatures in States that were already established members of the Union.

The case comes before the Senate from Montana by the majority and minority reports of the members of the Committee on Privileges and Elections. The case had the most patient and thorough examination by that committee. The respective claimants were heard at length by able counsel, and I think that the committee when it made its decision was in full possession of the case. Each member of the committee at the close of the examination expressed his views, and after each member was heard a vote was taken which ended in the majority favoring the seating of Messrs. Sanders and Power and the minority vote favored the seating of Messrs. Clark and Maginnis. The able chairman of that committee [Mr. HOAR], who heard the whole case, as we all did, an able lawyer, clear and level-headed, an experienced Senator familiar with all the rules and principles which have heretofore governed these contests, made the majority report, and I take it that he has fully and fairly presented the questions involved for the Senate to decide. I will read from the majority report, because I can not state it more briefly or clearly or forcibly than it is done by the chairman of the committee:

No distinction exists between the cases of Messrs. Sanders and Power and no distinction exists between the cases of Messrs. Clark and Maginnis. The cases on each side have been presented and argued upon the merits of the title, and not merely upon the question presented by the certificate of the governor or of the secretary of the State. The committee, therefore, have considered and report upon the whole case upon its merits.

The claimants on both sides seem to be agreed that a lawful joint convention was held in Montana by the members of the two houses of the Legislature, and elected Senators by due proceedings. The dispute is which of two bodies claiming to be the lawfully organized house of representatives of Montana was entitled to that character.

There was no election of Senator by concurrent vote on the Tuesday appointed for that purpose by the statute of the United States (Rev. Stat., secs. 14, 15). On the following day one-half the members of the senate met in joint assembly with a body which had assembled and organized in a room called the Iron Hall, which body was known as the Iron Hall or Republican house, whereupon, a ballot for Senator being had, Mr. Sanders had a majority of all the votes cast and was declared duly elected. No other person having such majority, the convention was adjourned until the day following, when, a ballot for Senator being held, Mr. Powers had a majority of all the votes cast and was declared duly elected. If this body were the lawful house of representatives of Montana, these two gentlemen were duly chosen Senators.

On the same day the other half of the members of the senate met in joint assembly with a body which had assembled and organized in the court-house, which body was known as the Court-House or Democratic house, voted for Senators by separate ballottings, adjourned from day to day, and continued balloting until Messrs. Clark and Maginnis had a majority of all the votes cast and were declared duly elected. If this body were the lawful house of representatives of Montana, these two gentlemen were duly chosen Senators.

These two bodies were composed as follows: By the constitution of Montana the house of representatives consists of fifty-five members, of whom twenty-

eight are a quorum. Twenty-five persons of whose title to sit in the house of representatives and take part in its proceedings no question is made, together with five persons claiming to be entitled to sit and take part as representatives from the county of Silver Bow, met, as above stated, at the Iron Hall, at the time fixed by the constitution for the meeting of the Legislature and organized there. The auditor, who is required by the constitution to preside at the organization of the house, called them to order and presided till a speaker was chosen.

Twenty-four other persons of whose title to sit in the house of representatives and take part in its proceedings no question is made, together with five other persons claiming to be entitled to sit and take part as representatives from the county of Silver Bow, met, as above stated, at the court-house, at the time fixed by the constitution for the meeting of the Legislature, and organized there.

The whole case, therefore, turns upon the question which of these two sets of five persons was entitled to sit in the house of representatives from the county of Silver Bow, take part in the organization and other proceedings down to and including the time of the election of Senators. It is not claimed that there was any adjudication of the house itself affirming or denying such title.

To determine this question the committee have been led to consider three others, the decision of which, in our judgment, disposes of the whole case.

First. Which of the two sets or groups of five members claiming to sit for the county of Silver Bow had credentials from the officer or board entitled to canvass the vote and declare the result?

Second. If one group of five had the lawful credentials, but the other group were in fact elected, which was legally entitled to sit in the house at its original organization, and remain and take part in all subsequent proceedings until the house itself had adjudicated their title, there being in existence two bodies, each claiming to be the true house?

Third. Is there evidence which warrants the Senate in finding that the persons who had the credentials were not, in fact, duly elected?

First. Who had the lawful credentials?

That question is answered by a majority of the committee as follows:

We hold, then, that Mr. Bray and his four associates, who went to the Iron Hall with the certificate of the State board that they were duly elected from Silver Bow, had the lawful credentials.

I state it to be an undisputed fact that the only muniment of title presented or relied upon to seat Sanders and Power is the certificate of what is called the State board, which is in fact nothing but a board composed of the governor of the Territory, the chief-justice of the Territory, and the secretary of the Territory, all appointees of President Harrison, authorized by the convention of the Territory to make a final canvass of the votes for members of the Legislature. I say that this muniment of title is the only foundation that is claimed for the right of these two claimants, Sanders and Power, to seats in this body. I state further, as an undisputed fact, that the credential, the certificate of that final canvassing board gets all its legal validity, gets all its power to invest these claimants with the right to seats in this body, from the admitted fact that there was no count of the vote at precinct 34, in Silver Bow County. All the merit it has, all the merit that can be claimed for it in law, justice, or fairness, it gets from the fact that it is founded on the suppression of the vote at precinct 34, in Silver Bow County. If it were not for the undisputed fact that the vote at precinct 34 was suppressed by that canvassing board, the five Republican members could claim no right to seats in that Legislature as representatives from Silver Bow County.

Where does that certificate of this final canvassing board get such power, such legal validity? Where does it come from? Where does it get the virtue of finality? Where does it get the power to be presented in this body as a barrier to the power of the Senate to go behind it to find the truth? Where does it get that power? From what source does it derive that character? Did it get it from a State government? Did it get it from State laws? Was it in truth and in fact a State board? What is it? What reason is there for giving to a State board the character that has always been conceded to it? What is the reason for our treating State action as a finality? Because it is the board of a State created by the State under State laws. The election is had by State authority. The election is had under State laws. These State laws, these State officers and State boards act under a State government established in the Union. The State has a separateness and an independence of the Federal Government in dealing with the question of the election of its own Legislature. It was out of the reach of the supervision of the Senate when the election of the members of the Legislature was in conformity with the State laws and its final action ascertained by a board established by the State government. That is the foundation of the claim that the action of the State shall be recognized as final and shall be treated with this amount of consideration.

How is it with the case before the Senate? How is it with these boards, starting at the precinct board called judges of election in the Territorial laws? How is it with the county board created under Territorial laws, with the power to make an abstract of the votes for members of the Legislature? How is it with this final canvassing board upon whose certificate it is relied to seat Republican members of the Legislature? From the beginning to the close of every proceeding necessary to the preparation of the Territory of Montana for admission into the Union as a State the action was wholly under the authority of Congress.

The election of members of the Legislature was authorized to be held by the constitutional convention under the enabling act of Congress according to the general laws of the Territory of Montana. This board of judges of election in the precinct, this board of county officers that had the power to make an abstract of the votes, were election officers under the Territorial government. The law-making power of the Ter-

ritory passed these election laws and created these officers and boards of supervision. The constitution-making power in Montana—the convention—was authorized by the enabling act of Congress to confer upon the governor of the Territory, the chief-justice of the Territory, and the secretary of the Territory the power to make a final canvass and declare the result. Every member of that board was a creature of the Federal executive, appointed by President Harrison, and the convention endowed them with the power of making a final canvass of these returns and, say for the sake of argument, of declaring the result.

That is the relation that these agencies occupied to the Federal Government, to the Senate and the House, in the preparation of the Territory of Montana for admission into the Union as a State. That is the agency created under the authority of Congress.

Now, is the action of that agency, of that machinery, out of the reach of the Federal Government? Have their certificates the same sanctity, the same verity, the same validity as though they were furnished by State boards certifying to an election of the members of a State Legislature? There is no similarity whatever between the character that the Senate ought to give certificates from such sources, from its own agencies created by themselves, when they make their report of their action necessarily under our supervision and examination to see if they have faithfully discharged their duty as they were required under the enabling act of Congress, and certificates from State boards under State authority.

That board having the character that I have given it, being a board of Federal executive creation, has furnished a certificate to the claimants of their right to seats in this body, and I state, as I stated before, the validity of the certificate depends upon whether they have followed the authority vested in them by Congress or by the constitutional convention under the authority of the enabling act. The certificate that they presented to the Republican claimants of seats has been read by every Senator who has participated in this debate. I will call brief attention to it. It says:

The following is the finding of the canvassing board, consisting of the governor, chief-justice, and secretary of the Territory, as to the result of the election on the first Tuesday of October, 1889:

TERRITORY OF MONTANA, County of Lewis and Clarke, ss:

We, Benjamin F. White, governor; Henry N. Blake, chief-justice, and Louis A. Walker, secretary of the Territory of Montana, the duly appointed and authorized canvassing board designated in the act of Congress approved February 22, A. D. 1889, providing for the admission of Montana as a State in the Union, and also under and by authority of ordinance No. 2, passed and enacted by the constitutional convention of the said Territory, do hereby certify that the above and foregoing is a full, true, and correct abstract of the votes cast in said Territory at the election held on the first Tuesday in October, A. D. 1889, as appears by the duly certified returns from the counties named, and as counted and canvassed by us this the 4th day of November, A. D. 1889.

As stated by my friend the Senator from Delaware [Mr. GRAY], if that certificate had closed down to where I have read there would have been no dispute about the regularity of the certificate. It would then be a valid muniment of right to seats of every member of the Legislature of Montana from every county in that Territory except the county of Silver Bow. There can be no dispute about the validity of that certificate and of the right of the members of the Legislature from every other county except the county of Silver Bow to take their seats under that certificate as *prima facie* evidence of their title. But they proceed further to certify:

And we further certify that, having duly convened as such canvassing board on the 31st day of October, A. D. 1889, the same having been the thirtieth day after the close of said election, and having received no duly certified returns from the county of Silver Bow, in said Territory, we duly appointed and commissioned Benjamin Webster a special messenger to proceed forthwith to the said Silver Bow County and to demand and receive from the county clerk of said county a properly certified copy of the abstract of the votes cast in said county at said election as canvassed and declared by the proper canvassing board.

That the said messenger, Benjamin Webster, duly appointed as aforesaid, did proceed to the said Silver Bow County and did demand from the county clerk of said county the duly certified copy of said abstract of votes as aforesaid, and thereafter returned to Helena and made his sworn return that the demand for said abstract was by the said county clerk refused.

Then it is recited in the certificate of this board that the return of the vote of the county board, upon which alone they had authority to canvass the result in Silver Bow County, was not made to them and was not before them when they made the canvass and gave the certificate.

Being, therefore, without any proper copy of the abstract of votes cast in Silver Bow County and having exhausted the authority given by the statute in endeavoring to obtain the same, it now becomes our duty to ascertain and declare the same from the best sources of information obtainable.

Where did they get any authority from any source to obtain information upon which to act and canvass the result and declare it except from the returns they acknowledged they did not have before them and were never made to them under the authority of the law?

We have before us the official certificate of Charles F. Booth, county clerk of Silver Bow County, showing that a certain number of votes were cast for the different candidates in that county in the different precincts thereof, naming each of them and the number received by each candidate in each precinct, and including the thirty-fourth precinct as having voted at said election. We also have before us an official notice signed by Mr. Booth as county clerk of said county, stating in effect that the board of canvassers in said county met as such on the 14th day of October, 1889, and did then and there canvass and count the vote of Silver Bow County and declare the result thereof, and that they did not count, but did reject as false, fraudulent, and void, all of the votes reported as cast and counted in election precinct No. 34 in said county.

No other or further action having been had by the canvassing board of said

county in relation to the canvass of the vote therein, we conclude that the true result as canvassed and declared must be found by eliminating from the list of votes cast, as certified by County Clerk Booth, the vote of precinct 34, which was rejected by said canvassing board, as stated in the certificate of said county clerk, and which shows the true vote of Silver Bow County to be as follows.

There is an admission that the sole reason upon which they refused to count the vote at precinct No. 34 was on account of its having been suppressed by the county board for fraud and irregularity. There is no other reason given in this certificate by that final Territorial canvassing board. There is no other reason given for their action in refusing to count the vote at the thirty-fourth precinct. There is no other reason given by them, except that the county board had refused to count it on account of irregularity and fraud.

The county board had no authority under the law to suppress the vote returned to them by the judges from precinct No. 34. It is conceded that this county board had no authority to suppress the vote at precinct 34. It has not been claimed by any Senator who has participated in this debate that the board had any authority whatever to dispose of that vote at precinct 34, as is recited in the certificate of this final canvassing board, and that void action, that wholly unauthorized action of this county board of Silver Bow County is the sole reason given by this final canvassing board for their action in refusing to count the vote at precinct 34.

The very able and exhaustive argument made by my friend the Senator from Delaware upon the character of this certificate and its validity leaves but little for me to say on that subject. If that board had been a statutory court, with the same powers that are given that board to canvass the vote and declare the result upon the returns made to it by the county board for members of the Legislature, there is not a court anywhere that would receive as evidence of the right of any member to that Legislature from Silver Bow County the certificate of that final canvassing board. Why? Because on the face of the certificate it shows the want of jurisdiction, the want of power conferred upon it by law to canvass that vote and declare the result. The sole basis of their jurisdiction are the returns made to them by the county board. As no such returns were before that board and the board itself admits that it had no such returns and that it went for other sources of information upon which to act in canvassing and declaring the result, then indisputably that board shows upon the face of its own proceedings as certified by itself that its action was *coram non jure* and void.

That certificate could be attacked collaterally in any court in the Union when offered as evidence of any right upon earth; and if no court would receive such a certificate as evidence of right, how can the Senate give it a conclusive and final character, which it seems to have received from the hands of the majority of the Committee on Privileges and Elections? A certificate that shows on its face that they did not act within the scope of their powers, but went to sources for information that they had no authority to find or to act upon—a certificate with such recitals, I say, no lawyer can contend would be received or respected as evidence of title in any court, and certainly it ought not to have any such character given it in the Senate in the trial of the right of a claimant to a seat in this body.

The only credential that Messrs. Sanders and Power have to their right to seats in the Senate is that certificate of this board, which I say is not entitled to be received as evidence for any purpose.

What is it that gives to a member of the Legislature a right to his seat? What is it that gives to a member of the house and the senate in Montana or in any State in the Union the right to pass laws and elect United States Senators? What is the source and foundation of right of a member of the Legislature to exercise the law-making power and the power to elect a United States Senator? What is the source of his title? Manifestly it is the election of that member by the people. It is the election by the people that confers the right upon the member of the house to his seat. It was the election by the people in Silver Bow County that conferred upon these five members the right to take their seats in the house of representatives of Montana.

Mr. GEORGE. Will the Senator yield to me?

Mr. PUGH. Certainly.

Mr. GEORGE. This is a very important judicial investigation of a very serious matter for the people of Montana, as well as of the United States. It is presumed that the Senate is acting in a judicial capacity, endeavoring to learn the facts and the law connected with this case. I discover, on looking around, that there are only two members of the majority of the Senate who are in the Chamber. In the absence of so large a number of the majority, that would leave the Senate without a quorum; and as I am extremely anxious, as every good citizen ought to be, that this matter shall be discussed and understood by those who are to pass by their votes upon the question, I respectfully suggest, if not objected to by the Senator from Alabama, that there is not a quorum of the Senate present.

The PRESIDING OFFICER (Mr. FAULKNER in the chair). The Senator from Mississippi having suggested that no quorum is present, the Secretary will call the roll.

The Secretary proceeded to call the roll.

Mr. CULLOM (when Mr. FARWELL's name was called). My colleague [Mr. FARWELL] is at his quarters sick, and is unable to be present in the Senate.

The roll-call was concluded.

Mr. BLACKBURN. I desire to state that my colleague [Mr. BECK] is detained from the Chamber by reason of sickness.

The PRESIDENT *pro tempore*. The Secretary will call the names of the Senators who have responded to their names.

The SECRETARY. Those present are Messrs.

Allen,	Evarts,	Higgins,	Stewart,
Barbour,	Faulkner,	Hoar,	Stockbridge,
Berry,	Frye,	Ingalls,	Turpie,
Blackburn,	George,	Kenna,	Vest,
Call,	Gibson,	McPherson,	Voorhees,
Chandler,	Gorman,	Morgan,	Walthall,
Coke,	Gray,	Payne,	Wilson of Iowa,
Cullom,	Harris,	Pugh,	Wilson of Md.
Daniel,	Hawley,	Reagan,	Wolcott.
Dixon,	Hearst,	Squire,	

The PRESIDENT *pro tempore*. Thirty-nine Senators have answered to their names—less than a quorum.

Mr. GIBSON. I move that the Senate adjourn.

Mr. HARRIS. I move that the Sergeant-at-Arms be directed to request the attendance of absent Senators.

The PRESIDENT *pro tempore*. Does the Senator from Louisiana insist on the motion to adjourn?

Mr. VOORHEES. I ask the Senator from Louisiana to withdraw the motion for the present.

Mr. GIBSON. I withdraw the motion.

Mr. VOORHEES. With the permission of the Senator from Alabama, who is entitled to the floor—

The PRESIDENT *pro tempore*. The Chair must remind the Senator from Indiana that until a quorum is present no business is in order.

Mr. VOORHEES. Not even by unanimous consent?

The PRESIDENT *pro tempore*. The Senator from Tennessee moves that the Sergeant-at-Arms be directed to request the attendance of absent Senators.

The motion was agreed to.

The PRESIDENT *pro tempore*. The Secretary will furnish the Sergeant-at-Arms with a list of absentees, who will execute the order of the Senate.

Mr. GIBSON. I move that the Senate adjourn.

The PRESIDENT *pro tempore*. The Senator from Louisiana moves that the Senate do now adjourn. [Putting the question.] The ayes appear to have it.

Mr. HOAR. I call for the yeas and nays.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. FAULKNER (when his name was called). I am paired with the Senator from Pennsylvania [Mr. QUAY].

Mr. RANSOM (when the name of Mr. VANCE was called). My colleague [Mr. VANCE] is paired with the Senator from Michigan [Mr. McMILLAN].

The roll-call was concluded.

Mr. BUTLER. Is this a party vote, Mr. President?

The PRESIDENT *pro tempore*. The Chair is not able to inform the Senator.

Mr. BUTLER. I thought—

The PRESIDENT *pro tempore*. Does the Senator desire to be recorded?

Mr. BUTLER. Yes, sir; I should like to be, as soon as I can get some information on the subject of my pair.

Mr. EVARTS. I wish to state that my colleague [Mr. HISCOCK] is absent from town.

Mr. BUTLER. I am compelled to announce, very much against my will, my pair with the Senator from Pennsylvania [Mr. CAMERON], and I shall therefore withhold my vote.

Mr. HOAR. I should like to be permitted to observe that this is plainly a party vote, and a vote on which the Democratic party are entirely right.

Mr. BUTLER. I am delighted to hear the Senator make that admission. It is the first time I ever heard him make it in my life.

Mr. HOAR. It is the first time I ever had a chance.

The PRESIDENT *pro tempore*. The Chair begs Senators to be seated and refrain from conversation so that they can be recognized when addressing the Chair.

Mr. McMILLAN. I am paired with the Senator from North Carolina [Mr. VANCE].

Mr. DIXON (after having voted in the negative). As this appears to be a party vote and I do not see the Senator from South Carolina [Mr. HAMPTON] with whom I am paired in the Chamber, I desire to withdraw my vote. Were he present I should vote "nay."

The PRESIDENT *pro tempore*. The Senator from Rhode Island withdraws his vote.

Mr. PADDOCK. I should like to inquire if the Senator from Louisiana [Mr. EUSTIS] is recorded.

The PRESIDENT *pro tempore*. He is not recorded.

Mr. PADDOCK. I announce my pair with that Senator.

Mr. HALE. I am paired with the Senator from Kentucky [Mr. BECK].

M. GEORGE (after having voted in the affirmative). I discover

that the Senator from New Hampshire [Mr. BLAIR] has not voted, and I withdraw my vote.

The PRESIDENT *pro tempore*. The Senator from Mississippi withdraws his vote.

Mr. CHANDLER (after having voted in the negative). I withdraw my vote, as I am paired.

Mr. HEARST (after having voted in the affirmative). As this seems to be some sort of a political move, I withdraw my vote.

The PRESIDENT *pro tempore*. The Senator from California withdraws his vote.

The result was announced—yeas 23, nays 28; as follows:

YEAS—23.

Barbour,	Colquitt,	McPherson,	Turpie,
Berry,	Daniel,	Morgan,	Vest,
Blackburn,	Gibson,	Payne,	Voorhees,
Call,	Gorman,	Pugh,	Walthall,
Cockrell,	Harris,	Ransom,	Wilson of Md.
Coke,	Kenna,	Reagan,	

NAYS—28.

Aldrich,	Evarts,	Manderson,	Sherman,
Allen,	Frye,	Mitchell,	Spooner,
Casey,	Gray,	Morrill,	Squire,
Cullom,	Hawley,	Pierce,	Stewart,
Davis,	Higgins,	Platt,	Stockbridge,
Dawes,	Hoar,	Plumb,	Teller,
Edmunds,	Ingalls,	Sawyer,	Wilson of Iowa.

ABSENT—31.

Allison,	Chandler,	Hampton,	Pasco,
Bate,	Dixon,	Hearst,	Pettigrew,
Beck,	Dolph,	Hiscock,	Quay,
Blair,	Eustis,	Jones of Arkansas,	Stanford,
Blodgett,	Farwell,	Jones of Nevada,	Vance,
Brown,	Faulkner,	McMillan,	Washington,
Butler,	George,	Moody,	Wolcott.
Cameron,	Hale,	Paddock,	

So the Senate refused to adjourn.

Mr. BUTLER. I beg to announce to the Senate that the Senator from Alabama [Mr. PUGH] is complaining of feeling very badly, and he is really physically unable to proceed with his remarks. I suggest to our friends on the other side to either take up some other measure or adjourn, out of deference to his physical condition.

Mr. HOAR. There would be, I am sure, no Senator on this side of the Chamber or on the other who would fail to respond to that request; and I am perfectly prepared to take up the trust bill, which was left in my charge temporarily by the Senator from Vermont [Mr. EDMUNDS], the chairman of the Committee on the Judiciary.

Mr. BUTLER. With the understanding that the Senator from Alabama will retain the floor on the Montana case?

Mr. HOAR. Certainly. I ask that the pending matter be laid aside informally and that the Senate proceed to the consideration of the bill known as the trust bill.

Mr. VOORHEES. Before that is done—

The PRESIDENT *pro tempore*. The Chair must first ask whether by unanimous consent further proceedings under the call of the Senate shall be dispensed with, a quorum being now present.

Mr. HARRIS. I ask that further proceedings may be dispensed with.

The PRESIDENT *pro tempore*. It will be so ordered, if there be no objection.

Mr. VOORHEES. Before this question is disposed of I desire to contribute a little to the case, and I will ask that a dispatch, a copy of which has been placed in my hands, be read at the Secretary's desk in connection with the speech of the Senator from Alabama.

The PRESIDENT *pro tempore*. Is there objection? The Chair hears none, and the Secretary will read the dispatch.

The Secretary read as follows:

HELENA, MONT., April 8, 1890.

Harrison's newspaper said yesterday: "This is the first election held since the late legislative deadlock. This is the first opportunity given to the people to express at the ballot-box their opinion of Democratic methods, their opinion of precinct 34."

The Republicans made that the issue in our city election to-day.

The Democrats elected their mayor by over 300 majority, and six of eight aldermen. The Republicans carried but one ward, and that by 1 majority. Usual Republican majority 400 to 600 in city.

Mr. BUTLER. In what city?

Mr. VOORHEES. In Helena.

Mr. HOAR. That is the strongest argument that has been made on that side of the Chamber yet.

Mr. VOORHEES. That will be the last and final argument made in this case.

TRUSTS AND COMBINATIONS.

Mr. HOAR. I ask unanimous consent that the trust bill be taken up.

The PRESIDENT *pro tempore*. The Senator from Massachusetts asks unanimous consent that the pending business be informally laid aside, and that the Senate proceed to the consideration of the bill (S. 1) to declare unlawful trusts and combinations in restraint of trade and production. Is there objection? The Chair hears none. The Senator from Alabama [Mr. PUGH] will be recognized as entitled to the floor when the Montana case is next considered.

The Senate, as in Committee of the Whole, resumed the considera-

tion of the bill (S. 1) to declare unlawful trusts and combinations in restraint of trade and production, which had been reported from the Committee on the Judiciary with an amendment to strike out all after the enacting clause and insert a substitute.

The PRESIDENT *pro tempore*. The question is on agreeing to the amendment proposed by the Committee on the Judiciary, which will be read.

The SECRETARY. The committee report to strike out all after the enacting clause of the bill and to insert:

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding \$5,000 or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000 or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000 or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section 4 of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this act, and being in the course of transportation from one State to another or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person" or "persons" wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

The PRESIDENT *pro tempore*. The question is on agreeing to the amendment proposed by the Committee on the Judiciary.

Mr. HOAR. I desire to say that I hope we may have a vote. I shall not undertake to explain the bill, which is well understood.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the committee. Is the Senate ready for the question?

Mr. GEORGE. Before the question is put I should like to make a parliamentary inquiry. If the amendment reported by the Committee on the Judiciary be adopted, will it then be competent to move by way of amendment to that amendment additional matter without striking out any of the matter thus adopted?

The PRESIDENT *pro tempore*. Further amendments can be offered as in Committee of the Whole.

Mr. SHERMAN. I do not intend to open any debate on the subject, but I wish to state that, after having fairly and fully considered the amendment proposed by the Committee on the Judiciary, I shall vote for it, not as being precisely what I want, but as the best under all the circumstances that the Senate is prepared to give in this direction. Therefore, without enlarging or entering into debate, I shall vote for the proposition of the Judiciary Committee as it stands.

Mr. VEST. I stated the other day when the bill was reported from the committee that there was one section that I thought ought to be extended further than its present provisions go, but on reflection I am satisfied that the public interest demands the passage of this bill as it came from the committee, and I am prepared to sacrifice my private judgment to a certain extent in order to facilitate its immediate passage. I sincerely hope that it may go through without any delay and without amendment.

Mr. REAGAN. Is it proper now to offer an amendment to the amendment of the committee?

The PRESIDENT *pro tempore*. The question now is upon the amendment proposed by the committee.

The amendment was agreed to.

The PRESIDENT *pro tempore*. Are there further amendments to the bill as in Committee of the Whole?

Mr. REAGAN. I will ask the Secretary to take down an amendment in section 7, lines 4 and 5. I move that the words "circuit court of the United States in the district in which the defendant resides or is found" may be stricken out and the following words inserted in lieu of those—

The PRESIDENT *pro tempore*. That amendment can not now be entertained. The amendment having been agreed to as in Committee of the Whole, it is not subject to amendment until the bill is reported to the Senate.

Mr. REAGAN. Very well.

The PRESIDENT *pro tempore*. Are there further amendments to the bill as in Committee of the Whole? If there are none, the bill will be reported to the Senate.

The bill was reported to the Senate as amended.

The PRESIDENT *pro tempore*. The Senate have made one amendment to the bill as in Committee of the Whole. The question is, Shall the amendment made as in Committee of the Whole be concurred in in the Senate?

Mr. REAGAN. In lines 4 and 5, in section 7, I move to strike out the words "circuit court of the United States in the district in which the defendant resides or is found" and to insert in lieu thereof the words "court of the United States or of any State of competent jurisdiction."

The PRESIDENT *pro tempore*. The amendment proposed by the Senator from Texas will be read.

The SECRETARY. In section 7, line 4, after the word "any," it is proposed to strike out the words "circuit court of the United States in the district in which the defendant resides or is found" and to insert "court of the United States or of any State of competent jurisdiction;" so as to read:

Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any court of the United States or of any State of competent jurisdiction, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee.

Mr. REAGAN. Mr. President, I offer this amendment for the reason that this is the section which gives a remedy for damages in a civil suit, and while it purports to give a remedy, as it is in the original section, it really in most cases amounts to no remedy at all, because no one except a corporation or a rich man would attempt to institute a proceeding under this section. Men of ordinary means (and that is the class of men who are usually subjected to wrongs of this kind) would not be able to employ lawyers and to take witnesses to the circuit court of the United States, and perhaps travel a great distance to reach there, in order to prosecute a suit for a few hundred dollars.

If we intend to give a civil remedy we ought to give it in a jurisdiction within reach of the people of the United States so as to make the remedy available to the people. If we do not mean to give them a remedy we had better strike this section out, because this would be only a remedy for corporations or wealthy men, and would not be a remedy for the great mass of the people.

I trust that the Senate will adopt the amendment so as to give a remedy to all the people.

Mr. HOAR. I ask the Senator before he sits down to say whether he means by the term "competent jurisdiction" and by striking out the words "in the district in which the defendant resides or is found" to give to individuals a right to sue in any United States court anywhere in the country a defendant who may reside anywhere else in the country.

Mr. REAGAN. I believe that the general law fixes the question of the territorial jurisdiction of the various courts; and if I am right as to that, it is not necessary to repeat it in this act.

Mr. HOAR. Then the Senator, I understand, does not intend to accomplish that result?

Mr. REAGAN. It is not my purpose to change the law of territorial jurisdiction so far as the United States courts are concerned.

Mr. HOAR. Then why does not the Senator make it safe and clear by leaving in the phrase "in the district in which the defendant resides or is found?"

Mr. VEST. If my friend from Texas will permit me, I do not want to take any advantage of the phraseology, though I am not prepared to support his amendment, and I suggest that he put his amendment in after the word "found" in line 5, adding the words "or in any State court of competent jurisdiction." Of course he does not wish that a suit should be instituted in a circuit court of the United States against a defendant in a district where he neither resides nor is found. I take it for granted that is not his object; and if he would insert after the word "found," in line 5, the words "or in any State court of competent jurisdiction" it would leave the Federal jurisdiction as it is in the bill and would add to it the State jurisdiction, which I take it is the salient point at which my friend aims.

Mr. REAGAN. I will adopt the suggestion of the Senator from Missouri and insert after the word "found," in line 5, the words "or in any State court of competent jurisdiction."

The PRESIDENT *pro tempore*. The Senator from Texas withdraws his amendment and proposes to amend as will be stated.

The SECRETARY. In section 7, line 5, after the word "found," insert the words "or in any State court of competent jurisdiction;" so as to read:

Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, or in any State court of competent jurisdiction, without respect to the amount in controversy, etc.

Mr. VEST. I sympathize with the object of the Senator from Texas, but unless we change the entire practice in the Federal courts as it now exists upon the general statute-book of the United States, his amendment is simply in the right direction without reaching the real difficulty. As the law now stands, if a suit under the proposed act should be instituted in a State court, taking it for granted that the Senator's amendment is adopted, the corporation attacked would only be compelled under existing law to appear and make affidavit through its agents or officers that the suit involved a statute of the United States, which it unquestionably would do, and that would take the case into the Federal tribunal.

It is absolutely necessary, then, in order to reach the object of my friend from Texas, with which I entirely sympathize, to change the existing general statute, and he is simply going one step, and a very short step, towards the object which he seeks to attain. I do not know that without an entire revolution in the present Federal judiciary system of the United States we can ever do anything toward equalizing the difference in wealth and in the ability to sue and defend between persons; and therefore this by no means attains the full object of the Senator from Texas. I believe it would be infinitely better to take the bill as it comes from the committee.

Mr. HOAR. I hope the Senator from Texas and those who like him in the Senate on both sides of the Chamber would desire a more sweeping and vigorous remedy will consent so far as this bill is concerned, whatever separate measures may be proposed hereafter, to take it as it has come from the Committee on the Judiciary. Senators will remember that this is entering upon a new and untrodden field of legislation. It is undertaking to curb by national authority an evil which, under the opinions which have prevailed of old under all our legislative precedents and policies, has been left to be dealt with either by the ordinary laws of trade or to be dealt with by the States.

The complaint which has come from all parts and all classes of the country of these great monopolies, which are becoming not only in some cases an actual injury to the comfort of ordinary life, but are a menace to republican institutions themselves, has induced Congress to take the matter up. I suppose no member of this body who remembers the history of the processes by which this bill reached the shape in which it went to the Judiciary Committee will doubt that the opinions of Senators themselves, of able and learned and experienced lawyers, were exceedingly crude in this matter. One Senator who had taken charge of a bill and had drawn one supposed that the processes of the United States courts ran into every district in the United States, and framed his bill on that theory. Another bill was framed on the theory that a bargain between two citizens of different States for an unlawful purpose constituted a controversy between these two citizens within the meaning of the Constitution and gave jurisdiction.

Now, the Judiciary Committee has carefully and as thoroughly as it could agreed upon what we believe will be a very efficient measure, under which one long forward step will be taken in suppressing this evil. We have affirmed the old doctrine of the common law in regard to all interstate and international commercial transactions, and have clothed the United States courts with authority to enforce that doctrine by injunction. We have put in also a grave penalty.

But look at this amendment. I am sorry that I have not the attention of the Senator from Missouri [Mr. VEST], who is on the committee and who expressed himself generally as in favor of the amendment. Oh, there he is. It seems to me, and I wish to suggest to my honorable friend from Missouri, that this amendment of the Senator from Texas is clearly unconstitutional, and that it injures the bill by inserting an unconstitutional proposition, when the whole bill itself is constitutional.

Mr. VEST. I am opposed to the amendment.

Mr. HOAR. I know, but I thought the Senator said he thought he would agree with its purpose.

Mr. VEST. I said I sympathize with the object the Senator from Texas has in view.

Mr. HOAR. What I wish to point out to the Senate and to the Senator from Texas is this: This section which is proposed to be amended is a section establishing a penalty, threefold damages. Now, you can not clothe a State court with the authority to enforce a penalty.

If we create a legal right like a debt by a United States statute, then undoubtedly a State court of general jurisdiction, which has authority to enforce and aid in the collection of debts, without any express enactment by the Congress of the United States, would sustain an action to recover that debt. If there is a debt due from one citizen to another the State court of competent jurisdiction enforces it, no matter what is the nature of the law under which the debt was created; it may

have been created in a foreign country, it may have been created in another State.

But when you come to penalties, no court enforces penalties except those created by the authority which creates the court, and no statute of any foreign or other authority but that can clothe the court with that power. Take, for instance, the familiar case of usury. If the State of Mississippi enacts that a payment of usurious interest shall not vest the title to that sum in the person to whom it is paid, it may be recovered in an action for money had and received. To that extent that could be enforced in any State in the country or in any foreign country, because the person who receives the usurious interest instantly owes as a debt the money had and received under the law where that transaction took place. But it is very well settled that a statute of a State creating a penalty for usury by enabling the party to recover threefold the usurious interest, or twice the usurious interest, or any other sum, as a penalty, can be enforced only within the jurisdictional limits of the State where the transaction took place and under whose law the transaction is made penal.

We might perhaps say that a person who owed to another a sum of money under an obligation solely the creature of a statute of the United States might recover in any State court; and if the obligation were created he could recover it equally, whether we said so or not; but we can not say that a State court shall be clothed with jurisdiction to enforce a claim for threefold the damages suffered, which is purely penal and punitive.

Mr. MORGAN. And the attorney's fee.

Mr. HOAR. Yes; and the attorney's fee. So I submit to my honorable friend from Texas that his amendment, though intended in the same direction as the bill is intended, will not bear examination.

Mr. REAGAN. In response to the suggestion made by my friend from Missouri that the general law would authorize the transfer of a suit brought in a State court to the Federal court, I have this to say, that without this proposed statute in the form that it would be if my amendment were adopted, his proposition would be true; but if we have the constitutional power to enact the language as it would be if amended, that would be a law fixing the restriction, and would certainly form an exception to the provision of the general law, because this would give an alternative jurisdiction, and being subsequent to the general law the Senator speaks of, it would, it seems to me, carry the State jurisdiction.

As to the question presented by the Senator from Massachusetts that the provision would not be warranted by the Constitution, I understand of course that the State courts will not, as a rule, enforce penal statutes; but it will be remembered, if I am not mistaken, that in the laws in relation to post-offices, perhaps in the laws in relation to national banks, and on quite a number of subjects that I once collected the laws about, the United States gave jurisdiction to the State courts, and that jurisdiction is being asserted upon various subjects and not specially with reference to the collection of debts.

This measure is giving a civil remedy. It is not in the nature of prosecution for crime. It is a civil remedy for damage done. It is true that it fixes a part of the measure of the damages in a civil suit providing that the defendant may be required to pay triple damages and costs, and attorney's fees; but that is a part of the measure of damages in a civil suit and is not in the nature of a prosecution for a crime.

I once had occasion to examine this subject, and I once took the opinion of some of the ablest men in this country, including Judge Jere Black, of Pennsylvania, on this very question, who sustained the view I am presenting now. I hope I do not do the memory of that great lawyer injustice by making the suggestion, but I did consult him and other lawyers of great eminence on the subject of giving the State courts jurisdiction over civil suits brought under a United States statute.

So I do not feel prepared to accept the suggestions of either of the Senators and will ask for a vote of the Senate upon my amendment.

Mr. GEORGE. Mr. President, I am afraid we have got into this condition about the pending bill, that we have a disposition to do something, and that very speedily, whether that something amounts to much or not. I am afraid that there will be great disappointment among the people of this country about the effects of this bill when it shall become a law. It covers professedly a very narrow territory, leaving a very large number of these institutions, these trusts, or whatever we may call them, entirely without the purview of the bill.

That is not the fault of the committee, Mr. President. The bill has been very ingeniously and properly drawn to cover every case which comes within what is called the commercial power of Congress. There is a great deal of this matter outside of that. The bill being of that character, it necessarily will be a disappointing measure to the people of this country.

I sympathize with the amendment offered by the Senator from Texas. If the parties who are injured by these trusts are compelled in all cases to resort to the Federal courts, in many States held at a very long distance from the residence of the parties, it will amount, in effect, to a denial of justice to the small men, the people of small means, the people who have suffered small injuries individually, though very large ones in the aggregate. It will in a measure deprive them of any remedy

against the wrongs perpetrated by the combinations and conspiracies against which the bill is directed.

It is not competent for Congress to confer a jurisdiction upon a State court any more than it is for a State to confer jurisdiction upon a United States court. But there is a rule of law of this sort which we can obviate, and which will be obviated by the amendment of the Senator from Texas. As to actions or suits arising under the laws of Congress, Congress can make the jurisdiction of the Federal courts exclusive, so that if a State, or any number of States, or all of the States were willing to allow their courts to try cases arising under such a law, they could not authorize their courts to try them.

The object and purpose and the legal effect of the amendment offered by the Senator from Texas are not to confer *in invitum* on the State courts a jurisdiction which the States do not desire the courts to possess, but it simply means that, if the States are willing or if any State is willing that its courts may entertain jurisdiction and try cases arising under this law, the consent of Congress is given for that to be done.

Mr. President, I think we ought, in view of what is said by the Senator from Texas and in view of what we all know about these matters, to give that consent; in other words, we ought to leave it to the option of each State to give its courts concurrent jurisdiction with the United States courts in cases arising under this act if it should become a law. I hope, therefore, that the amendment of the Senator from Texas, as it does not change in the least the general structure of the bill, but merely furnishes an additional facility to the people of the United States to get redress for their wrongs in a cheap and easy and convenient mode, will be adopted by the Senate.

As to the suggestion made by the Senator from Missouri that it would be unavailing because as soon as a suit was brought in the State courts it could be immediately removed into the Federal courts, if that be true (and I am not sure whether it is so with reference to the amount involved) that trouble can be very easily remedied by adding this provision:

And suits commencing in the State courts under this act shall not be removed into any Federal court.

Mr. BUTLER. May I ask the Senator a question in that connection?

Mr. GEORGE. Yes.

Mr. BUTLER. How will the Senator reconcile the amendment of the Senator from Texas with section 5 of this bill, which says:

SEC. 5. Whenever it shall appear to the court before which any proceeding under section 4 of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Mr. GEORGE. That only applies to the remedial process of injunction and things of that kind.

Mr. BUTLER. Precisely, but if the suit is begun in a State court, how is the process of the State court to go outside of the limits of the State?

Mr. GEORGE. If the Senator will look at the amendment he will find that it applies to section 7, which has reference only to actions brought by persons injured to recover damages for the injury, and does not affect that remedial process in courts of equity mentioned in the section to which he has called my attention.

I hope that the amendment will be adopted; and I propose—though I am urged by Senators in whose judgment and in whose disposition to do right about this matter on both sides of the Chamber I have confidence not to offer any further amendments—to take the sense of the Senate upon an amendment which I have drawn up, which will still further facilitate the small men, the men of small capital in getting redress for the great wrongs that are perpetrated against them by these trusts.

Whilst I am up, as it is objected to by Senators, I will explain the object and purpose of the amendment which I shall offer.

It is well known that the great evil of these combinations, these conspiracies, as they are called, these monopolies, as they are denominated by the bill, consists in the fact that by combination, by association, there have been gathered together the money and the means of large numbers of persons, and under these combinations, or conspiracies, or trusts, this great aggregated capital is wielded by a single hand and guided by a single brain, or at least by hands and brains acting in complete harmony and co-operation, and that in this way, by this association, by this direction of this immense amount of capital, by one organized will, to a very large extent, these wrongs have been perpetrated upon the American people.

They come about by the association of men of large capital living in various States of the Union. They come about by corporations organized in various States of the Union acting in concert. They come about, too, by single individuals organizing as a single corporation in one State in the Union. By the use of this organized force of wealth and money the small men engaged in competition with them are crushed out, and that is the great evil at which all this legislation ought to be directed.

The amendment which I intend to offer gives the right of combination in suits under the seventh section of this bill to the wretched victims of these great combinations and trusts. For instance, these com-

binations and trusts raise the price of articles of consumption; take for instance that article which has been made the subject of a trust and has been so injurious to the section of country from which I come, the cotton-bagging trust. They double the price of cotton-bagging. Cotton-bagging is bought in the South, and the men who are injured by the trust are those small farmers, white and colored, who raise a few bales of cotton. They will probably, on each bale of cotton, lose by the combination, by the increased price, from one to two dollars. The small farmer will make from three to twenty bales of cotton. So he will be injured by this cotton-bagging trust from ten to fifty or sixty dollars. How can a single man thus injured—I put it to Senators to think about this thing candidly—how can the small farmer thus injured from \$10 to \$50, with his witnesses, go to a distant town or city, employ a lawyer, and sue one of these great trusts in a United States court?

Sir, it is like a single man, a citizen untrained in military affairs, taking his musket or his shotgun and attacking a drilled army. So of every other trust.

The object of my amendment is to allow combination against combination, to allow these small farmers, these mechanics who have been injured in small sums by the advanced price which they have been compelled to pay for articles they must use to unite in the same suit against one of these combinations, and to require the court when proof of this union has been made to try the case and to ascertain the damages done to each one and to render judgment in favor of each one for the damages sustained by him. I think without a provision of that sort you might as well write on the face of your bill, "This is not intended for small men, for small people; this is intended only for those who have money enough to fight these great corporations, these great trusts, these great combinations."

Now, a word or two more and I shall have done, because when I have said what I think is proper to say in this matter I shall conclude. The country calls on us loudly for relief; the Senate is being pressed now, urged now to go on with this bill, because we ought to take some step, make a beginning to show that we are opposed to trusts. That is a proper sentiment when not carried too far; but it ought not, I submit to this honorable body, to be allowed to have sufficient strength and vigor to deprive us of the power of reasoning upon the bill we are about to pass and give it such amendments and such perfection as will prevent its turning out Dead Sea fruit.

I hope that the amendment of the Senator from Texas, as the first step in the line of giving the real sufferers of this country a chance to get something back from these combinations and conspiracies, will be adopted.

Mr. EDMUNDS. I should like to have the Senator from Mississippi send up his amendment to be read for information, if he will, before I submit some observations. I think I understand it, for it was considered in the Committee on the Judiciary, but I should like to have it read for the information of the Senate.

Mr. GEORGE. I intended to offer it and have it printed, it is written so badly.

Mr. EDMUNDS. I hope we shall finish the bill to-night; but let the Senator send his amendment up to be read. It was considered in the committee and I should like other Senators to know what it is, I should like the whole body of the Senate to know what it is. The Committee on the Judiciary knew what it was when it was submitted there.

Mr. GEORGE. I was just saying to Senators that I would go to some convenient place and read it myself, as I did not think the Secretary could read it, it having been written in a hurry.

Mr. EDMUNDS. I hope my friend will read it himself, then.

Mr. GEORGE. I will read it here in the aisle. I propose to add at the end of section 7:

And in all such actions in any court of the United States it shall be lawful for any number of persons complaining of such injuries committed by the same defendant against each of them separately, to join as plaintiffs, and the court or jury trying the issues of fact in any such cause shall find the amount of the separate damages sustained by each plaintiff and may also find in favor of a part of said plaintiffs and against the others, as the proof shall warrant, and the court shall render judgment accordingly. And in the proceedings in such cause the court may, if justice so requires, proceed with the trial thereof as to a part of said plaintiffs and continue the cause to a future day as to the remainder, and this may be done as often as justice may require. And whenever there shall be a motion for a new trial in any such cause, the court may sustain the same as to a part of said plaintiffs and overrule it as to others, accordingly as the right and justice of the case may require. Execution shall issue on any judgment rendered in such cause in favor of each plaintiff for the amount recovered by him and for his reasonable attorney's fees, and also for such share of the costs as the court shall determine to be fair and reasonable.

Mr. EDMUNDS. This amendment in substance, and perhaps in very form, was submitted by my friend from Mississippi and carefully considered by the Committee on the Judiciary, and I am under the impression that we all agreed excepting himself that it was entirely inadmissible for the purposes of the safety of the very people who are concerned in it. So much for that.

Now, I have this to say to my friend from Mississippi, and I know he will not misunderstand me, that having been in this Capitol a good while, if I were a lobbyist of some of these trusts and combinations that are affected by the bill as reported by the Committee on the Judi-

ciary, as there are such around this Capital city—of course they never come to my friend nor to me, nor to any Senator probably, but they bring influences to bear; well, perhaps I have overstated that—I rather think that one or two have come to me—I say, if I were a lobbyist and wished to bedevil this bill as it stood before it was sent to the Committee on the Judiciary, in order to break it down in the end, I should bring whatever indirect influence, because I could not bring any direct, upon my friend from Mississippi to appeal to the common humanity that he has been talking about, etc., and to offer exactly such an amendment as this, and I should appeal by some indirect way to my friend from Texas to offer the amendment that he has offered.

The trouble about this business is as I have seen a good many times before when we were trying to strike at great evils in a broad way and leave the details and difficulties that might afterwards arise to be repaired by legislation, as we do about all such things, that Congress has failed to make a law because the very persons against whom it was intended to operate in their mischievous performances got up, as they say on the prairies, a counter-fire and added to the fuel and stimulated men to carry the law so far that it could not be executed at all.

That was the aspect of this thing when this subject was sent to the Committee on the Judiciary. We all felt it, and the committee, I think unanimously, including my friend from Mississippi, thought that if we were really in earnest in wishing to strike at these evils broadly, in the first instance, as a new line of legislation, we would frame a bill that should be clearly within our constitutional power, that we should make its definition out of terms that were well known to the law already, and would leave it to the courts in the first instance to say how far they could carry it or its definitions as applicable to each particular case as it might arise.

Therefore I say as to the suggested amendment of my friend from Mississippi—and I repeat it in all earnestness—that if I were a lobbyist and wanted to entangle this business, I should provide that everybody might sue everybody else in one common suit and have a regular *pot-pourri* of the affair, as his amendment proposes, and leave it to the lawyers of the trust to have an interminable litigation in respect of the proper parties, whether their interests were common or diverse or how they were affected, and take twenty years in order to get a result as to a single one of them. The Judiciary Committee did not think it wise to do that sort of thing, because we were in earnest about the business, as I know my friend is.

Now I come to the amendment of my friend from Texas [Mr. REAGAN], to section 7, I believe it is, that a person aggrieved may sue in the State courts. I wish to call the attention of my friend from Texas—and I know he is perfectly earnest about this business and I think he introduced the best and the first bill upon the subject—I wish to call his attention to this seventh section as framed in the very line of what he is speaking of.

The law of the United States as it is now prevents anybody from going into the circuit court of the United States unless he has a two-thousand-dollar controversy.

This section provides that any person who shall be injured, etc., by anything declared unlawful in this act may sue therefor in the circuit court of the United States in the district where the defendant resides or is found, without regard to the amount in controversy. That is all. The whole object of the seventh section is to relieve the circuit court of the United States from the question of the *quantum* in dispute. It leaves everybody, as everybody now has the power under any law of the United States, to sue anybody who wrongs him, whether against the law of the State or of the United States, in a State court if he chooses to do so. So I appeal to my friend from Texas and make the suggestion to him that his amendment is quite useless and unnecessary, because this section merely gives in the circuit court of the United States the right of anybody to sue who chooses to sue, without regard to the amount in controversy, leaving anybody to sue in the State courts against anybody who wrongs him under the common practices of the law that apply in all the States.

So I should hope, if the Senator is really in earnest, he will be satisfied to leave the section as it is. Of course the man who writes for a newspaper in the fifth story of a large building in some city, that is properly furnished and carpeted and lighted by electricity, etc., is "public opinion." Whatever we might think about his opinion if he came here and told it to us without regard to what he may say in a newspaper, I should hope that the Senate of the United States, being in earnest about this business, would allow us to pass a bill that is clear in its terms, is definite in its definitions, and is broad in its comprehension, without winding it up into infinite details which those whom we are trying to repress would be most glad to have us do.

Mr. REAGAN. Mr. President, I certainly for one feel gratified at the result of the action of the Judiciary Committee in getting before the Senate a bill which is probably not obnoxious to constitutional objections and one that may afford some relief against the evils towards which it is directed. But it seems to me that we need not be afraid to do that which would bring the beneficial operations of the law within the reach of the people intended to be protected by it.

On the bills that were before the Senate and that were referred to the Judiciary Committee we encountered the trouble of coming in con-

tact with the Constitution, and certainly there were many suggestions made in them which were liable to objections of that kind. The objection which we now meet is the danger of the lobby. Well, the lobby is composed of a troublesome set sometimes; but the lobby can not change the meaning of words, nor can it change legal principles.

The Senator from Vermont suggests that the bill is in the line which I have in view, of extending the law so as to put it within the reach of everybody by waiving the \$2,000 limit, which fixes the jurisdiction of the circuit courts. The Senator certainly is right in that, and I feel gratified that the Committee on the Judiciary have put the clause into the section providing that these suits may be there prosecuted without respect to the amount in controversy.

That, however—and I call the attention of the Senator from Vermont to it—is not the point that I presented as a reason for the amendment which I offered. The difficulty is in getting into the circuit court of the United States. Take any one of the great States of this country, especially those most sparsely settled; the litigants may in many cases be very far removed from the place of holding the circuit court and may be unable and would, if only a few hundred dollars were involved, be unable to employ counsel and go to the place where the court sits and bring suit and take witnesses and prosecute the claim. So, then, even with the provision as submitted by the Judiciary Committee and the words "without reference to the amount involved" inserted, still, the distance from the court and the expense of employing attorneys in that court would be involved, and justice would be denied to the great mass of the people under the bill as it is presented.

Mr. EDMUNDS. But my point about that is that this seventh section only is intended to and only does give a right to sue in the courts of the United States, which becomes a right common to sue in the courts of all the States and in the courts of the United States without regard to the \$2,000 limitation which prevails by general law. It has been suggested to me by my friend from Massachusetts who sits behind me [Mr. HOAR], and there may be force in it, but I am not sure about it (certainly there must be force in it or he would not have suggested it), that possibly if suit were brought in the State court, as triple damages are fixed by the act of Congress, the plaintiff in the State court could not recover the triple damages. But I wish to repeat that in respect of this seventh section, waiving the point of triple damages, it has been suggested that any person who has a right of action for a wrong done to him in violation of this statute may sue in any court of any State where he may find the defendant or any of his property, according to the laws of the jurisdiction, and apart from the question my friend from Massachusetts suggested about whether the triple damages, being allowed by act of Congress, and not by the laws of the State, could be recovered in a State court.

I repeat that this section was intended by the Committee on the Judiciary to allow anybody who wished, to sue in a court of the United States without regard to the \$2,000 limitation, leaving to any man the original right to sue anybody that offended him in the courts of his own State and in the courts of his own county.

Mr. REAGAN. I understand the Senator, and I always have great respect for him, especially on legal questions; but under this section I submit to him and to the Senate, as it limits the right to sue to the circuit court of the United States, I do not exactly see how men could sue in the State courts.

Mr. EDMUNDS. I was about to address my friend as "my good friend," but I address the Chair. I submit to him that he will see that the language is an authority that the man "may sue in the circuit court of the United States" without regard to the amount in controversy. It is not intended and designed by a long-settled line of decisions to exclude the jurisdiction of the courts of the States.

Mr. REAGAN. I should be afraid that "may" would be held by the courts in that case to mean "shall," and certainly, if it be subject to that interpretation, then the only suggestion I have to make further in response to what the Senator from Vermont has said is the same I have made in response to what the Senator from Massachusetts said, that this is not a section which provides for punishing a crime; if it were, of course it would have to be enforced by the Federal courts; but it is a section that governs a civil suit and fixes the measure of damages in that civil suit. It provides for triple damages, and for costs as a matter of course. If I am right about that, my amendment would simply place it in the power of the people to institute suits in a jurisdiction which would be accessible to them and where they could enforce their rights; and I do not care to go further into the discussion of that subject at this time.

Mr. MORGAN. Mr. President, suppose we should undertake to give to the States criminal jurisdiction under this statute. I presume there is not a lawyer in this body or anywhere else who would not deny that we had any authority of that kind; and yet we have just the same power to confer criminal jurisdiction upon the State courts as we have to confer upon the State courts the power to recover a penalty, something that must be enforced in a *qui tam* action or something like that.

Now, whoever recovers upon this statute, in whatever court he may go to, will recover upon the statute. It is very true that we use common-law terms here and common-law definitions in order to define an offense which is in itself comparatively new, but it is not a common-

law jurisdiction that we are conferring upon the circuit courts of the United States. It is a Federal jurisdiction, arising under the Constitution of the United States. If it did not arise there we could not confer it.

In the great criminal feature of the bill and in the feature which declares a forfeiture for the offense of the transportation of goods contrary to this statute, it provides for a recovery and punishment upon the same footing that such proceedings are put by our laws in relation to the importation of goods into the United States contrary to the statutes provided in such cases.

Now, if the amendment of the Senator from Texas should prevail, the first question that would arise in any case in a State court would be, Where did this State court get its jurisdiction? It has not got it now. That is very clear. Where would it get it? Would it get it from the act of Congress?

The Senator from Vermont did not say, as I understood him, that the common-law remedy, which he considers exists in all common-law countries and in all the State courts, still exists in the common-law courts, but you can not get your triple damages and attorney's fees there. You would have to get your damages as they are measured by the common law in the State courts, because the jurisdiction comes from that source.

I think, Mr. President, it is time the Congress of the United States had reconciled as many of the difficulties about this matter as it can and we had gotten some strong, general, useful legislation upon this question. Now, the Committee on the Judiciary have been, I think, remarkably successful in the suggestion of their remedies. They certainly have been very cautious, indeed, in their definitions, so far as giving power to the courts and limiting the authority of the courts, and prescribing some enlargement, perhaps, in cases of injunction and in the service of process upon parties interested or concerned who may be beyond the borders of the particular jurisdiction. It seems to me that this is the best bill on that subject that I have ever seen in this body, and I shall expect real, wholesome, good fruit from it.

The Senator from Texas [Mr. REAGAN] has been for many years trying to reform the transportation of this country, trying to reform its interstate commerce, and he is very eager and very anxious to give every remedy that ingenuity could possibly suggest, but I submit to the Senator that there is no occasion for going so far as to bring up a great constitutional difficulty over which war will be had. This bill ought not to be a breeder of lawsuits. If there is any one duty we have got higher than another in respect of the general judiciary of the United States, it is to suppress litigation and have justice done without litigation as far as we can.

Mr. REAGAN. If the Senator will allow me I will suggest that the very object of this is to make litigation, or there would be no use for it.

Mr. MORGAN. No; it is not. Every man can not go to the circuit court of the United States and bring his suit. My view of the bill was that there was a little too much temptation of that kind presented in it, for when a plaintiff is allowed reasonable attorney's fees, if he has but 75 cents interest, he will always be very likely to find an attorney who will prosecute his case.

Mr. HOAR. And civil damages also.

Mr. EDMUNDS. If my friend from Alabama will allow me, I wish to add that the framework of this bill provides, first, for a declaration of the illegality of these things; it provides, second, for the criminal punishment of the parties engaged in that illegal combination; it provides, third, for an institution of a suit on the part of the United States to repress it as you suppress a nuisance, although it is liable to indictment; it provides, fourth, that, on the part of the United States defending all small people, any part of the property which is the subject of this combination that is moved from State to State (that is as far as we can go, as everybody knows) shall be an illegal movement and subject to confiscation. Then we say that anybody, without respect to the amount in controversy, may bring suit in the circuit court.

Mr. MORGAN. I should have been perfectly satisfied with this bill, or the first three propositions of it, as a bill that would cover the evil, but we have gone further and given a personal remedy, to whoever may be injured in his business or property by the unlawful act defined and denounced in the statute. We can not go to every length. We can not bring in a bill in the nature of a creditor's bill for the purpose of enabling a man to sue in favor of himself and of other persons who may find themselves injured and therefore is given a creditor's bill to recover debts. That is something that does not belong to our statutory jurisdiction. It would be very hard to give it. It is admitted here there would have to be a jury trial in each case, and they might rise to fifty, and we should have perhaps fifty jury trials, and the probability of new trials; and when would that case ever end and when would you get an appeal?

There is as much harm in trying to do too much as there is in not trying to do anything, and I think we have stopped at about the proper line in this bill, and I shall support it just as it is.

Mr. GEORGE. Mr. President, I suppose the Senator from Vermont [Mr. EDMUNDS] knows more about the habits, dispositions, and the tricks (if I may so call them) of the lobbyists than I do, as he under-

takes to tell the Senate what a lobbyist would do if he was engaged in lobbying against this bill. I do not know anything of the methods of that very interesting class of our fellow-citizens. I am not sure that I ever saw a lobbyist, that is, ever saw him and knew he was one at the time I did see him. I will put it in that way.

Mr. EDMUNDS. As the boy said about the letter A, you know him by sight, but you do not know him by name. [Laughter.]

Mr. GEORGE. I understand they infest the Capitol and are passing around here, and so I suppose I must have seen at some time or other an individual who occupies that position in reference to Congress. But this amendment is not to be put down in that way. It was the duty of the Senator to show, first, that this amendment of mine was an obstacle to the successful operation of this bill if it should become a law, and not, as I believe it to be, a necessary thing to have it operate at all.

It is very well to talk about the symmetry of the work of the Judiciary Committee, but when you pass a bill by which you throw the poor unlettered and unskilled American farmer and American mechanic and American laborer, who are the great sufferers by these trusts and combinations, unaided, single-handed, against these large corporations, you just simply pass a bill that will amount to nothing, and I predict—and I put it on the record now as my deliberate judgment—that not one suit will ever be brought under this seventh section by any person who is simply damaged in his character as consumer. I repeat it. I do not propose silently to sit here and be a silent partner, an assenting partner, to the enactment of what I know to be, so far as a remedy to the real parties injured by these trusts is concerned, a sham, a snare, and a delusion.

I do not mean by that to say that there are not other classes of the community that will be benefited by this bill. I do not mean by that to say that this bill ought not to pass. I believe it ought to pass. I believe it ought to pass whether amended as proposed by the Senator from Texas and myself or not. There is enough of good in it to justify the American Senate and the American Congress in putting it in the shape of a law; but when we are performing this operation, when we are legislating for the benefit of the people of this country, I do not think that, out of any mere sentiment or out of any mere objection to taking a little pains and care in perfecting this bill, we ought to leave out the essential matters contained in the amendment of the Senator from Texas and in the amendment offered by myself. I should like some Senator to get up and show by a specific statement, not by general allegations, in what respect the amendment offered by me would interfere with the beneficial operation of this bill.

Suppose twenty consumers combine in a suit. They have bought cotton-bagging; they have been robbed of the amount of five, twenty, fifty, or one hundred dollars each, according to the amount of cotton-bagging they have bought. They have all been injured by the same combination, by the same conspiracy. This combination—this conspiracy—controls millions of dollars. The parties injured separately are poor men. Why not allow them to combine in a suit to enforce from this great combination proper redress for the wrongs they have suffered? Suppose they bring the suit. Suppose at the trial term half of them are not ready for trial and half of them are.

The court, according to the provisions of this bill, continues the case as to half, proceeds with the trial as to half, settles their rights, gives judgment in their favor, gives them full redress, and continues the case as to the others until the next term of the court. At the next term they try the rest. How does that injure anybody? Some Senator suggested that if a hundred persons were injured you would have a hundred jury trials in one case. No, sir; the whole matter can be tried by the same jury. Will gentlemen tell me that in a case which I have suggested, where all have been injured by the same act, and you prove that act, you prove the combination, you prove the rise in the price of bagging, a jury is not competent to say that when the proof is that the plaintiff A was damaged to the amount of \$10 they can not find that, that where plaintiff B was damaged to the amount of \$20 they can not find that, and so on to the end of the list? Certainly that is not an extraordinary feat for a jury to perform.

So, then, the objection made by the Senator from Vermont, and I think, though I could not hear him distinctly, as his back was to me, participated in by the Senator from Alabama [Mr. MORGAN], amounts simply to nothing. What is the effect if you do not pass the amendment? Will any single one of those men who have been thus wronged to the amount of ten, fifteen, twenty, or fifty dollars bring a separate suit? How can he maintain it? He is to employ a lawyer; he has to go to a distance of from 100 to 500 miles, perhaps to a distant State, to maintain his suit. Who will do it? I ask Senators to stop and reflect who will do it? Not one of them. If some great manufacturer has been injured by an advance in the price of his raw material he can sue, but the poor man, the consumer, the laborer, the farmer, the mechanic, the country merchant, all that large class of American citizens who constitute 90 per cent. of our population and who are the real sufferers will have no opportunity of redress, and the bill, so far as they are concerned, will be a snare and a mere delusion.

A word now about whether or not the triple damages could be recovered in a State court. There is no doubt that they can not be re-

covered unless we give permission to the State courts to entertain the suit, because, being a penalty, the courts will construe the statute which is passed here as giving exclusive jurisdiction to the United States courts.

Mr. EDMUNDS. How can Congress, Mr. President—I am sorry to take time, but I know my friend is a great lawyer—

Mr. GEORGE. No, I am a very poor lawyer.

Mr. EDMUNDS. A very great lawyer may be a very poor one. How can Congress impute to a State court of sovereign jurisdiction the right to enforce its own penalties?

Mr. GEORGE. If the Senator had honored me with his attention when I first addressed the Senate upon this subject he would not have asked that question. I stated distinctly that it was no more competent for Congress to give or confer a jurisdiction upon a State court than it was competent for a State to confer a jurisdiction upon a United States court. That is not the point. We, in passing laws of this sort, may give concurrent jurisdiction to the States or we may take exclusive jurisdiction for the United States courts. When we manifest a disposition to allow the jurisdiction to be concurrent that does not give the State courts jurisdiction. It allows the States themselves to give that jurisdiction to their courts. That is all there is of it.

We remove the bar created by the presumption or the enactment that we intended the jurisdiction to be exclusive, and we allow each State to give or withhold the jurisdiction to its own courts as it sees proper. Then when a State comes to do that, suppose we give them the permission, the State courts will enforce the exact jurisdiction which the States allow their court to assume. The State of Mississippi, for instance, says, and the State of Vermont says, and some other State says, "We confer upon our common-law courts jurisdiction under this bill, and they shall take and assume the jurisdiction which Congress allows them to take and assume under this bill." Suppose that is done. The suit is brought in a State court. What prevents the State court from rendering just such judgment as the law we pass allows the United States court to render? It is the State having the permission of Congress that can regulate this matter.

Now, Mr. President, I have done my duty.

Mr. HOAR. Will the Senator allow me to ask him a question?

Mr. GEORGE. Oh, yes.

Mr. HOAR. I should like to understand the Senator's view of this point: What is it that the State renders judgment upon?

Mr. GEORGE. The Senator has made his question too laconic. I do not understand it.

Mr. HOAR. Is it a contract, and what is the cause of action?

Mr. GEORGE. The cause of action under this seventh section would be a wrong.

Mr. HOAR. A penalty.

Mr. GEORGE. A wrong or a penalty.

Mr. HOAR. How can a State render judgment for a penalty or wrong committed by a man in another State?

Mr. GEORGE. That depends entirely upon what jurisdiction the State gives its own courts. If it be a foreign country, for instance, if it be a penalty under the law of England, the State may or it may not, as it sees proper, invest its courts with the jurisdiction to enforce it. The States ordinarily do not give that jurisdiction, but there is nothing to prevent it being given in the case of a Federal law. If it be a Federal law, a national law, there is something else besides the mere will of the State to be considered: the Federal relation to the State. If the United States allow, the State can give that jurisdiction to its courts, and in the Federal Government will not allow it, the State can not. If the Senator disputes that proposition, he must show me some principle of constitutional law restricting the powers of the States which prevents them from investing their courts with jurisdiction to enforce penalties incurred under a foreign jurisdiction or under the United States laws, if the United States shall consent that the State courts may do it.

Mr. REAGAN. If the Senator will allow me, I wish to state in that connection that there are numbers of cases in which State jurisdiction is given under Federal laws.

The PRESIDENT *pro tempore*. Is the Senate ready for the question upon the amendment offered by the Senator from Texas [Mr. REAGAN]?

Mr. KENNA. Let it be again reported.

The CHIEF CLERK. In section 7, line 5, after the word "found," it is proposed to insert the words "or in any State court of competent jurisdiction."

Mr. REAGAN. I call for the yeas and nays.

Mr. EDMUNDS. That will break up a quorum, I fear.

Mr. REAGAN. I can not help it.

The PRESIDENT *pro tempore*. On this question the Senator from Texas asks that the yeas and nays may be entered upon the Journal.

Mr. TELLER. Can we not have the question stated by the Chair?

The PRESIDENT *pro tempore*. The question is upon agreeing to the amendment proposed by the Senator from Texas. It will be again read.

The CHIEF CLERK. In section 7, line 5, after the word "found," it is proposed to insert the words "or in any State court of competent jurisdiction;" so as to read:

Sec. 7. Any person who shall be injured in his business or property by any

other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, or in any State court of competent jurisdiction without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee.

Mr. BUTLER. I am not going to inflict a speech on the Senate at this late hour, but I want to explain my vote.

I shall vote against this amendment and I shall vote against all amendments to this bill, and if the difficulties which have been pointed out by the Senator from Texas and the Senator from Mississippi exist, there is nothing easier than for Congress to amend this law in the future.

It seems to me that this is a very good bill as it stands, and I shall therefore vote for it as it stands, and shall vote against all amendments, because I desire to get some legislation upon this subject; and if, as I said awhile ago, in the future it shall turn out that these additional provisions shall be found necessary it will be a very easy thing for Congress to add them.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. BUTLER (when his name was called). I am paired with the Senator from Pennsylvania [Mr. CAMERON] on all political questions. I do not know whether this is a political question or not.

Mr. EDMUNDS. I think the Senator from Pennsylvania would vote "nay" on this question.

Mr. BUTLER. Then I shall vote "nay."

Mr. CULLOM. I see that the Senator from Delaware [Mr. GRAY] is not present. I am not aware how he would vote if present. I suppose I ought to withhold my vote.

Mr. RANSOM and others. It is not a party question.

Mr. CULLOM. I understand the Senator from Delaware, if present, would vote "nay," so I will vote "nay."

Mr. DIXON (when his name was called). I am paired generally with the Senator from South Carolina [Mr. HAMPTON]. If he were present I would vote "nay."

Mr. BUTLER. I think the Senator from Rhode Island may vote with safety.

Mr. DIXON. On the statement of the Senator from South Carolina I will vote "nay."

Mr. FAULKNER (when his name was called). I am paired with the Senator from Pennsylvania [Mr. QUAY].

Mr. GEORGE (when his name was called). I am paired with the Senator from New Hampshire [Mr. BLAIR]. If he were present I would vote "yea."

Mr. KENNA (when his name was called). I am paired with the Senator from Colorado [Mr. WOLCOTT].

Mr. McMILLAN (when his name was called). I am paired with the Senator from North Carolina [Mr. VANCE].

Mr. PADDOCK (when his name was called). I am paired with the Senator from Louisiana [Mr. EUSTIS]. Believing that if he were here he would vote "nay," I vote "nay."

Mr. PLATT (when his name was called). I am paired with the Senator from Virginia [Mr. BARBOUR], but my colleague [Mr. HAWLEY] is absent, and, as I understand, unpaired. I will therefore transfer my pair to my colleague and vote "nay."

Mr. SHERMAN (when his name was called). I am usually paired with my colleague [Mr. PAYNE]. Being satisfied that he would vote "nay" if present, I vote "nay."

The roll-call was concluded.

Mr. GIBSON. I am paired with the Senator from Minnesota [Mr. WASHBURN]. If he were present I should vote "nay."

Mr. SAWYER. The Senator from Minnesota would vote "nay."

Mr. DAVIS. I can assure the Senator from Louisiana that he may vote on this question notwithstanding his pair with my colleague.

Mr. GIBSON. Then I vote "nay."

Mr. DANIEL (after having voted in the affirmative). I am paired with the Senator from Washington [Mr. SQUIRE]. I heard it stated that this was not regarded as a party vote, and therefore I took the liberty of voting. It seems to me that under the circumstances I should withdraw my vote. ["Oh, no!"]

Mr. PADDOCK (after having voted in the negative). I will observe my pair with the Senator from Louisiana [Mr. EUSTIS] to cover all doubt. Therefore I withdraw my vote.

The result was announced—yeas 13, nays 36; as follows:

YEAS—13.

Bate,	Colquitt,	Pugh,	Walthall,
Berry,	Daniel,	Reagan,	Wilson of Md.
Blackburn,	Gorman,	Turpie,	
Call,	McPherson,		

NAYS—36.

Aldrich,	Davis,	Higgins,	Ransom,
Allison,	Dawes,	Hoar,	Sawyer,
Blodgett,	Dixon,	Ingalls,	Sherman,
Butler,	Dolph,	Jones of Nevada,	Spooner,
Casey,	Edmunds,	Manderson,	Stewart,
Chandler,	Frye,	Morgan,	Stockbridge,
Cockrell,	Gibson,	Pierce,	Teller,
Coke,	Gray,	Platt,	Vest,
Cullom,	Harris,	Plumb,	Wilson of Iowa.

ABSENT—33.

Allen,	Faulkner,	McMillan,	Squire,
Barbour,	George,	Mitchell,	Stanford,
Beek,	Hale,	Moody,	Vance,
Blair,	Hampton,	Morrill,	Voorhees,
Brown,	Hawley,	Paddock,	Washburn,
Cameron,	Hearst,	Pasco,	Wolcott.
Eustis,	Hiscock,	Payne,	
Evarts,	Jones of Arkansas,	Pettigrew,	
Farwell,	Kenna,	Quay,	

So the amendment of Mr. REAGAN was rejected.

Mr. GEORGE. Mr. President, I now offer the amendment I send to the desk.

The PRESIDENT *pro tempore*. The amendment will be read.

Mr. REAGAN. I move that the Senate do now adjourn.

Mr. EDMUNDS. Oh, no; let us finish the bill.

The PRESIDENT *pro tempore*. The Senator from Texas can not offer the motion at this time, because the Senator from Mississippi is on the floor offering an amendment.

Mr. GEORGE. Let us have a vote on it.

Mr. REAGAN. I insist on my motion to adjourn.

The PRESIDENT *pro tempore*. The amendment proposed by the Senator from Mississippi will be read.

The CHIEF CLERK. It is proposed to add to section 7 the following:

And in all such actions it shall be lawful for any number of persons complaining of such injuries committed by the same defendant against each of them separately to join as plaintiffs, and the court or jury trying the issues of fact in any such cause shall find the amount of the separate damages sustained by each plaintiff, and may also find in favor of a part of said plaintiffs and against the others as the proof shall warrant, and the court shall render judgment accordingly; and in the proceedings in a cause the court may, if justice so requires, proceed with the trial thereof as to a part of said plaintiffs and continue the cause to a future day as to the remainder, and this may be done as often as justice may require. And whenever there shall be a motion for a new trial, in any such cause the court may sustain the same as to a part of said plaintiffs and overrule it as to others, according as the right and justice of the case may require. Execution shall issue on any judgment rendered in such a cause in favor of each plaintiff for the amount recovered by him, and for his reasonable attorney's fees, and also for such share of the costs as the court shall determine to be fair and reasonable.

The PRESIDENT *pro tempore*. The question is on agreeing to the amendment of the Senator from Mississippi [Mr. GEORGE].

The amendment was rejected.

The PRESIDENT *pro tempore*. Are there further amendments to the bill in the Senate?

Mr. REAGAN. I offer the following to come in as a proviso at the end of the third section:

Provided, That each day's violation of any of the provisions of this act shall be held to be a separate offense.

The PRESIDENT *pro tempore*. The question is on agreeing to the amendment proposed by the Senator from Texas [Mr. REAGAN].

The amendment was rejected.

Mr. KENNA. Mr. President, I have no disposition to delay a vote on the bill, but I would like to ask, with his permission, the Senator from Vermont a question touching the second section:

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade, etc.

Is it intended by the committee, as the section seems to indicate, that if an individual engaged in trade between States or between States and Territories, or between States or Territories and the District of Columbia, or between a State and a foreign country, by his own skill and energy, by the propriety of his conduct generally, shall pursue his calling in such a way as to monopolize a trade, his action shall be a crime under this proposed act? To make myself understood, if I am not clear—

Mr. EDMUNDS. I think I understand the Senator.

Mr. KENNA. Suppose a citizen of Kentucky is dealing in short-horn cattle and by virtue of his superior skill in that particular product it turns out that he is the only one in the United States to whom an order comes from Mexico for cattle of that stock for a considerable period, so that he is conceded to have a monopoly of that trade with Mexico; is it intended by the committee that the bill shall make that man a culprit?

Mr. EDMUNDS. It is not intended by it and the bill does not do it. Anybody who knows the meaning of the word "monopoly," as the courts apply it, would not apply it to such a person at all; and I am sure my friend must understand that.

Mr. KENNA. I think I understand what the word "monopoly" means, and my ignorance may have caused me to propound the inquiry; but it does not make any difference how the courts have explained or interpreted the word "monopoly." I do not know that the courts have done it, but no matter how they have explained it, here is a provision in the bill which, if plain English means anything in the courts or elsewhere, provides a penalty for such conduct on the part of any citizen of this country engaged in the commonest and most legitimate callings of the country, who happens by his skill and energy to command an innocent and legitimate monopoly of a business.

Mr. EDMUNDS. It does not do anything of the kind, because in the case stated the gentleman has not any monopoly at all. He has

not bought off his adversaries. He has not got the possession of all the horned cattle in the United States. He has not done anything but compete with his adversaries in trade, if he had any, to furnish the commodity for the lowest price. So I assure my friend he need not be disturbed upon that subject.

Mr. GRAY. Before the Senator from West Virginia arose I had the bill before me and was about to offer an amendment which was directed precisely to the point he has raised, and I shall offer that amendment now. It is to strike out of section 2, in lines 1 and 2, the words "monopolize, or attempt to monopolize, or," so that the section shall read:

Every person who shall combine or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States, etc.

We will avoid by that amendment the objection which I think the Senator from West Virginia has very pertinently raised. I do not know what definition the courts of the United States have ever given to the word "monopoly" or "monopolize." It is true that, because I do not know it, it does not follow that they may not have defined those terms; but we avoid the danger by this amendment of incorporating in the bill words that are not susceptible of exact legal interpretation, and we confine the provisions of this bill to an inhibition of the combination or conspiracy to monopolize, which we all agree should be the object of its denunciation.

Mr. HOAR. I put in the committee, if I may be permitted to say so (I suppose there is no impropriety in it), the precise question which has been put by the Senator from West Virginia, and I had that precise difficulty in the first place with this bill, but I was answered, and I think all the other members of the committee agreed in the answer, that "monopoly" is a technical term known to the common law, and that it signifies—I do not mean to say that they stated what the signification was, but I became satisfied that they were right and that the word "monopoly" is a merely technical term which has a clear and legal signification, and it is this: It is the sole engrossing to a man's self by means which prevent other men from engaging in fair competition with him.

Of course a monopoly granted by the King was a direct inhibition of all other persons to engage in that business or calling or to acquire that particular article, except the man who had a monopoly granted him by the sovereign power. I suppose, therefore, that the courts of the United States would say in the case put by the Senator from West Virginia that a man who merely by superior skill and intelligence, a breeder of horses or raiser of cattle, or manufacturer or artisan of any kind, got the whole business because nobody could do it as well as he could was not a monopolist, but that it involved something like the use of means which made it impossible for other persons to engage in fair competition, like the engrossing, the buying up of all other persons engaged in the same business.

Mr. KENNA. If the Senator will permit me, I should like to ask him whether a monopoly such as he defines is prohibited at common law. I ask the Senator from Massachusetts whether a monopoly coming within the definition which he gives is prohibited at common law.

Mr. HOAR. I so understand it.

Mr. KENNA. Then why should this bill proceed to denounce that very monopoly?

Mr. HOAR. Because there is not any common law of the United States.

Mr. KENNA. There is common law in nearly every State in the Union.

Mr. HOAR. I know. The common law in the States of the Union of course extends over citizens and subjects over which the State itself has jurisdiction. Now we are dealing with an offense against interstate or international commerce, which the State can not regulate by penal enactment, and we find the United States without any common law. The great thing that this bill does, except affording a remedy, is to extend the common-law principles, which protected fair competition in trade in old times in England, to international and interstate commerce in the United States.

Mr. EDMUNDS. I have only to say, in regard to the amendment suggested by my friend from Delaware and the suggestions of the Senator from West Virginia, that this subject was not lightly considered in the committee, and that we studied it with whatever little ability we had, and the best answer I can make to both my friends is to read from Webster's Dictionary the definition of the verb "to monopolize:"

1. To purchase or obtain possession of the whole of, as a commodity or goods in market, with the view to appropriate or control the exclusive sale of; as, to monopolize sugar or tea.

Like the sugar trust. One man, if he had capital enough, could do it just as well as two.

2. To engross or obtain by any means the exclusive right of, especially the right of trading to any place, or with any country or district; as, to monopolize the India or Levant trade.

The old definition. So I assure my friends that although we may be mistaken (we do not pretend to know all the law) we were not blind to the very suggestions which have been made, and we thought we had done the right thing in providing, in the very phrase we did,

that if one person instead of two, by a combination, if one person alone, as we have heard about the wheat market in Chicago, for instance, did it, it was just as offensive and injurious to the public interest as if two had combined to do it.

The PRESIDENT *pro tempore*. The question is on the amendment proposed by the Senator from Delaware [Mr. GRAY].

Mr. HOAR. Let it be read.

The PRESIDENT *pro tempore*. The amendment will be stated.

The CHIEF CLERK. In lines 1 and 2 of section 2 it is proposed to strike out the words "monopolize, or attempt to monopolize, or," so as to read:

Every person who shall combine or conspire with any other person or persons to monopolize any part of the trade, etc.

The amendment was rejected.

The PRESIDENT *pro tempore*. Are there further amendments? If there are none, the question recurs on concurring in the amendment made as in Committee of the Whole.

The amendment was concurred in.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDENT *pro tempore*. Having been read three times, shall the bill pass?

Mr. EDMUNDS. I wish to have the yeas and nays on that, Mr. President.

The yeas and nays were ordered; and the Secretary proceeded to call the roll.

Mr. DIXON (when his name was called). I am paired generally with the Senator from South Carolina [Mr. HAMPTON]. If he were present, I should vote "yea."

Mr. BUTLER. I think my colleague [Mr. HAMPTON] would vote for the bill, and the Senator from Rhode Island may vote.

Mr. DIXON. On the statement of the Senator from South Carolina, I vote "yea."

Mr. CULLOM (when Mr. FARWELL's name was called). My colleague [Mr. FARWELL] is detained at home sick and is paired with the Senator from Florida [Mr. PASCO].

Mr. GEORGE (when his name was called). I am paired with the Senator from New Hampshire [Mr. BLAIR] generally. I do not know how he would vote on this bill. If he were present, I should vote "yea."

Mr. FRYE (when Mr. HALE's name was called). My colleague [Mr. HALE] is necessarily absent from the Senate and is paired with the senior Senator from Kentucky [Mr. BECK]. If my colleague were present and authorized to do so he would vote "yea."

Mr. BLACKBURN. My colleague [Mr. BECK] would vote "yea."

Mr. HARRIS (when his name was called). I have a general pair with the Senator from Vermont [Mr. MORRILL], but I am so confident that if he were here he would vote "yea" that I shall record my vote "yea."

Mr. EDMUNDS. That is right.

Mr. BERRY (when the name of Mr. JONES, of Arkansas, was called). My colleague [Mr. JONES] is unavoidably absent and is paired with the Senator from New York [Mr. HISCOCK]. If my colleague were present he would vote "yea."

Mr. KENNA (when his name was called). I am paired with the Senator from Colorado [Mr. WOLCOTT]. I should like to ask the Senator from Colorado [Mr. TELLER] if he knows how his colleague would vote?

Mr. TELLER. I presume he would vote "yea." I have not any doubt about it.

Mr. KENNA. If the Senator feels sure of that, I will vote "yea."

Mr. MORGAN (when his name was called). I am paired with the Senator from New York [Mr. EVARTS], but I know that he would vote for this bill, and I will therefore vote. I vote "yea."

Mr. PADDOCK (when his name was called). I believe that the Senator from Louisiana [Mr. EUSTIS], with whom I am paired, would vote "yea," and therefore I shall vote. I vote "yea."

Mr. PLATT (when his name was called). My colleague [Mr. HAWLEY] is paired with the Senator from Virginia [Mr. BARBOUR]. I vote "yea." My colleague would vote "yea" if he were present.

Mr. RANSOM (when the name of Mr. VANCE was called). My colleague [Mr. VANCE] is detained from the Senate this evening by necessary duties. If he were here I feel at liberty to say he would vote "yea" on the passage of the bill.

Mr. DAVIS (when Mr. WASHBURN's name was called). My colleague [Mr. WASHBURN] is unavoidably absent and is paired with the Senator from Louisiana [Mr. GIBSON]. My colleague would vote "yea."

The roll-call was concluded.

Mr. BUTLER (after having voted in the affirmative). I have a general pair with the Senator from Pennsylvania [Mr. CAMERON]. I have had my vote recorded "yea," and unless some Senator on the other side will inform me that the Senator from Pennsylvania if present would vote against the bill I shall allow my vote to stand.

Mr. EDMUNDS. I think you are safe about it.

The result was announced—yeas 52, nays 1; as follows:

YEAS—52.

Allison,	Davis,	Ingalls,	Ransom,
Bate,	Dawes,	Jones of Nevada,	Reagan,
Berry,	Dixon,	Kenna,	Sawyer,
Blackburn,	Dolph,	McMillan,	Sherman,
Butler,	Edmunds,	McPherson,	Spooner,
Call,	Faulkner,	Manderson,	Stewart,
Casey,	Frye,	Mitchell,	Stockbridge,
Chandler,	Gibson,	Morgan,	Teller,
Cockrell,	Gorman,	Paddock,	Turpie,
Coke,	Gray,	Pierce,	Vest,
Colquitt,	Harris,	Platt,	Walthall,
Cullom,	Higgins,	Plumb,	Wilson of Iowa,
Daniel,	Hoar,	Pugh,	Wilson of Md.

NAY—1.

Blodgett.

ABSENT—29.

Aldrich,	Evarts,	Jones of Arkansas,	Stanford,
Allen,	Farwell,	Moody,	Vance,
Barbour,	George,	Morrill,	Voorhees,
Beck,	Hale,	Pasco,	Washburn,
Blair,	Hampton,	Payne,	Wolcott,
Brown,	Hawley,	Pettigrew,	
Cameron,	Hearst,	Quay,	
Eustis,	Hiscock,	Squire,	

So the bill was passed.

The title was amended so as to read: "A bill to protect trade and commerce against unlawful restraints and monopolies."

SENATORS FROM MONTANA.

The PRESIDENT *pro tempore*. The Senate resumes the consideration of the unfinished business, being the report of the Committee on Privileges and Elections on the Montana Senatorial contest.

Mr. HOAR. I move that the Senate adjourn.

The motion was agreed to; and (at 5 o'clock and 48 minutes p. m.) the Senate adjourned until to-morrow, Wednesday, April 9, 1890, at 12 o'clock m.

HOUSE OF REPRESENTATIVES.

TUESDAY, April 8, 1890.

The House met at 12 o'clock m. Prayer by the Chaplain, Rev. W. H. MILBURN, D. D.

The Journal of yesterday's proceedings was read and approved.

ORDER OF BUSINESS.

The SPEAKER. The Chair will lay before the House two bills which have been returned from the Senate with amendments.

HELEN E. DEWEY.

The amendments of the Senate to the bill (H. R. 2861) for the relief of Helen E. Dewey were read, as follows:

Strike out all after "pension-roll," in line 2, down to and including "laws," in line 3.

After "64," in line 8, insert "and pay her a widow's pension from and after the passage of this act."

Mr. MORRILL. I move that the House concur in these amendments.

The amendments were concurred in.

JOHN J. FREELAND.

Senate amendments to the bill (H. R. 7010) for the relief of John J. Freeland were read, as follows:

Strike out all after the word "infantry," down to and including the word "suffer," and insert "and pay him at the rate of \$30 per month in lieu of that which he is now receiving."

Mr. MORRILL. I ask that the Clerk read the words proposed to be struck out and also the words which the Senate proposes to insert.

The Clerk read as follows:

Strike out the words "for disability resulting from amputation of right foot and pay him the pension provided for such disability by the various acts of Congress from the date to which pension therefor was paid him, deducting, however, all payments of pension that may have been made to him since such date for any other disability from which he may suffer."

Insert in lieu of the words proposed to be struck out the following: "And pay him at the rate of \$30 a month in lieu of that which he is now receiving."

Mr. MORRILL. I move to concur in the amendments of the Senate.

Mr. BRECKINRIDGE, of Kentucky. Will the gentleman be kind enough to indicate the effect of these amendments? Does the Senate increase or diminish the amount proposed to be paid?

Mr. MORRILL. The Senate amendment is restrictive; it makes the bill plainer and more definite. As I understand, the House bill provides that this man should be paid the pension allowed by law, which is \$30, and then goes on to recite something about paying him a difference. The Senate amendment makes the bill more definite, providing only that the pensioner shall be paid \$30 a month from this time.

Mr. SPRINGER. As I understood, the House provision allowed him arrears from the time the pension was first granted.

Mr. MORRILL. I could not quite understand whether that was the effect of the provision or not, though it struck me when I first heard

the language that it did grant arrears. But the Senate strikes that out, and as that action is in harmony with all our legislation on the subject, I move that the House concur.

The amendments of the Senate were concurred in.

ORDER OF BUSINESS.

Mr. CHIPMAN. I have a resolution I would like to offer for reference.

The SPEAKER. Does it require to be offered in open House?

Mr. CHIPMAN. Yes, sir; I think so.

The SPEAKER (after examining the resolution). This resolution is referable under the rules. The morning hour begins at 12 o'clock and 13 minutes. The call rests with the Committee on Naval Affairs.

Mr. BOUTELLE. The gentleman from New Jersey [Mr. McADOO], who was to call up a bill from the House Calendar, does not seem to be here. If it is in order, I move to dispense with the morning hour and go into Committee of the Whole.

Several MEMBERS. Oh, no.

Mr. BOUTELLE. I move that the House resolve itself into Committee of the Whole to consider the naval appropriation bill.

Mr. PAYSON. That is not in order, Mr. Speaker.

The SPEAKER. The motion is not in order at this time.

The Committee on the Post-Office and Post-Roads having been called without response,

The SPEAKER called the Committee on the Public Lands.

SETTLERS ON NORTHERN PACIFIC INDEMNITY LANDS.

Mr. PAYSON. I call up the bill (H. R. 5939) for the relief of settlers on Northern Pacific Railroad indemnity lands.

The bill was read, as follows:

Whereas the Secretary of the Interior, in the year 1887, determined that the Northern Pacific Railroad Company was not entitled to its so-called second indemnity belt of lands, and then directed that said lands be restored to the public domain and thrown open to settlement, under the general land laws of the United States; and

Whereas many persons thereupon, relying upon such determination and direction, in good faith and at large expense, filed, entered, settled upon, and made homes and valuable improvements on said lands; and

Whereas many of said settlers thereafter made final proof at the United States land offices and paid for their respective claims and received their final receipts therefor, and many others gave due notice of the time and place for making such final proof, and were enjoined and restrained by order of the courts; and

Whereas it was determined thereafter that said lands were within the said Northern Pacific Railroad grant, and were, by direction of the Department of the Interior, withdrawn from settlement, thereby entailing great loss, trouble, and inconvenience upon said settlers: Therefore,

Be it enacted, etc., That those persons who, after the 15th day of August, in the year A. D. 1887, and before the 1st day of January, in the year 1889, settled upon, improved, and made final proof on lands in the so-called second indemnity belt of the Northern Pacific Railroad Company's grant under the homestead and pre-emption laws of the United States, their heirs, or assigns may transfer their said entries from said tracts to such other vacant Government land subject to entry under the homestead and pre-emption laws as they may select, and receive final certificates and receipts therefor, in lieu of the tracts proved up as in said belt by the respective claimants: *Provided*, That such of said persons as have relinquished said tract to the United States, and whose money has been refunded, shall not transfer their entries and receive final receipts until they make repayment thereof, as may be directed by the Secretary of the Interior.

Sec. 2. That all persons who having homesteads or pre-emption rights, and who in good faith filed, settled upon, and improved lands in said second indemnity belt and were prevented making proof either by the decision of the courts or by the subsequent withdrawal of said lands, may, in lieu thereof, transfer their filings and enter upon an additional tract of any vacant Government land subject to entry under the homestead or pre-emption laws that they may select, and make final proof therefor; and in making such proof the period of their bona fide residence and amount of their improvements upon their respective claims in the said indemnity belt shall be allowed and applied as if made upon said final selection. Payment for said final selection shall be made as under existing laws. The intention and purpose of this act is to place said settlers as nearly as may be in the position they would have been had said second indemnity belt been Government lands, subject to entry under the homestead and pre-emption laws. The provisions of this act shall be carried into effect under such rules and regulations as may be prescribed by the Secretary of the Interior.

Mr. PAYSON. I ask for the reading of the amendments reported by the Committee on Public Lands.

The amendments were read and agreed to, as follows:

Strike out the preamble.

After the word "heirs," in section 1, line 10, strike out the words "or assigns," and in line 11, same section, insert the words "in compact form and in legal subdivisions;" so the section will read:

"Be it enacted, etc., That those persons who, after the 15th day of August, in the year of our Lord 1887, and before the 1st day of January, in the year 1889, settled upon, improved, and made final proof on lands in the so-called second indemnity belt of the Northern Pacific Railroad Company's grant under the homestead and pre-emption laws of the United States, (or) their heirs may transfer their said entries from said tracts to such other vacant Government land in compact form and in legal subdivisions subject to entry under the homestead and pre-emption laws as they may select, and receive final certificates and receipts therefor, in lieu of the tracts proved up as in said belt by the respective claimants: *Provided*, That such of said persons as have relinquished said tract to the United States, and whose money has been refunded, shall not transfer their entries and receive final receipts until they make repayment thereof, as may be directed by the Secretary of the Interior."

Section 2, after the word "therefore," in line 9, insert the following words: "and proofs may be made before the register and receiver of the local land office or the clerk of a court of record."

Mr. BRECKINRIDGE, of Kentucky. I raise the point of order, Mr. Speaker, that this bill ought not to be upon the House Calendar because it appropriates public lands. If I understand the provisions of the first and second sections, it is provided that out of the present public lands are appropriated *pro tanto* to make up lands taken from these