against reduction in the sugar tariff—to the Committee on Ways and Means.

By Mr. NEVILLE: Petition of citizens of Gordon, Nebr., favoring the passage of House bill 7212, relating to leasing of public lands for grazing purposes—to the Committee on the Public Lands.

By Mr. PAYNE: Petition of Mary L. Seymour and others, of Auburn, N. Y., for an amendment to the national Constitution defining legal marriage to be monogamic—to the Committee on the Judiciary.

Also, petition of clerks in the post-office at Cortland, N. Y., for the enactment of an eight-hour law and mandatory classification for clerks in first and second class post-offices—to the Committee on the Post-Office and Post-Roads.

Also, petition of Julia D. Sheppard, of Penn Yan, N. Y., for an amendment to the Constitution providing that the right of citizens to vote shall not be denied or abridged by any State on account of sex—to the Committee on the Judiciary.

By Mr. RAY of New York: Petitions of post-office clerks in Ithaca and Owego, N. Y., for the classification of clerks in first and second class post-offices—to the Committee on the Post-Office and Post-Roads.

Also, petition of railway postal clerks of the Twenty-sixth Congressional district of New York, for the reclassification of the Railway Mail Service—to the Committee on the Post-Office and Post-Roads.

By Mr. RUPPERT: Paper to accompany House bill for the relief of Frederick Hoefer—to the Committee on Invalid Pensions.

By Mr. RYAN: Petition of railway postal clerks of the Thirty-second Congressional district of New York, for the reclassification of the Railway Mail Service—to the Committee on the Post-Office and Post-Roads.

Also, resolution of the National Live Stock Exchange, against the passage of the Grout bill—to the Committee on Agriculture.

By Mr. SHALLENBERGER: Petitions of Phil. Zeigler and 17 merchants of Riverton, Nebr., and John H. Clearman and 7 others, of Norman, Nebr., against House bill 6578, known as the parcels-post bill—to the Committee on the Post-Office and Post-Roads.

Also, paper to accompany House bill 4176, granting an increase of pension to Nathan W. Snee—to the Committee on Invalid Pensions.

Also, paper to accompany House bill 4172, granting an increase of pension to George R. Chaney—to the Committee on Invalid Pensions.

By Mr. SHERMAN: Petition of citizens of Utica, N. Y., for amendment of Constitution to prohibit and punish polygamy and defining legal marriage—to the Committee on the Judiciary.

By Mr. SPERRY: Resolutions of Buffers and Polishers' Union No. 8, of Meriden, Conn., favoring the construction of war ships at the navy-yards—to the Committee on Naval Affairs.

By Mr. SOUTHARD: Petition of Ship Carpenters' Union No. 6976, of Toledo, Ohio, favoring the building of war vessels in the navy-yards—to the Committee on Naval Affairs.

By Mr. STEVENS of Minnesota: Resolution of Washington County (Minn.) farmers, against reciprocal trade relations with Cuba admitting sugar free—to the Committee on Ways and Means.

Also, resolution of the Minnesota Good Roads Association, for an appropriation for improved roads in various sections of the country—to the Committee on Agriculture.

By Mr. SULZER: Petition of Lithographers' Protective and Beneficial Association, in opposition to House bill 5777, amending the copyright law—to the Committee on Patents.

By Mr. TONGUE: Protests of citizens of Lake County, Oreg., against leasing of public lands—to the Committee on the Public Lands.

By Mr. WADSWORTH: Resolution of Niagara Falls Command, No. 22, Spanish War Veterans, favoring the Bromwell bill providing payment of medical expenses of officers and men on sick furlough—to the Committee on Military Affairs.

By Mr. WANGER: Petition of Cigar Makers' Union No. 446, of Norristown, Pa., and Ardmore (Pa.) Union, No. 465, Brotherhood of Carpenters and Joiners, for the repeal of the desert-land act and the commutation clause of the homestead act, against donations of public lands to the States, and for an appropriation of $250,000 for irrigation surveys—to the Committee on the Public Lands.

Also, resolution of the Pennsylvania State board of agriculture, Harrisburg, Pa., in relation to the sale of public lands, the manufacture and sale of oleomargarine, and the irrigation of arid lands—to the Committee on the Public Lands.

Also, petition of Souderton (Pa.) Union, No. 115, American Federation of Labor, favoring the construction of naval vessels at Government navy-yards—to the Committee on Naval Affairs.

Also, petition of Stove Mounters' Union No. 46, of Royersford, Pa., for the restriction of illiterate immigrants—to the Committee on Immigration and Naturalization.

By Mr. YOUNG: Resolution of Pennsylvania State board of agriculture, for the enactment of a bill further taxing oleomargarine, opposing appropriations for irrigation of arid lands, and for the passage of House bill No. 8735—to the Committee on Agriculture.

Also, petition of Schuylkill Branch of Philadelphia Christian Endeavor Union, Garvin Hipple, and others, of Philadelphia, Pa., for the suppression of polygamy—to the Committee on the Judiciary.

Also, resolutions of the National Board of Trade, favoring amendments to the interstate-commerce law—to the Committee on Interstate and Foreign Commerce.

Also, resolution of the Merchants' Association of New York, favoring the reorganization of the consular service—to the Committee on Foreign Affairs.

Also, resolution of New Orleans Progressive Union, in opposition to reduction of tariff on sugar—to the Committee on Ways and Means.

Also, resolutions of the Art Federation of Philadelphia, against changing the title of Architect of the Capitol—to the Committee on Appropriations.

Also, resolution of King David Castle, No. 342, Knights of the Golden Eagle, and Legion of the Red Cross, of Philadelphia, Pa., for the suppression of anarchy—to the Committee on the Judiciary.

Also, resolution of Plasterers' Association No. 8, of Philadelphia, Pa., favoring an educational test in the restriction of immigration—to the Committee on Immigration and Naturalization.

Also, petition of the president of the Trans-Alaskan Railway Company, in relation to agriculture, fish, mining and transportation, etc., in Alaska—to the Committee on the Territories.

Also, resolutions of the Boot and Shoe Manufacturers' Association of Philadelphia, Pa., asking that hides be placed on the free list—to the Committee on Ways and Means.

Also, petition of Guarantee Council, No. 95, Junior Order United American Mechanics, in favor of the reenactment of the Chinese-exclusion act—to the Committee on Foreign Affairs.

By Mr. ZENOR: Papers to accompany House bill 10772, for the relief of Cornelius Hall—to the Committee on Invalid Pensions.

SENATE.

WEDNESDAY, *February 5, 1902.*

Prayer by the Chaplain, Rev. W. H. MILBURN, D. D.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. QUAY, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. Without objection, the Journal will stand approved.

GROWTH OF CRIMINAL LAW OF THE UNITED STATES.

The PRESIDENT pro tempore. The Chair lays before the Senate a communication from the Secretary of State, transmitting a letter from Mr. Samuel J. Barrows, United States commissioner for the International Prison Commission, inclosing, as forming one of the reports of that commission, a copy of an address by the Hon. David K. Watson, one of the commissioners to revise the Federal statutes, on the "Growth of the criminal law of the United States." The documents accompanying the communication, the Chair is informed, have been sent to the House of Representatives. The communication and accompanying letter will be printed and referred to the Committee on Education and Labor.

FRENCH SPOLIATION CLAIMS.

The PRESIDENT pro tempore laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting the conclusions of fact and of law filed under the act of January 20, 1885, in the French spoliation claims set out in the findings by the court relating to the vessel brig *Industry*, James Very, master; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

He also laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting the conclusions of fact and of law and of the opinion of the court filed under the act of January 20, 1885, in the French spoliation claims set out in the findings by the court relating to the vessel brig *Sally*, Samuel Wells, master; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

He also laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting the conclusions of fact and of law filed under the act of January 20, 1885, in the French spoliation claims set out in the findings by the

court relating to the vessel brig *Good Intent*, Oliver C. Blunt, master; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had passed the joint resolution (S. R. 49) increasing the membership of the Joint Committee of Congress upon the Library.

PETITIONS AND MEMORIALS.

Mr. NELSON presented the petition of E. A. Young, president of the National Association of Credit Men, of St. Paul, Minn., praying for the establishment of a department of commerce; which was ordered to lie on the table.

Mr. FOSTER of Washington presented a petition of the Board of Trade of Bremerton, Wash., praying that an appropriation be made for the construction of necessary buildings for the steam engineering department at the Puget Sound Navy-Yard, in that State; which was referred to the Committee on Naval Affairs.

Mr. KEAN presented a memorial of Pomona Grange, No. 1, Patrons of Husbandry, of Moorestown, N. J., remonstrating against the enactment of legislation authorizing the irrigation of the arid lands of the West at public expense; which was referred to the Committee on Irrigation and Reclamation of Arid Lands.

He also presented petitions of 36 members of Cross Keys Council, No. 278, of Cross Keys; of 64 members of Elberon Council, No. 85, of Oakhurst; of 81 members of Veritas Council, No. 194, of Riverside; of 44 members of Marlboro Council, No. 235, of Marlboro, and of 127 members of General U. S. Grant Council, No. 168, of Jersey City, all of the Junior Order United American Mechanics, in the State of New Jersey, praying for the reenactment of the Chinese-exclusion law; which were referred to the Committee on Immigration.

He also presented petitions of sundry citizens of Boonton and Ridgewood, in the State of New Jersey, praying for the adoption of an amendment to the Constitution to prohibit polygamy; which were referred to the Committee on the Judiciary.

Mr. QUAY presented petitions of the Presbyterian Young People's Society of Christian Endeavor of Elders Ridge, and of 48 members of the Young People's Society of Christian Endeavor of New Providence, in the State of Pennsylvania, praying for the enactment of legislation prohibiting the sale of opium and intoxicating liquors in the island possessions of the United States; which were ordered to lie on the table.

He also presented petitions of Lieut. H. H. Hoagland Post, No. 170, Department of Pennsylvania, Grand Army of the Republic, of Catawissa; of Brotherhood of Operative Potters' Union No. 51, of Canonsburg, and of Local Union No. 115, American Federation of Labor, of Souderton, all in the State of Pennsylvania, praying for the enactment of legislation authorizing the construction of war vessels in the navy-yards of the country; which were referred to the Committee on Naval Affairs.

Mr. FORAKER presented a memorial of sundry leper patients at the leper settlement on the island of Molokai, Hawaii, remonstrating against that settlement being made a national segregation settlement for persons afflicted with leprosy, as contemplated by the so-called Wilcox bill; which was referred to the Committee on Pacific Islands and Porto Rico.

Mr. CULLOM presented a petition of the Woman's Christian Temperance Union of Wheaton, Ill., praying for the enactment of legislation to prohibit the sale of firearms and intoxicating liquors in the island possessions of the United States; which was ordered to lie on the table.

MISSOURI HOME GUARDS, 1861.

Mr. COCKRELL. I have a letter from the Secretary of War, embracing 12 pages of typewriting, which contains much information in regard to a certain military organization in Missouri known as the Missouri Home Guards. It is very important to the Committee on Pensions and also to the Commissioner of Pensions that it be printed, and I ask that it be printed as a document. I make that motion.

The motion was agreed to.

REPORTS OF COMMITTEES.

Mr. PRITCHARD, from the Committee on Forest Reservations and Protection of Game, to whom was referred the bill (S. 492) for the purchase of a national forest reserve in the Southern Appalachian Mountains, reported it without amendment, and submitted a report thereon.

Mr. CLAPP, from the Committee on Indian Affairs, to whom was referred the bill (S. 590) for the relief of the Mille Lac Chippewa Indians in the State of Minnesota, reported it with an amendment, and submitted a report thereon.

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

A bill (S. 308) to reimburse the State of Wyoming for money expended by the Territory of Wyoming in protecting and preserving the Yellowstone National Park during the years 1884, 1885, and 1886;

A bill (S. 1920) for the relief of Albert C. Brown; and

A bill (S. 173) for the relief of the owners of the British ship *Foscolia* and cargo.

Mr. WARREN, from the Committee on Claims, to whom was referred the bill (S. 2090) for the relief of John L. Rhea, executor of Samuel Rhea, deceased, and John Anderson, administrator of Joseph R. Anderson, deceased, submitted an adverse report thereon; which was agreed to, and the bill was postponed indefinitely.

He also, from the same committee, to whom was referred the bill (S. 2487) for the relief of Bvt. Capt. James D. Vernay, asked to be discharged from its further consideration and that it be referred to the Committee on Military Affairs; which was agreed to.

Mr. WARREN. I am directed by the Committee on Claims, to whom was referred the bill (S. 1091) for the relief of the Portland Company, of Portland, Me., to submit an adverse report thereon. I ask that the bill be placed on the Calendar.

The PRESIDENT pro tempore. The bill will be placed upon the Calendar with the adverse report of the committee.

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

A bill (S. 165) to reimburse certain persons who expended moneys and furnished services and supplies in repelling invasions and suppressing Indian hostilities within the territorial limits of the present State of Nevada; and

A bill (S. 169) for the relief of Robert D. McAfee and John Chiatovich.

Mr. TALIAFERRO, from the Committee on Claims, to whom was referred the bill (S. 567) for the relief of H. B. Matteosian, reported it without amendment, and submitted a report thereon.

Mr. CULLOM, from the Committee on Foreign Relations, to whom was referred the amendment submitted by Mr. HALE on the 3d instant, proposing to appropriate $1,800 for second secretary to the legation of the United States at Vienna, Austria, intended to be proposed to the diplomatic and consular appropriation bill, reported favorably thereon, and moved that it be referred to the Committee on Appropriations and printed; which was agreed to.

Mr. KEAN, from the Committee on Claims, to whom was referred the bill (S. 903) for the relief of William D. Rutan, reported it without amendment, and submitted a report thereon.

Mr. HEITFELD, from the Committee on Public Lands, to whom was referred the bill (S. 1912) granting to the State of Washington 50,000 acres of land to aid in the continuation, enlargement, and maintenance of the Washington State Soldiers and Sailors' Home, reported it without amendment, and submitted a report thereon.

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

A bill (S. 475) to refer the claim of Joseph W. Parish to the Secretary of the Treasury for examination and payment of any balance found due; and

A bill (S. 1902) for the relief of Flora A. Darling.

EMPLOYMENT OF MESSENGERS.

Mr. JONES of Nevada, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the following resolution, submitted by Mr. CLARK of Wyoming on the 3d instant, reported it without amendment; and it was considered by unanimous consent, and agreed to:

Resolved, That the Committee on Railroads be, and is hereby, authorized to employ a messenger, to be paid from the contingent fund of the Senate, at the rate of $1,440 per annum, until otherwise provided by law.

Mr. JONES of Nevada, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the following resolution, submitted by Mr. FOSTER of Washington on the 28th ultimo, reported it without amendment; and it was considered by unanimous consent, and agreed to:

Resolved, That the Committee on Coast and Insular Survey be, and it hereby is, authorized to employ a messenger, to be paid from the contingent fund of the Senate, at the rate of $1,440 per annum, until otherwise provided for by law.

Mr. JONES of Nevada, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the following resolution, reported by Mr. BEVERIDGE from the Committee on Territories on the 31st ultimo, reported it without

amendment; and it was considered by unanimous consent, and agreed to:

Resolved, That the Committee on Territories be, and it hereby is, authorized to employ a messenger, to be paid from the contingent fund of the Senate at the rate of $1,440 per annum until otherwise ordered.

Mr. JONES of Nevada, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the following resolution, submitted by Mr. DEPEW on the 28th ultimo, reported it without amendment; and it was considered by unanimous consent, and agreed to:

Resolved, That the Committee on the Revision of the Laws of the United States be authorized to appoint a messenger, whose services shall be devoted exclusively to the business of said committee, and paid from the contingent fund of the Senate at the rate of $1,440 per annum until otherwise provided for by law.

Mr. JONES of Nevada, from the Committee to Audit and Control the Contingent Expenses of the Senate, to whom was referred the following resolution, submitted by Mr. SCOTT on the 29th ultimo, reported it without amendment; and it was considered by unanimous consent, and agreed to:

Resolved, That the Committee on Mines and Mining be, and it is hereby, authorized to employ a messenger, to be paid from the contingent fund of the Senate at the rate of $1,440 per annum until otherwise provided for by law.

BILLS AND JOINT RESOLUTIONS INTRODUCED.

Mr. MORGAN introduced the following bills; which were read twice by their titles, and referred to the Committee on Claims:

A bill (S. 3525) for the relief of the estate of Martha Byrd, deceased;

A bill (S. 3526) for the relief of the estate of Jonathan Paulk, deceased;

A bill (S. 3527) for the relief of the estate of Thomas J. Price, deceased;

A bill (S. 3528) for the relief of Cain Leach;

A bill (S. 3529) for the relief of John Graves Turner;

A bill (S. 3530) for the relief of estate of Jonathan Lewis; and

A bill (S. 3531) for the relief of the heirs of Dr. John H. Robinson.

Mr. HARRIS introduced a bill (S. 3532) granting a pension to Ashbell G. F. Janes; which was read twice by its title, and referred to the Committee on Pensions.

Mr. SIMMONS introduced a bill (S. 3533) granting a pension to Zebulon A. Shipman; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 3534) for the relief of D. S. Barrus and others; which was read twice by its title, and referred to the Committee on Claims.

Mr. MALLORY introduced a bill (S. 3535) for the relief of the heirs at law of Edward N. Oldmixon; which was read twice by its title, and referred to the Committee on Claims.

Mr. BARD introduced a bill (S. 3536) for the relief of certain Mission Indians of California, and for other purposes; which was read twice by its title, and referred to the Committee on Indian Affairs.

Mr. WETMORE introduced a bill (S. 3537) to remove the charge of desertion from the military record of Michael J. Pryor, alias Michael Nolan; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. GALLINGER introduced a bill (S. 3538) for the relief of Sophie Kosack; which was read twice by its title, and referred to the Committee on Claims.

Mr. MITCHELL introduced a bill (S. 3539) to amend an act entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," approved March 3, 1891; which was read twice by its title, and referred to the Committee on Indian Depredations.

Mr. QUAY introduced a bill (S. 3540) to establish a national park and to erect a peace monument at Appomattox, in the State of Virginia: which was read twice by its title, and, with the accompanying paper, referred to the Committee on Military Affairs.

He also introduced a bill (S. 3541) to correct the military record of C. Wilson Walker; 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. 3542) granting an increase of pension to William H. Shaw; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 3543) granting a pension to Mary Allum; which was read twice by its title, and referred to the Committee on Pensions.

Mr. WARREN introduced a bill (S. 3544) to amend an act entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," approved March 3, 1891; which was read twice by its title, and referred to the Committee on Indian Depredations.

Mr. CLARK of Montana introduced a bill (S. 3545) for the relief of Warren S. Baxter; which was read twice by its title, and referred to the Committee on Public Lands.

Mr. DILLINGHAM introduced a bill (S. 3546) for the relief of L. A. Noyes; which was read twice by its title, and referred to the Committee on Claims.

Mr. MASON (by request) introduced a bill (S. 3547) to provide for the transmission in the mails of sums of money of $1 and less by postage-stamp certificates, to be used in lieu of postage stamps, now commonly employed in the payment of small accounts; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

He also introduced a bill (S. 3548) authorizing the construction of a training ship for the use of the Naval Militia of Illinois and the several States bordering on the Mississippi River; which was read twice by its title, and referred to the Committee on Naval Affairs.

He also introduced a bill (S. 3549) for the relief of P. J. Sexton, Ezekiel Smith, and Frank Jubin; which was read twice by its title, and referred to the Committee on Claims.

He also introduced a bill (S. 3550) authorizing the Santa Fe Pacific Railroad Company to sell or lease its railroad property and franchises, and for other purposes; which was read twice by its title, and referred to the Committee on Pacific Railroads.

Mr. COCKRELL introduced a bill (S. 3551) granting an increase of pension to John P. Collier; which was read twice by its title.

Mr. COCKRELL. To accompany the bill I present the petition for increase of pension of John P. Collier, Company A, Eleventh Regiment Kentucky Volunteer Infantry, together with his affidavit and the affidavits of Capt. E. F. Kinnaird, A. B. Sanders, and county officials and others, and also decision of the Secretary of the Interior on appeal, War Department record, and hospital records. I move that the bill and accompanying papers be referred to the Committee on Pensions.

The motion was agreed to.

Mr. COCKRELL introduced a bill (S. 3552) granting a pension to John A. Reilley; which was read twice by its title.

Mr. COCKRELL. To accompany the bill, I present the petition of John A. Reilley, Company B, First Battalion, Fremont's Rangers, Missouri Home Guards, together with his military record, and the affidavits of Robert Drum, H. W. Myrick, and Dr. August Sanders. I move that the bill and accompanying papers be referred to the Committee on Pensions.

The motion was agreed to.

Mr. COCKRELL introduced a bill (S. 3553) granting an increase of pension to Mary A. Van Wormer; which was read twice by its title, and referred to the Committee on Pensions.

Mr. FAIRBANKS introduced a bill (S. 3554) granting an honorable discharge to Thomas J. Brown; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. PLATT of Connecticut introduced a bill (S. 3555) for the relief of William Dugdale; which was read twice by its title, and referred to the Committee on Post-Offices and Post-Roads.

Mr. MCMILLAN introduced a bill (S. 3556) granting a pension to Julia Rowland Mizner; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 3557) to provide for free transfers between street railway lines in the District of Columbia; which was read twice by its title, and referred to the Committee on the District of Columbia.

Mr. HOAR introduced a bill (S. 3558) to fix the salaries of the Vice-President and of the members of the two Houses of Congress; which was read twice by its title, and referred to the Committee on the Judiciary.

Mr. HALE introduced a bill (S. 3559) granting an increase of pension to George E. Houghton; which was read twice by its title, and referred to the Committee on Pensions.

Mr. FORAKER introduced a bill (S. 3560) to amend an act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March 2, 1893, and amended April 1, 1896; which was read twice by its title, and referred to the Committee on Interstate Commerce.

He also introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Military Affairs:

A bill (S 3561) for the relief of James C. Whitten (with accompanying papers);

A bill (S. 3562) to remove the charge of desertion from the military record of Frederick Madaka (with accompanying papers);

A bill (S. 3563) for the relief of Azor H. Nickerson; and

A bill (S. 3564) to remove the charge of desertion from the military record of John F. Barney.

Mr. FORAKER introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions:

A bill (S. 3565) granting a pension to Clara G. Garretson;

A bill (S. 3566) granting an increase of pension to John W. Armitage; and

A bill (S. 3567) granting a pension to Peter J. Osterhaus (with accompanying papers).

Mr. MILLARD introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions;

A bill (S. 3568) granting an increase of pension to John P. Travis (with accompanying papers);

A bill (S. 3569) granting a pension to Marquis Brown (with accompanying papers); and

A bill (S. 3570) granting an increase of pension to James Rush (with accompanying papers).

Mr. CLAPP introduced a bill (S. 3571) to provide for the erection of a monument in commemoration of the services of Gen. Frederick Steuben in the Revolutionary war; which was read twice by its title, and referred to the Committee on the Library.

Mr. TELLER introduced the following bills; which were severally read twice by their titles, and referred to the Committee on Pensions;

A bill (S. 3572) granting an increase of pension to John B. Hanna;

A bill (S. 3573) granting an increase of pension to John C. Post; and

A bill (S. 3574) granting an increase of pension to Henry R. Bennett.

Mr. NELSON introduced a bill (S. 3575) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof; which was read twice by its title, and referred to the Committee on Interstate Commerce.

He also introduced a bill (S. 3576) for the relief of William Duncan; which was read twice by its title, and referred to the Committee on Military Affairs.

Mr. HAWLEY introduced a bill (S. 3577) granting an increase of pension to Mary V. Walker; which was read twice by its title, and referred to the Committee on Pensions.

Mr. McMILLAN introduced a joint resolution (S. R. 50) directing the Attorney-General to bring suit to determine the constitutionality of the retrocession of that portion of the original District of Columbia which was ceded to the United States by the State of Virginia; which was read twice by its title, and referred to the Committee on the Judiciary.

AMENDMENT TO INDIAN APPROPRIATION BILL.

Mr. HANSBROUGH submitted an amendment proposing to appropriate $441,172.89, out of any money in the Treasury belonging to the Choctaw Nation, to pay the claims against the Choctaw Nation of John A. Rollins and James Gilfillan, as assignees of Luke Lea and John T. Cochrane, for services rendered in the collection from the United States of what is commonly known as the "Net proceeds claim," intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

INTERSTATE COMMERCE COMMISSION.

On motion of Mr. ELKINS, it was

Ordered, That 500 extra copies of the bill (S. 3521) to enlarge the jurisdiction and powers of the Interstate Commerce Commission be printed for the use of the Senate.

EXECUTION OF LEGAL INSTRUMENTS IN THE PHILIPPINES, ETC.

Mr. GALLINGER submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 5814) to provide for the execution in the Philippine Islands and in Porto Rico of deeds for land situate in the District of Columbia, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate, and agree to the same.

J. H. GALLINGER,
JAMES McMILLAN,
THOMAS S. MARTIN,
Managers on the part of the Senate.
JOHN J. JENKINS,
SPENCER BLACKBURN,
W. S. COWHERD.
Managers on the part of the House.

The PRESIDENT pro tempore. The question is on agreeing to the report of the committee of conference.

Mr. HOAR. There was a bill on this subject which passed the Senate the other day enlarging the scope of the measure originally proposed. Is that included in the report?

Mr. GALLINGER. Mr. President, I will say to the Senator from Massachusetts that this is the bill he alludes to. The House disagreed to the amendments of the Senate, but the House conferees receded from the agreement and agreed to the amendments.

Mr. HOAR. It is all right, then. I did not know but that it was some independent measure.

Mr. GALLINGER. It is the same bill.

The report was agreed to.

URGENT DEFICIENCY APPROPRIATION BILL.

Mr. HALE. I ask the Senate to proceed to the consideration of the urgent deficiency appropriation bill.

There being no objection, the Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 9315) making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1902, and for prior years, and for other purposes.

The PRESIDENT pro tempore. The question before the Senate is on the amendment of the committee to strike out on page 44 lines 11 to 16, inclusive.

Mr. TILLMAN. Mr. President——

Mr. HALE. Will the Senator yield?

Mr. TILLMAN. What does the Senator from Maine desire?

Mr. HALE. I wish to make a statement about the business of the Senate as presented by the bill.

Mr. TILLMAN. Certainly; I give way, sir.

Mr. HALE. Mr. President, I am very desirous of finishing the consideration of this bill as early as possible, and practically the bill, so far as its provisions go, has already been passed by the Senate. There are only one or two matters, which will not take time, that have been reserved.

The consideration of the bill is complicated by a discussion of the scandal, or alleged scandal, in Alaska. The subject-matter is not in the bill. The Noyes episode is not here. While I am powerless entirely and am at the mercy of Senators, I venture to appeal to them to let me go on with the consideration of the provisions which are in the bill and get it passed, so that it may go over to the House.

Of course I understand that some Senators may feel that, after what was said yesterday afternoon, there should be the opportunity of reply. I see the force of that. As I said, I am powerless; I can do nothing; but I appeal to Senators generally, after proper reply has been made, not to prolong the discussion of that subject on the bill, because the Senate is clearly divided upon it. There are friends of the judge here, who will stand by him, and there are many Senators who believe that there is a bad condition up there. That debate may run on indefinitely. I shall sit down now, simply with this general appeal to Senators, that after proper reply has been made, if Senators desire to reply, we do not prolong the discussion further on this matter, but let the Senate go on and complete the bill.

Mr. McCUMBER. Mr. President——

Mr. HALE. The Senator from South Carolina yielded to me.

The PRESIDENT pro tempore. The Senator from South Carolina was recognized.

Mr. TILLMAN. I will give way to the Senator from North Dakota, if he desires the floor.

Mr. McCUMBER. I believe, Mr. President, that I had the floor when we adjourned last evening, and I was about to speak to the subject that was introduced by the Senator from South Carolina.

Mr. President, it seems to me that there are proper times for considering subjects that ought to be brought before the Senate. There are proper times for bringing a subject before the Senate. I do not know of anything that can possibly be said to be more inopportune than the dragging in of this Noyes difficulty and this Nome matter on every conceivable opportunity during the last twelve or fifteen months.

It has been brought in and the most villainous charges have been made, charges which I knew then and know now to be entirely unfounded, charges which I know to be absolutely false. I have had to restrain myself for months when listening to these false accusations, with the hope that the parties who seemed to be so instrumental in carrying out the designs of certain persons who desire to control the entire Nome country would cease at some time, and feel themselves that a matter which was being duly considered by the courts ought to be left in the hands of the courts until they had disposed of it, and that it would be premature for the Senate to express an opinion, much less to render a verdict, upon matters then before the Supreme Court of the United States or the court of appeals before the judges themselves had seen fit to put upon the record their own convictions and their own decisions in the matter.

One man has been assailed particularly. I know the Senator from South Carolina; I know that he belongs to that class of men

who have been known for their chivalrous conduct at all times; I know, further, that if he was well acquainted with Alexander McKenzie, the man whom he stabs here in the back and in the darkness and under conditions in which he can not defend himself, his own sense of manhood, his own sense of fair play, would require him to desist a while at least from an attack of that kind.

I have known this man, Mr. President, for twenty years, ever since I have been in business for myself. I know him to be a noble-hearted, generous, impulsive, sympathetic individual, one whom the Senator from South Carolina would love as a brother if he knew him. He is a man who is so true to his own principles of manhood that he would give his very life's blood for any friend and ask for no remuneration on earth except the fidelity of a friend to a friend.

Now, Mr. President, this man has been assaulted. He has been declared to be a thief, a man who has entered into a conspiracy, and he has been condemned by the circuit court of California of the ninth district as being, in connection with Judge Noyes, in a conspiracy to rob people of their rights.

No person on earth has ever placed his finger upon a single line or letter or any word to show that Alexander McKenzie or Judge Noyes has ever wronged a man out of one single dollar, and I defy anybody to obtain anything from these records to show that either of these men, so charged by this court and so convicted, has ever in reality injured another individual.

Mr. BERRY. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Arkansas?

Mr. McCUMBER. Certainly.

Mr. BERRY. I simply want to ask a question. I simply want to know the facts.

I read the opinion of the court last night. It is stated in that opinion that it was proven that Mr. McKenzie had gone to a firm of lawyers who represented one of the claimants to these mines and had stated to them that it was best that they should transfer to him a certain interest in that mine, and they did so transfer it—I think a fourth interest—and that after the transfer was made to him Judge Noyes appointed him receiver to take charge of the mine in the litigation then pending. Is that a fact or has the court misstated the fact?

Mr. McCUMBER. I will answer the Senator. The man who makes that statement or attempts to make that statement is proven in the very record from which that statement is obtained to be a falsifier. That man himself made an affidavit absolutely to the contrary before the influence of this syndicate was so strong as to bring him over and hire him to make those false statements.

The other two members of the same firm with whom he claims to have been a partner, and who know as much about everything as he does and who were his partners, denounce it as an absolute falsehood. He himself has denounced it before in his own evidence.

I stated in the few remarks I made yesterday that this conviction or this judgment has segregated certain portions of evidence taken from over 3,000 pages of irrelevant testimony, testimony that was merely hearsay, and twice removed in many instances; and even then it had to segregate the parts and put them together without giving either the public, who are interested in this matter, or the Senate the evidence from which the court drew their conclusions.

Mr. BERRY rose.

Mr. McCUMBER. I desire to say to the Senator that I will reach all of these points in time if he will give me but an opportunity.

Mr. BERRY. If the Senator will permit one other question, I will not interrupt him further.

Mr. McCUMBER. Gladly. I am glad to be interrupted.

Mr. BERRY. It is also stated by the court that after this mining proposition was returned to the parties from whom it was taken by Judge Noyes's order, Mr. McKenzie, in making his report, reported that he had received from working the mines $35,000, and that his expenses had been much more than that amount. The court thereupon states that upon investigation it was found that he had received $100,000 from working the claim and that his expenses had been only $35,000. Is that also a false statement by the court, or is it true?

Mr. McCUMBER. The statement is incorrect, as shown from all of the evidence which I have read—not in the 3,000 pages, but from evidence bearing upon that, with which I am pretty well acquainted.

Now, I purpose to go through with this matter. Who is this man Hume who gives the testimony referred to? What is his standing in Alaska? What is he known as being there? Go into the country and find yourself the standing of that man, and it would condemn him without anything else.

But even he does not attempt to convict Judge Noyes, except as he testifies that somebody else said to him that somebody else was interested. He did not have the talk with McKenzie, nor does he claim that, as I understand; but he talked with somebody else who said that McKenzie had that interest, and that McKenzie could control that court and would control the judge.

Now, I have known Alexander McKenzie. I have known him all these years. A more quiet, unassuming individual I never met, and I know enough about the man to know that even if there was anything of that character in his mind he would have kept it to himself. I know him to be a man of sufficient intelligence to do that. I know his position there. When any man accuses him of entering into a conspiracy so fishy as that which has been indicated in that decision, I simply stand between him and any such false accusation.

I will go over this matter and explain it not only to the Senator but to the Senate, so that Senators may understand some of the particulars in this case and can draw a correct conclusion and see whether or not all of the judgments that have been entered are just and fair, or whether they are the result of a prejudice or a passion created by this syndicate that seeks to control all of that country by a persistent purchase of the press and publishing day after day falsehoods and false accusations.

Mr. President, I say that this has been uttered so often here that forbearance has ceased to be a virtue upon my part. Without attacking any judge, because I will admit that they are all honorable men, I shall at the same time show what has been done, according to the record, in the McKenzie case, and you can draw your conclusion from what is the possibility of what may have been accomplished in the other case.

These are honorable men, as was stated by the Senator from California, and I want to tell him that as to Alexander McKenzie, Dudley Dubose, Mr. Frost, Mr. Wood, each and every one of them is shown to be as honorable a man as the Senator or any other person. So it is a question of one party of honorable men convicting another honorable man and sentencing him without any evidence whatever, scarcely, or with barely enough to sustain themselves upon the record.

They may be honorable men. I am not attacking them. I consider, however, that their judgments have been warped; and when you tell me that a black mark is white simply because a white man made it I will still criticise it as being a black mark, and it is not going to change the color.

What these judges have done the record shows. The evidence on which they have acted is a clear, concise statement. Here is the record in the McKenzie case. At the last end of it you will find the conclusion of the court, and I want to tell every Senator here that there is not one scintilla of evidence in that entire record which will support the conclusion of the court of a conspiracy on the part of Alexander McKenzie.

Let me see what the facts show in this case. It is stated that Mr. McKenzie and Judge Noyes went to Seattle and from Seattle to Nome on the same boat, and from the fact that they were seen upon the same boat the court concludes that there must have been a conspiracy.

How did they happen to go on the same boat? The judge went there intending to take a boat later. He had engaged his passage upon a boat which was to leave at a later period. Finding that there was a boat going in a day or two, the same one on which McKenzie went to Nome, he went, with his secretary, on board that boat.

Now, when he got to Nome I want to explain the conditions he found at that place. You will remember that there had been no judge in the country for about a year. Judge Johnson, who is now attorney for this Lane syndicate, had come off the bench just at the time when they were about trying some important cases, and he afterwards acts as the attorney for this same syndicate.

Then they had no judge there for about a year. The syndicate did not need a judge there. They had enough men in their employ, enough under their control, so that they could get along very well without a court, for sometimes a court becomes an inconvenient thing.

He found another condition there. There were somewhere about 100 cases, as I am informed, that were all ready and the papers all drawn the moment the court should arrive in Alaska; and the moment that he did arrive Judge Noyes was importuned and motions were made before him for the purpose of securing receivers and granting injunctions.

What should he have done under the conditions as they existed? Here were hundreds of men out of employment. It is said there were about 1,000 men of disreputable character there, many of whom had come out of penitentiaries. There was a lawless element there; they were craving for work; there was nothing to do. One of the parties representing the Lane syndicate desired that the judge simply grant injunctions, if he did anything; but if he granted injunctions against the working of those mines, then there would have been a thousand or more men who would be lying idle.

It is claimed here that he simply appointed Mr, McKenzie receiver in all of these cases so that he might take the mines for the benefit of himself and the judge. Let us see what the facts are. The were but 15 cases—I believe that is the limit of the number of cases—in which a receiver was appointed, as I am informed, about that number. There were something over a hundred applications and many were refused. In many cases receivers were discharged and nothing further done with reference to the claims.

So it is that this great claim that McKenzie went there and was appointed receiver over half of the Nome country falls when one understands the real facts in the case as to the appointment of receivers. Alexander McKenzie was appointed receiver in some four or five of these cases; other persons were appointed receivers in other cases. You could not get a receiver on every corner of the street there; everybody could not justify in a sum of $35,000 to $100,000, and it was impossible for Judge Noyes, in his short acquaintance there, to pick up a man who had been there for any number of years, knowing him to be a straight and competent man.

Now, they say that no notice was given; that the moment he landed he appointed these receivers. That is true, Mr. President; but they do not tell all of it. He appointed receivers then and there because the claims involved were placer mining claims, and within the ten days' notice of hearing great damage could have been done. He appointed a receiver and said: "You can now make a motion to discharge the receiver;" and such motions were made, and the court refused to discharge the receiver and McKenzie went into possession.

I want to state to the Senate what was done by Alexander McKenzie, this man who is charged with being a thief; this man who is charged with stealing so much property; this man who is charged with having entered into a conspiracy to rob that whole country. Not one dollar, not one cent, of all the gold that was taken out of that Nome country by him was unaccounted for. Not only this, but it is shown that in mining these claims before that time the expense of securing the gold was about 50 per cent—from 40 to 50 per cent—of its output.

This man who is said to have robbed these individuals reduced it down to between 16 and 18 per cent. The judge made an order that every person interested in the clean up of the gold should be present, and they were present, and their seal and concurrence was impressed upon every ounce of gold that was taken from the mines.

After he had been working the mines a little while and they saw that they were yielding well under the good management of Alexander McKenzie, then those who represented the opposite side came to the court and said "the bonds of McKenzie are not high enough." "Very well," said the court, "we will protect you in this way." So the court made an order that every dollar's worth of the gold that was taken from those mines should be taken to certain vaults; and that order declared that the gold should there "remain until the further order of the court herein."

When that gold was placed in the vaults it was out of the control of Alexander McKenzie, except in so far as he could take it out upon the order of the court, and he could only take it out from time to time as the court ordered portions of it to be taken out and used in the payment of the men who were working under him.

This was the condition, Mr. President, when an application was made for an appeal. Judge Noyes looked over the Alaskan code at that time, and I want to tell you what he found on the question of whether an appeal would lie from an interlocutory order. Chapter 51, part 4, of Carter's Annotated Alaska Codes, section 507, page 252, reads as follows:

> An appeal may be taken to the circuit court of appeals from any interlocutory order granting or dissolving an injunction, refusing to grant or dissolve an injunction made or rendered in any cause pending before the district court within sixty days after the entry of such interlocutory order. The proceedings in other respects in the district court in the cause of which such interlocutory order was made shall not be stayed during the pendency of such appeal unless otherwise ordered by the district court.

We well know that there is no appeal from interlocutory orders, unless allowed by express statute. This express statute allows an appeal from an order dissolving or granting an injunction, and there stops. Those attorneys who represented the opposite side from those requesting the appointment of receivers claimed that this in effect was an order of injunction, because it enjoined the other claimants from proceeding to work the mines, and they made their application and they argued the case before Judge Noyes upon that point.

Judge Noyes rightly held that every appointment of a receiver over the claim of any individual necessarily enjoined the other person from working the same property; and he held that it was not an injunctional order, but an interlocutory order appointing a receiver only.

Mr. President, there was another law passed about the same time—in fact, upon the same day—granting an appeal from an interlocutory order appointing a receiver. It was one amending the law pertaining to the right and authority of the court of appeals of the ninth circuit. A copy of this law, however, was not in Alaska, or, at least, it was not known by any of the attorneys at that particular time.

So it was held that it was not appealable, and Judge Noyes refused to allow an appeal to be taken. Then the parties went to the ninth circuit, and there made application to that circuit court for an order allowing an appeal. At that time they had before them this law, which was passed, I think, on June 7, 1900, on the same day as the other law, which carried into effect the Alaskan code.

Mr. President, here was the first order that was brought to Mr. McKenzie's notice. It was a writ of supersedeas issued by the circuit court of the ninth circuit. First, was the order which directed and ordered the issuance of a writ of supersedeas. This order was filed in the lower court—that is, in the court at Nome.

This order simply directed that a writ of supersedeas issue out of the court and that writ simply commanded all persons to desist from further action in the matter. It did not require them to turn over any of the property; it did not decide the case before it ever got to the court of appeals; but simply directed them to desist from any further action.

An order was drafted by the attorneys representing in that case Mr. Chipps and others, which it seems was afterwards affirmed by the ninth circuit court of appeals, which writ went entirely outside of the order. It not only contained what this order contained, but it went further, and directed the defendant, Alexander McKenzie, to turn over all of the property received by him under and by virtue of such orders appointing him receiver.

Mr. President, when these writs were brought to the notice of Mr. McKenzie, this question arose: What should be done with the gold? Was it the intention of the circuit court of appeals that he should turn the gold dust over without ever having paid the men who took it out of the ground? Was it the intention that he should turn over all of this property before there had been a hearing, or was it simply the intention to stay proceedings in the matter?

All of the attorneys interested went before Judge Noyes and had a fair and open hearing upon this proposition. McKenzie said, "I am not an attorney; I am simply a layman. I will submit this matter to my attorney, and if my attorney tells me to turn over that property, then I will turn it over; I will act according to his advice." He gave the writ to his attorney, Hon. T. J. Geary, who, after looking it over, advised him about as follows: "There is no question now under the writ but that you should turn over the property itself. As to whether you shall turn over the gold taken from this property, I desire to consider it further."

McKenzie reported upon that and asked for further time. This writ was served about 3 o'clock in the afternoon, and by 6 o'clock in the afternoon he expected to get a reply from his attorney. His attorney, after examining the law, after looking at the writ, after going into the case as much as possible, advised Mr. KcKenzie in writing that the writ was void, first, because no appeal would lie from an interlocutory order appointing a receiver, and, second, because the order directing the issuance of the writ of supersedeas never directed that it should contain a statement that the property and gold dust itself should be turned over, and thereupon the entire case determined by the writ allowing the appeal, and not waiting until the case should arrive at the court to be determined by the court itself.

What would any honest man have done under the conditions? What condition was he in? I want to call your attention, Mr. President, to some of the statements that were made at the time of the hearing in the case of Alexander McKenzie, when he was brought before the court for contempt; and I especially call attention to the attorneys who were prosecuting Alexander McKenzie.

When they had completed the testimony before the referee or commissioner appointed by the circuit court of appeals, they then went before the court itself, and the attorneys who had prosecuted this case from beginning to end made this statement to the court. After reciting the same facts which I have recited, they said:

> This is a statement of the facts, with this addition, that the receiver, McKenzie, seems to have been between two fires. He was being threatened by the plaintiffs and their attorneys that if he did not comply with the writ he would be subjected to contempt of the order of Judge Noyes—

It will be remembered that this was the order in which Judge Noyes directed that that gold should not be taken from the vaults except upon his order, and if McKenzie obeyed that order he could not turn over one ounce of that gold without being subject to an

action for contempt before Judge Noyes. The attorneys further say:

and he was being threatened by the attorneys for the defendants that if he did not comply with the order of the writ of supersedeas that he would be in contempt of this court.

This statement we make in order that we may fully lay the matter before the court, desiring to take the advice of the court upon the proposition, but not wishing to have the court believe that we are in any manner attempting to use a quasi-criminal process of the court in furtherance of our prosecution of a civil remedy, or to force a settlement of it; and as we have stated, we would like either to dismiss the case, should the court be of the opinion that we may, or to submit it upon the testimony herein given in the proceedings above mentioned.

This paper was signed by J. C. Campbell and W. H. Metson, and is dated January 31, 1901. It was placed in the record as showing the desire of the persons who were prosecuting in two of these cases, that Mr. McKenzie should be released, and admitting before the court that he was placed in a position in which he ought not to be convicted of any offense whatever.

Mr. President, when this matter got up to the court in San Francisco, they found another section of our laws, which it seems had not been published, or had not been in Alaska, at least, at the time, a law in which an appeal might lie from an interlocutory order appointing a receiver. This was the act of June 6, 1900, amending section 7 of the court of appeals act, which was approved, and reads as follows:

That where upon a hearing in equity in a district court or in a circuit court, or by a judge therof in vacation, an injunction shall be granted or continued or receiver appointed by an interlocutory order or decree, in a cause in which an appeal from a final decree may be taken under the provisions of this act to the circuit court of appeals, an appeal may be taken from such interlocutory order or decree granting or continuing such injunction or appointing such receiver to the circuit court of appeals.

There was a serious question whether the district court referred to there did not mean a constitutional district court and not a legislative court. It had been decided again and again, and under similar statutes, that "district court" referred simply to a constitutional court.

The Supreme Court held that this section, considered in pari materia with the other section of the Alaska code, gave the circuit court of appeals jurisdiction, and, considering that they had jurisdiction of the case, then the United States Supreme Court would not go into the question whether or not, upon a writ of habeas corpus, the evidence was sufficient, or any proper evidence had been adduced, to justify the conviction of Mr. McKenzie. That was the way the case went out of the Supreme Court of the United States.

I have stated, and I reiterate, that I read very carefully at the time the entire record in the McKenzie case. I also read the decision of the court as written by Judge Ross in the same case, and in that decision he gives four-fifths of the whole time and space to the consideration of what he claims to be an attempted conspiracy on the part of Judge Noyes and Alexander McKenzie. The word "conspiracy," or any fact or circumstance relating to conspiracy, is not to be found in that entire record. Where did he get it? I found out afterwards where he got portions of it. The greater portion seemed to be from publications in the San Francisco newspapers. They were not a part of the record.

When this was done and disposed of, the next step that was taken was to secure the pardon of Alexander McKenzie. All these matters were laid before the Attorney-General, and he gave them careful consideration. In his opinion, upon the record, the circuit court of appeals should not have done certainly anything more than to have given a mild rebuke for the offense which was committed—namely, obeying the order and direction of his attorney but for two hours or more, and then disobeying possibly the order of the circuit court of appeals, because I want to tell you, Mr. President, that within three hours after these writs were served the bank in which these vaults were was in possession of an armed force, and neither Mr. McKenzie nor anyone else could have carried into effect that order, and even if he had he would take the chance of being brought up before Judge Noyes for contempt of court in disobeying his orders. He acted under the advice of his attorney.

What did he suffer for that? I want the Senator from South Carolina [Mr. TILLMAN], who I know is a man of sympathy, and naturally kind and gentle, for a moment to consider what under those circumstances would have been a just and proper punishment for the simple offense of disobeying the writ.

The punishment that was given was one year in the county jail—six months each on two of these orders. Can any man conceive of a more heinous and more bloodthirsty character of condemnation than was given in this case? "Ah," but answer the judges, "we are not punishing for a mere technical disobedience; we are punishing for a conspiracy."

There are two matters you must consider in connection with this case, Mr. President. In the first place, he was not convicted of any conspiracy; in the second place, Judge Noyes was 2,000 miles distant and knew nothing about what was being done in San Francisco—the other conspirator.

In the next place, if any conspiracy had been entered into between these parties, under the law of the land they were entitled to a trial by jury upon a proper indictment. Therefore the conviction and this enormous punishment was upon a mere technical disobedience of a writ.

That is not all, Mr. President. The Senator from California [Mr. PERKINS] says that these are honorable men. I will concede that they are, but I must judge their acts and the feelings of humanity in their breasts by what they have done in this case. Let us see. They carefully guarded their own court from any character of insinuation.

They say, "If you ever do disobey the order of this court, it must, in order to sustain its majesty, send you to jail for one year;" and yet in the same judgment, in the same conviction, it attacks a court 2,000 miles distant, which could not defend itself, and in most scurrilous language condemns it, and convicts it without even a hearing. It argues that it must be protected and its dignity preserved by placing five or six men in prison for a mere technical disobedience of law upon a question of a different construction of a statute.

When they tried McKenzie, where did they get all the evidence? I found out this. There is the record down in the Attorney-General's office of the report of those judges when the application for a pardon was sent to them. It answers this entire inquiry. The Attorney-General saw that there was nothing in that record to convict, and he asks where they did get the record to convict Mr. McKenzie of this terrible offense. It never ought to have gone back to the judges.

It is certainly an improper policy, it seems to me, to refer a question of the character of punishment which shall be inflicted to the party who says that he is the injured individual. It is all proper enough in other cases, where judges are presumed not to be prejudiced, but inasmuch as they say the assault was upon the court, the court certainly must be the injured party; and they are to determine the amount of punishment that shall be inflicted. In their reply what do they do? They go into the Dubose case.

Mr. McKenzie was not a party to the Dubose case. The court convicted Dubose of having agreed with other attorneys who were associated with him that the writ was void and that it should not be obeyed by the parties; it was conveyed to the party in interest by their attorneys and he disobeyed the writ, although the record shows that Mr. Dubose had never seen this client or ever had anything in the world to do with him; but for his position in that case he must take his six months in prison in the county jail.

They reported on this Dubose case, and let me tell you here, Mr. President, that that Dubose case is just exactly in the same condition as all the others. Witnesses who had failed in a case before Judge Noyes were asked in that case if they did not believe that Judge Noyes was dishonest and if they did not believe that he was improperly influenced in deciding that case against them; and those persons who felt that they had possibly not been justly treated in their case very willingly gave their version of the matter, that Judge Noyes was not an honest man or he could not have decided their cases in favor of the other litigants.

Then they take several hundred pages in the Dubose case and they segregate a little evidence on this page, a line or two on another page, a sentence from another page, and they go through some 600 pages in that case, and they find enough, they say, to justify them in holding that Mr. McKenzie was guilty of contempt, although nearly every syllable of it was hearsay evidence, and all of it in a case in which Mr. McKenzie was not a party or interested in any way, shape, or manner.

Why, Mr. President, you could take the Holy Scriptures, and if you were allowed to select and garble sentence after sentence you could convict the Deity Himself from those same records; and yet this is what this record discloses which was before the Attorney-General of the attempt to besmirch the character of Alexander McKenzie.

Again, if you will read the concluding words, or nearly the concluding words, in the sentence against Alexander McKenzie, you will find that Judge Ross, who writes that opinion, almost in actual words advised the people of Alaska that they would have been justified in committing any character of hostility against Noyes. They may be honorable judges, but when I tell you they go out of the record in that method, they are doing something that a judge ought not to do.

Further than that, if this record is correct, if the statement published in the Post is correct, which was introduced by my friend the Senator from South Carolina [Mr. TILLMAN], then I say that record condemns the court itself. Think of a judge who has decided a case of this character out in California coming here and going to the departments and to persons and telling them he

is surprised that, under the circumstances, Judge Noyes is allowed to retain his place, and that something is not done in the matter. When a judge has pronounced his judgment, then he should leave other things to the proper department to be dealt with.

Mr. PERKINS. That is only newspaper report.

Mr. McCUMBER. That is only a newspaper report, and I will not convict any judge upon a report of that character, and I doubt very much if such a statement was made by the judge.

There was another thing that was spoken of, and that was the surreptitious manner, as they claim, in which this pardon was obtained and the mighty influences that were brought to bear upon the President of the United States to secure his interposition in this matter.

Mr. President, when you have read that record there is not a man here who would not have done just the same thing that the Attorney-General did in the matter—recommend the pardon. I wish to call attention to a matter which is of record, that for the last twenty years, I believe, there have been only five cases in the United States in which the pardoning power has been exercised by the President in favor of a man convicted of contempt, and every one of those cases came from that particular court or from that section of the country, and in every one of those cases the pardon was granted because of the brutal and excessive punishment that had been inflicted. That ought to have some bearing itself, so that parties will understand it.

But the Senator said that these men are feigning sickness. Judge Noyes will never go back to Nome. Senators who are interested in seeing this scheme, this persecution, carried to its final end may feel at least the consolation that death itself will prevent Judge Noyes from ever going back to Alaska. He is in a hospital to-day in the second stages of quick consumption, persecuted to death, driven from his place, a position of honor, and is dying; and I believe, from the best information I can get, that he will never recover.

I knew Alexander McKenzie when he was injured some ten or twelve years ago. When an elevator in a hotel in New York was some eight or nine stories from the bottom the cable broke and the elevator, with all its load, went to the bottom. Mr. McKenzie at that time weighed about 245 pounds.

The shock was so great that it drove the tibia bone of the left leg, I believe, up and beyond the femur bone, tearing away the entire calf of the leg and otherwise bruising and shocking him, so that he was in a hospital for eleven months before he could be taken from his bed. It was a serious shock. His health has never been the same since, and so in this application for a pardon great stress was laid upon the fact of his physical condition. He has never been the same man since.

I was at his bedside at the Merchants' Hotel, in St. Paul, when an argument was made in the case against Judge Noyes, in which this amicus curiæ—this particular friend of the court—who prosecuted this case with a vehemence and an interest that I have never observed before in one occupying his position, stated that the court had been deceived in recommending the pardon of Alexander McKenzie, because he was at that time as well a man as ever lived, and that immediately upon being released he was erect and went to St. Paul.

As a matter of fact, Mr. McKenzie was sick and in his bed, and he has not been able to sleep more than an hour or two at a time since his incarceration. He is broken down physically and his nervous system is entirely destroyed. Any man who knows him can tell you of that to-day.

I know, furthermore, that instead of immediately leaving, before he could get out of Oakland where he was imprisoned, he was taken to a private house and there had to remain for some ten days to two or three weeks. The exact time I do not know. He was then able to get as far as Seattle, and remained there a month, and yet all of these falsehoods are hurled in this case, hurled upon the Senate, put into the record as something we must believe and take for granted. Mr. President, I protest against this injustice.

They say Judge Noyes is well. His physicians say he is not. A few days ago I received a record of his last hemorrhage, which they said was very copious, and the physicians say that in their belief he will never be able to get up again. That is enough, it seems to me, to explain away these charges of how the court has been imposed upon.

Now, Mr. President, I wish to call your attention to one of the principal witnesses who has testified not only in the Noyes case but in the McKenzie case. I wish to give you a little insight into the character of the men whom these syndicates are employing to crush individuals and to drive them from their positions.

When Judge Noyes arrived in Alaska—there is no question about this—the first importunities addressed to him were that he should sell out for $20,000; that he could then get to be the attorney of the same syndicate, and he could make more money in that way. Even while he was on the boat he was so importuned, and that record you will find in the Attorney-General's Office to-day.

When he got to Nome, being unable to bribe him, being unable to rule or to bribe him in that manner, what was the next step? Mr. Knight, one of the attorneys on the opposite side of the same case before Judge Noyes, after having tried in vain to get Judge Noyes to fall into some character of a trap, then offered $1,000 to another individual by the name of Reese, who was to employ another person to swear that the judge had been purchased by this individual.

This party immediately went to Mr. Woods, the district attorney there, and reported what was being done. Mr. Woods said: "Go there and make the affidavit, get your money, and bring the affidavit and the money back here." The party went there. He made the affidavit. He received $750 for that perjured affidavit, and then asked for the affidavit from this man Knight to bring it back to the prosecuting attorney. He declined to give him the affidavit.

Mr. Knight was immediately sent for by Mr. Noyes, to whom the report had been carried. He admitted that he had the affidavit. He said, "I will bring it to your honor in about an hour, as I have to go back to my room to get it." The judge allowed him to go back to his room, and that was the last heard of him there. He immediately left. He took the affidavit and got on one of the tugs of this syndicate and was taken out to sea, and was afterwards put on board a ship some 17 miles from the coast and was taken to Seattle and there held until they could use him in San Francisco.

Not only is that corroborated by some two or three men, but the same person who made the affidavit has admitted over and over again to different individuals that this was true.

Here comes in Frost. He was implicated in this. He knew of the fact. He was the young man who was sent from the Department. Mr. Frost was working in the Department of Justice. They sent him to Alaska for the purpose of ascertaining what fees, under the circumstances, ought to be drawn by the court commissioners and other officers there. He went there for the purpose of making a report.

After Mr. Frost reached there he learned of this attempt to bribe the judge and of the attempt to secure another man to swear that he had bribed him, and he reported that fact, with all its circumstances, to the Attorney-General; and he takes one year for that. That is the penalty he must pay for having shown, as these people think, an interest in the side that was opposed to this syndicate which sought to control the entire country.

I do not find that he can be justly and rightly charged with having committed any offense whatever. He is known down here as a boy. In fact, he is but a boy, about 22 or 23 or 24 years old, I should say, of especially exemplary character. He has been in the office some time. Every one of his associates considers him a very honorable and upright young man, and yet he has to take one year in prison.

I want to take up these men's cases. Dudley Dubose—of what on earth is he convicted? Of having incidentally agreed with other attorneys that their position was right and that his clients were not bound to obey these orders. That is Dubose. He was a judge in the Territory of Montana for several years.

I speak, and I ask the Senators from Montana, who are here, to speak, for the integrity of that man as they have known his judicial acts. I have never heard any man spoken of more highly than was Dudley Dubose while he was on the bench in that district. I believe that the Georgia Senators know something about him there. No breath of suspicion was ever uttered against him until it was found that he represented an interest outside of the syndicate.

I take Mr. Frost. I have given you his record. I have given you, so far as I know, the real reason of his conviction. Let us take up the next person, Mr. Woods. I have not found that he has done anything really vicious except that he had the keys to the vault, and when they came there with a mob to get into the bank he refused to deliver over the keys. The writ was not directed to him.

It did not tell him that he was made a part of this committee to break into the bank. He was not responsible. When the marshal came to him and asked him for the keys, he declined to give them up; and he takes six months. Judge Ross says he should have had fifteen months for all of these heinous crimes committed by him.

Alexander McKenzie. I have told you what I know about him and about his record, and there is nothing in the record anywhere that is not hearsay that could convict him. I do not care where you look for it.

Mr. President, when I am speaking of this matter I want to

say that I have not read this record of 3,000 pages, because that is not in the McKenzie case, and what they could have got in that case against Judge Noyes I am not speaking of, because I have not read the record, and I do not suppose I will ever get time to read all of it.

But persons who were present there tell me that the only thing of which Judge Noyes was convicted was of having issued a couple of orders called the statu quo orders, one of which was directed to the marshal, to preserve the peace and to keep matters in statu quo, and the other of which was directed to Mr. Van Orsdale, who was in charge of a body of the military up there that he do likewise. I submit these papers to any one who desires to read them, and they will find that there is nothing very criminal about them. Let me read one of them:

NOME, ALASKA, *September 15, 1900.*

C. L. VAWTER, *United States Marshal, City.*

DEAR MARSHAL: I have been able for the first time to make an examination of the original order sent down from the circuit court of appeals, and find that it will be necessary for me to enter certain orders of record here, which will be done as soon as they can be drawn and spread upon the record.

In the meantime it devolves upon you to preserve the peace and good order, so far as it is possible for you to do, and I have taken occasion to request Major Van Orsdale to render such assistance as necessary to protect life and property and to hold things in statu quo until the order can be prepared and presented to the court.

Sincerely, yours, ARTHUR H. NOYES, *Judge.*

At this time there was a mob of workmen who were desiring to break into that bank. They were the men who had been employed by McKenzie, and no order had been made to pay them, and when they saw the gold about to go into the hands of other individuals they were there clamoring for their pay and threatening, if they did not get it, to break into those vaults and help themselves; and that was the reason for the issuance of this order.

Now, on the same day, I think, September 15, Judge Noyes wrote to Major Van Orsdale:

NOME CITY, ALASKA, *September 15, 1900.*

Major VAN ORSDALE, *Nome City, Alaska.*

MY DEAR MAJOR: After you called with Captain French this morning, I saw the original papers on file from the circuit court of appeals, and I find that it is necessary for an order to be entered by this court, which will be entered of course as soon as the same can be prepared, and such further steps will be taken as will be a full and complete compliance with the order of the circuit court of appeals.

My anxiety in this matter is to do everything in my power, and have all those whom I can in any wise control fully comply with the order of the court above, which will of course be done. In the meantime it is necessary that matters should rest in statu quo, and peace and order be preserved, and I therefore request that you render such assistance to the marshal as may be necessary to maintain that peace and quiet.

Assuring you of my desire to cooperate in every effort that is needful in order to preserve life and property, I am,

Very sincerely, yours, ARTHUR H. NOYES, *Judge.*

Those are the orders upon which he is convicted. The superior court says that those orders really mean that in preserving the statu quo there he is not to allow the marshal with his force to go in and take the gold, and although the marshal said he did not obey the order, that he did not do so; that it had no influence with him; that he nevertheless did go, and they took possession of the gold; nevertheless, they say that Judge Noyes showed his contempt of the court in ordering that matters be held in statu quo as near as possible.

Those are the only things upon which Judge Noyes has been convicted in this case, except a recitation elsewhere that he had been guilty of a conspiracy of some character. If he had, there is a court that can try him. If he has done so, justice demands that he be tried by a jury of his peers. Justice demands that the witnesses be brought face to face with the man they accuse, and that his fellow-citizens may pass their verdict upon him.

Mr. President, I have never felt in my life more than I have since I read this record the justice of many laws that are now being passed in onr several States restricting the power of the court to sentence for contempt without any character of trial. If there is one word of evidence to sustain them, although there may be a thousand witnesses to the contrary, there is no remedy in the world for the party convicted.

I now come to the conviction of Judge Noyes. If they are really convicting him of the conspiracy with Mr. Frost, let any Senator answer me this question: Why is Mr. Frost, this young man of twenty-odd years of age, sentenced to one year in prison, and Judge Noyes, the judge, placed there in an honorable position, where every dictate of his conscience, where every principle of honor and manhood required that he should be a fair and just man, given no sentence whatever? Why is he merely fined a thousand dollars without even an alternative? They can not imprison under this sentence. This young man can be imprisoned.

I will tell you why. It is clear to me. There is a mighty good reason. If he is not imprisoned, a writ of habeas corpus will not lie; and if they can not relieve him by writ of habeas corpus, then they have accomplished everything they have wanted to accomplish. They have blackened his character. They have killed him so far as going back to Nome is concerned, I may admit. But they did not dare imprison him, because there was a remedy if they did. But they take this stripling of a boy, whom they say was in a conspiracy with Judge Noyes, and give him twelve months' imprisonment.

They put Judge Dubose behind the bars for six months for advising his client that the writ was void. They take Hon. Thomas J. Gary, and they set him free, although they recite in this very judgment that he did advise McKenzie to disobey that order, and the record in the McKenzie case is replete with Gary's testimony over and over and over again that McKenzie acted under the advice of his attorney in not turning over the gold immediately within the three hours of time within which he could have turned it over.

Why is not Gary convicted? There are reasons back of it. The Senator from Colorado said, in substance, that if the public knew all there was the whole community would be startled by the corruption that is in Alaska. If they knew what was back of all this there would be an earthquake shock to the entire public. No man has given any good reason——

Mr. TILLMAN. Will not the Senator give us the reason and let us be shocked?

Mr. MCCUMBER. I am not going into something where it will take five weeks to get into the RECORD the entire case, but I will tell you now that this man Gary resides in California. He has a standing there. He has friends there, and they will not submit to that outrage against him, and they would make their influence felt for Gary where they would not make it felt, either before this body or elsewhere, for Judge Noyes, or Dubose, or Woods, or Mr. Frost. There is one reason. That is enough.

Mr. TILLMAN. Will the Senator allow an interruption?

Mr. MCCUMBER. Certainly, if it is for the purpose of asking a question.

Mr. TILLMAN. I will simply ask this question: Does not the Senator feel, after what he has said, which must mean the most damnable corruption on the part of these judges, that he owes it to himself, as a member of the Senate, to inform the House of Representatives of this mass of corruption and villainy and whatever else he has in mind, which would involve the impeachment of the corrupt judges?

Mr. MCCUMBER. What charge of corruption have I made?

Mr. TILLMAN. You said it would shock the country, and I should like to be shocked.

Mr. MCCUMBER. Not on the part of those judges, but that which is back of all and controlling this Nome country and their methods.

Now, I want to say to the Senator in reference to these judges that I do not accuse them of being brought under the influence of anything but prejudice and bias. I say that this record shows that they are intensely biased; that they are prejudiced beyond all reason and all sense. I know what it means to live in the atmosphere where these charges were reiterated day by day, where the press had given them out week after week and impregnated the whole atmosphere with a feeling of hostility against Judge Noyes and against McKenzie and against everyone else who was on the opposite side of the syndicate.

Mr. TILLMAN. Then, if the Senator will permit me, I will suggest that if these judges are so impregnated and saturated with prejudice, and bias, and unfairness, and injustice they are not fit to sit in any court and are not fit to be charged with the responsibility of determining causes involving life, liberty, and happiness and the rights of property, and that he owes it to himself to quit attacking this court or prove something against it otherwise than by mere assertion.

Mr. MCCUMBER. I have proved this prejudice from the record. I do not take the stand of the attorney from South Carolina, or base anything upon mere assertions.

Mr. TILLMAN. If the Senator will pardon me, I am simply a farmer.

Mr. MCCUMBER. All right, a farmer.

Mr. TILLMAN. I have never been in the cesspool of courts, to have my mind debauched by selling my brains to a cause on either side for a fee, without regard to the right of the matter involved.

Mr. MCCUMBER. Nobody would accuse the Senator of being an attorney unless he did so by a slip of the tongue, and I beg the Senator's pardon if I did.

I have made no assertions here except such as I deal with by the record. I know something about the influences that have been at work in Alaska, and I have seen the effects of those influences. I have seen judgments that were unjust and worse than unjust. The Senator must agree with me, that the sentences which have been imposed have been monstrous.

Now, Mr. President, the Senator from South Carolina desires to place in the RECORD the entire judgment of that court. How

many pages does it contain, may I ask the Senator from South Carolina?

Mr. TILLMAN. Oh, if the Senator had permitted me last night, I would have had it printed and would not have taken the trouble to read it this morning.

Mr. McCUMBER. All right. How many pages does it contain? That is all I am asking now.

Mr. TILLMAN. It will not take as long to read as you have been talking.

Mr. McCUMBER. Very well; how many pages?

Mr. TILLMAN. Forty-eight.

Mr. McCUMBER. Forty-eight pages of segregation of testimony here and there out of 3,000 closely printed pages and over. Can we get an honest idea from that?

Mr. TILLMAN. I will when I get the floor answer more in detail, but I would rather let the judges answer for themselves. I will not interrupt the Senator any further, but his remarks a little while ago were so startling that I could not resist the temptation of asking him to specify his position.

Mr. McCUMBER. I thought I had made clear to the Senator my position as to what influences and what influences only were brought to bear upon the judges. I have dealt more particularly with the influences that have purchased witnesses; that have taken out of the worst slums in Nome and Alaska men and got them to perjure themselves and bought them for the purpose of making evidence.

Now, when that comes before the higher court it may come as evidence as good and as strong as any other, but I know the men, and a verdict rendered or a judgment expressed under such testimony as that must do an injustice.

Now, we are not trying these judges here. We are not trying that judgment. I am defending Alexander McKenzie against a wrongful and an unjust attack. I do not believe that that opinion ought to go in the RECORD.

If the Senator insists on reading it, I know he can get it in the RECORD, and if he does insist on doing that injustice I shall not object to his placing it in the RECORD; but I want to say to him that if he had been treated as these men have been treated and the case was coming before his fellow-men for consideration, he would want the evidence, and the whole of it, before this body of men, rather than conclusions which I know are based for the most part upon testimony that he himself would never give the least credit to.

Mr. TILLMAN. Will the Senator permit me?

Mr. McCUMBER. It is against that that I am protesting.

Mr. TILLMAN. Will the Senator permit me, Mr. President?

The PRESIDING OFFICER (Mr. SIMON in the chair). Does the Senator from North Dakota yield to the Senator from South Carolina?

Mr. McCUMBER. Certainly.

Mr. TILLMAN. I wish to have it distinctly understood, as I repeated, I think, three or four times yesterday, that my connection with this case is a purely accidental one, and that I injected into the debate on the bill for the increase of the salaries of the Supreme Court judges and others the statement which appeared in the Post merely as a commentary upon some abnormal, and, as I think, corrupting conditions connected with the judiciary.

Mr. McCUMBER. Yes; but, Mr. President——

Mr. TILLMAN. Wait, now, please, and let me get through.

Mr. McCUMBER. Then the Senator may finish his sentence.

Mr. TILLMAN. I never would have opened my mouth again or broached the subject or brought the matter into the Senate but for the fact that yesterday afternoon the colleague of the Senator from North Dakota and the Senator himself injected into the debate a condition which made it necessary that these judges should be heard for themselves, through their opinion, in the RECORD, after you had brought in a special plea here, filed by an attorney in the case, and read by the other Senator from your State.

Mr. McCUMBER. That is an elegant excuse, Mr. President.

Mr. TILLMAN. The Senator from South Carolina does not need any excuse to do anything he wants to do here, sir.

Mr. McCUMBER. You have given your excuse; but the Senator from South Carolina stood upon this floor yesterday and charged a man as honorable as he is with being a thief and a scoundrel.

Mr. TILLMAN. It was day before yesterday.

Mr. McCUMBER. That was defended by my colleague. So, if my colleague had said nothing and if I had said nothing, but let that charge go unchallenged, he would not have offered to put this opinion in the RECORD. Well, I assure the Senator from South Carolina he can make no such charge as that against an honorable citizen of my State that he will not find it defended.

I want to tell him further that he is speaking of a man he is not acquainted with, and who will meet him, and with his wonderful courage—a man who needs to make no excuse—and he will find a man there who will meet him face to face and eye to eye; and then the Senator from South Carolina, without being shielded by these walls, can call that man a liar and thief if he desires so to do.

I think it is unjust to him, I think it is improper, to pick out of a paper a scurrilous article and hurl it against any man without any opportunity upon his part to defend himself, and I protested against that. I have listened to this for more than a year and a half, and it has been hurled in here again upon an honorable man.

I remained silent because I felt that the time was inopportune and that it should not be brought into discussion here. But by the energy of that syndicate they have forced everything into this Senate that could be of a scurrilous nature, and used it to influence and prejudice Senators here. I could not stand it any longer, and I think the Senator will give me credit for having done my duty in protesting against a thing of that kind.

Mr. TILLMAN. Mr. President——

The PRESIDING OFFICER. Will the Senator from North Dakota yield?

Mr. McCUMBER. For a question.

Mr. TILLMAN. I should think I might be allowed a little more than a question after that allusion.

Mr. McCUMBER. I understand that the Senator can be allowed all the time he wants.

Mr. TILLMAN. I wish to repeat again that my connection with this case is purely accidental, and that I injected into a discussion on another bill an article which I found in a morning paper which to my mind disclosed a very strange and extraordinary situation. My attack, if I made any attack, was upon the Department of Justice and the Executive of the United States as neglecting their duty, if the judgment of the court in California was true; that is all.

As for Mr. McKenzie and Judge Noyes or any of these other people, I never heard of them before, except incidentally. I know nothing about them. I care nothing about them. I have expressed regret for having used this language of vituperation in regard to them, but I was merely interpreting the decision of the court.

Mr. McCUMBER. I will say to the Senator that I am very glad if he expresses regret for having used that language.

Mr. TILLMAN. I had already said that yesterday. What more does the Senator ask?

Mr. McCUMBER. Why should we consider this matter when to-day it is before that same Executive Department? This whole matter is now being considered by the Attorney-General, and why should it be brought in here and the judgment of the court be placed in the RECORD?

Mr. TILLMAN. Can it hurt the judgment of the court to have the case ventilated in the Senate after the Attorney-General has it?

Mr. McCUMBER. If it is wrong it can. If it is right it may not.

Mr. TILLMAN. It is a queer——

Mr. McCUMBER. It is not a question as to what the Attorney-General may do, but it is a question involving this body itself.

Now, Mr. President, I have here another record in which this decision by the judge is considered by an attorney who is not a party to this action. It is strong in terms. The language I would not have adopted myself. It does not deal with the court of appeals kindly, and yet it deals straightly with the facts.

I might ask leave to put this in the RECORD, so as to explain his record, but I think that both of them would be improper. I do not believe that the RECORD ought to be lumbered up by them; but if the Senator puts in all of that record, then it seems to me that I ought to put in the other statement as a fair and just consideration by an attorney who explains away every one of these matters, and where will we end?

Mr. TILLMAN. So far as I am concerned, the more we put into the RECORD of the infamies—I will repeat that word—somebody is guilty of infamy.

Mr. McCUMBER. If the Senator——

Mr. TILLMAN. Either the judges who have condemned these innocent men are infamous and ought to be impeached or removed, or else this man ought not to draw a salary after he has been convicted by this superior court.

Mr. McCUMBER. In Heaven's name, if you are going to try that case, try it on the evidence and introduce 3,000 pages of testimony.

Mr. TILLMAN. Put it all in the CONGRESSIONAL RECORD, if you want to do it.

Mr. McCUMBER. All right. If you want to put it all in and the Senate will submit to it, I shall not object.

Mr. TILLMAN. I am willing that it shall circulate in your Congressional district and in your State as a document.

Mr. McCUMBER. The Senator knows that it does not belong

in the RECORD without placing in the RECORD the facts on which it is based.

Mr. TILLMAN. I am perfectly willing to put anything in the RECORD, if the Senate will permit it. This would have gone in yesterday if the Senator had permitted me, merely as a means of allowing other Senators the opportunity of seeing for themselves upon what the court based their conclusion.

Mr. McCUMBER. I will never debauch the RECORD by offering to put in anything that I think has no appropriate place there.

Mr. TILLMAN. I have sufficient respect left. I have some lingering respect——

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

Mr. McCUMBER. For a question; yes.

Mr. TILLMAN. I will remark that I have some lingering respect for the judiciary of the United States. It is true that we on our side, or rather the party to which I belong, have criticised them in our national platform and protested against government by injunction. We have seen fit to declare that the Supreme Court of the United States fell into error and reversed itself in the income-tax cases, and we were hounded from one end of the country to the other as anarchists because we dared to imitate Lincoln and others who in the past criticised the Dred Scott decision.

But that is neither here nor there. I have some lingering respect for the judiciary of the United States, and when I hear them abused, as these three circuit judges, men of high character and men of prominence and ability and purity, so far as I know, I say it is due them that after I have brought them into this case to defend them to the end, and I am going to see that their opinion does go into the RECORD.

Mr. McCUMBER. There is a proper way of doing that, Mr. President. I am glad to see once in my life, and in the life of the Senator, that he is taking up the cudgel in favor of the courts of the United States.

Mr. TILLMAN. I hope the Senator from North Dakota will imitate me some time or other.

Mr. McCUMBER. I am glad to see that change of heart taking place in the Senator from South Carolina. If he thinks that this record will be sufficient without taking the testimony on which the record is based for him to formulate an opinion in the case, then he can get all the glory that he wishes out of that record and he can satisfy his conscience that that is absolutely true, and the court has been properly cared for and protected.

But I had supposed that after reading some of the records in this case the Senator from South Carolina would feel that there was an appropriate place for the trial of this matter, and it is now before the Attorney-General on that record there. I understand that the Noyes case is going to the Supreme Court if they can get it there in any manner, and it will be determined there.

Let them pass upon the question whether or not the superior court of California is in error. But when you call a man a scoundrel because he has been convicted of a technical disobedience, then I say the Senator forgets himself and his natural impulse and good will toward all men.

The PRESIDING OFFICER. The Senator will suspend. The hour of 2 o'clock having arrived, the Chair lays before the Senate the unfinished business, which will be stated.

The SECRETARY. A bill (H. R. 5833) temporarily to provide revenue for the Philippine Islands, and for other purposes.

Mr. LODGE. Mr. President, I do not wish, of course, to inject into this discussion anything so totally irrelevant as the unfinished business of the Senate, and therefore I ask that it may be temporarily laid aside.

Mr. McCUMBER. Mr. President, I had finished what I had to say.

The PRESIDING OFFICER. The Senator from Massachusetts asks unanimous consent that the unfinished business be temporarily laid aside. Is there objection?

Mr. McCUMBER. I had finished my remarks. I have no objection to going on with the unfinished business.

Mr. LODGE. I should like to have my request put to the Senate.

The PRESIDING OFFICER. Is there any objection to the request of the Senator from Massachusetts, that the unfinished business be temporarily laid aside? The Chair hears no objection, and the order is made. The Senator from North Dakota.

Mr. McCUMBER. I have practically finished all I desire to say now. I may make reply if anything further is said by the Senator from South Carolina.

PUBLIC BUILDING AT CUMBERLAND, MD.

Mr. WELLINGTON. As the Senator from North Dakota has concluded his remarks, I ask unanimous consent for the present consideration of the bill (S. 3293) to increase the limit of cost of public building at Cumberland, Md.

Mr. HALE. I should not want to agree to that if the bill is to give rise to any debate.

Mr. WELLINGTON. I shall not ask it if it does.

The PRESIDING OFFICER. The bill will be read in full to the Senate.

The bill was read; and by unanimous consent, the Senate, as in Committee of the Whole, proceeded to its consideration. It proposes to increase the limit of cost for construction of a public building at Cumberland, Md., from $125,000 to $175,000.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

Mr. HALE. Now let us go on with the consideration of the urgent deficiency bill.

URGENT DEFICIENCY APPROPRIATION BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 9315) making appropriations to supply urgent deficiencies in the appropriations for the fiscal year ending June 30, 1902, and for prior years, and for other purposes.

The PRESIDING OFFICER. The pending question is on the amendment reported by the Committee on Appropriations, to strike out lines 11 to 16, inclusive, on page 44.

Mr. TILLMAN. Mr. President, very much to my regret I appear in a new rôle here; that is, first as an attorney, when, as a matter of fact, I never have been in a court-house in my life except as a spectator or as a witness or a juror. Secondly, I appear in the rôle of defending the judges of one of the circuit courts of the United States. If there is any man alive who has had a poor opinion of some of those judges and has not omitted to express it when he was governor, those who care about a message I wrote on the corruptibility and infamy to which that court was willing at times, in some instances, to lend itself, can get that document.

As I stated a moment ago, and I will take the trouble to restate it, when I volunteered the other morning to read an article from the morning paper here, which is a respectable journal, which reflected in scathing terms upon an anomalous condition existing by which we found that men who were practically removed from office by the court above them were still drawing their salaries, I felt that I had done enough.

But I was attacked yesterday afternoon in the way I was by three Senators. I can usually attend to one man in this body, but when they came at me in droves you know I got a little nervous. I was a little astonished at something that happened yesterday afternoon.

For instance, my good friend—I do not speak in any perfunctory way—the senior Senator from North Dakota [Mr. HANSBROUGH] gave me a very brotherly lecture on my wrongdoing, my errors of the head, not of the heart, he was kind enough to say.

Then later on the distinguished chairman of the Judiciary Committee [Mr. HOAR] came to the assistance of the two Senators from North Dakota and gave an obiter dictum of his own to the effect that having been told by a dead colleague of ours, whom we all loved and respected, that he had examined this matter and it was all one way, etc., and so on, and this was a moot question that ought never to have been brought here, he proceeded to lecture me in a kind and fatherly way upon my shortcomings. Then later, when I endeavored to do these judges simple justice by letting them speak for themselves in their own opinion, in which the evidence upon which that opinion rests is rehearsed, the junior Senator from North Dakota [Mr. McCUMBER] felt constrained to interpose an objection.

I confess, Mr. President, that during my seven years here I have never known a similar instance of discourtesy. The Senator, I presume, supposed that I was actuated by some partisan or sinister motive in endeavoring to get this document in the RECORD, while I declare to you upon my honor, Senators, that my sole purpose was to render accessible to you the facts upon which the article in the Post rests, and to enable you this morning to understand it without further discussion. So far as I was concerned, I was through with it if they had let the document go in; but as they did not, and I could not get it in in any way last night, there is no way but for me to read it.

Mr. CULLOM. Print it.

Mr. STEWART. Oh, no; let the Senator read it.

Mr. TILLMAN. It is rather a tiresome job, and the Senator from Maine, I know, has the fidgets, something he does not often get.

Mr. McCUMBER. I stated that I have no objection to its going into the RECORD.

Mr. HALE. I do not often get tied up in this way. If it will serve the Senator's purpose, I judge from what was indicated by the Senator from North Dakota that probably no objection will be made to its being printed in the RECORD.

Mr. McCUMBER. I did state that I do not object.

The PRESIDING OFFICER (Mr. SIMON in the chair). Does

the Senator from South Carolina yield to the Senator from North Dakota?

Mr. TILLMAN. Certainly.

Mr. HALE. If it can be printed in the RECORD without reading it will bridge over the time.

Mr. MCCUMBER. I said that if the Senator insists on having it put in the RECORD I would withdraw the objection. So if he does insist I withdraw it.

Mr. TILLMAN. I submit to Senators, after the special plea of the attorney, which was read by the senior Senator from North Dakota [Mr. HANSBROUGH] yesterday evening, and after the additional special plea which has been presented this morning by the other Senator from North Dakota, whether it would be fair to the judges if their attorney here, their defender, did not read their opinion and comment a little on it. In other words, would I be doing my duty by my clients, these three distinguished jurists in California, in defense of whom I unexpectedly appear here?

Mr. HALE. The relation of a client to attorney is a very sacred one; I recognize that.

Mr. TILLMAN. With that view, then, I shall proceed to read a part of it. I do not know that I will read it all, but still I feel constrained as a matter of duty to these judges, whom unexpectedly I have gotten into hot water, to try to cool it a little.

There is one phrase that I noted down here a moment ago, uttered by the Senator from North Dakota who has just taken his seat, which rather sets my teeth on edge. He said I had stabbed somebody in the back, when I have expressed time and again my regret that commenting upon a statement of facts coming from a court I had interpreted their words into declaring that the men whom they had convicted and condemned were scoundrels and thieves.

Possibly I ought not to have said it. They may be innocent. These judges may be the culprits. These judges may be tyrants. These judges may be debauched, and it may be that they have been bribed. Therefore, if it will do the two Senators from North Dakota any good, I desire here and now to apologize to these men who may have been imprisoned unjustly and whose lives have been taken, who are on beds of sickness with consumption and every other ill, whose honor has been destroyed, whose property is gone, and all that kind of thing—I will apologize to them and withdraw all opprobrious epithets. Can I do any more?

I hope nobody supposes for a minute it is because my friend who has just taken his seat declared there was some blood-and-thunder man here by the name of McKenzie, who will meet me outside of the Chamber and hold me to personal account on account of what I have said. I have been going through the world for fifty-four years, and I have never yet shunned any encounter of any kind very much. I have never been noted for police-court proceedings or anything of that sort. I do not suppose that anybody here imagines that I am terrorized by that threat of my friend.

I mention that merely of my own accord, to translate into plainer language what I tried to express three times yesterday. I spoke unthoughtedly, without proper consideration. I had no purpose or intention of doing more, as I said, than to inject into the debate on the salary bill a commentary which, by the way, I will elaborate a little now by pointing out if this great American Government, with its machinery, can not provide honest judges and honest district attorneys and other officers in Alaska, where our language is spoken, and you are entering upon a programme which involves sending into the Pacific judges and everything else who have full sway to tyrannize over and rob and oppress people who do not speak our language, is it not a commentary on the situation which should give you gentlemen who are hell-bent on your programme a little pause?

If we can not protect American miners; if we can not get honest judges in Alaska; if we can not send, even from the Department of Justice, a trusted agent but what as soon as he gets in that atmosphere he becomes debauched and is bribed and bought to lend himself to the schemes of this so-called syndicate of which we hear so much, what will we do when syndicate after syndicate has been turned loose, as you propose to do, in the Philippines?

This ought to be said on the Philippine tariff bill instead of on the deficiency bill; but we get so mixed up here sometimes that you will pardon this seeming inconsistency, or rather the irrelevancy, of my utterances.

Perhaps I ought not to mention it, but I will do it in illustration of what I am just saying. I will read another extract from a paper. I think we will have to give a day to newspaper discussions and clippings, to see if we can not put a little mustard on the backs of some men and make them a little more amenable to reason.

I hold in my hand yesterday's New York Sun. "The Sun shines for all," it claims; and everybody knows that if there is a dyed-in-the-wool, villainous, and venomous Republican paper in the United States, it is this New York Sun. [Laughter.] Being, therefore, necessarily a friend of the Republican party and the Administration, who would have supposed that the Sun would have been guilty of this attack on its friends?

CONVICTED FELON FOR OFFICE—NOMINATED AND CONFIRMED AS UNITED STATES MARSHAL FOR ARIZONA.

CHEYENNE, WYO., *February 3.*

Great surprise has been caused here at the receipt of news from Washington that the Senate on Thursday last confirmed the nomination of Ben Daniels, if that is really his name, as United States marshal of Arizona. His career as swindler, gambler, and desperado was known to certain people in Washington before his appointment, but it seems hardly credible that the Senate Committee on the Judiciary—

I am sorry its honored chairman is not present, who read me such a lecture yesterday evening—

who passed upon his nomination, knew that he has a prison record as a convict. But here is a page copied from the description book of convicts in the United States penitentiary at Laramie City, Wyo., which is of record in the office of the United States marshal in this city:

Name, Benjamin Daniels; registered No. 86; received November 29, 1879; crime, larceny—

Not an honorable crime, like shooting a man in hot blood, but stealing—

sentence, two years and return of stolen property; age, 27; nativity, American; occupation, laborer; height, 5 feet 10 inches; complexion, fair; hair, dark brown; eyes, brown. Has wife? No. Has father? Yes—

He was obliged to have a father, of course—

Religion? Methodist. Habits of life? Regular. Education? Common. Relations? Address Mrs. M. C. Eddy, Lyndon, Osage County, Kans. Marks, scars. Is a large, strong-built man, weighing 165 pounds. Has a thin face, large Roman nose, bushy eyebrows, and ears stand out straight from head. Nose has been broken and the lobe of right ear is missing. The letters B. D. in india ink on his right arm. A small scar under the right knee. Small scar on left knee. A large round scar on left shoulder blade. Is pockmarked slightly on body and considerably on face. Has had smallpox. Conduct while in confinement, good. Discharged, August 28, 1883. Allowed good time.

In this case it was ordered and adjudged that the judgment be dissolved and a new trial ordered, and that defendant be held for safekeeping until a new trial can be had. Reconvicted June 30, and transferred to page 33.

If we have got the wrong sow by the ear, it is not a bit of trouble to have the real marshal, who has been confirmed by this august body and its Judiciary Committee, exonorated. Then I will apologize to the real marshal and give all my attention to this man, whoever he may be.

But I just want to call attention—I will not read any more, but will simply insert the whole of it in the RECORD—I want to call attention to the fact that the Judiciary Committee, too, sometimes makes mistakes, as do all of us occasionally in our work here, who are not always able to sift to the bottom the characters and the antecedents of the men whose names are sent in here.

We take it for granted that those who recommend them for office would not put off on the President a man of this type; and if he is thus deceived that, as soon as he finds it out, he will himself correct the wrong that has been done him and the public service by putting in office a man like this to go to another Territory. What a pretty specimen—if we have got the right Daniels—to be nominated here for marshal and sent out there. If you Senators who are in power and who are responsible for these things in recommending your friends are not a little more careful, I am afraid you will bring this Administration into some disrepute.

Now, I will get back to my mutton; but I will first give anybody who chooses the opportunity to defend Mr. Daniels. I presume the Senator from Wyoming will be on me next, or possibly somebody from Kansas or Nebraska or somewhere else out there where this man originally came from will be getting up tomorrow and calling me to account for having read an article from a reputable newspaper describing this man correctly; and I will have to meet it. I do not like to be doing things of this kind, but somebody has got to hold up the looking-glass so that you Republicans may see yourselves as others see you.

Having said that much, I do not believe I have the heart to impose on the good nature of the Senate any longer. This case of Noyes is really not here, and I did not bring it here with any view or purpose or desire of having Mr. Noyes or anybody concerned in this matter discussed or defended or attacked. I did not intend to; so help me God, I did not.

I was merely endeavoring to throw some additional light on the question of the judiciary, as to what kind of men we have got, and the failure of the Executive department and of the Attorney-General to do their duty. If it will take a year and a half—and it appears that already more than a year has gone by—before we can have it determined as to whether three judges of the circuit court in San Francisco are a lot of scoundrels and tyrants, it is incumbent on the Attorney-General to hustle a little.

He seems to take it very leisurely when he comes to dealing with the trusts, and he never has found any law under which he could bring an indictment against them. My distinguished friend, the chairman of the Committee on the Judiciary [Mr. HOAR] said the other day he hoped to see some act passed by this

Congress which would make it the duty of somebody else or put it in the power of somebody else to bring indictments against the trusts; that now the only man who is allowed under the law to indict them is the Attorney-General; that there was a bar, so to speak, against litigation by parties who chose to attack corporations or syndicates or combinations or monopolies, and that he hoped to see a change. I hope to, but I do not look for any.

As I before said, I wish the Attorney-General would get through with this job of determining whether or not these three circuit judges are corrupt or have made a mistake, or whether the court is right and those people ought to be punished, and then stop their salaries. That is all.

I will ask that this judgment and opinion of the court in the case under discussion or under trial shall be inserted in the RECORD without any further remarks.

The PRESIDING OFFICER. The Senator from South Carolina asks unanimous consent of the Senate that the document which he sends to the Secretary's desk may be printed in the RECORD as part of his remarks. Is there objection on the part of the Senate? The Chair hears none, and that order is made.

The document referred to is as follows:

Nos. 701, 702, 703, and 744. In the United States circuit court of appeals for the ninth circuit. In the matter of Arthur H. Noyes. In the matter of Thomas J. Geary. In the matter of Joseph K. Wood. In the matter of C. A. S. Frost. Opinions and judgment. E. S. Pillsbury, amicus curiæ. P. J. McLaughlin and F. J. Heney, for Arthur H. Noyes and C. A. S. Frost. J. G. Maguire, for Thomas J. Geary. Joseph K. Wood, in propria persona. Before Gilbert, Ross, and Morrow, circuit judges.

Gilbert, circuit judge, delivered the opinion of the court.

The affidavit upon which the order to show cause was directed to Arthur H. Noyes charges that on July 23, 1900, said Arthur H. Noyes, as judge of the district court of Alaska, second division, at Nome, Alaska, signed an order in the action entitled "Chipps *vs.* Lindeberg et al.," appointing Alexander McKenzie receiver of property described in the complaint, which consisted of a placer mining claim, and enjoined the defendants, who were then in possession of the claim, from working the same, and that on the same date made similar orders in four other similar causes pending, viz, Melsing *vs.* Tornanses, Comptois *vs.* Anderson, Rodgers *vs.* Kjellman, and Webster *vs.* Nakkeli et al.; that thereupon the receiver took possession of the claims and proceeded to mine the same, and extracted therefrom gold dust of the value of more than $100,000.

That the defendants in each of the said cases presented to the said Arthur H. Noyes, judge of said court, a petition for the allowance of an appeal from said order, together with an undertaking on appeal and assignment of errors, but that the said Arthur H. Noyes refused to grant said petition or to allow such appeal. That thereafter, on August 29, 1900, Hon. W. W. Morrow, one of the judges of this court, made orders allowing appeals in said cases, and directing that writs of supersedeas issue thereon out of this court, directed to the said Alexander McKenzie and the said Arthur H. Noyes, commanding the said Noyes to desist from any further proceedings on account of said orders and commanding the said McKenzie to restore to the defendants in said cases all property which he had taken or received as receiver.

That on September 14, 1900, certified copies of said orders allowing such appeal in some of said cases, and writs of supersedeas in all of said cases, were filed in the office of the said district court at Nome, and certified copies of the writs of supersedeas were served upon said Arthur H. Noyes, and also upon the said receiver, and demand was made upon the latter that he return to the defendants in said actions the gold and gold dust which he had taken from the claims described in the complaints in said actions, which gold dust was then in his possession, and was of the value of about $200,000. That said receiver refused to deliver said gold dust or any part thereof to the defendants in said actions and refused to comply with the writs of supersedeas, whereupon application was made by the respective defendants through their counsel to the said Arthur H. Noyes for orders directing the enforcement of the writs of supersedeas which had been issued by this court, and that the said Arthur H. Noyes then and there declined to make such orders, saying that the matter was out of his hands.

That on September 15, 1900, the defendants in said cases, through their counsel, again requested said Arthur H. Noyes to make an order directing the enforcement of the said writs of supersedeas, but the said Noyes then and there stated and declared that the orders appointing the receiver were not appealable; that the defendants were not entitled to an appeal. That on said last-named date, the said Noyes gave instructions to the United States marshal to place a guard over the vaults containing the gold dust and to prevent access thereto by any person. That the object of said order was to defeat the execution of the said writs of supersedeas.

That on said date the said Arthur H. Noyes in the presence of T. J. Geary said to the said marshal: "Go ahead and keep possession of the gold dust, and do not let McKenzie or any of the parties go near it," and that at the same time the said Noyes stated in the presence of said Geary that he did not think the order appointing McKenzie as receiver was an appealable order, but that, assuming that it was, the only supersedeas that could be effected was one staying proceedings, and that on the record as it was, there was no justification for the defendants demanding the return of the property. That on October 6, 1900, in the case of Chipps *vs.* Lindeberg et al., the plaintiff, by his attorneys, Hubbard, Beeman & Hume, filed a motion in said district court of the district of Alaska at Nome, for an order of the court restraining the defendants in said case from working the placer mining claim in controversy therein, and from taking out of the jurisdiction of said court any gold taken therefrom, and that said motion was based upon an affidavit of the plaintiff which referred to the writ of supersedeas as "an alleged writ of supersedeas from the circuit court of appeals of the ninth circuit."

That upon such motion the said Arthur H. Noyes, judge of said court, ordered that the defendants in said action show cause on October 8 why an injunction should not issue restraining them from further working the claim and from deporting from the jurisdiction of the court any gold dust taken therefrom. That upon October 10 the said Arthur H. Noyes made an order upon such application for an injunction enjoining the defendants in said action from removing any gold dust taken from said placer claim to any place outside of the Nome precinct, district of Alaska. That the conduct of the said Arthur H. Noyes after the appointment of the said receiver, and above described, was for the purpose of interfering with and preventing the enforcement of said writs of supersedeas.

The answer of Arthur H. Noyes admits that he refused to make an order requiring the receiver to return the gold dust to the defendants, but avers that he did not believe he could or should make such an order, and that all matters pertaining to the receivership had passed beyond his control except such orders as he was required to make by the terms of the writ. That he did not state as a reason for refusing to make an order requiring the receiver to deliver the gold dust that the orders appointing the receiver were not appealable, but admits that it was his judgment and opinion that such orders were not appealable. He denies that he ordered the marshal to allow no one, especially McKenzie, or the parties interested to have access to the vaults in which the gold dust held by the receiver was deposited or that he stated to the said marshal to go ahead and keep possession of the gold dust.

He admits that he stated that the only order he could make in such cases was one staying proceedings; that the writ of supersedeas directed him to stay all proceedings in the receivership matter and to desist and refrain from any further acts in connection therewith, and he alleges that the injunction of October 10 was made upon the belief and in the full conviction that such order was within his power as a judge in the said case then pending for the reason that the appeals had been taken only from the orders appointing the receiver, leaving all other matters in said causes pending in the district court for further proceedings. That in all the matters set forth in the charges he acted in good faith and in full respect for the authority, writs, and orders of this court, and he denies that he sought to interfere with or prevent the enforcement of the writs of supersedeas.

Of the evidence which was taken upon the issues raised by the answer of Arthur H. Noyes to the order to show cause, a large proportion consists of testimony concerning the attitude of the judge toward the litigation then pending before him in the cases which are hereinafter referred to as well as in other cases in which McKenzie was receiver or was interested. Much of it tends strongly to show the existence of a criminal conspiracy between some of these respondents and McKenzie and others to use the court and its process for their private gain and to unlawfully deprive the owners of mines who were in possession thereof of their property under the forms of law.

Concerning this portion of the evidence, it is not necessary to express an opinion. The respondents are on trial here for the offense of contempt of the process of this court and for no other offense. Reference to the evidence of their misconduct will be made only for the purpose of finding the animus which actuated them in the commission of the acts with which they stand charged. We find it unnecessary to discuss all of this evidence in detail. We shall assume as proven none of the material facts which are testified to except such as are not disputed, or are corroborated by other evidence, or are so well sustained by the proofs as to leave in our minds no reasonable doubt of their truth.

Judge Noyes arrived at Nome on July 19, 1900, in company with other officers of his court and in company with Alexander McKenzie. Prior to going to Nome, McKenzie had been engaged in organizing the Alaska Gold Mining Company, a corporation, for the purpose of engaging in mining at Nome, and in that connection had made the acquaintance of O. P. Hubbard, a member of the firm of Hubbard, Beeman & Hume, attorneys at Nome, Alaska. On the day of his arrival at Nome, McKenzie went to the office of Hubbard, Beeman & Hume and had an interview with Mr. Hume, in which he told the latter that Hubbard had transferred to him, McKenzie, his interest in the litigation which involved the right of possession of the Anvil Creek mining claims, and that Hubbard had represented to him that the other members of the firm would do the same—that is, would transfer to his corporation the contingent interest they had in those claims.

The contingent interest of Hubbard, Beeman & Hume was a one-half interest in the claims in case the plaintiffs prevailed. Hume testified that McKenzie further represented to him and to Beeman that he controlled the appointment of the judge and the district attorney, and that if they desired to have those cases heard it would be absolutely necessary to transfer their interest to his corporation, and receive in lieu certificates of stock, and he testified that at the same time McKenzie demanded that a one-fourth interest of the business of Hubbard, Beeman & Hume be transferred to Joseph K. Wood, the district attorney, and that Wood become a silent partner in the firm, and stated that if all this were assented to Hume should become deputy district attorney. The evidence shows that Hume and his partners agreed to these suggestions, and Wood became a silent partner in the firm of Hubbard, Beeman & Hume, and that Hume was appointed deputy district attorney.

All this was done on Thursday, July 19. The evidence shows that on the same day, and immediately after making these arrangements, McKenzie took Hume and Beeman aside and demanded that an entire one-fourth interest of the firm be placed in his, McKenzie's, name, and that he receive one-fourth of the profits. Hume testified that this was assented to on the next morning, after much objection and hesitation, and only after McKenzie had threatened him that if he refused his business and the interests of his clients would be ruined. He testified further that partnership articles were drawn up and signed in accordance with the agreement. Wood admitted that the agreement was entered into whereby he and McKenzie were each to have a one-fourth interest in the firm, but he expressed the belief that it was never acted upon or carried out, so far as McKenzie's interest was concerned.

At that time Hubbard, Beeman & Hume were attorneys for the plaintiffs in four actions at law that were pending concerning the title to four of the best placer-mining claims on Anvil Creek. Immediately after entering into the partnership agreement, McKenzie directed the firm to get all their stenographers at work preparing papers for applications for the appointment of receivers in those actions. This was done in the four cases then pending, to wit: Rodgers *vs.* Kjellman, involving Claim No. 2 below Discovery on Anvil Creek; Comptois *vs.* Anderson, involving Claim No. 3 above Discovery; Melsing *vs.* Tornanses, involving Claim No. 10 above Discovery; and Webster *vs.* Nakkeli, involving a claim on Nakkeli Gulch, tributary to Anvil Creek; and a new action was brought, Chipps *vs.* Lindeberg et al., involving Discovery Claim on Anvil Creek.

The firm of Hubbard, Beeman & Hume employed three stenographers, and were busily engaged until the afternoon of Monday, July 23, in making out papers. Bills in equity and affidavits in aid of the pending actions at law were prepared in all these causes except in Rodgers *vs.* Kjellman. In that case the receiver was appointed upon a complaint in ejectment and affidavits. In Melsing *vs.* Tornanses the bill was not verified. While the papers were being prepared, McKenzie was constantly in and about the office of Hubbard, Beeman & Hume, urging haste. On Monday morning, July 23, he had a wagon waiting in front of the office of the firm for the purpose of conveying himself and his keepers to take possession of the mines as soon as he should be appointed receiver.

Monday afternoon there were two such wagons waiting. These facts are shown by the testimony of several disinterested witnesses, one of whom, Arthur M. Pope, testified that as early as 9 or half past 9 o'clock in the morning his attention was directed to teams standing ready to convey McKenzie and others to the mines on Anvil Creek, and that on that day, or perhaps the day before, he had received information from Hubbard, Beeman & Hume that McKenzie would be appointed receiver of those mines. Between half past 5 and 6 o'clock in the evening of Monday, July 23, the papers having been prepared, but not filed, Mr. Hume called upon Judge Noyes at his hotel, presented his papers, and asked for the appointment of a receiver in the five suits.

Mr. Hume testified that he started to read the affidavit of the plaintiff in one of the cases, whereupon the judge said it was not necessary to read the

affidavit, and asked for the orders, and that the witness then stated that he desired to recommend for appointment Alexander McKenzie, to which the judge replied that he had known McKenzie for many years; that he was a very good man, and that, as he was a stranger in the country, he would prefer to appoint some one with whom he was acquainted, and thereupon he appointed McKenzie receiver of all of said mining claims, with instructions to take immediate possession of the same and work them, and to preserve the gold dust and proceeds of the claims, subject to the further orders of the court, and all persons then in possession of the claims were ordered to deliver to the receiver immediate possession, control, and management thereof, and were enjoined from in any manner interfering with the mining or working of the claims or the receiver's control or management thereof.

The amount of the bond required of the receiver was in each case only $5,000, and this in the face of the showing made by the plaintiff's affidavit in one of the cases that the daily output of the mine involved therein was $15,000. Immediately after the orders were signed, and before any bonds were filed and before the papers were filed by the clerk or the summons had been issued, the receiver proceeded to take possession of the five placer claims involved in those suits. The appointment of a receiver in these cases was a complete surprise to the defendants therein.

Judge Charles S. Johnson, formerly the district judge of Alaska, who was an attorney for certain of the defendants, testified that in a conversation he had with Judge Noyes on his arrival the latter had stated that his court would not be open for business until his return from St. Michaels; that he would go there in a few days and there formally open his court and spread his commission on the records and return; that he would keep a clerk or deputy at Nome until he returned, but added: "He will transact no business until I return from St. Michaels." The fourth section of the act of June 6, 1900, under which Judge Noyes was appointed, provided that the judge of the Second district of Alaska should reside at St. Michaels, and it authorized him to hold court elsewhere in the district upon giving at least thirty days' notice. (Stats., 321-323.)

This notice was given by Judge Noyes by publication. It was dated July 21, 1900, and gave notice that a special term of the district court would be held at Nome on Monday, August 22, 1900, or as soon thereafter as practicable and convenient. Upon learning that a receiver had been appointed, the attorneys for the defendants in those cases endeavored to obtain an order setting aside the appointment. Samuel Knight, an attorney for certain of the defendants, prepared papers and called upon the judge on July 24, and requested that his motion be set for hearing immediately or as soon as possible. The judge replied that the matter could not then be taken up, nor until after his return from St. Michael. Mr. Knight urged that the matter be set for hearing at 3 o'clock that afternoon, to which the judge replied that the notice was too short.

Judge Noyes declined to give the order or to set the cases for hearing, whereupon Mr. Knight said he would serve a notice on Hubbard, Beeman & Hume, and would be there at 3 o'clock in the afternoon. At 3 o'clock counsel appeared, the motions were argued, and judge Noyes announced that he would render his decision on the following Monday. On the following Monday, July 30, he made no decision. Two days later he left Nome for St. Michael. After he returned, the motions were reargued on August 3 and 4. On August 10 they were decided adversely to the defendants. W. H. Metson and Judge Kenneth M. Jackson, on behalf of the defendants whom they represented, made similar motions and efforts to obtain orders setting aside the appointment of the receiver in their cases.

In the meantime, on July 25, Judge Noyes made an order in the case of Chipps *vs.* Lindeberg et al., which should receive more than casual notice. W. H. Metson, one of the attorneys for the defendants in that case, hearing that the receiver had taken possession of the personal effects of the defendants therein, went on July 24 to the judge and asked him to make an order so construing the order of the 23d as to permit the defendants to remain in the possession of their tents and their personal property, and thereupon the judge so ordered. On July 25, Mr. Metson, having heard that the judge had made a statement that he had been imposed upon in making the order of the previous day, went to the judge and stated what he had heard, and remarked that he was not in the habit of imposing upon judges and did not intend so to do. To which Judge Noyes replied: "Your people are preventing the receiver from working the Discovery claim. I am going to tie your people up all around. I am going to make an order which will take everything away from them."

Mr. Metson protested against this and requested the judge not to take so drastic a remedy, and drew his attention to the fact that the complaint called for the possession of the mine only, and he argued that to take away the tools and supplies and personal effects of the defendants would be a great injustice. To which Judge Noyes replied: "I have been imposed upon, and I am going to tie them up." Mr. Metson testified positively to these facts. Judge Noyes admitted that portions of Metson's testimony are true, and made uncertain denial of the remainder. We entertain no doubt, in view of all the facts and circumstances and the nature of Judge Noyes's own testimony, that the interview occurred substantially as testified to by Mr. Metson. He testified further that he requested the judge to refrain from making such an order, and that the judge declared his purpose to make it, and told him if he got anything he would have to see McKenzie about it.

Judge Noyes denied that he referred Metson to McKenzie. The order which was made on July 25 was entitled an "order enlarging the powers of receiver." Among other things it directed the receiver to "take possession of all sluice boxes, pumps, excavations, machinery, pipe, plant, boarding houses, tents, buildings, safes, scales, and all personal property, fixed and movable, gold, gold dust, and precious metals, money boxes, or coin, and all personal property upon said claim." The receiver took possession of the tents and the beds of the men, the men's own personal property, the boxes of gold dust belonging to the men, the gold dust taken from other claims belonging to the defendants, the contents of the safe, and the time books of other claims which the defendants were working, and there was no redress until some six weeks later, when the receiver, on the advice of his counsel, surrendered a few of the things so taken.

On August 15 the defendants applied to Judge Noyes for orders allowing them appeals to this court from the orders appointing the receiver, and accompanied their application in each case with bonds and assignments of error, and presented bills of exceptions. The applications were denied. After the appeals had been subsequently allowed by the order of the Hon. W. W. Morrow, one of the judges of this court, and copies of the orders of the judge and the writs of supersedeas thereupon issued had arrived at Nome on September 14, Marshal Vawter on that day served the writs upon Judge Noyes and upon the receiver. Mr. Knight called upon the Judge on the same day and stated to him that he had come to see about getting an order to put into effect the writs of supersedeas, and the Judge said to him:

"I can do nothing about this order. This litigation has caused me a great deal of worry. My hands are tied. The court has taken the whole matter out of my hands. You gentlemen have got to fight this thing out among yourselves." And he added, "I shall make no order; it is not my duty to do so; it is not within my province or right to do so."

On the following day Mr. Knight made a similar application for such order, and presented to the judge a form of order to which, he testified, the judge replied that he had talked with Mr. McKenzie, and had come to the conclusion that the writs were void, and added: "You have laid a very suspicious emphasis upon the injunctional part of these orders. You are not entitled to an appeal, and your record shows evidence of a great deal of haste."

Judge Noyes further stated to Mr. Knight that he was having an order prepared. Cornelius L. Vawter, who was the marshal of the district court of Alaska, second division, in the fall and summer of 1900, testified that on September 14 he served copies of the writs upon Judge Noyes and McKenzie, and that later in the same day he called upon the judge and asked if there was anything that could be done in relation to the writs, and that the judge answered that he was not going to do anything; McKenzie could do as he pleased. The marshal testified that on the following day, while he was in consultation with Major Van Orsdale, he received from Judge Noyes the following letter:

NOME, ALASKA, *September 15, 1900.*

C. L. VAWTER, *United States Marshal, City.*

DEAR MARSHAL: I have been able for the first time to make an examination of the original order sent down from the circuit court of appeals, and find that it will be necessary for me to enter certain orders of record here, which will be done as soon as they can be drawn and spread upon the record. In the meantime, it devolves upon you to preserve the peace and good order so far as it is possible for you to do, and I have taken occasion to request Major Van Orsdale to render such assistance as necessary to protect life and property, and to hold things in statu quo until the order can be prepared and presented to the court.

Sincerely, yours, ARTHUR H. NOYES, *Judge.*

The marshal testified that in connection with the letter and after he had put a posse of two soldiers in the bank, he had a conversation with Judge Noyes in which he told the judge what he had done to guard the bullion, and that the judge remarked: "That is right. Hold it there. Don't let this crowd get it; don't let anybody get it; keep the guard on there until further orders." The marshal testified further that it was rumored at that time that the Lane people and the Pioneer Mining Company (the defendants in the Anvil Creek cases) were going to go in and take the bullion out, and that their attorneys had requested him to have the writs enforced and that he informed Judge Noyes of this later and that the judge said it was right "not to enforce them; not to let them get the bullion."

Marshal Vawter testified that later at St. Michael he had a conversation with the judge in which he said to the latter: "There is no danger but what you are going to obey the writ of the appellate court, is there?" and the judge answered: "Don't you think it. In the first place I have got a right to interpret those writs. They have not put up bonds enough; I don't know whether they are genuine or not. I don't know who Frank Monckton is; I am not going to take any clerk of the court's word for it. In any event the Supreme Court will knock them out when it gets there." Judge Noyes contradicted the testimony of the marshal in regard to this conversation and denied that he made the remarks which the marshal attributed to him.

There is a partial corroboration of the marshal's testimony by that of George V. Borchsenius, the clerk of the court, who testified that he was present during a part of the conversation at St. Michael, and that he heard some remark of Judge Noyes concerning Mr. Monckton, the clerk of the circuit court of appeals. It should be noted that Marshal Vawter at the time when he testified was no longer marshal of the court and that his feeling toward Judge Noyes was unfriendly, and that he and the judge were not upon speaking terms. Chas. D. French, captain in the United States Army, Seventh Infantry, testified that he was on duty at Nome in August, September, and October, 1900; that he had an interview with Judge Noyes on September 15, in which reference was made to the writs of supersedeas and that he asked Judge Noyes what was going to be done about it, to which Judge Noyes answered that he understood it that the writs required him not to do anything whatever. Captain French further testified:

"There was some further conversation; he directed me not to issue any executive order in reference to these writs, as I understood it. * * * I understood I was required not to undertake the execution of the writs. I was captain of Company K, Seventh Infantry, which was engaged in controlling the town, and was, as I understood it, held responsible for keeping the peace."

Captain French later testified that when the judge forbade him to issue an executive order, he understood it to refer to the writs of supersedeas, and he so informed Major Van Orsdale, his superior officer.

Major Van Orsdale, who was in command of the military forces at Nome, testified that on the morning of September 15 Kenneth M. Jackson, one of the attorneys for the defendants in the Anvil Creek cases, called upon him and told him that the receiver had refused to comply with the writs of supersedeas, and that there was danger of serious trouble, as a vigilance committee was being or was about to be organized for the purpose of taking possession of the properties that McKenzie was responsible for as receiver, and that he was very anxious that matters should proceed in a lawful way; that if the committee got started there was no knowing where it would end, and very serious trouble would probably result, possibly bloodshed.

Kenneth M. Jackson testified that what he told Major Van Orsdale was that McKenzie had refused to obey the writs and that the marshal had refused to enforce them, and that the defendants were afraid that McKenzie and the plaintiffs would remove the gold dust and get away with it, and that if they did attempt to take the gold dust out of the bank some one would get hurt and that he wanted the assistance of the military to enforce the writs. We have no hesitation in accepting Mr. Jackson's statement as embodying the truth of the situation. It is fully sustained by the circumstances and by the general facts in the case as testified to by other witnesses. There was no danger of a general riot or of the formation of a vigilance committee, and there was no danger of bloodshed unless either the plaintiffs or the defendants or the receiver should attempt by force to remove the gold dust from the safe-deposit vault where it was stored.

It is true there were miners in Nome at that time who had been working for the receiver whose wages had not been paid, and who were clamorous for payment, but there is no credible evidence that they contemplated or threatened the use of violence to take the gold dust or for any purpose, or that there was talk of a vigilance committee. Major Van Orsdale testified that he went to see Judge Noyes, together with Captain French; that he reported to the judge what he had heard about the writs and the danger of riot and bloodshed, and that the judge informed him that the matter had been taken entirely out of his hands, and that he did not know what Mr. McKenzie was going to do about it, but if the matter was brought to his attention he would inform Mr. McKenzie that he should comply with the writ, or words to that effect. That afternoon about 4 o'clock Major Van Orsdale received the following letter from Judge Noyes:

NOME CITY, ALASKA, *September 15, 1900.*

Major VAN ORSDALE, *Nome City, Alaska.*

MY DEAR MAJOR: After you called with Captain French this morning I saw the original papers on file from the circuit court of appeals, and I find that it is necessary for an order to be entered by this court, which will be entered, of course, as soon as the same can be prepared, and such further

steps will be taken as will be a full and complete compliance with the order of the circuit court of appeals. My anxiety in this matter is to do everything in my power, and have all those whom I can in anywise control fully comply with the order of the court above, which, of course, will be done. In the meantime it is necessary that matters should rest in statu quo, and peace and order be preserved, and I therefore request that you render such assistance to the marshal as may be necessary to maintain that peace and quiet.

Assuring you of my desire to cooperate in every effort that is needful in order to preserve life and property, I am,

Very sincerely, yours, ARTHUR H. NOYES, *Judge.*

Judge Noyes testified that the letter to Major Van Orsdale was written in pursuance of an interview that he had previously had with Major Van Orsdale, when the latter had called upon him and told him there was going to be a disturbance and an attack upon the bank, or that a mob was likely to assemble and that there was going to be bloodshed.

On September 17 W. H. Metson made formal application in court for an order directing the receiver to comply with the writs of supersedeas in his cases, and the judge answered, saying that he was preparing a formal order, which would be filed.

On September 19, Mr. Metson and Judge Johnson made in open court a motion for the enforcement of the writ of supersedeas in the Chipps case, and accompanied the motion with an affidavit that McKenzie had extracted $130,000 from the mine which he refused to deliver, and they asked the court to make an order on the writ of supersedeas that he transfer that property to the defendants. Judge Noyes being then engaged in hearing a trial, directed that the trial proceed, and made no answer to the application which was thus made. It appears that no order was made in open court by Judge Noyes in any of these cases at any time, but Mr. Metson testified that subsequently he found among the papers in the Chipps case orders which bore date September 17, which were not filed and which contained, indorsed upon them in pencil in the handwriting of Wheeler, the private secretary of the judge, the memorandum "not to be filed."

The order, after setting forth certain recitals, concludes as follows: "Ordered, that all further proceedings herein in relation to said interlocutory order of this district court of said 23d day of July, 1900, be, and are hereby, stayed pending the said appeal from said interlocutory order to the circuit court of appeals." Similar orders were made in the other cases, all bearing date September 17, 1900. Judge Noyes testified that these orders were made to express his understanding of the requirements of the writs of supersedeas, so far as they were directed to him, and that he did not make or authorize the memorandum "not to be filed."

The writs contained the following: "And that you, said Alexander McKenzie, do forthwith return unto the said defendants the possession of any and all property of which you took possession under and by virtue of said order, and that you do make return of this supersedeas, together with your acts and doings thereon, to said district court for such district of Alaska, second division, as you will answer the contrary at your peril, and you, the judge of said district court for the District of Alaska, second division, are hereby commanded to stay any and all proceedings which may have issued as aforesaid upon said order, and to stay any and all further proceedings in relation to said order and the appointment of a receiver in this case, pending the appeal last aforesaid in this court."

Judge Noyes testifies that he was not advised of the fact that Judge Morrow had approved the form of the writs of supersedeas or that he had taken other action than to make the orders upon which said writs were issued, and that taking the writs in connection with those orders and the amount of the bonds upon which the appeals had been allowed, which was $35,000 in each case, he was in doubt whether the writs directed the receiver to turn over the gold dust. He testified that he told McKenzie that he (McKenzie) ought to comply with the writs, but as to what was necessary for him to do in order to comply therewith he did not undertake to advise him; that he thought when the appeals were taken the whole thing was taken out of his (Noyes's) hands, and that he was restrained from taking any further steps in the cases whatever, so far as the receiver was concerned. He admitted that he declined to make an order requiring the receiver to turn over the gold dust, "not believing I was bound to; on the contrary, believing it was not a part of my duty to do so."

On October 6, this gold dust remaining still in the possession of McKenzie, the receiver, but the mining claims involved in the suits having been surrendered by him to the defendants, who were then engaged in mining the same, Chipps, the plaintiff in the case of Chipps *v.* Lindeberg et al., by his counsel, applied to the court for an order upon the defendants therein, to show cause why they should not be restrained from removing from the territorial jurisdiction of the court the gold dust which they were then extracting from the mine, and accompanied the application with an affidavit setting forth the facts of the allowance of the appeal by Judge Morrow, and the issuance of the writ of supersedeas, which was therein referred to as "an alleged writ of supersedeas of the circuit court of appeals of the ninth circuit."

Hearing was had upon the order to show cause on October 8, at which time a discussion was had before the court, by counsel for the respective parties, concerning the effect of the writ of supersedeas. It was argued on behalf of the plaintiff that inasmuch as the appeal had been taken only from the receivership proceedings, and the main action remained pending before the court, there could be no violation of the writ of supersedeas by enjoining the defendants from deporting the gold dust from the jurisdiction. That argument was met by the defendant's counsel with the proposition that on proper application to the court and the proper bond being given, the court would have jurisdiction to issue an injunction, but that the court would have no jurisdiction unless the bond was offered, and they contended that the application for the injunction without the bond was merely a makeshift to avoid the writ of supersedeas.

On October 10 the court made the injunction order, enjoining the defendants from moving any of the gold dust from the jurisdiction of the court. It was made without bond and without suggestion of a bond. Judge Noyes testified that it was not his intention to order an injunction without a bond, and that if he so ordered in this instance it was by mistake. Marshal Vawter testified, and his testimony is not contradicted, that on October 10, the day when the injunctions were issued, and some three hours before their issuance, McKenzie came to him and was very anxious to have the injunctions served that night and wanted him to be ready to make the service.

On October 15 McKenzie was arrested at Nome upon an order of this court to show cause why he should not be held guilty of contempt for his disobedience to the writs of supersedeas. The defendants, on October 16, made a motion in court to dissolve the injunction of October 10. On the following day W. T. Hume, one of the attorneys for the plaintiffs, stated in open court that he thought it was the duty of the plaintiffs' attorneys in that matter and for their own good to dissolve the injunction of their own motion or for the court to dissolve it. Judge Noyes thereupon immediately said, "All of the injunction orders are dissolved forthwith."

The record and the evidence of these proceedings show from first to last upon the part of Judge Noyes an apparent disregard of the legal rights of the defendants in the cases in which McKenzie was appointed receiver. The proceedings upon which the receiver was appointed were extraordinary in the extreme. Immediately after his arrival at Nome in company with the man who it seems had gone to Nome for the express purpose of entering into the receivership business, and who boasted to others that he had secured the appointment of the judge, and that he controlled the court and its officers, upon papers which had not as yet been filed, before the issuance of summons and before the execution of receiver's bonds, without notice to the defendants, without affording them an opportunity to be heard, Judge Noyes wrested from them their mining claims, of which they were in the full possession, the sole value of which consisted of the gold dust which they contained and which lay safely stored in the ground, and placed the claims in the hands of a receiver with instructions to mine and operate the same, and this without any showing of an equitable nature to indicate the necessity or propriety of the receivership or the necessity for the operation of the mines by a receiver, in order to protect the property or to prevent its injury or waste.

When the defendants undertook to appeal from these orders, their right of appeal was denied them. The receiver so appointed was permitted to go on and mine these claims on an extensive scale and extract from them their value. According to the testimony some of the mines were "gutted." The appointment of the receiver was, in the case of Chipps *v.* Lindeberg, almost immediately followed by an order authorizing the receiver to take into his possession all the personal property of the defendants which was found upon the claim, including their stores, provisions, tools, and tents. The order so made was so arbitrary and so unwarranted in law as to baffle the mind in its effort to comprehend how it could have issued from a court of justice. That it was not inadvertent is shown by the fact that before making it Judge Noyes was reminded that the suit involved the placer mining claim only, and by the further fact that the order was preceded by the threat to "tie up" the defendants and take away their property, and was followed three weeks later by the deliberate execution of similar orders in the other four cases.

The appointment of the receiver in each case was in direct violation of the Code of Alaska, under which the court was organized (31 Stats., 451, sec. 753), which provides as follows: "A receiver may be appointed in any civil action or proceeding, other than an action for the recovery of specific personal property—first, provisionally, before judgment on the application of either party, when his right to the property which is the subject of the action or proceeding, and which is in the possession of an adverse party, is probable and the property or its rents or profits are in danger of being lost or materially injured or impaired." There is evidence of other arbitrary and oppressive action of the court in McKenzie's favor in cases in which he was receiver or was interested, notably the case of the Topkuk mine.

It is shown that two of the original locators of that mining property went to Judge Noyes upon his arrival at Nome and complained of the action of certain trespassers, and that he referred them to his private secretary, Wheeler, saying that the latter was about to resign his office and take up the practice of the law; that they went to Wheeler, and he proposed that if they would give him a one-half interest in the mine he would secure them the full possession of their property within twenty-four hours; that they refused this exorbitant demand, and after some discussion were about to engage his services in consideration of a one-eighth interest, when negotiations were dropped for the reason, it is suggested in the evidence, that McKenzie had become interested on the other side. An action of ejectment was then commenced by the persons whom the locators complained of, and one Cameron was immediately appointed by the court receiver of the mining property upon a bond of $10,000.

He proceeded to operate the mine upon an extensive scale, refused to use the machinery which the owners had placed there at an expense of $6,000, and instead rented machinery from McKenzie at the rate of $50 per day and bought supplies of him to the amount of $7,800. The owners attempted to protect their interests. They challenged the sufficiency of the bond and the ability of the sureties to respond, but without avail. They attempted to watch the clean-ups, but their right to be present was denied by the receiver. They applied to the court for relief, but the only relief they could obtain was an order that one of their number, who was designated by name, be permitted to be present at each clean-up simultaneously with one of the plaintiffs. The evidence is that a considerable portion of the time the plaintiffs declined to be present, and thereupon the receiver denied the right of the designated defendant to be present.

When the defendants finally established their title to the property by the verdict of a jury, and the receiver was discharged, his account showed that he had taken out of the mine $30,000, while his expenses were largely in excess of that amount. The owners contended that he had taken from the mine more than $200,000. Upon a reference of the receiver's account to a referee appointed by Judge Noyes it was found that the receiver had taken from the mine $100,000, and that his expenses were no more than $35,000. The evidence shows that neither the receiver nor his bondsmen have any property which can be found to apply upon this large deficit of $65,000. All these matters were properly shown to this court upon these proceedings, to throw light upon the transaction, to show the animus of Judge Noyes in those cases, and to aid the court to interpret the nature of his conduct in the matters upon which contempt is charged.

The charges are in substance that the respondent is guilty of contempt of this court in refusing to execute an order directing the receiver to obey the writs of supersedeas, in giving to the marshal and to Major Van Orsdale instructions to hold matters in statu quo and permit no one to have the gold dust, and in issuing the subsequent injunction of October 10 enjoining the defendants from removing the gold dust from the jurisdiction of the court. When the writs of supersedeas arrived at Nome and their contents were made known to Judge Noyes, and an application was made to him for an order requiring the receiver to obey them, it was his plain duty to make that order.

The receiver had refused to obey the writs. He was an officer of Judge Noyes's court, subject in all his conduct as receiver to be controlled by the order of that court, subject to removal or punishment for contempt in case of disobedience. If Judge Noyes believed the writs were void, it was none the less his duty to obey them and to leave the question of their validity to the decision of the court whose writs they were. He had no warrant for saying that his hands were tied. The writs of supersedeas did not tie his hands so as to prevent his obedience to their own terms. In language which was neither uncertain nor doubtful, they directed him to go no further with the receivership, and McKenzie to surrender all the property he had taken as receiver, including the gold dust.

It is absurd to say that Judge Noyes was enjoined from ordering McKenzie to do the very thing the writs commanded the latter to do. It was no excuse for denying the application for the order that the bonds upon which the appeals had been allowed were less in amount than the value of the gold dust which the receiver had taken out of the claims. The inadequacy of the bonds, if they were inadequate, was no concern of Judge Noyes. The appeals had been allowed, it is true, upon bonds aggregating $100,000, but that sum was considerably larger than the sum total of the bonds which Judge Noyes had required of McKenzie as receiver.

Had Noyes done nothing further than to refuse to make an order directing the receiver to obey the writs, however, we should hesitate to hold his refusal to be contempt of court. But he went further than that. Not only did he refuse to make the order, but, apparently fearful that the defendants in

those cases were about to obtain possession of the gold dust under the writs, he issued to the marshal and to Major Van Orsdale directions to hold things in statu quo, and couched his directions in words, which, upon their face and unexplained, we can construe no other wise than as meaning that his purpose was to prevent the delivery of the gold dust to the defendants or to anyone.

These orders, it is true, were accompanied with the promise that the court would investigate the writs and issue such orders as might be proper for their enforcement, but when the promised orders were finally made they were orders not enjoining obedience, but the reverse. In framing the orders Judge Noyes took the language of the supersedeas so far as it enjoined him from further proceeding in the receivership matter and turned it into a general order of the court, which, if it had any force or effect at all, had the effect to inhibit the surrender of the gold dust by McKenzie, the receiver.

But Judge Noyes disclaimed that he had any purpose to interfere with the writs or to obstruct their enforcement and testified that his orders to the marshal and to Major Van Orsdale were made in consequence of the representations which the latter had made to him of the danger of violence, and were not directed against the delivery of the gold dust to the defendants, but were issued to preserve order and prevent riot and possible bloodshed. We have not disregarded the evidence which has been offered on behalf of Judge Noyes to explain the letters to the marshal and to Major Van Orsdale by reference to an alleged condition of lawlessness at Nome at that time, which threatened the safety of the property and the funds in the bank.

The evidence does not convince us that that state of things existed. On the contrary, the overwhelming weight of the evidence is that the only commotion that existed at that time was caused by the belief or the apprehension that the defendants in the suits, if balked by the refusal of the receiver to deliver the gold dust, would themselves take possession thereof. The evidence upon that point is to our minds so clear as to leave no room for doubt. We are convinced that Major Van Orsdale misunderstood the purport of the communication which he received from Judge Jackson. But inasmuch as Major Van Orsdale represented the situation to Judge Noyes as he has detailed it, we reckon with that fact and with the element of doubt which it might create were it not for the other evidence in the case.

All doubt is removed, however, when we come to consider the testimony of Marshal Vawter and Captain French concerning the oral directions which they received from Judge Noyes in connection with the "statu quo" letters. Vawter was instructed, as he testified, to prevent the defendants in those cases from obtaining the gold dust. Captain French, a disinterested witness, to whose testimony we must give full credit, testified that Judge Noyes directed him to issue no executive order in reference to the writs, which he understood to mean, and which could only mean, that Judge Noyes forbade him to issue an order that the gold dust referred to in the writs be turned over to the defendants in obedience to the commands of the writs. These oral instructions furnish evidence of the motive of the written instructions.

In giving them and in making the written instructions the respondent willfully committed an overt act which had the direct effect to interfere with the execution of the writs of this court, and thereupon the charge of contempt must be sustained. Concerning the remaining charges against the respondent it is not necessary to make extended comment. His action in issuing the writ of injunction of October 10 was attended by no features of contumacy or want of respect for this court, except the fact that it was made upon a petition which referred to the writs of supersedeas as "an alleged writ of supersedeas of the circuit court of appeals," and the fact that when the injunction was allowed it was allowed without bond. It is significant, perhaps, of the purpose which these injunctions were intended to serve that on October 17, after the arrival of the warrant of arrest of McKenzie, Judge Noyes of his own motion dissolved them.

In arriving at the conclusion which we have reached in this case we have not failed to recognize the seriousness of the charge of contempt when laid at the door of a judge of a court, nor the necessity of maintaining a due regard for the judicial discretion which belongs to that office. It is essential, however, to the administration of justice that the process of courts be obeyed. Upon no one does this obligation of obedience rest with more binding force than upon a judicial officer. The respondent, Arthur H. Noyes, is adjudged guilty of contempt of the authority of this court by his resistance to the execution of its writs of supersedeas. In view of the fact that he holds a public office, it is the opinion of the court that the respondent be required to pay a fine. It is accordingly adjudged that he pay a fine of $1,000.

Thomas J. Geary, an attorney of this court, was cited to show cause upon evidence which had been furnished by himself in his testimony taken before this court on January 23, 1901, in the case of Kjellman *v.* Rodgers upon the proceedings which were instituted against Alexander McKenzie for contempt. Mr. Geary testified at that time that he was the attorney for McKenzie, the receiver, at Nome, and that on or about September 17 he discussed with Judge Noyes the application which had been made to the latter for an order directing the receiver to turn over the gold dust according to the writs of supersedeas, in which discussion Judge Noyes said to him that he did not believe he possessed the authority to make such an order, and that the only order he could make was one staying proceedings, leaving the property where it was. The witness proceeded to say: "Under those circumstances I advised Mr. McKenzie not to turn over the money." In the cross-examination which was then had appears the following testimony:

Q. Was not your advice to McKenzie that the order was not appealable from, and for that reason he should not obey the writ of supersedeas?

A. That was part of it; not all of it. * * *

Q. Did you not advise him that the order of Judge Morrow allowing the appeal was void?

A. Yes, sir; I advised that because I thought that under the two cases that I have cited, that the order appointing McKenzie being merely an order appointing a receiver and not an injunction order, that Justice Morrow or this court had no jurisdiction of an appeal from the order appointing a receiver.

Q. Had you any intention of advising McKenzie on the 15th to turn over the gold dust?

A. I do not know how I can answer that any plainer than I have. I stated at that time that I advised Mr. McKenzie that evening after 6 o'clock that in my opinion the supersedeas did not require him to turn over the money.

Q. After that writ had been served upon him, McKenzie, did you advise him not to obey that writ?

A. Yes, sir. It did not change my opinion at all. If the original proceeding was void and the court had issued a writ it had not authority to issue, it was void.

In his testimony taken in the present proceedings, the respondent testified that he never at any time advised McKenzie to disobey the writs; that he went no further than to state to McKenzie his opinion of the law, and that he advised him that in his opinion not only the orders appointing him receiver were not appealable, but that the writs themselves did not require him to surrender the possession of the gold dust, and he testified that he gave McKenzie no advice whatever as to the course of action he ought to pursue in the matter. Upon his attention being directed to the specific testimony which he had given in the McKenzie case, and which is quoted above, he testified that either he did not catch the scope of the interrogatory, or that the testimony had been incorrectly taken by the reporter, and that he had not intended to testify as reported.

In that connection he directed attention to the fact that by the other questions and his answers thereto given in his former testimony it appeared that he did not advise McKenzie in regard to his action, or advise him to disobey the writs. There is no other evidence in the case sustaining the charge that the respondent advised the receiver to disregard the writs or to disobey the orders of this court. The testimony of Kenneth M. Jackson tends rather to some degree to corroborate the evidence of the respondent in that regard. We think that upon due consideration of the whole of the evidence against the respondent Geary there is not sufficient to convince us beyond a reasonable doubt that he has been guilty of contempt of the court. The charge against him will therefore be dismissed.

Joseph K. Wood, the United States district attorney, went to Nome in company with McKenzie and Judge Noyes and immediately after his arrival, through the intermediation of McKenzie, became a silent member of the firm of Hubbard, Beeman & Hume, and appointed Mr. Hume his deputy district attorney. He corroborated the testimony of Hume to the effect that an arrangement was also made whereby McKenzie was to be a member of the firm and to receive one-fourth of the profits thereof, but he expressed a doubt whether the agreement was ever carried out. The charge which is made against Wood is that at the time of the arrest of McKenzie on October 15, 1900, the keys of the safe-deposit vaults in which McKenzie, as receiver, kept the gold dust, which was to be delivered under the writs of supersedeas, had been given by McKenzie to Wood, and that when the officers in the presence of McKenzie demanded of Wood the possession of the keys, he refused to surrender the same.

George H. Burnham, one of the deputy marshals who went from San Francisco to arrest McKenzie and enforce obedience to the writs of supersedeas, testified that on October 15, 1900, while he had McKenzie in his custody under arrest, he and Shelley Monckton, the other deputy marshal, demanded of McKenzie the keys of the box which contained the gold dust in the Alaska Banking and Savings Deposit Company, and that McKenzie answered that he had given the keys to Mr. Wood, the United States attorney; that Mr. Wood soon thereafter came into the room and Monckton said to him:

"Mr. Wood, we understand you have the keys of the boxes that contain the gold dust in the Alaska Banking and Savings Deposit Company, deposited there by Mr. McKenzie, the receiver," and that Mr. Wood said: "Do you understand I have the keys to those boxes? Understand nothing; I don't care what you understand," and that Mr. Monckton then said: "Well, Mr. Wood, Mr. McKenzie has just informed us that he gave you those keys; that you were an officer of the court; that he thought the keys were safer with you than with himself, and I now make demand on you for those keys," and that Mr. McKenzie then added: "Mr. Wood, I told the marshals you had the keys; that I thought they were safer with you than with myself," and then Mr. Monckton said: "I make demand on you for those keys. Have you the keys?" and that Wood replied: "I don't know whether I have them or not," and that he then got up and went to the door, and as he was going to the door he said, "I will see you later."

Dr. Cabell Whitehead, the manager of the bank, testified that when the deputy marshals came to the bank to obtain the gold dust he asked them if they had the keys and they replied denying that they had them, and that afterwards he met Wood on Stedman avenue and told him that the deputy marshals were at the bank and wanted to see him, to which Wood replied that "the sons of bitches knew where to find him if they wanted to see him;" that the witness protested against the use of that sort of language to him and told Wood he was simply trying to protect property, that he could not see any good purpose that could be served by breaking open those boxes, which the officers had a right to do and would do, and that Wood answered:

"I will deliver those keys to no one until I have seen a certain person;" that the witness then said to Wood that he did not think there was time to see anybody, because the marshals had been waiting some time and he did not think they would wait much longer, and that Wood turned and went across the street and said: "Let them proceed with their damned burglaries."

McKenzie testified that after he was arrested he handed Wood his pocketbook and keys and told him he wished him to take possession of them, as he was afraid they were going to take him to jail and he did not wish them to get possession of his private papers and private affairs, and that when the deputy marshals inquired of him if he had the keys he answered "no," and informed them that Mr. Wood had them, and that shortly after Wood passed through the room and Monckton asked him if he had the keys or requested him to give up the keys, and Wood said: "I will see about that later," and passed right on.

Mr. Wood never did surrender the keys, and the marshals were compelled to break open the boxes. In his answer upon the order to show cause the respondent states that his failure and refusal to give up the possession of the keys was not through a purpose on his part to hinder or obstruct the officers in discharging their duty or to render ineffectual any order of this court, or to be in contempt of court, but alleges that he was acting on the belief that he had not the authority or the right to surrender possession of the keys without instructions from McKenzie or against McKenzie's wishes as he understood them.

We think the evidence fully sustains the charges against the respondent, Wood, and indicates upon his part a hostile attitude toward the officers of this court, whose duty it was to enforce the writs of supersedeas, and a disposition to willfully obstruct them in the performance of their duty. We are disposed, however, in dealing with this case, to take into consideration the nature of the averments of his answer upon the order to show cause and the apology which he subsequently made to this court. It is the judgment of the court that the respondent, Joseph K. Wood, is guilty of contempt of the lawful orders of this court, and that he be imprisoned in the county jail of Alameda County, Cal., for a period of four months.

C. A. S. Frost, an attorney at law, was sent to Nome by the Department of Justice as a special examiner to advise and instruct the clerk of the court and the marshal concerning their duties and accounts. He held that office until September 15, 1900, when he resigned to become assistant district attorney to Joseph K. Wood, in the place of Hume, who had resigned, which office he held until April 15, 1901, when he became the private secretary of Judge Noyes. Direct testimony in support of the charges against Frost is given by Marshal Vawter, who testified that the relations between Judge Noyes, McKenzie, and Frost were intimate; that on September 15, 1900, Frost told him that the writs of supersedeas were void, and on that date dictated to him the following letter:

Hon. C. L. VAWTER,
United States Marshal, Nome, Alaska.

SIR: Your attention is invited to that portion of section No. 846, Revised Statutes of the United States, which reads as follows:

"That where the ministerial officers of the United States have or shall incur extraordinary expenses in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States has the authority to allow the payment thereof under special taxation of the district or circuit court of the district in which the said services have been or shall be rendered, to be paid from the appropriation for defraying extraordinary expenses of the judiciary."

If it shall be necessary for you to incur extraordinary expenses under this statute in suppressing specific unlawful acts, acts of violence or attempted violence, burglary, robbery, etc., you will be authorized to employ such force

as may be necessary in the premises, and the necessary expenses thereof incurred by you may be included in an extraordinary expense account to be rendered and paid as provided in said action.

Respectfully, C. A. S. FROST.

The marshal testified that the letter was accompanied by an order to swear in a large posse comitatus to prevent the delivery of the gold dust to the Lane crowd or to the Pioneer people, and that Frost at the same time remarked that such delivery must be prevented at all hazards, and that he said: "They are going to try to take it by force, and these writs that have been sent up here will be declared void by the Supreme Court. You must obey this court; you are the executive officer of this court here." Frost in his testimony contradicted the marshal as to all essential features of his testimony, except that he admitted having written the letter, but the marshal is so well corroborated that we entertain no doubt of the truth of his testimony.

George Leekley, who was the marshal's deputy and clerk, and who occupied the same room with Frost, testified that a day or two after September 14, the date when the writs of supersedeas arrived at Nome, he had a conversation with Frost, in which the latter stated that it was the duty of the marshal by all means to preserve the gold dust intact in the bank in which it was then deposited, and prevent the defendants in said cases and the owners of the gold dust from securing the same under the writs. He also testified that Frost was the confidant and intimate friend and adviser of McKenzie and Judge Noyes, and spent a great deal of time in their company. There are other facts which are fully proven in the case, and which show the deep personal interest which Frost had in the McKenzie receivership, and his partisanship for McKenzie's cause in the controversies then pending.

It is proven that in August, 1900, Frost, in violation of his duties as an officer of the United States, and for the purpose of aiding McKenzie, employed on behalf of the United States, three detectives, Carson, Carroll, and McLean, who for such services during the latter part of August, all of September and a portion of October, were paid by the Department of Justice, two of them $10 per diem and their expenses, and one $15 per diem and his expenses, and that the purpose for which the detectives were employed, and the sole service which they rendered, was to watch the movements of the defendants and their attorneys in the cases in which McKenzie was receiver.

Frost admitted the employment of these men, but stated that they were engaged for the purpose of ferreting out certain efforts which he had heard were being made to corrupt the jury panel of the district court. The explanation which he gave is inherently improbable. He testified in substance that it came to his knowledge that attempts were being made to get persons on the jury panel, and that names were being furnished by interested parties to that end, and that it was for the purpose of ascertaining who was doing this and to prevent the corruption of the jury panel that the three detectives were employed.

He declined to state the nature of his information, claiming that it was a confidential communication. On cross-examination he testified that he gave the detectives no instructions to watch any particular person, but simply informed them that he had been informed that attempts were being made to corrupt the jury panel, and that he wanted them to find out who was doing that work. He testified that he received from them reports from time to time, but he declined to divulge the nature of their reports.

On further cross-examination it was shown from the witness that there were upwards of 300 names drawn from the grand and petit jury; that the names were selected one-half by the clerk of the court and one-half by the jury commissioner; that Frost made no inquiry of the clerk nor of the jury commissioner, and had no talk with either of them on the subject, and directed no investigation of either; that he gave to his detective no instructions whatever concerning either of these officers, and that he directed no investigation of the 300 names which were put in the box for jurors, and never personally saw that list or made any investigation of it. He admitted that these detectives were paid under the order of the judge out of funds in the hands of the clerk.

On further cross-examination he testified to a conversation which he had with Judge Noyes concerning lists of names that were presumably to be put into the jury box, and stated that Judge Noyes showed him the lists and an affidavit accompanying them, to the effect that certain persons had been furnishing names for the jury panel, and stated that Judge Noyes asked him if he knew of any way in which he could find out who the parties were who were attempting to corrupt the jury panel, and that he, Frost, had replied by saying that while he was in the Department of Justice the Attorney-General had authorized the employment of persons to investigate that sort of thing, and that he informed the Judge that if, in his opinion, it was necessary or advisable to employ some one for that purpose, he thought it might be done.

He further testified that Judge Noyes told him that the lists had been furnished by attorneys and that they were in the handwriting of two persons named. This testimony is not corroborated by Judge Noyes. He testified that he did not make any inquiry as to where the lists were obtained, and that he does not remember that anyone told him the lists had been furnished by attorneys, and that he could not have told anyone whose handwriting the names were in, and that he could not have shown Frost those lists earlier than August 25, because the affidavit which was attached thereto was dated August 25. There is positive and direct testimony of other witnesses concerning the purpose for which the detectives were employed.

John F. Mercer, who was a deputy marshal and who had been a captain in the First Montana Regiment in the Philippines, a man of standing and of good repute, so far as the evidence shows, testified that Frost told him that he wanted those detectives to watch Judge Johnson, Mr. Metson, Mr. Knight, Judge Jackson, Lane, their attorneys and following, and report to him their actions and doings. The witness testified that Frost stated to him that they were watching these people, and that Frost told him that they had the means of ascertaining what was going on in certain neighborhoods, notably the Judge's chambers. "I know," said the witness, "they were watching Mr. Metson's office; I know they were watching Judge Jackson very closely."

Mercer further testified that he saw these detectives giving their reports to Frost; that on one night one of them, Carson, reported that an attempt was to be made by the defendants in those suits to take certain gold dust out of the bank; that immediately after Frost conferred with the witness and told him what Carson had reported and said it must be prevented, and that he went out with Frost late that night to the bank and that Frost seemed very much excited and thought they ought to make a general alarm, and that this happened on the night of the arrival of the writs of supersedeas. Marshal Vawter testified that L. D. McLean, one of the detectives, told him that he was employed as a spy upon the attorneys and owners of those Anvil Creek claims of which McKenzie was receiver.

Dr. Cabell Whitehead, manager of the bank, testified that McKenzie came to him frequently and told him of reports which his detectives had made to him, and that on one occasion he referred to McLean as one of his detectives and reported a conversation which he said McLean had overheard through the wall of the room adjoining W. H. Metson's office. W. H. Metson testified that Carson was already employed by him before Frost engaged him as a detective, but that Frost was evidently not aware of that fact; that Carson came to him and reported to him that Frost had engaged him for the purpose of watching him (Metson), and had directed him to seek employment from Metson in order to be in a position to watch his movements and report the same to Frost.

That thereupon he (Metson) ostensibly and openly employed Carson, and from that time on Carson made regular reports to Frost, and that the reports were first submitted to Metson for his supervision. George A. Leekley testified also that on the night of the arrival of the writs of supersedeas Frost made several trips to the bank, and that Frost informed him that he had just received information that the defendants and owners of the gold dust were going to attempt to take the dust from the bank that night.

George V. Borchsenius, the clerk of the court, testified that he objected to the payment of the bills of these detectives for the reason that he did not think they were proper bills, but that Judge Noyes ordered him to pay them immediately, and said to him that he could either pay them or be in contempt of court. The amount of McLean's bill was about $900. The amount paid to the others is not stated. The whole of the evidence concerning the case of Frost convinces us beyond any reasonable doubt that he not only aided and abetted to the utmost of his power the efforts of McKenzie to obstruct the execution of the writs of supersedeas, but that, in his official capacity, he grossly betrayed the interests of the United States which were intrusted to his care.

The respondent, C. A. S. Frost, is adjudged to be in contempt of the lawful orders of this court, and for his contempt it is the judgment of the court that he be imprisoned in the county jail of Alameda County, Cal., for a period of twelve months.

[Indorsed:] Opinion and judgment. Filed January 6, 1902. F. D. Monckton, clerk.

CONCURRING OPINION OF ROSS, CIRCUIT JUDGE.

The findings of fact in the cases of Arthur H. Noyes, Joseph K. Wood, and C. A. S. Frost, embodied in the foregoing opinion of my brother Gilbert, to the effect that each of those parties committed the contempt alleged against him, meets with my concurrence; but I am of the opinion that the records and evidence in the cases show beyond any reasonable doubt that the circumstances under which and the purposes for which each of those persons committed the contempt alleged and so found were far graver than is indicated in the opinion of the court, and that the punishment awarded by the court is wholly inadequate to the gravity of the offenses.

I think the records and evidence show very clearly that the contempt of Judge Noyes and Frost were committed in pursuance of a corrupt conspiracy with Alexander McKenzie and with others, not before the court and therefore not necessary to be named, by which the properties involved in the suits mentioned in the opinion, among other properties, were to be wrongfully taken, under the forms of law, from the possession of those engaged in mining them, and the proceeds thereof appropriated by the conspirators. For those shocking offenses it is apparent that no punishment that can be lawfully imposed in a contempt proceeding is adequate. But a reasonable imprisonment may be here imposed, and I am of the opinion that in the case of the respondent Arthur H. Noyes a judgment of imprisonment in a county jail for the period of eighteen months should be imposed, and in the case of Frost a like imprisonment of fifteen months.

The facts and circumstances against the respondent Wood are by no means strong, although I find it difficult, if not impossible, to reconcile his ignorance of and disconnection with the conspiracy with the facts that immediately upon his arrival at Nome he was, at McKenzie's dictation, given a one-fourth interest in the firm of Hubbard, Beeman & Hume (which firm was employed to carry on the legal part of the nefarious business), and that Hume (who was, so far as appears, a total stranger to Wood) was, likewise at McKenzie's dictation, immediately appointed by Wood assistant United States attorney. I think Wood should be imprisoned for ten months.

In regard to the respondent Geary, I agree with the finding of the court to the effect that the contempt alleged against him is not sufficiently established. Reading and considering Geary's entire testimony, and especially his written opinion given McKenzie at the time of the occurrences in question, and in the light of the testimony of Mr. Metson, I am of the opinion that it is not shown that he went beyond the legitimate privileges of an attorney in giving his legal advice. I therefore concur in the dismissal of the proceedings against him.

[Indorsed:] Concurring opinion of Ross, circuit judge. Filed January 6, 1902. F. D. Monckton, clerk.

In the United States circuit court of appeals for the ninth circuit. In the matter of Arthur H. Noyes, in the matter of Thomas J. Geary, in the matter of Joseph K. Wood, in the matter of C. A. S. Frost. Concurring opinion of Morrow, circuit judge:

MORROW, circuit judge. I concur in the findings of fact contained in the opinion of Judge Gilbert in the cases of Arthur H. Noyes, Joseph K. Wood, and C. A. S. Frost. I am also of the opinion that the evidence does not establish the charge against Thomas J. Geary.

In my judgment the evidence establishes the fact that there was a conspiracy between the respondent Noyes, McKenzie, and others to secure possession of certain valuable mining claims at Nome, Alaska, under proceedings involving the appointment of a receiver, for the purpose of working the properties and obtaining the gold deposited in the claims. To carry these proceedings to a supposed successful conclusion, Noyes, McKenzie, and others found it a necessary part of their scheme to resist the process of this court. In pursuance of this conspiracy, the contempt charged against Noyes was committed; but I agree with Judge Gilbert that this conspiracy is outside the charge of contempt, and in view of the fact that the respondent Noyes holds a judicial position, I concur in his judgment that the respondent be required to pay a fine of $1,000.

[Indorsed:] Concurring opinion of Morrow, circuit judge. Filed January 6, 1902. F. D. Monckton, clerk.

Mr. STEWART. Mr. President——

Mr. TILLMAN. If the Senator from Nevada will permit me, I forgot to send to the desk the article from the New York Sun. I should like to have it go in the RECORD in full, taking it up at the part where I left off reading, and inserting the remainder of it as though I had read the whole.

The PRESIDING OFFICER. Is there objection to the request of the Senator from South Carolina? The Chair hears none.

The remainder of the article referred to is as follows:

Page 33 of the record gives the following information:

Name, Benjamin Daniels; registered No., 95; when received, June 10, 1880; sentence, three and a half years; conduct while in confinement, conduct good; discharged, August 28, 1883, at the expiration of sentence. Allowed good time. Other items same as above.

That is the man who has been nominated and confirmed as United States marshal for Arizona, and Republicans here think that President Roosevelt, with whom Daniels served as a "Rough Rider," must have been ignorant as to his past.

When Daniels served his penitentiary sentence he lived for two or three years at Denver, employed by the most disreputable bunco men and gamblers, and was the leader of a "brace" game of faro. He afterwards took himself to La Junta, Colo., where he distinguished himself on one occasion by holding up a faro game with a gun and robbing it of $600, for which little stunt he was driven out of La Junta.

Daniels then moved on to Cripple Creek, alternately served on the police force and acted as stool pigeon for the crook gamblers of the place. It is understood that an effort will be made to have Daniels's commission withheld until his past record can be more fully ventilated, in the hope that a Republican can be found to serve as marshal of Arizona who is not a convicted felon.

Mr. HALE. Now, Mr. President, let us proceed with the little bill that has been before us.

Mr. STEWART. I should like to make a few remarks in this connection.

Mr. HALE. Does the Senator really think that the consideration of the urgent deficiency bill, which involves so much, should be further delayed by this discussion?

Mr. STEWART. A little history, I think, is in order at this time.

Mr. HALE. Could not history wait? It generally does.

Mr. STEWART. Mr. President, there is plenty of time.

Mr. HALE. Will not the Senator from Nevada, who is a good-natured man——

Mr. STEWART. Yes; always.

Mr. HALE. Let me go on and finish my little bill and then bring in his history?

Mr. STEWART. It is a very interesting history.

Mr. HALE. I have no doubt it is.

Mr. STEWART. I think it ought to be known in this connection. I am going to put it in the RECORD. I think this matter in Nome commenced a little earlier than has been stated.

Mr. HALE. I can not stop the Senator, of course.

Mr. STEWART. No; not well. [Laughter.]

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. STEWART. Mr. President, I wish to say that I have no interest in Nome, directly or indirectly, never have had, and never was consulted as an attorney in regard to any matters there. My attention was first called to matters in Nome by an amendment offered by the senior Senator from North Dakota [Mr. HANSBROUGH] to the Alaskan code when it was pending here in the spring of 1900. That amendment was retroactive and calculated to take away the property of a large number of people by changing the title to the property. I knew nothing about the circumstances when the amendment was offered, but I was very much opposed to it when I saw its purpose. The amendment was in these words:

SEC. 73. That persons who are not citizens of the United States, or who, prior to making location, had not legally declared their intention to become such, shall not be permitted to locate, hold, or convey mining claims in said district of Alaska, nor shall any title to a mining claim acquired by location or purchase through any such person or persons be legal. In any civil action, suit, or proceeding to recover the possession of a mining claim, or for the appointment of a receiver, or for an injunction to restrain the working or operation of a mining claim, it shall be the duty of the court to inquire and determine the question of the citizenship of the locator: *Provided*, That no location of a mining claim shall hereafter be made in the district of Alaska by any person or persons through an agent or attorney in fact, and all locations heretofore made by any person or persons through an agent or attorney in fact upon which $100 worth of labor or improvements had not been expended or made within ninety days first succeeding the date of such location are hereby declared to be null and void.

That changed the law. The law as it stood allowed any person to locate; it said that the mineral lands of the United States should be open to exploration and purchase by citizens of the United States or those who had declared their intention to become such. Foreigners who had been prospecting in the country frequently located and when the question of their title came before the courts and then before the Supreme Court the Supreme Court held that they had rights that could only be defeated by the Government itself; that a third party could not destroy their rights; that they themselves might, even if the question was raised by the Government, declare their intention to become citizens. It appeared in that discussion that large numbers of Laplanders and others in Alaska had declared their intention to become citizens and others had not. They had gone to that region and had located mining claims. They had been dispossessed, and the subject was discussed here for nearly a month. The Senate, after full discussion, voted against this retroactive law and held to the decisions of the Supreme Court of the United States—I need not recite those decisions—that a party who had located on mineral land might hold until the Government intervened. This change in the condition of a great mining region like that attracted my attention. When the proposition was defeated, I supposed that was the end of it.

Then commenced another history, and I have extracts from that history. Judge Noyes was appointed on the 6th of June, 1900, and proceeded to Alaska. I have in my hand a synopsis of the record which he has made, and quotations from the record. I will ask the Secretary to read the synopsis of the record made by Judge Noyes; and if anyone desires to make any criticism of it, I have copies of the record and the references to show what it is.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

Memorandum of facts taken from the records and sworn testimony in various cases, calling for the immediate removal of Judge Noyes on account of his manifest dishonesty or incompetency.

[Filed with the Attorney-General March 2, 1901.]

In the spring of 1900 Judge Noyes was appointed judge, and in July proceeded to Alaska, the court over which he was to preside being stationed at St. Michael, a short distance from Nome. On his way across the continent to the scene of his judicial labors he was accompanied by Alexander McKenzie, a man whom he had known for twenty years, having resided with him for a long period of time in the State of North Dakota. On taking the steamer for Cape Nome, McKenzie and Judge Noyes were joined, among others, by Robert Chipps, a man who in the preceding year had located a claim near Nome, which claim had been located prior to that time by others, Chipps being really a "jumper."

Chipps had spent a considerable portion of the preceding winter in New York City and Washington, D. C., meeting McKenzie and others, including Judge Noyes, in Washington. He had been told then that Judge Noyes was a candidate for a judgeship, and that he was regarded by McKenzie as a good man. Chipps had, while in New York, made a deed of a claim he had jumped to Alexander McKenzie, who held it for the Alaska Gold Mining Company, and he received in exchange for this deed a considerable sum of money and the promise of $300,000 in stock of the company.

On the steamship going to Nome Chipps discussed with Judge Noyes his claim as a jumper and the fact that he was about to commence litigation, and Judge Noyes told him that he supposed he would want a receiver appointed. It was his understanding, derived from his conversation with McKenzie, that they would have "a shade the best of it" in any lawsuit likely to be brought before Judge Noyes.

The party reached Nome on Saturday, July 21, and at 5 o'clock in the afternoon of Monday, July 23, there were filed before Judge Noyes half a dozen applications for receivers, representing claims to as many of the richest mines in that neighborhood.

Careful inspection of the bills of complaint in the various cases in which receivers were asked for will show that the original intention of the complainants was to apply merely for injunctive relief, for after setting up the names of the parties, alleged discovery and location, entry, filing of notice of location with the office of the recorder, ouster by the defendants, and work upon the premises by them in a reckless way; that the premises are particularly valuable for gold; that the defendants are insolvent and irresponsible, and the gold is being secreted, the bills continue by declaring that unless the defendants, etc., be restrained, etc., the claim will be wholly lost to the complainant and destroyed for mining purposes, following the foregoing by an excuse for not sooner presenting a bill of complaint and reciting the bringing of an action at law. They then say that in order to preserve the rights of the complainants, etc., it is necessary, proper, and convenient that a receiver be appointed, etc.

It will be seen from the foregoing summary that not a single statement is made in the bill of complaint justifying the appointment of a receiver for a placer-mining claim, and that the paragraph asking for such receiver is an interpolation and in no way related to the substance of the bill. That this is a fact further appears by the circumstances shown in the accompanying documents, that Judge Noyes from the bench declared that the idea of a receiver was his own suggestion.

In the granting of injunctions in the various causes, which injunctions were granted at the same time that receivers were appointed, Judge Noyes violated the civil government law of Alaska, which provides (sec. 384, p. 397, session statutes, first session Fifty-sixth Congress) that "Before allowing" an injunction "the court or judge shall require of the plaintiff an undertaking, with one or more sureties, to the effect that he will pay all costs and disbursements that may be decreed to the defendant, and such damages, not exceeding an amount therein specified, as he may sustain by reason of the injunction if the same be wrongful or without sufficient cause."

Judge Noyes again clearly violated the well-established principles of law in that the receivers named on July 23, 1900, were appointed ex parte. No suggestions are made in the bills of complaint justifying or excusing the appointment of ex parte receivers. No such emergency is stated as would excuse the appointment of a receiver without notice, nor is any difficulty alleged in the way of serving process or rule to show cause. The simple fact is that without excuse or justification Judge Noyes on July 23 transferred to the possession of Alexander McKenzie, his old friend and companion on the ship, six of the richest mining claims in Alaska, worth together hundreds of thousands if not millions of dollars.

The fact that in at least two cases the record shows that the receiver went into possession on the very day of his appointment, the parties theretofore in possession being on that day served with process, indicates that no reason existed why a rule to show cause might not well have issued before the making of an appointment.

The bond required of the receiver in each case bore no relation to the value of the property coming into his hands.

Chipps *v.* Lindeberg: Amount of gold theretofore extracted, $200,000; being taken out daily, $15,000; bond, $5,000.

Rogers *v.* Kjellman: Gold theretofore extracted, $10,000; being taken out daily, $500; bond, $5,000.

Webster *v.* Nakkela: Gold theretofore extracted, $50,000; being taken out daily, $500; bond, $5,000.

Melsing *v.* Tornansis: Gold theretofore extracted, $150,000; being taken out daily, $5,000; bond, $5,000.

Although the suggestion in the bills of complaint that the mines were being unskillfully and wastefully worked was manifestly inserted merely for the purpose of securing injunctive relief, nevertheless, if these paragraphs were so inserted as a guide to the court in the selection of a receiver, they evidently failed of their purpose, for the court appointed Alexander McKenzie, a man who, so far as the records at any point disclose, was wholly without mining experience.

Judge Noyes was guilty of another act of high-handed usurpation, in that in a large number of cases, without any prayer therefor in the bill of complaint, and without any petition or affidavits filed to justify the passing of any order, and in the very teeth of the provisions of the special code of Alaska limiting the appointment of a receiver to special actions of receivers "other than an action for the recovery of specific personal property," he directed the receiver to take possession of "tents, buildings, safes, scales, and all personal property, fixed and movable, gold, gold dust, and precious metals, money, and books of all kinds, and each and all personal property upon such claim, connected therewith, or in any way appertaining thereto, in possession of or under the control of the defendants." By virtue of this order thousands of dollars of property clearly belonging to the parties upon the claim, including gold dust in many instances obtained by working other claims, was seized and held by the receiver, and even the very beds upon which the men slept were taken from them.

Notwithstanding the manifest impropriety of the appointment of receivers under the circumstances hereinbefore set forth, motions to set aside the

orders appointing them were all denied. When an appeal was sought from his arbitrary orders, Judge Noyes refused to permit it, and so determined was he to prevent these causes from getting beyond his reach that in the order denying the appeal he said:

"Now, therefore, it is by the said judge ordered that the said proposed bill of exceptions is in each and every part thereof disallowed as a bill of exceptions herein, and the settlement thereof or of any proposed bill of exceptions herein is hereby refused; that said petition for an order allowing said appeal is hereby denied, and said judge declines to accept or fix the amount of any bond for costs thereof, or to allow a supersedeas bond to be given, or to fix the amount thereof."

Recognizing the gross wrongs committed by Judge Noyes, Judge W. W. Morrow, of the United States court of appeals, on August 27 directed an appeal to be granted and that a writ of supersedeas issue. By the terms of this writ Alexander McKenzie and Judge Noyes, together with the respective plaintiffs, were commanded "that from every and all proceedings on any execution of the aforesaid order or in any wise molesting the said defendants on the account aforesaid, or in any manner interfering with their possession of said property, you entirely surcease and refrain, as being superseded, and that you, the said Alexander McKenzie, do forthwith return unto said defendants the possession of any and all property of which you took possession under and by virtue of said order, * * * and you, the judge of said district court for the district of Alaska, second division, are hereby commanded to stay any and all proceedings which may have issued, as aforesaid, upon said order, and to stay any and all further proceedings in relation to the said order, and the appointment of a receiver thereunder in this case pending the appeal last aforesaid in this court."

This writ was served on Judge Noyes at 2 o'clock p. m., September 14, and although he was immediately thereafter asked to direct the receiver to return the property taken by him to the defendants, he in all cases refused to pass such order, and simply passed an order staying proceedings. Because of the default of McKenzie in obeying the supersedeas he has in two cases been sentenced to jail for six months. His excuse for disobedience was that he had not been directed by Judge Noyes to comply with the supersedeas. If McKenzie were in default, what shall we say of the position of Judge Noyes?

THE TOPKUK CASE.

One of the richest mines in Alaska was known as the Topkuk mine, and at the time of the arrival of Judge Noyes was in the peaceable possession of the Black Chief Mining Company. Immediately after his arrival suit was brought in ejectment by jumpers and a suit in equity filed for the appointment of a receiver. In this case the usual course was departed from and the rule to show cause issued. Upon the return of the rule, notwithstanding the strongest possible affidavits on the part of the defense, a receiver was appointed, and although in the case of substantially every other rich mine which had been thrown into litigation McKenzie had been appointed receiver, a man named Cameron, hailing also from North Dakota, and a friend of McKenzie, was named, and a man named McCormack employed by him as superintendent of the mine. To understand the reason why Cameron rather than McKenzie was appointed, a brief digression must be permitted.

McKenzie had taken with him to Nome, in boxes bearing his name, a large quantity of machinery supposed to belong to the Alaska Gold Mining Company, and the cost of which at Nome, freight included, was something under $20,000. He had used it unavailingly in connection with some beach mining, and finding the machinery practically valueless, desired to discover a purchaser. A day or two prior to the appointment of Cameron as receiver at Topkuk, McKenzie loaded it on barges bound for that neighborhood and directed it to be sent there. At about the same time he held a meeting in Alaska of the directors of the Alaska Gold Mining Company, at which a resolution was passed authorizing the sale of the machinery.

One of the directors present was McCormack, afterwards manager of the Topkuk mine. The machinery was sold to Cameron as receiver for the sum of $29,000, and although the Topkuk mine was supplied with all the machinery needed, such machinery was displaced and the discarded machinery belonging to McKenzie—or, in other words, to the Alaska Gold Mining Company—was installed in its place. Of course, a sale of this machinery by McKenzie to McKenzie, receiver, would have been too obvious, but a sale by McKenzie, receiver, to Cameron (Cameron being, as is evident by a consideration of the record, his alter ego) was permissible, and the fact that McCormack, his manager, was one of the directors of the Alaska Gold Mining Company was, of course, readily lost sight of.

JUDGE NOYES'S PRIVATE SECRETARY, A. K. WHEELER.

Judge Noyes, by an order dated June 30, 1900, but entered of record long after that date, appointed A. K. Wheeler as his private secretary, and as such he was paid for the months of July, August, and September at the rate of $250 per month, and his board bills were also allowed as proper expenditures during the same period by Judge Noyes. During all this time Wheeler was a practitioner before Judge Noyes, appearing in a number of cases enumerated in the extracts hereto attached, and in several cases, as is shown by the accounts of the clerk, receiving refund of costs.

On one occasion Judge Noyes suggested to the persons interested in the Black Chief Mining Company that Wheeler, his private secretary, would be a good man for them to employ, and they found his office to be directly adjoining that of the judge, and when they went there to consult with him he was going in and out between the two offices and evidently consulting with his superior officer. This apparent consultation took place while a suggested fee was being considered, one-eighth to three-tenths of the mine being discussed as the proper amount to be paid for getting the company out of its difficulties. The impropriety of the private secretary of the judge practicing before him and receiving fees, especially contingent ones, as a practitioner, while being paid for his services as a Government official, occupying confidential relations with the judicial authority, is too patent to call for extended comment.

CONCLUSION.

Summing up the foregoing, the spectacle is presented of the judge seizing, in violation of statute and common law, and in violation of all precedent, property belonging to private individuals and transferring it to the possession of an old friend. It is found that when this old friend himself can not with safety act as receiver a complacent judge names another man to serve his temporary purposes. It is discovered that the judge permitted his private secretary to practice before him and at the same time to be paid as a public official and as an attorney for litigants, himself approving his governmental accounts.

In view of all the foregoing it is submitted that, either because of dishonesty or absolute and proven incompetency and reckless disregard of the rights of private individuals, Judge Noyes is unfit to act in any judicial capacity, and should be summarily removed. Condemned as he is by the record he has himself made, the authenticity of which can not be questioned, it is believed that the citizens of Alaska should not be further prejudiced by the continuance in office of Judge Noyes for even an additional day.

In the foregoing statements reliance has been placed upon the transcripts in the several cases which have gone to the United States circuit court of appeals; upon the record in the contempt cases against Alexander McKenzie; upon the opinion of the circuit court of appeals of the ninth circuit in the McKenzie contempt case; upon Senate Document No. 196, second session Fifty-sixth Congress; and, as a matter of convenience, there is herewith filed "The Case of Judge Arthur H. Noyes, of Nome, Alaska," a pamphlet reviewing many of the circumstances herein set forth, and also extracts from the contempt proceedings, which extracts have particular relation to this memorandum of facts.

Mr. STEWART. I desire to have published in this connection the proceedings of the circuit court of appeals in the contempt case against McKenzie.

The PRESIDING OFFICER. Is there any objection on the part of the Senate to the request of the Senator from Nevada? The Chair hears none, and that order will be made.

The document referred to is as follows:

Nos. 634 and 636. In the United States circuit court of appeals for the ninth circuit. John I. Tornanses, appellant, *v.* L. F. Melsing et al. and William A. Kjellman, appellant, *v.* Henry Rogers. In the matter of the contempt of Alexander McKenzie in having disobeyed and refused to comply with the terms of the writs of supersedeas duly issued herein. Opinion and judgment.

Page, McCutchen, Harding, and Knight, for appellants.
Thomas J. Geary and A. C. Severance, for respondent, Alexander McKenzie.
Before Gilbert, Ross, and Morrow, circuit judges.
Ross, circuit judge, delivered the opinion of the court:

The proceedings now before the court in the above-entitled cases grow out of the alleged disobedience by one Alexander McKenzie of certain writs of supersedeas issued out of this court upon the order of Hon. William W. Morrow, one of its judges. They have been argued and submitted together and will be so considered.

Each case originated in the United States district court for the second division of the district of Alaska, of which Arthur H. Noyes is the judge, George V. Borchsenius the clerk, and C. E. Dickey a deputy clerk. Placer mining claim, known as No. 10 Above Discovery, on Anvil Creek, a tributary to Snake River, was the subject of controversy in the action of Melsing et al. *v.* Tornanses, and placer mining claim No. 2 Below Discovery, on the same creek, was the subject of contention in the action of Rogers *v.* Kjellman. Both claims are situated within the Cape Nome mining district of Alaska.

The act of Congress under which Judge Noyes was appointed was approved June 6, 1900. (31 Stat. L., 321.) In its fourth section it is provided that:

"The judge designated to preside over division No. 2 (within which division is the Cape Nome mining district) shall reside at St. Michaels during his term of office, and shall hold at least one term of court each year at St. Michaels, in the district, beginning the third Monday in June."

It is further provided in the fourth section that each of the three judges provided for by the act "is authorized and directed to hold such special terms of court as may be necessary for the public welfare or for the dispatch of the business of the court, at such times and places in the district as they or any of them, respectively, may deem expedient, or as the attorney-general may direct;" and that "at least thirty days' notice shall be given by the judge or the clerk of the time and place of holding special terms of the court."

It is not pretended that Judge Noyes held any term of the court at St. Michaels in June, or that any notice was given by him or the clerk of the court of the holding of a special term thereof at Nome or elsewhere, prior to the acts out of which the present proceedings arise. On the contrary, it appears from the records and proofs on file in this court that the steamer on which Judge Noyes went from the city of Seattle, Wash., to Alaska did not reach the roadstead of Nome until July 19, 1900, and that he did not go ashore until Saturday, July 21. Two days thereafter, to wit, Monday, July 23, he signed orders appointing Alexander McKenzie receiver of said placer-mining claims, with directions to take immediate possession thereof and to manage, mine, and work the same; to preserve the gold, gold dust, and proceeds resulting from the working and mining of the claims, and to dispose of the same subject to the further orders of the court; and further ordering the persons then in possession of the claims to deliver to the receiver their immediate possession, control, and management, and expressly enjoining them from in any manner interfering with the mining or working of the claims by the receiver, or with his control or management thereof. The amount of the bond required by the judge of the receiver was $5,000 in each case.

These orders were signed at the same time, and the circumstances under which they were made appear in the proceedings of the court of August 3, 1900, on the motion of counsel for the parties against whom they were directed, made for their annulment on July 24. We extract from the record in the case of Melsing et al. *v.* Tornanses—precisely similar proceedings appearing also in the case of Rogers *v.* Kjellman:

"Upon the hearing of the applications to set aside appointments of receiver in the Anvil Creek cases, Mr. Knight, of counsel for defendant, after reading affidavits in support of his application, continued as follows:

"In addition, if the court please, to these affidavits, we desire to introduce the records of the court in this case; and if Mr. Dickey is here I desire to call him as a witness.

"The COURT. I believe Mr. Dickey is inside.

"Mr. KNIGHT. I desire to call Mr. Dickey with reference to the filing of these papers."

(It is ascertained that Mr. Dickey is not in.)

"The COURT. The records are here; can you use them instead?

"Mr. KNIGHT. I desire to prove, if the court please, that the papers were not filed in this case until after an order had been made appointing a receiver; and further, that no process was issued at that time, or summons, and that, so far as I know, it has not been issued at the present time.

"Mr. HUME. So far as the plaintiff is concerned, the papers were delivered to the clerk to be filed, all at the same time.

"Mr. KNIGHT. The summons has not been served on any of our people.

"Mr. HUME. So far as I know, the summons has not been served in any of these cases. Preparation was made to serve the summons, but the defendants came into court the next morning, and the question of the propriety of their appearance here before answer coming up, personal service has been delayed until the court should pass upon that matter. We have been getting the papers ready to serve each and every person interested with a copy of the complaint.

"Mr. KNIGHT. I wish simply to make the point that the papers were not filed before the order was issued.

"The COURT. All the papers were before the court; they were left here.

"Mr. KNIGHT. But my point is, that they were not filed until after the order appointing the receiver was made, and that the order was made before process issued. I think your honor will agree as to the fact that the bill of complaint was presented to your honor on the afternoon of the 23d day of July, 1900, and that your honor thereafter made an order appointing a receiver, and the papers were subsequently that evening handed to the deputy clerk of the court for filing, but that no process was issued in the cases in which I now appear—that is, in the cases involving No. 2 Below, Nos. 10 and 11 Above, and No. 1 Nakkela. Mr. Hume, is that correct?

"Mr. HUME. Well, of course, as to the time they were filed, we can agree to this fact—that all the papers, the affidavits and bills of complaint and summons, were all presented here to the court. They were not presented to the

for portions of the Proceedings here omitted.

clerk. We couldn't find the clerk at that time; he had no office. They were presented to the court and left with the court. All the papers were left with the court, and the clerk was to file them; but, he being out some place, we were unable to find him, and he having no special office, we presumed they were not filed until later. Everything was in confusion then, and we simply left the papers with the court; that is all we could do.

"The COURT. I remember this—that the papers were here on the table, and I called Mr. Dickey's attention to them.

"Mr. KNIGHT. After the order had been made?

"The COURT. Oh, yes.

"Mr. KNIGHT. It is agreed, further, then, that no process has yet issued in this case?

"Mr. HUME. I think the summons has been issued. I know it was made out.

"Mr. KNIGHT. But no process has been placed in the hands of an officer for service?

"Mr. HUME. No; I think not. I think not placed in the hands of an officer.

"The COURT. I think you will find, as a matter of record, that the summons has been issued.

"Mr. KNIGHT. As far as the issuance of process is concerned, the records will speak for themselves."

It thus appears that the injunctions and orders appointing a receiver of the claims in question were made before the organization of the court, without notice of any character, and before any paper of any kind had been placed on the files of the court—assuming the court to have been organized and in condition for the transaction of business. Not only so, but the injunction granted and the appointment of the receiver in the case of Rogers *v.* Kjellman was based upon a pleading which is without a single allegation of an equitable nature.

That pleading alleges only the citizenship of the plaintiff Rogers and the alienage of the defendant Kjellman; the competency of the plaintiff to make locations under the mining laws of the United States; his discovery of gold on and his location of claim No. 2 Below Discovery, on Anvil Creek, on the 6th day of June, 1899; his marking of its boundaries in accordance with the statutes of the United States and with the local rules of the mining district within which it is situated, and the recordation of notice of the location in the office of the recorder of the district; the possession of the claim by the plaintiff until his dispossession by the defendant on or about July 1, 1899; the withholding thereof by the defendant ever since, and the extraction therefrom by the defendant and others under him of $100,000 in gold and gold dust, to the damage of the plaintiff in that sum and the right of the plaintiff to a restitution of the possession of the claim.

The prayer is only for such restitution of possession of the property and for $100,000 damages, and for costs. In other words, the complaint in the case of Rogers *v.* Kjellman, upon which the judge granted an injunction and appointed a receiver, was an ordinary complaint in ejectment, without a single allegation of even an equitable nature. It is true there was presented to the judge at the same time the affidavit of the plaintiff Rogers and the affidavit of one Charles Cooper, in which they swore, in substance, that the defendant Kjellman was not a citizen of the United States and had never declared his intention to become such; had never located or marked the claim in question in accordance with law, but had extracted therefrom during the mining season of 1899 gold to the amount of $100,000 and removed the same beyond the jurisdiction of the court, and that his servants and assigns were then in the possession of and working the claim, whose only value consisted of the gold it contained, and, if allowed, would continue to work the claim and extract therefrom $5,000 a day and appropriate the same to their own use, in fraud of the plaintiff's rights.

In the case of Melsing et al. *v.* Tornanses, the order granting the injunction and appointing the receiver was based upon an unverified bill praying for an injunction and an order appointing a receiver, supported by the affidavits of one T. H. Downing and one E. W. Bacon. L. F. Melsing, H. L. Blake, D. B. Libby, W. T. Hume, and O. P. Hubbard are the complainants in that bill and John I. Tornanses is the sole defendant thereto, although it appears in more than one place in its body that the complainants contemplated naming other parties also as defendants.

In the bill it is, among other things, alleged "that the complainant, L. F. Melsing, has begun an action at law against the defendants herein to recover the possession of the premises herein described, a copy of which complaint is attached to this bill and made a part hereof; that in order to preserve the rights of the complainant in said action at law and in said placer mining claim pending the termination of said action at law, to prevent the extraction of gold from said claim and the appropriation thereof by defendants, his lessees, agents, servants, employees, and grantees, and preserve the said property and the gold extracted therefrom, it is necessary, proper, and convenient that a receiver should be appointed by this honorable court to take possession of, charge of, and care for said claim, and to hold, operate, and mine and control the same, under the orders of this honorable court, until the termination of said action at law; that the complainants, H. L. Blake, D. B. Libby, O. P. Hubbard, and W. T. Hume, are grantees, for a valuable consideration, of the said complainant, L. F. Melsing, of an undivided interest each in said placer mining claim, and are the owners of a substantial and undivided interest in the land and premises hereinbefore described, alleged, and designated as said placer mining claim No. 10 Above Discovery, on Anvil Creek."

The record shows that the complaint in the action at law thus spoken of was verified by Melsing on the 25th day of August, 1899, and is entitled in the district court of the United States for the district of Alaska, which court was abolished by the act of Congress of June 6, 1900. (31 Stat. L., 321.) That complaint, however, appears from the record to have been filed in the district court for the district of Alaska, second division, created by the last-mentioned act of Congress, at the time the bill in the case of Melsing et al. *v.* Tornanses was filed therein, together with an affidavit of Melsing, made by him on the 25th day of August, 1899, evidently to be used in some way in connection with the action at law entitled in the abolished court.

The bill in the case of Melsing et al. *v.* Tornanses further alleges that on the 11th day of March, 1899, Melsing discovered gold in the ground known as the said placer mining claim No. 10 Above Discovery, and, being at the time competent to do so, located the ground under the mining laws of the United States, marking the boundaries thereof in accordance with law, and recording the notice of the location in the office of the recorder of the district in which the claim is situated, and took peaceable possession thereof; that thereafter and on or about May 1, 1899, the defendant Tornanses wrongfully and forcibly, by himself and others under him, ejected Melsing from the premises and took possession of the claim, and has ever since withheld its possession from him; that during the mining season of 1899 the defendant worked the said claim and extracted therefrom gold of the value of at least $150,000, and at the opening of the season of 1900 commenced, and still continues the working of the claim, thereby extracting therefrom each day gold and gold dust of the value of at least $5,000, all of which the defendant, Tornanses, his lessees and grantees, have appropriated to their own use and benefit, to the injury of the complainants and in fraud of their rights; that the ground is valuable only for the gold it contains, and that the defendant, Tornanses, his agents, lessees, and grantees are insolvent, and that the defendant Tornanses is an alien and has never declared his intention to become a citizen of the United States.

This bill, as has been said, was never verified. The affidavits of Downing and Bacon, presented in support of the bill, are only to the effect that in July, 1900 (that of Bacon fixing the date as the 19th of that month), they saw working upon claim No. 10 Above Discovery a large number of men, under, as they were informed and believe, the defendant or his assigns or grantees, and that the claim was being unskillfully worked, with the object of taking only the richest pay dirt, without regard to the manner in which the claim would be left thereafter, and that the continuation of such work in that manner would destroy the value of the claim. The affidavit of Bacon further states that he was informed by the men at work that they were getting gold therefrom at the rate of a dollar a shovel, and that in addition to the work by hand the persons working the ground had a steam plant in operation thereon for the purpose of expediting the extraction of the gold contained therein, and that the pay dirt was then so exposed as to be easily sluiced and worked when there should be sufficient water in Anvil Creek, and that when there should be more water in the creek the parties then working the ground "could take thousands of dollars out of said claim, and virtually destroy the same for sale or proper operation, unless restrained by order of the court."

It was upon the showing here stated and under the circumstances above detailed that Judge Noyes, on the 23d day of July, 1900, signed the orders granting the injunctions and appointing the receiver of the mining claims in question, who at once took possession of them. On the 24th day of July, 1900, in the case of Melsing et al. *v.* Tornanses, and on the 30th day of July, 1900, in the case of Rogers *vs.* Kjellman, the parties claiming under Tornanses and Kjellman moved the court to vacate those orders, supporting the motions by the notices of location of the respective claims by Tornanses and Kjellman, by their respective deeds of conveyance, and by numerous affidavits. The notice of location by Kjellman of claim No. 2 Below Discovery described the claim, set forth the discovery of gold thereon on the 22d day of September, 1898, and its location on that day, and appears to have been witnessed by John Brynteson and Erik O. Lindblom, and was filed for record at 12 o'clock noon on October 12, 1898, with A. N. Kittelsen, recorder of the mining district.

The notice of location by Tornanses of claim No. 10 Above Discovery, was similar, and purported to have been witnessed by G. W. Price and A. N. Kittilsen, M. D., and filed for record at 12 o'clock noon on October 18, 1898. The deeds thus presented to the court were conveyances from those original locators, for a valuable consideration, to Charles D. Lane of their interests in the claims. The affidavits presented in support of the motions to vacate the orders referred to set forth, among other things, that Tornanses was the first locator of the aforesaid claim No. 10 Above Discovery, and that Kjellman was the first locator of the aforesaid claim No. 2 Below Discovery; that prior to the respective locations gold was discovered by the locator in the ground located, and that in making each of said locations the boundaries thereof were so marked upon the ground that they could be readily traced, and that from the time of their location each of the claims was in the possession of the locator and his successors in interest, and during each working season thereafter was mined for gold in a proper miner-like way; that the conveyance of those claims to Lane was made to him for and on behalf of the Wild Goose Mining and Trading Company, a corporation—that of the aforesaid claim No. 2 Below Discovery, on the 9th day of September, 1899, and that of the aforesaid claim No. 10 Above Discovery, on the 18th day of September, 1899, since which time neither Kjellman nor Tornanses have ever had possession of, or control over, either of said claims, but that both of them thereupon departed from the United States, and neither has ever returned, and that the property has since been held and worked by Lane and those holding under him, and was so worked and held at the time of the initiation of these cases. The affidavits on behalf of the moving parties also deny the alleged insolvency of Lane and those holding under him, and, on the contrary, aver that both Lane and the Wild Goose Mining and Trading Company are amply able to respond in any damages that may be recovered against them.

In each case the district court, on the 10th day of August, 1900, made and entered an order denying the motion so made to vacate the order granting the injunction and appointing the receiver, and on the 14th day of August, 1900, counsel for the defendants in each case petitioned the court for an order allowing an appeal from the order granting the injunction and appointing the receiver, at the time presenting to the court a proper bond on appeal, together with an assignment of errors and a proposed bill of exceptions for settlement and allowance; in response to which the judge, on the 15th day of August, 1900, made an order in each case "that said proposed bill of exceptions is in each and every part thereof disallowed as a bill of exceptions herein, and the settlement thereof, or of any proposed bill of exceptions herein, is hereby refused; that said petition for an order allowing said appeal is hereby denied, and said judge declines to accept or fix the amount of any bond for costs thereof, or allow a supersedeas bond to be given or fix the amount thereof."

Dated Nome, Alaska, August 15, 1900.

ARTHUR H. NOYES, *Judge.*

On the same day, to wit, August 15, 1900, the judge made and entered the following order in each case:

"Now, at this time, comes the plaintiff by his attorneys, Hubbard, Beeman & Hume and Dudley Du Bose, and moves the court for an additional and further order in the matter of the appointment of Alexander McKenzie as receiver in the above-entitled suit, and the court being fully advised in the premises:

"It is further ordered that, in addition to the powers and authorities already granted the receiver appointed, the said receiver is hereby ordered to take possession of the placer claim mentioned in the complaint herein, and all sluice boxes, dams, excavations, machinery, pipe, boarding houses, tents, buildings, safes, scales, and all other personal property, fixed or movable, on the said placer claim; also all gold, gold dust, precious metals, money, books of account, and each and all personal property upon the said claim connected therewith, and in any way appertaining thereto, in possession of and under the control of the defendant, his lessees, grantees, assigns, employees; and all and every person in possession of the said claim or claiming any right, title, or interest in and to the said placer claim, or any gold dust therein or any personal property thereon of any nature whatsoever, are hereby ordered to deliver the same to the said receiver, and are hereby restrained from interfering with the said receiver in quiet and peaceable possession of the same, or any agent that the said receiver may designate to take possession thereof.

"It is further ordered that this order shall revoke all and any order in conflict herewith, and does hereby revoke the same; and

"It is further ordered that this order shall remain in full force and effect until further order of this court.

"It is further ordered that a copy of this order shall be served upon any person in possession of or claiming possession of the property described.

"Done in chambers this 15th day of August, 1900.

"ARTHUR H. NOYES, *Judge.*"

For this sweeping order against any and every person, whether a party to the suit or not, and this express requirement of the receiver to take possession, among other things, of all sluice boxes, machinery, pipe, boarding houses, tents, safes, scales, money, books of account, and all other personal

property upon the claims, of whatsoever kind or nature, no basis of any kind appears from the records which have been brought here upon certiorari to have been presented to the court below, although the order recites upon its face that the court was "fully advised in the premises." Nor does it appear that the slightest attention was paid to an express provision of the very statute under which the court was created and existed, in terms prohibiting the appointment of a receiver in any action for the recovery of specific personal property (Alaska Code, sec. 753), nor to sections 301 or 475 of the same code, which provide as follows:

"SEC. 301. Any person who has a legal estate in real property, and a present right to the possession thereof, may recover such possession, with damages for withholding the same, by an action. Such action shall be commenced against the person in the actual possession of the property at the time, or, if the property be not in the actual possession of anyone, then against the person acting as the owner thereof."

"SEC. 475. Any person in possession, by himself or his tenant, of real property, may maintain an action of an equitable nature against another who claims an estate or interest therein adverse to him for the purpose of determining such claim, estate, or interest."

It will be observed from these provisions that by the code governing Alaska an action of ejectment is required to be brought "against the person in the actual possession of the property at the time, or if the property be not in the actual possession of anyone, then against the person acting as the owner thereof;" and that the right to maintain an equitable action for the purpose of determing an adverse claim is only given to one in possession by himself or his tenant.

The successors in interest of the defendants to the suits having thus been denied an appeal from the orders granting the injunctions and appointing a receiver, not only of the mining claims in question, but of their personal property as well, with directions to the receiver to extract from the claims the gold which constituted their sole value, the defendants applied, with all speed possible, to a judge of this court for the allowance of the appeals which had been denied them in Alaska.

The judge of this court, to whom the applications were made, and upon a showing embracing much of this shocking record, at once granted the appeals, requiring and approving a supersedeas bond in each case in the sum of $20,000, and thereupon ordered a writ of supersedeas to issue out of this court under its seal in each case, and, in writing, approved the form thereof, staying all proceedings under the orders granting the injunctions and appointing the receiver, and further ordering the receiver to at once restore to the defendants from whom he had taken them the said mining claims, together with the gold, gold dust, and other personal property received by him under the orders appealed from. Certified copies of the order allowing the appeal in each case, together with certified copies of the assignment of errors and of the bond, were, with the original writ of supersedeas and the original citation in each case, filed in the lower court on the 14th day of September, 1900, and copies thereof at once served upon the receiver, McKenzie, and a demand made upon him for the restitution of the property, in accordance with the writs.

The evidence taken upon the hearing of these proceedings is to the effect, and we so find the fact to be, that the respondent McKenzie thereupon refused and continued to refuse to restore, in accordance with the requirements of the writs of supersedeas, the gold, gold dust, and other personal property received by him under the orders of the trial court, and that fact being made to appear to this court by affidavits on the 1st day of October, 1900, and it further being then made to appear to this cout that the last steamer for the season would leave the city of Seattle for Nome within a few days and that no further communication could be had with that section of the country until the spring or early summer of 1901, this court thereupon made an order directing its marshal to proceed to Nome, enforce its writs of supersedeas, arrest the offending receiver, and produce him at the bar of this court.

The evidence taken upon the hearing of these proceedings is also to the effect, and we so find the fact to be, that the respondent, McKenzie, at all times had it within his power to comply with the requirements of the writs of supersedeas issued out of this court; that he contumaceously refused to restore the gold, gold dust, and other personal property to the defendants, as required by those writs, and has continued such refusal ever since.

It is said by counsel for the respondent, McKenzie, that the action of Judge Noyes in refusing to allow the appeals petitioned for, and in refusing to settle any bill of exceptions, was based upon the opinion that no appeal is allowed by law from the orders made by him; and it is here so contended.

Provision is made by section 504 of the Alaska code for the taking and prosecution of an appeal from the final judgment of the district court for the district of Alaska, or any division thereof, direct to the Supreme Court of the United States in certain cases within which the present cases do not come, and it is then provided "that in all other cases, where the amount involved or the value of the subject-matter exceeds the sum of $5,000, the United States circuit court of appeals for the ninth circuit shall have jurisdiction to review upon writ of error or appeal the final judgment (and) orders of the district court." And section 507 of the same code declares that "an appeal may be taken to the circuit court of appeals from any interlocutory order granting or dissolving an injunction, refusing to grant or dissolve an injunction made or rendered in any cause pending before the district court within sixty days after the entry of such interlocutory order. The proceedings in other respects in the district court in the cause in which such interlocutory order was made shall not be stayed during the pendency of such appeal unless otherwise ordered by the district court."

Leaving out of consideration the last-quoted section, which in express terms authorizes an appeal from an order granting an injunction, and without considering the right of the defendants to the suits in question to thus have reviewed the orders enjoining them from working the mining claims involved in them, and as a necessary incident the right of the court to appoint a receiver of the property claimed by them, we think we may safely rest the jurisdiction of this court to review those orders upon section 504 of the Alaska Code above referred to. And it is for this court, subject to review of its action by the Supreme Court, to determine whether it may entertain jurisdiction of the cause removed and to dispose of controversies in respect to the form of its writs, the parties, the citation, and their service, without interference from any other court. (In re Chetworth, 165 U. S., 443.)

Courts take judicial notice of the general physical and climatic condition of the country within their jurisdiction. We therefore know judicially, as well as from the record in these cases, that the sole value of the mining claims in question consisted in the mineral contained in them. The extraction of that is, therefore, the taking of the very substance of the estate, and when all of it is removed nothing of value will remain in the claims. In the case of a vein or lode mine, with tunnels, drifts, and shafts in which there are timbers to be placed, replaced, or repaired, or water to be controlled, it sometimes happens that the appointment of a receiver becomes necessary to take possession of and operate the mine pending the litigation, in order to preserve the property; but even in that class of cases the necessity for a receiver is not of frequent occurrence.

This is well shown in the case of Bigbee *v.* Summerour (101 Ga., 201, 228, S. E. Rep., 642). So, too, in the case of placer mining claims valuable only for the oil contained in them, where it becomes necessary for the proper preservation of the claim that the ground be worked to prevent its substance from being drawn off by the operation of wells on adjoining ground, or where it is shown that a receiver is necessary in order that the annual work required by law may be performed for the benefit of the party who may ultimately be adjudged entitled to the ground. But nothing of that sort is shown to have existed with respect to the claims here involved. Here the gold in the claim would have remained as safe as it was during all the ages it had been there, and an injunction (assuming a proper showing for one to have been made) staying the working of the claims pending the litigation would have perfectly preserved the property for whomsoever might be ultimately adjudged to be entitled to it.

The value of mining property of every character, like the value of any other kind of property, largely depends upon the manner in which it is operated. Many good mines prove unprofitable because of loose management or extravagant methods of working them. The successors in interest of the defendant to the suits in which this receiver was appointed were in possession of the claims under a claim of right, and were engaged in mining the ground on a large scale, and had been so engaged during the working season of the year 1899, well as that of the then current season of 1900. They may, therefore, be properly presumed to have been, at least, somewhat familiar with the proper working of placer claims. But there is no evidence that the respondent ever saw a placer, or any other kind of mining claim before he was appointed receiver of these, and, at least, two other similar claims on the 23d day of July, 1900.

It is in evidence in at least one of the contempt proceedings now pending before us against McKenzie that, shortly before going to Alaska, he caused to be organized a corporation called the Alaska Gold Mining Company, with a capital stock of $15,000,000, a majority of which he held, and that, having placed a portion of the remainder where he thought it would stand him in good stead, he proceeded with Judge Noyes to Nome, arriving there on Saturday, July 21, 1900, and on Monday, July 23, before the court was organized and before the filing of any paper of any character with the clerk of the court, was appointed by Judge Noyes receiver of at least four of the richest claims in the district of Nome, upon complaints made by persons the interest therein of at least one of whom had theretofore been acquired by the receiver's corporation, the Alaska Gold Mining Company.

It has been already seen that the orders under which this was done in the present cases directed the receiver to take possession of and mine the claims in question, and enjoined the parties then in possession from in any manner interfering with the claims or with the acts of the receiver. It has been seen, also, that in the case of Rogers *vs.* Kjellman this was done upon a complaint which did not even ask for the appointment of a receiver or for such injunction, and in the case of Melsing et al. *vs.* Tornanses that the only relief that was asked was the granting of an injunction and the appointment of a receiver, all of which was granted by the court by the orders made by it on July 23, 1900.

We have no hesitation in holding that an order by which a placer-mining claim, whose proper preservation in no respect requires it, is taken from one who is in the actual possession thereof and turned over to a receiver, with instructions to extract from it its only value, is, in effect, a final decree, and appealable as such; for its entire value may be thus destroyed by improper working or extravagant management, or by the extraction of all its mineral, while he from whom it is taken and who asserts a right to it may prefer to work the claim to a limited extent only, or in a particular manner, or not at all. He may prefer to hold it for sale or other disposition; yet, under such orders as are here involved, the operations of the receiver of necessity constantly exhausts the very substance of the property, and may speedily render it absolutely worthless. Surely the authority, by whatever name called, under which such a result may be wrought is, in effect, a final judgment.

As was said by the circuit court of appeals for the third circuit, in Potter *vs.* Beal, 50 Fed. Rep., 63, the determination of the question as to what is or is not a final decree "is to be governed by the essence of what is done, and not by the appellation given to it." In the Farmers' Loan and Trust Company case, 129 U. S., 206, it was held that an order allowing a receiver of a mortgaged railroad to issue certificates which should be preferred to the mortgage was a final decree in effect and appealable. In the case of Sharon *vs.* Sharon, 67 Cal., 215, the supreme court of California held that an order made pendente lite directing the payment of alimony in a divorce suit is in the nature of a final decree and appealable as such. (See also the Tampa Railway Company case, 168 U. S., 583, 588, and Iron Co. *vs.* Meeker, 109 U. S., 180.) A mine is, as was held in Bigbee *vs.* Summerour, supra, destroyed as such as fast as the mineral is taken out; so that the necessary effect of the orders in question was to gradually, and perhaps rapidly, destroy the mining claims, and, as a matter of course, the personal property embraced by the orders would necessarily perish by use.

The remaining points urged on behalf of the respondent may be briefly disposed of. It is contended that in order to give effect to the orders made by Judge Morrow allowing the appeals it was essential to file the origina; orders in the lower court. Only certified copies of those orders were so filedl but the original citation and the original writ of supersedeas were filed in the lower court in these cases, together with certified copies of the assignment of errors and of the supersedeas bond. All of these papers were filed in the district court September 14, 1900. That that was sufficient to give effect to the appeal has been expressly decided by the Supreme Court in two cases—Brown *vs.* McConnell, 124 U. S., 489, and Stewart *vs.* Masterson, id., 493.

Section 1007 of the Revised Statutes declares:

"In any case where a writ of error may be a supersedeas the defendant may obtain such supersedeas by serving the writ of error, by lodging a copy thereof for the adverse party in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterwards with the permission of a justice or judge of the appellate court; and in such cases where a writ of error may be a supersedeas execution shall not issue until the expiration of (the said term of sixty) (ten) days."

It is contended that the supersedeas thus provided for by statute does not require the restoration to the defendants, pending the appeal, of any property taken by the receiver. Let that be admitted, and the fact remains that, in each of these cases, Judge Morrow ordered a writ of supersedeas to be issued out of this court, under its seal, and, in writing, approved the form of the writs, each of which required the receiver, among other things, to restore to the possession of the defendants the personal property he had taken from them, together with the gold and gold dust extracted by him as such receiver from the claims. It is said that a single judge of this court can not grant a writ of supersedeas. Sections 1000 and 1007 of the Revised Statutes, the case In re Claasen, 140 U. S., 200, Rule 36 of the Supreme Court, and section 11 of the act, approved March 3, 1891, creating this court, conclusively answer this objection.

By section 11 of the circuit court of appeals act it is, among other things, provided that "any judge of the circuit court of appeals, in respect of cases brought or to be brought to that court, shall have the same powers and

duties as to the allowance of appeals or writs of error, and the conditions of such allowance, as now by law belong to the justices or judges in respect of the existing courts of the United States, respectively." In the case, In re Claasen, supra, the Supreme Court held that a justice of the Supreme Court was authorized to grant a supersedeas, saying:

"By section 1000 of the Revised Statutes it is provided that every justice or judge signing a citation on any writ of error shall take security for the prosecution of the writ, and for costs, where the writ is not to be a supersedeas and stay of execution, and for damages and costs where it is to be. In a criminal case, there are no damages; and in such a case, the United States being a party, it is provided by subdivision 4 of rule 24 of this court that in cases where the United States are a party no costs shall be allowed in this court for or against the United States.

"Section 1007 of the Revised Statutes provides for the manner in which a supersedeas may be obtained on a writ of error. It is by serving the writ of error, by lodging a copy thereof for the adverse party in the clerk's office, where the record remains within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But as there is no security required in a criminal case, the supersedeas may be obtained by merely serving the writ within the time prescribed, without giving any security, provided the justice who signs the citation directs that the writ shall operate as a supersedeas, which he may do when no security is required or taken.

"We hold, therefore, that the allowance of the supersedeas in the present case was proper, and we deny the motion to set it aside.

"To remove all doubt on the subject, however, in future cases, we have adopted a general rule, which is promulgated as rule 36 of this court (see 139 U. S., 706) and which embraces, also, the power to admit the defendant to bail after the citation is served."

The rule thus referred to and adopted by the Supreme Court will be found in 139 U. S., 706, and is as follows:

"1. An appeal or a writ of error from a circuit court or a district court direct to this court, in the cases provided for in sections 5 and 6 of the act entitled 'An act to establish circuit courts of appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes,' approved March 3, 1891, may be allowed, in term time or in vacation, by any justice of this court, or by any circuit judge within his circuit, or by any district judge within his district, and the proper security be taken and the citation signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal."

It is further contended that the scope of the writs was too broad, in that, in the first place, they went beyond the orders of Judge Morrow, and, in the second place, that it was beyond the power of the court to require the receiver to restore the property taken by him. It is true that the orders first made by Judge Morrow did not in terms direct the receiver so to restore the property, but in each case that judge subsequently, and on the same day, made an order expressly approving the form of the writs requiring such restoration. If it be conceded that the scope of the writs was too broad, it was not for the receiver to ignore their requirements and himself be the judge of that question, but his only proper remedy was a motion to modify the writs. While refusing to obey them he should not be heard to object to their scope.

In 2 High on Injunctions, section 1416, it is said that "If defendant is in doubt as to the scope or extent of the injunction, he should not be left to disregard or violate it, with a view of testing such questions, but should apply to the court for a modification or construction of its order."

The same rule is applicable to a receiver. (See, also, Wells, Fargo & Co. *vs.* Oregon Rwy. and Nav. Co., 19 Fed. Rep., 20; Ullman *vs.* Ritter, 72 Fed. Rep., 1000, 1003; Maginnis *vs.* Parkhurst, 4 N. J. Eq. Rep., 433, 436.) But the point itself is, we think, untenable.

In the leading case upon the subject, that of The State *vs.* Johnson, 13 Florida, 33, 48, it is said:

"The allowance of a supersedeas does not, nor does the order in this case, 'undo' or reverse the order of the circuit judge. The order, following the intent and effect of the law, in terms directs a stay of all proceedings under the several orders appealed from, and suspends their operation. The power of the circuit court was suspended, and thereby the power of all the officers in that court, under its orders in question, became inoperative. They no longer had any duties to perform under such orders. The authority of the receiver to continue to act as such was made nugatory by the operation of the law. He had entered upon an office and commenced to act, when the office was suspended. The supersedeas as understood by us, and as seems to be understood by the courts, does of necessity retroact by suspending the life of the order appealed from; reaches back to that order and forbids action under it.

"It does not make unlawful an act done in pursuance of the order before the appeal was taken, but it forbids the court and its officers further to act. No new rights having been created, and the duties of the receiver being superseded, the bond standing in the place of the property in his hands, and he having been notified thereof by proper process, it was his duty to restore that which had come to his hands to the parties from whom it had been taken and withheld; for his authority to take being inoperative by the suspension, his authority to hold was equally so, both being derived from the same order."

The case of State *vs.* Johnson has been several times approved. (Buckley *vs.* Georgia, 71 Miss., 580; Farmers' National Bank *vs.* Backus, 63 Minn., 115. See, also, Everett *vs.* State, 28 Md., 190; Freeman on Ex., 2 ed., sec. 271a, p. 876; High on Receivers, 3d ed., sec. 190, p. 164; 20 Am. & Eng. Ency. L., 110.)

In the last edition (Anderson's) of Beach on Receivers (p. 129, sec. 117) it is said that "from the authorities and reason there may be legally deduced the following principles which should govern questions concerning the subject of this section:

* * * * * * *

"2. If a receiver be appointed and takes possession of the property prior to the appeal and supersedeas, the consummation of the appeal with bond and supersedeas gives to the defendant the right to demand and have the property returned to him."

Finally, it is urged that the refusal of the receiver to obey the writs of supersedeas issued out of this court was based on the advice of his counsel that the writs were void. Such advice is never a justification of a contempt, but in proper cases may be considered in mitigation of the offense. (1 Beach on Injunctions, sec. 250; High on Injunctions, sec. 1427; Rogers *vs.* Pitt, 89 Fed. Rep., 424, and cases there cited.)

The circumstances attending the appointment of the receiver in these cases, however, and his conduct after as well as before the appointment, as shown by the record and evidence, so far from impressing us with the sincerity of the pretension that his refusal to obey the writs issued out of this court was based upon the advice of his counsel that they were void, satisfy us that it was intentional and deliberate, and in furtherance of the high-handed and grossly illegal proceedings initiated almost as soon as Judge Noyes and McKenzie had set foot on Alaskan territory at Nome, and which may be safely and fortunately said to have no parallel in the jurisprudence of this country.

And it speaks well for the good, sober sense of the people gathered on that remote and barren shore that they depended solely upon the courts for the correction of the wrongs thus perpetrated among and against them, which always may be depended upon to right, sooner or later, wrongs properly brought before them. And it is well, in these days of the rapid extension of our national domain, for all persons, whether residing in remote regions or nearer home, to remember that courts which respect themselves and have a due regard for the administration of justice and the maintenance of law and order will never tolerate any disobedience of their lawful orders, writs, or judgments, wherever committed within their jurisdiction.

"It is inherent in the nature of judicial authority," said the supreme court of Florida in the case of State *vs.* Johnson, supra, that "every court may protect and maintain its jurisdiction under the law, and that it shall protect itself against all attempts to resist or thwart or overthrow its authority. Without the power to judge of its jurisdiction, it is practically without jurisdiction. Without the power to enforce its judgments, it has no judicial authority. That it be made the plaything of whomsoever may choose to deride its judgments or its process and ignore its existence and its acts, because the opinions of the judges and the judgments of the court may not meet the approval of counsel upon the one side or the other of a controversy or may not be in accordance with the opinions or the wishes of subordinate officers, can not be allowed without surrendering the judicial character and confessing the impotency of this department of the Government.

"Courts commit errors, and parties may suffer from the improvidence or corruption of their judges, yet the remedy for these is not in individual resistance or in a resort to private judgment. Every court will hear the appeals of those who conceive themselves to be wronged or threatened with injustice by the execution of its decrees. If its errors be made apparent, it will do justice to itself by dealing justice to parties without fear and without hesitation. There is no excuse for resistance of the orders of the courts in this country where their doors are wide open, and where every human being may be heard in the presence of the whole people."

In the refusal of the respondent Alexander McKenzie to obey the writs of supersedeas issued out of this court, as hereinbefore found and stated, it is now here considered and adjudged that he did commit contempts of this court, and for the said contempt so committed in the case entitled Tornanses *vs.* Melsing et al. it is now here ordered and adjudged that he, the said Alexander McKenzie, be imprisoned in the county jail of the county of Alameda, Cal., for the period of six months, and for the said contempt so committed in the case entitled Kjellman *vs.* Rogers that he be imprisoned in the jail of the said county for a like period of six months, making one year in all, the sentence imposed in the said last-mentioned case to commence immediately upon the completion of the term of imprisonment under the first sentence herein.

The marshal will execute this judgment forthwith.

United States circuit court of appeals for the Ninth circuit. John I. Tornanses, appellant, *vs.* L. F. Melsing et al., respondents. William A. Kjellman, appellant, *vs.* Henry Rogers, respondent. Filed February 12, 1901.

MODIFICATION OF JUDGMENT.

Based upon our understanding of the statement of counsel in two of the companion cases against the respondent McKenzie for alleged contempt of the process of this court that all of the pending cases against him had been, in so far as the parties thereto are concerned, settled, and that the respondent had restored to the parties from whom it had been taken the whole of the property in controversy, we so stated in the opinion delivered herein February 11.

The court is now informed that this is a mistake of fact in respect to the present cases, and that in these cases there has been no settlement as respects the parties, and there is no showing of the restoration by the receiver of the property in the above-entitled cases as required by the writs of supersedeas issued out of this court. The paragraph of the opinion of this court rendered February 11, in which the erroneous statement of fact was made, will therefore be corrected, and the judgment entered in these cases at the same time will be, and hereby is, so modified as to direct that the respondent pay all the costs of the contempt proceedings herein, to be taxed by the court.

Mr. STEWART. Mr. President, I have a very few remarks to make. I have been familiar with mining litigation and the making and enforcing of the mining laws for over fifty years. The mining laws grew up among the miners themselves. The nonaction of the Government for twenty years enabled them to make their own laws and regulations. The courts recognized their laws, and the early reports of California contain numerous decisions construing the laws of the miners, their rights of possession, etc. More than a million and a half people in the Western States and Territories lived under and their rights were predicated upon the mining laws which were thus made. They were trespassers.

In 1865 a case went to the Supreme Court of the United States, Strong *v.* Sparrow, to be found reported in 3 Wall., in which the question arose as to whether the miners had any rights, being trespassers under the law. I participated in the argument of that case. Judge Black was my colleague. Mr. O'Connor, of New York, and Mr. Ticknor Curtis were on the other side. They attempted to show that those people had no rights, and that there was no property which would give the court jurisdiction, as it required property of the value of $1,000. The court said they could not shut their eyes to the history of the country; that they could not deny that property had grown up in that way; and they refused to dismiss the appeal.

The Chief Justice did me the honor to suggest, however, that some remarks which I had made in the Senate and which had been taken down, with regard to the history of mining, be incorporated in the appendix as explanatory of their decision, which was done. You will find it in 3 Wallace.

I make this remark to show that I have some familiarity with the practice in such cases. In the first place, the people demanded—those who had developed mines—that property should not be taken away from them, although they were aliens, and that they should be given an opportunity, even after they made their location, to declare their intention. The Supreme Court held that they might do that, because exploring for mines is no easy task, and exploring for mines in the Arctic region is a very

laborious task. Few of us are going to be engaged in it, and, with respect to those who had found mines in Alaska when this matter came up, it seemed to me cruel to talk about robbing them of the fruits of their pioneer labors. I could not understand how anybody could have the heart to do so cruel a thing. I had some feeling in that case and in that discussion. The Senate was with me in it. Congress adjourned on the 7th of June, 1900. On the 21st of July, Noyes and McKenzie and some others arrived at Nome, and on the Monday following, immediately, six of the principal claims were taken into possession by the receiver.

The matter of the granting of receiverships in the case of placer mines had been discussed and understood in all that region. No receivership had ever been granted in any case that I ever heard of where it was not necessary to preserve the property. Where there were pumping works or something of that kind the court would do it to preserve the property, but I do not suppose in all history there have been half a dozen receiverships granted even in those cases. But a receiver in a placer mining claim where gold is being taken out was not heard of. Just think of it! What guaranty has the defendant if the placer mine is taken? They say they will let him see the clean up. They can clean up every hour—any time they have a mind to clean up. Just think of putting uncounted gold into the hands of irresponsible parties, and taking it from those who own it! The thing shocked every mining man who had any knowledge of the country. Such a proceeding was never heard of before, and if Judge Noyes was honest in that he was utterly incompetent. There is no precedent for it.

Just think for a moment! It was not necessary to appoint a receiver in order to preserve the property; but gold was being taken out. I have known an injunction to be granted to stop the taking out of gold by either party, because it could not be counted. That is frequent. But receivers, where you put the gold in the hands of a stranger to the proceeding, was never dreamed of in the whole practice for fifty years. No case can be found where a receiver for a placer mining claim has been granted by any court. If the title was in doubt, the court would be bound to interfere, but it would simply interfere by injunction to preserve the property. But to allow one party to take out gold, and say that he can account for it and pay every dollar, was not heard of. How does anybody know? A court would say, "We can not know what you take out, and we will not let you take any out."

These receivers were appointed, and that practice was considered throughout the whole country there. Not only that, but men frequently wrote to me who had claims there that they had stopped working them; that they did not dare to open them because they feared they would be taken from them. Judge Noyes refused parties the right of appeal, and the investigation made by the court of the conduct of the parties connected with that refusal is a chapter in the history of the country.

To say that Judge Ross, or Gilbert, or Morrow was actuated by low motives is to impeach men of as high character and as fine judicial records as anybody in the country.

Judge Ross, who used the strongest language of any of them, stands as high as any judicial officer in the United States. He was regarded when he was on the supreme bench of California as a remarkably strong judge. His decisions were read with pleasure by the bar and quoted everywhere. He was honored and respected. Mr. Cleveland appointed him to the district bench, and his record there has continued to do him credit, and he has given satisfaction to the entire community. I do not know any man on the bench anywhere whose record is finer than that of Judge Ross as a judicial officer. The other judges have not been on the bench so long, but they have honorable records, and if anybody will read these records that they have made, he will see that they examined this case carefully.

It is true they said they would only speak of the contempt. That contempt was involved in the conspiracy. There were a good many parties connected with thwarting the judgment of the court. The taking of evidence lasted for two or three months. Then, for anybody to come here and arraign those judges by outside statements is folly. What has been uttered against them but the unsupported declamations of Senators; and they went so far on yesterday as to object to the printing in the RECORD of the judgment of the court, so that everybody could see it. The idea of attacking a court and denouncing them as monstrously unjust, and refusing to allow the opinion which the court rendered and their proceedings to be put in the RECORD. When any honest man reads what these judges have said, and knows their character and sees the evidence taken, he will say that those judges have done their duty, although a painful one. The whole country will sustain them, and no fair-minded lawyer or judge will sustain a judge in granting promiscuously ex parte receiverships, taking possession of the whole country, blighting its prospects for years. The thing is unheard of.

I care not what the character of these men may have been before. It is nothing to me. I look at these general sweeping receiverships of gold mines, which no court ever before thought of doing—placing it in the power of outside parties to return what they will. In cases of disputed title—and it has to be a strong case—injunctions have been granted. But here we have the receivership, and an injunction to protect the receiver. Then we have the denial of an appeal even. Then we have resistance to the orders of the superior court when they reviewed and set aside these orders of the court below in granting receiverships. We have all that at length in a document which will now be printed, and the country will judge and judge fairly. No injustice will be done anywhere, but if the record made by the circuit court of appeals at San Francisco does not stand, I shall be very much mistaken.

Have not Noyes and McKenzie characters to sustain? Is not their position such as to justify them in guarding everything so dear to them? If the court garbled the testimony and condemned these men without cause; if they have committed the outrages as depicted here by Senators, they ought to be impeached. Either Judge Noyes and his party are guilty of the things charged against them by that court and that judgment against them is correct, or the court of appeals at San Francisco ought to be abolished and the judges impeached. It becomes a matter of honor and veracity and integrity between that high court and these speculators in receiverships, the like of which was never seen before. That is what this is. That is what the country will understand. It is settled. No argument can change it.

I am thankful that the Attorney-General this year sent an honest man up there—Judge Wickersham. He is holding court. Nobody doubts his honesty. All is quiet. Men have gone back, and are opening their claims. Prosperity is being restored at Nome. The people fear nothing there now. Judge Wickersham was in another part of Alaska. He was assigned to that field, and everything is right at Nome. There is nothing now to be done. These parties will not go back to Alaska. They will do no more harm. Nobody has any pecuniary or other interest in pursuing them, and I would not have said a word if it had not been for the attacks made upon the court. I would not have said a word but for the fact that the extraordinary proceeding was taken by Judge Noyes of granting receiverships for gold dust. No lawyer can find a case like that. I know there is none, because I have kept the run of litigation in the mining regions all the time. There is no case parallel to this at all. It was an unparalleled procedure, which, whether they stole anything or not, gave the receiver and his party an opportunity which no court would grant to anybody. If it were necessary to protect the property, a court would grant an injunction, as I said before. These being the facts, I thought it necessary to say this much.

Just one word more, Mr. President. My venerable friend from Massachusetts [Mr. HOAR] got into a little error yesterday. I call his attention to it. Of course he will correct it. He stated here that he predicated his opinion mostly upon what the lamented Senator Davis had said. The Senator from Massachusetts said that parties came to him with their grievances, and he heard them carefully, and that they had no papers. That was after the receivers had been appointed out there, and he said:

> I also suggested to them that as Alaska was at so great a distance a long time must elapse before there could be a thorough investigation if witnesses were summoned here who knew the facts; that they had better say to the Attorney-General that it occurred to me that in so grave a matter he ought to dispatch at once a competent commissioner, in whose ability and character every man would confide, who should investigate the case on the spot and report to him his conclusions by telegraph for the action of the Department and the President. At his request I wrote a note to the Attorney-General stating that.
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> Afterwards I stated, not to the committee itself, but to such members of it as I had opportunity to confer with, what I had said and done and what had been said to me. Thereupon Mr. Senator Davis, of Minnesota, then an honored and very influential member of the committee, as of the Senate, told me that he knew Judge Noyes thoroughly through and through; that he knew a good deal about the merits of this controversy as the result of inquiries, and that he believed Judge Noyes was entirely right.
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> He said there were reasons, which he stated, which I will not undertake to repeat now, where some extraordinary action of the court, possibly in appointing a receiver who was connected with one or two parties in interest—I am not sure, however, about that—was rendered necessary by the peculiar conditions there, and that it was necessary to act in a certain way to save the employment of very considerable bodies of men who, if that business were at once arrested, would be thrown out of employment and reduced to extreme hardship and poverty. Senator Davis spoke to me from time to time afterwards. He was full of the matter and very zealus in the belief which I have stated.

I hope the Senator from Massachusetts will explain this. I do not do it to make any attack upon him, but to show how men are liable to be mistaken. The Congress adjourned on the 7th of June. It will be remembered that Noyes arrived there on the 21st of July, and these proceedings occurred in July, August, and September, and the committee of the Senate were not in session again while Senator Davis was alive. He was taken sick some time in the fall—October I believe—and died on the 27th of November, 1900, and could not possibly have known anything about this transaction. It could not have become a matter before the

committee, because it only came up in the following year. It appeared here along in January, 1901. Nobody here that I am aware of had ever heard of it while Senator Davis was well and alive. The Senator from Massachusetts must be altogether mistaken about this conversation upon which he predicated his judgment in this case, and I hope he will correct the error, if it is an error, or show us how it is possible that it can be true.

Mr. TILLMAN. Mr. President, I will incidentally mention the fact that I saw in one of these documents, which very few people will read, a statement which corroborates what my friend the Senator from Nevada has just said about the injustice of these receiverships. If I am not mistaken, I saw in one of these documents a statement coming from one of the judges, as one reason for their action, that McKenzie as receiver had collected or got out of the mine $100,000, and had reported only $35,000.

Mr. TELLER. Thirty thousand dollars.

Mr. TILLMAN. Thirty thousand dollars.

Mr. TELLER. And $35,000 for expenses.

Mr. TILLMAN. And $35,000 for expenses. The balance disappeared, with no bondsman or anything else anywhere from whom the owners of the mines, when the final determination was made, could recover. That shows that the Senator's contention as to a receivership for a mine——

Mr. STEWART. A placer mine——

Mr. TILLMAN. A placer mine is rather a dangerous thing.

Mr. TELLER. I should like to call the attention of the Senator from South Carolina to the fact that Judge Noyes appointed an accountant to find out how much had been taken out of the mine—he can hardly be charged with being opposed to McKenzie—and he found that $100,000 had been taken. There is a deficit of $65,000 in one single case.

Mr. HALE. Now, Mr. President, if the Secretary will report the pending amendment we will soon finish the bill.

The SECRETARY. On page 44 it is proposed to strike out lines 11 to 16, inclusive, as follows:

That the number of land offices and land districts in the district of Alaska is hereby reduced to one, and the land office of said district will be continued at Sitka. If at the time of the taking effect of this act there should be any business pending in any of the offices to be discontinued, such business shall be transferred to the Sitka office.

Mr. CULBERSON. I ask the Senator in charge of the pending bill to allow this amendment to be passed over for the present. The junior Senator from Georgia [Mr. CLAY] has been called from the Chamber, and he is desirous of making some observations upon it.

Mr. TILLMAN. I do not desire to interfere with anything the Senator from Georgia may want to say, but as a member of the committee I have some documents here which throw some light on this matter. If the Senator from Texas is especially anxious that the matter shall go over, I am perfectly willing to wait until the Senator from Georgia returns, or I will go forward now.

Mr. HALE. I can not agree to let the bill be suspended, but we can go now to one or two other amendments.

Mr. TILLMAN. I will wait until the Senator from Georgia returns, or if he fails to return before we get to final action I will ask some questions about the matter.

The PRESIDING OFFICER (Mr. PERKINS in the chair). The pending amendment will be temporarily passed by.

Mr. HALE. Let us return to page 22.

The PRESIDING OFFICER. The Secretary will report the amendment proposed by the committee on page 22.

The SECRETARY. It is proposed, on page 22, after line 10, to strike out:

For the proper shelter and protection of officers and enlisted men of the Army of the United States lawfully on duty in the Philippine Islands, to be expended in the discretion of the President, $500,000.

And insert:

MILITARY POST.

For the establishment in the vicinity of Manila, P. I., of a military post, including the construction of barracks, quarters for officers, hospital, storehouses, and other buildings, as well as water supply, lighting, sewerage, and drainage, necessary for the accommodation of a garrison of two full regiments of infantry, two squadrons of cavalry, and two batteries of artillery, to be available until expended, $500,000.

Mr. TELLER. Mr. President, I wish the Senator who has this bill in charge would explain to the Senate why the House provision is stricken out of the bill and this one is proposed to be put in.

Mr. HALE. Yes.

Mr. TELLER. Then I want to ask him whether there is any proposition here or anywhere else that he knows of to provide other buildings at other places or whether we are to confine ourselves entirely to Manila?

Mr. HALE. The reason why it has been done is that the Appropriations Committee, upon the proper bill, has always taken jurisdiction of the question of Army posts. The committee has struck out the clause as it passed the House and has put it in the language of the estimates, the language which the Appropriations Committee has always followed in establishing and maintaining Army posts.

If I may refer to the proceedings in the other House, the suggestion was made there that the construction of a new building was subject to a point of order, and the chairman of the committee, finding the difficulty, changed the language, and the House adopted the provision which is found in lines 11, 12, 13, and 14. But, as I said, the Committee on Appropriations, believing that the jurisdiction of the subject-matter is with that committee, as it always has been, and not subject to any other committee, restored the language of the estimates and restored what has been the invariable practice.

On the sundry civil bill we provide for the next year for certain Army posts that we locate in terms. This is needed now. The debate in the House showed that, and the Department is desirous of entering upon the work and not waiting until July.

The PRESIDING OFFICER. The question is on agreeing to the amendment reported by the committee.

The amendment was agreed to.

Mr. HALE. Now the amendment on page 30.

The PRESIDING OFFICER. The Secretary will read the amendment on page 30, which was temporarily passed over.

Mr. HALE. I think it was at the request of the Senator from South Carolina [Mr. TILLMAN] that that amendment was also passed over.

Mr. TILLMAN. That is the amendment in regard to the purchase of boats. I requested that it be passed over. There are some inquiries which I should like to make. I wish to get some light. If the Senator will get the document which he kindly furnished me yesterday (Senate Report No. 330) bearing on this subject, he will find at the bottom of page 2 a paragraph in the letter of the Secretary of the Navy, which I will read.

The money expended for the property above mentioned is needed in the Philippine Islands at present, and as the Secretary of War has asked that settlement be made at an early date it is requested that the sum herein asked for, when appropriated, be made immediately available.

Now, there is a very queer condition of affairs over there. First, we have a civil government under the Taft Commission which is appropriating millions, as we find here in the laws which we have—a whole book of them—and yet the Secretary of War steps up to the Secretary of the Navy and says, "Here, you owe the insular government some money for some boats and ordnance stores, and I want you to settle."

I think that Senators owe it to themselves to clarify this nebulous situation and let us understand whether we have a civil government there or whether the civil government is simply a pro forma annex, so to speak, of the military occupation.

Of course we thought that the civil government was a part and parcel of the machinery of government supplied by what was called the Spooner amendment, which authorized the President to govern (I do not remember the exact words; the Senators will recall them) all officers, judicial, civil, military, etc. Now, the Secretary of War appearing here as the man who is spurring the Secretary of the Navy befuddles us.

Then, if you go on still further, we are worse befuddled on this other point than we are as to who is going to get this money and why he should get it. On the next page, page 3——

Mr. SPOONER. I ask the Senator to what point he has referred?

Mr. TILLMAN. I have just read it. I will read it again. It is in the letter of the Secretary of the Navy addressed to the chairman of the Committee on Appropriations, in which an explanation is given as to why this money ought to be appropriated in the urgent deficiency bill. Secretary Long says:

The money expended for the property above mentioned—

I do not read the whole letter. I have read it, but I am not reading it in connection with what I am saying.

The money expended for the property above mentioned is needed in the Philippine Islands at present, and as the Secretary of War has asked that settlement be made at an early date it is requested that the sum herein asked for, when appropriated, be made immediately available.

What I am endeavoring to get at is why the Secretary of War is trying to collect the debts of the United States due the insular government if that government is under the Taft Commission. Why does not Mr. Taft step forward and ask that his government be reimbursed?

Mr. HALE. He does.

Mr. TILLMAN. Where does he do it?

Mr. HALE. I am not going into the history of events in the Philippine Islands, because that would take too long; but in brief we had it this morning in a very interesting fashion in the Committee on the Philippines. Governor Taft was there and explained the association of the civil and the military power and the gradual development of the civil side of the government. It

was all under the War Department at first, and the care and responsibility have all the time been largely left in that Department. For a time the Army exercised both military and quasi-civilian powers. It appointed civil officers whose duties were not military, but of a civic character, and conjoined the two.

The President was desirous of engrafting upon that actual civil government, and we had two commissions. The first Philippine Commission which went out made certain recommendations, and then we had the appointment of an actual civil government, a civilian and other officers under him, and the civil part of the government has been turned over to that tribunal, at the head of which is Governor Taft.

Now, that is given powers to raise revenue and to legislate. It sounds absurdly to some people, and I am not very much in love with it myself, to find a commission issuing an act declaring "Be it enacted by the Commission," but they do that. They impose duties. They have an insular revenue. They spend money, sometimes large sums, in the building of roads. Their revenues—and that is why this is here—have been depleted to this extent in purchasing, at the time when the civil and military government was running along together, these vessels for use. They were used under the War Department, but when the Navy intervened, and large numbers of our troops were sent there, they were turned over to the Navy, which is now using the vessels in the shoal waters. As it has entirely gone from the control of the insular civil government there, the Secretary of War, under whom all this formula was carried on, recommends that that treasury be compensated for this expenditure. Whether that is the best way to do things I do not know. It has been found in administration by the course of events that it has worked successfully to some extent.

But I will say to the Senator there is no question about the fact which has been established, that these vessels were bought and paid for, and that this is a proper amount. If the Senate do not see fit to reimburse the funds of the insular government the civil government there will have so much less in their treasury to use.

We are doing the same thing in the provision of the bill that has been reported to the Senate from the Committee on the Philippines. We provide for collecting duties, because we believe the machinery can be better supplied in that way, and then, instead of covering it into a general treasury fund, it is segregated and returned to the Philippine civil government and goes into their treasury.

Mr. TILLMAN. Right there, if the Senator will permit me, I will call his attention to page 3 of this little report, which accompanies the urgency deficiency bill. In a letter from D. D. V. Stuart, commander, of the United States Navy, senior member of an appraisal board, I find the following paragraph:

> In reply to a letter addressed to the senior squadron commander and referred by him to the commandant of the naval station, Cavite, the board is informed that the date of receipt of these vessels is not known, nor is it known from whom they were received, nor their condition at the time they were turned over to the naval authorities.

Well, here is another nebulous condition which comes in connection with these vessels. While I am asking for an explanation I will point out all of the unsatisfactory conditions attending this appropriation, which I wish the Senator in charge of the bill to explain. Further on Commander Stuart says:

> The letter from the governor-general's office also informs the board that the armed transport *General Alava* and the gunboats *Quiros* and *Villalobos* were purchased by Maj. C. P. Miller, U. S. A., on February 21, 1900, at a cost of $215,000 Mexican currency, and were immediately turned over to the Navy.

Now, I want an explanation as to how anybody in the Philippines of a private station acquired a gunboat. I had supposed that gunboats were vessels of war, or of offense and defense, and any that were there were either in the possession of the insurgents or of the Spaniards. I see no mention made of any purchase from the Spanish Government. We have, of course, only the information which is here, and this information is not satisfactory to me, and I do not suppose it would be satisfactory to the Senator. I want to know from him how these gunboats were bought and from whom. I can understand how a transport steamer should be bought in open market from some Filipino or some Chinaman or some other outlandish yellow man over there, but I just want to know how you buy gunboats.

Mr. HALE. That does not trouble me any. It is simply a designation of the kind of ship. They are not engaged in any war. We call them gunboats. They are small vessels of that class, and they are engaged in patrol duty.

Mr. TILLMAN. I will call the Senator's attention to the following item on page 4 of this report:

> To thirteen gunboats purchased by Lieut. Col. J. W. Pope, United States Army, and transferred to the Navy by Maj. John T. Knight.

Mr. HALE. That appears in the report.

Mr. TILLMAN. Of course; I am reading from the report.

Mr. HALE. As to whom they were purchased from, I do not know. I have not felt that it was essential to inquire.

Mr. TILLMAN. If the Senator will permit me, as the House committee did not see fit to insert this item, and the Senate committee has done it, does it not appear that we might just let it go out until we get some information as to how gunboats have been bought before we take some money collected from American taxpayers and spend it over there to purchase gunboats that possibly we captured?

I do not like to appear suspicious or invidious in this matter; I do not want to charge any of our people over there with undue disregard of the laws of meum and tuum; but we have been discussing matters this morning in connection with our nearer territories, and I confess that most of this meat appears to be poison to me. I hope the Senator in charge of the bill will permit this item to go out.

Mr. HALE. No; I could not consent to that. It is——

Mr. TILLMAN. Then the Senator ought to be able to defend it and explain it.

Mr. HALE. If I have not explained it satisfactorily the Senate can strike it out.

Mr. TILLMAN. Of course if the Senator is going to fall back on his well-disciplined majority——

Mr. HALE. No.

Mr. TILLMAN. And ask them to stand by what the Appropriations Committee has done, I know what that means. Of course, in that case, as a small fragment or fraction of the Appropriations Committee, I will have simply to subside. But I shall ask for a vote on it.

Mr. HALE. I can only repeat, and it is repeating, that these vessels were bought and paid for out of the insular fund. I have no doubt that the amount is correct.

Mr. TILLMAN. There is no evidence here to that effect, because Commander Stuart tells us that he can not find from whom they were bought, nor when nor where they were turned over to the Navy.

Mr. HALE. The Secretary of the Navy adopts and sends in Commander Stuart's letter, and then recommends, and recommends in strong language, that this payment shall be made. He says that these insular funds that have been depleted so much ought to be reimbursed to this extent. It is rather novel that there are two kinds of government out there, but there is. There is an insular government——

Mr. TILLMAN. Then as to the other phase of the subject, where did these ordnance stores come from that the War Department or the civil government has sold to the Navy?

Mr. HALE. I do not know.

Mr. TILLMAN. Well, I confess I am a little more curious to know than the Senator appears to be. I am not willing to have the taxes of the American people paid out in this way, however small this amount may be. It is a mere bagatelle; but I am sick and tired of seeing good money poured into that Filipino rat hole. And the Senator himself has not had much stomach for it. I am surprised to see him stand here and defend something that he would not ordinarily do but for his association with this bill as a representative of his party.

Mr. HALE. I am entirely satisfied that it is a proper item and ought to go in. I have not any doubt about it whatever. I do not find fault with the Senator because he is not satisfied. The Senate has to settle it. I can give him no further explanation than I have done. Here are the facts. The Secretary of the Navy adopts the statement and recommends the appropriation. The facts are undisputed.

Mr. TILLMAN. I will read another paragraph that the Senator says is undisputed. Commander Stuart says in his letter of July 22, 1901:

> Letters were written to the military governor and to the commandant of of the naval station, Cavite, requesting that the board should be furnished with copies of all vouchers on file in their respective offices concerning the property in question.

The Senator says he has no doubt about it, yet Commander Stuart says:

> Replies were received to these letters on June 25 and 28, respectively, but the information contained in these replies was not sufficient on which to base an inventory and appraisal such as is ordered by the commander in chief.

In other words, the fact as to whether this money was honestly paid out of the insular fund or not does not appear in the record.

The PRESIDING OFFICER. The Chair will state that the amendment has not been read to the Senate. It will now be read for the information of the Senate.

Mr. HALE. Let the Secretary read the amendment.

Mr. TELLER. Are these gunboats now being used by the United States?

Mr. HALE. Yes; they have been turned over to the Navy Department, and they are using them for patrol duty in shallow

water. That is why the appropriation is asked for by the Secretary of the Navy.

Mr. ALLISON. I understand, in addition to what has been said by the Senator from Maine, that these are small steamers which were purchased by the Army, and they may have put small guns on them for aught I know during the operations there, in order that they might go from one place to another. The Army paid for them out of the funds, I understand.

Mr. HALE. Yes; they were paid for out of the insular funds.

Mr. ALLISON. Out of the fund of the Army.

Mr. HALE. Not from the Army appropriation.

Mr. ALLISON. Not at all, but they were paid out of the insular funds. The Army turned them over to the Navy to do patrol duty, and the Navy now asks that the insular fund may be reimbursed to that extent. I do not suppose they put everything in the letter which was transmitted.

Mr. TILLMAN. But what about the ordnance?

Mr. HALE. That is included.

Mr. TILLMAN. But where, how, in what possible way could private parties get hold of ordnance stores?

Mr. HALE. Why, many of them.

Mr. TILLMAN. The Senate is more confiding than I am.

Mr. FORAKER. Mr. President——

The PRESIDING OFFICER. Does the Senator from South Carolina yield to the Senator from Ohio?

Mr. TILLMAN. With pleasure. I want light if I can get it.

Mr. FORAKER. At the foot of page 3 of the document from which the Senator from South Carolina was reading a moment ago commences a report made by a board appointed to investigate this whole subject, and I think if the Senator will read that he will see that all the information has been given that it is probably possible to secure.

Mr. TILLMAN. But if the Senator will look he will see that that very board says:

> In making this recommendation the board would state that the information furnished is incomplete.

Mr. FORAKER. It is incomplete; and we can readily understand why it might be incomplete. There was not perhaps time to make complete records under all the circumstances when this transaction was had.

Mr. TILLMAN. Well, Mr. President——

Mr. FORAKER. But the board report that they have made a careful investigation, and in conclusion they recommend that reimbursement be made to the insular revenues; that is to say, they find that all these boats and certain ordnance stores were purchased and paid for with insular funds, that the amounts charged are reasonable and proper, and then they conclude, as the Senator from South Carolina was about to read, as follows:

> In making this recommendation the board would state that the information furnished is incomplete, and the amount of reimbursement recommended is the actual amount paid for the vessels as shown by the records furnished by the office of the military governor, less the amount of the value of ordnance and ordnance stores shown by the same records. This amount is not considered by the board to be excessive for the 17 vessels in question.
>
> In regard to the stores issued to these vessels and repairs to them since their receipt, paid for from insular funds, the board has not been able to collect sufficient data to make a report therefrom.

Now, Mr. President, it does appear from this report that they have had some difficulty in getting at the facts. The records, they say, are not complete, yet from the records to which they have had access and which they have examined they do find that 17 vessels were purchased, and they give the names of the 17 vessels that were paid for out of the insular funds. They were purchased by an officer of the United States Army, and along with the purchase of these vessels certain ordnance stores, amounting to more than $80,000 in value, were also purchased. The vessels alone, purchased and paid for out of the insular funds, were turned over to the Navy.

Mr. TILLMAN. If the Senator will stop right there for a moment, I will give the Senator from Maine some light. The report states that these ordnance stores were purchased with the boats, proving that the boats were vessels of war when we bought them, and they were not turned into patrol boats and armament put on them by our people. The point with me, which has not been brought out by anybody concerned, is for the Navy Department, or the Army, or Governor Taft, or anybody else who is willing to furnish the light to tell us who it was in Manila who had vessels of war for sale that we had not captured.

Mr. FORAKER. I do not understand——

Mr. TILLMAN. The point I want to make is that this whole business is entirely too slipshod and slack twisted for an honest government.

Mr. FORAKER. I do not find it anywhere stated that these were vessels of war when they were purchased. I understand from reading——

Mr. TILLMAN. I just said that I infer they were vessels of war.

Mr. FORAKER. If the Senator will allow me a minute, I understand from reading what is before us that there was a necessity for small boats to be equipped for use as gunboats, and an officer of the Army cast about and found vessels suitable for that purpose and purchased them; that they were paid for out of the insular funds and then they were transferred to the Navy, when they were equipped and fitted up for use as gunboats, and they are carried into this account as gunboats purchased in that way.

I do not think there is anything extraordinary about it. Certainly when business was transacted as under such circumstances it necessarily had to be, there is nothing extraordinary that there is not as accurate an account as the Department would have been glad to have had before them when they made this examination, but they do say they were perfectly satisfied from an examination of the records that all these boats were purchased and were paid for; that the amounts paid are reasonable, and that they were paid for out of the insular funds.

It is now simply a question whether or not the insular funds should be reimbursed by the United States Government, these ships having passed over to the United States Government and having been made a part of the United States Navy. It seems to me that we having gotten the boats and our own board having made a report that the amount paid is reasonable, we ought to reimburse the funds out of which the payment was made.

Mr. TILLMAN. The Senator from Ohio is so well satisfied in his own mind with this whole scheme of colonial expansion or imperialism, or whatever other thing we may call it, that he has not got his usual specs on. He does not see things, simply because he does not want to see them, if he will pardon me, not that I impugn his motives or would attack his sincerity; but there is so much of the "of course" business about this, that it must be so because we find it in this document, I can not help but express some little surprise as to why it is that these officers first tell us that they can not find anybody from whom the vessels were bought. That is in the first letter.

> The board is informed—
>
> Says Commander Stuart—
>
> that the date of receipt of these vessels is not known, nor is it known from whom they were received, nor their condition at the time they were turned over to the naval authorities.

So we find that money is being handled out there in a loose, slipshod way, no record kept, no receipts, no documents, no accounting, no anything which is necessary and usual in order to keep down thievery. But if Senators are satisfied, and continue to press this matter after the House has refused to put it in, I will just simply have to ask the Senate to vote for it on the yeas and nays.

Mr. TELLER. Mr. President, the statement in the report indicates that the ordnance was originally purchased by the United States, and as it has been turned over again to the United States, they have subtracted that amount, $82,457.60, from the total value of the vessels and ordnance.

Mr. TILLMAN. If the Senator will pardon me, it would indicate that this $532,500 included $82,457.60 worth of ordnance and ordnance stores; and therefore the deduction of $82,457.60 from it would indicate that that has gone to the chief ordnance officer of the United States Army, and is therefore not chargeable against the Navy. That is all it proves.

Mr. TELLER. I think it proves that $532,500 had been expended for ordnance and ordnance stores, and we are now giving a credit of $82,457.60, the value of the ordnance, or rather it indicates to me that they had delivered the ordnance over to the Government as ordnance unused.

Mr. TILLMAN. Delivered it over to the Army.

Mr. TELLER. Well, delivered it over somewhere. It does not make any difference whether it was delivered to the Army or the Navy. It goes into the funds of our Government instead of those of the insular government. It is not worth while to make very much fuss about this little bit of an item—only four hundred and fifty odd thousand dollars—compared with what we are expending, and we are told there is not enough income over there to keep the new civil government going. So, of course, we have got to put up the money.

Mr. TILLMAN. If the Senator will pardon me, did not the Senator from Utah [Mr. RAWLINS] demonstrate the other day by figures that they had a surplus of several million dollars over there more than they had been called on so far to spend? Then, how can the Senator get his consent to argue that they have not got money enough until they themselves so report, when their own report shows they have more than they need?

Mr. TELLER. I found in this document or some other a statement that they were short of funds, and that they want more money. I am very sure of that.

Mr. FORAKER. I am sure, if the Senator will allow me, no matter whether they are short or long of funds, if this sum was paid out of the insular fund and the property has been turned

over to the United States Government, now belongs to it, and is being used by it, we ought to reimburse that fund.

Mr. TELLER. That might depend on what we are using it for. What are we using it for? We are using it, I suppose, to defend those islands.

Mr. HALE. Not only to defend them, but——

Mr. TILLMAN. To subjugate them.

Mr. TELLER. Is that what we are using it for?

Mr. HALE. We are making contracts there for the improvement of harbors and large contracts for roads, and we shall undoubtedly have to appropriate, as the Senator says, from our own revenues for the expenses of the Philippine Islands. In fact, the Philippine tariff bill before the Senate provides that all the money collected on duties, instead of being put into the Treasury of the United States, as I said a few minutes ago, is to be turned back to them because they need it. We have got that government there running and doing its own work, and it involves the expenditure of a great deal of money. They will not have money enough in the Philippine Islands to pay all the bills, and nobody supposes they will.

Mr. BACON. I have no desire, Mr. President, except to have definite information from the Senator from Maine. If he is prepared to give the information as definitely being within his knowledge, I shall be content. I understood the Senator to say that these particular boats, which are here denominated gunboats, were purchased from private individuals and converted afterwards into gunboats. But they were not gunboats at the time they were purchased. Has the Senator any information to that effect?

Mr. HALE. I have no doubt that was the case. They were transports, boats that could be adapted to any service. The word "gunboat," as the Senator knows, is a very elastic kind of word. It does not always mean a war vessel. Those vessels are engaged in what you may call semiwar; they are patroling the islands and preventing supplies going in to the Filipinos. If there is a condition of war they are engaged upon our side. I suppose if the Senator and I should see one of those so-called gunboats in comparison with one of the great crafts that we build here and call gunboats, we would not observe much resemblance between them. They are small, fragile craft.

Mr. BACON. The Senator is not replying directly to the inquiry I made. I asked for information, and the Senator is giving a dissertation upon the character of gunboats, the size of boats, etc.

Mr. HALE. I thought the Senator's question was directed to that point.

Mr. BACON. No, sir; the question I asked the Senator was whether he, as the Senator in charge of this bill, has definite information that these boats which are termed gunboats were not gunboats at the time they were purchased, but have since been so converted?

Mr. HALE. I so believe. I have no doubt of it.

Mr. BACON. Because if they were gunboats——

Mr. HALE. Mr. President——

Mr. BACON. The Senator will pardon me a moment. I will not trespass long upon the Senate. If they were gunboats at the time they were purchased, of course there was no private individual authorized to sell them. They were the capture or prize of war belonging to the United States Government without being so purchased. That is what I desired to ascertain. But the Senator does not seem to have definite information. He has what he says is satisfactory to his own mind.

Now, it is true that this is a comparatively small amount, as we estimate amounts here, as stated by the Senator from Colorado [Mr. TELLER], $450,000 in Mexican money——

Mr. TELLER. I said a comparatively small amount.

Mr. BACON. I say comparatively, as estimated here, as we are in the habit of disposing of very much larger amounts.

Mr. TELLER. If I may interrupt the Senator, I will say that I meant it was a mere bagatelle compared with the amounts we are expending.

Mr. BACON. I was endeavoring to say that very thing, but I could not say it so well as the Senator from Colorado. I was endeavoring to express that very idea. As I said, it is comparatively a small amount; but, at the same time, unless we owe it it ought not to be paid.

I am quite sure in my own mind that at least a part of these gunboats, or what are now termed gunboats, are of the class named by the Senator from Maine; that there were purchased from private parties a number of small boats, which had been converted into gunboats, which are used there in the shallow waters, and anybody who goes there can see them; but at the same time I do think that there is a lack of definite information with which the Senate ought to be furnished as to that being the case; and the designations of some of these boats would indicate that they are not of the class. I call the attention of the Senator to the statement on page 3 of the report, contained in the letter of Commander Stuart, in which he enumerates them. He says:

> We, however, have official information, furnished from the office of the military governor, which states that these thirteen vessels were purchased by Lieut. Col. F. W. Pope, chief quartermaster, United States Army, at a cost of $315,000, Mexican currency. The letter from the governor-general's office also informs the board that the armed transport—

The term "armed transport" does not refer to a private boat—

> *General Alava* and the gunboats *Quiros* and *Villalobos* were purchased by Maj. C. P. Miller, United States Army, on February 21, 1900, at a cost of $215,000, Mexican currency, and were immediately turned over to the Navy.

All I want, Mr. President, is to have definite information. If it be true that these boats were purchased, as the Senator says he believes they were, I am prepared to vote for the amendment; but I do think that we ought to have definite information. There is no reason why we should not have it. I do not know whether this bill is to be concluded to-day or not; if not, I presume we can have the information by to-morrow morning. No one wishes to interpose any factious opposition to the item, if it is a proper item; but if it is not a proper item, we ought not to be called upon to vote upon it, even if we are uncertain. I rose for the purpose of suggesting to the Senator from Maine, without the slightest disposition to interfere with the adoption of this amendment, if it is proper, that in case the bill shall go over until to-morrow we will have this additional information. I presume it can be had; and if not, I think this item may just as well be put on some other appropriation bill.

It is not a fact—and I am sure the Senator upon investigation will find that my statement is correct—that the insular government is now in need of funds. I have no doubt they will need funds; but I have it myself from Governor Taft that they now have $5,000,000 surplus.

I will say to the Senator that nobody will be more prompt to vote in favor of this amendment than I will just as soon as he is prepared to stand in his place and say he has investigated the matter, that these boats were of the class named by him, and have since been converted into gunboats.

Mr. HALE. The Navy Department has this matter now in charge and the Senator has all the information before him. The letters have been read and reread. Speaking for myself, I can give no further information than what we all have in relation to the point which the Senator makes. If the Senator thinks that the question of whether these were originally gunboats is important enough to strike out the item, I am willing it shall go out.

Mr. BACON. No; I do not think that.

Mr. HALE. I want to conclude the bill to-night. It is very essential that we should do so.

Mr. BACON. I do not think the item ought to be stricken out, nor do I wish to vote for its rejection, but I think it is possible that it might be, in view of the uncertainty of it, a proper thing that it should at least be held in abeyance until we can have definite information.

Mr. TILLMAN. Mr. President——

The PRESIDING OFFICER. Does the Senator from Georgia yield to the Senator from South Carolina?

Mr. BACON. Will the Senator pardon me a moment?

Mr. TILLMAN. Certainly.

Mr. BACON. I should like to ask the Senator from Maine, in order that we may have the benefit of his judgment in the matter, how does he account for the designation "armed transport *General Alava*?" We have no transport of that name, and we have no transport or no boat which has been converted into an armed transport called the *General Alava*. How does the Senator account for its designation as "the armed transport *General Alava*" unless it was a Spanish armed transport? If it was a Spanish armed transport, nobody had a right to sell it to the United States Government.

Mr. HALE. It may have belonged to some old Spanish citizen. I do not know about that.

Mr. BACON. No Spanish citizen could have possession of an armed transport.

Mr. FORAKER. Allow me to make a suggestion. I will state what occurred to my mind in connection with that language, and that was that in this letter Commander Stuart, who, I believe, writes it, was describing the boat as it is now. It is now in our ownership as an armed transport.

Mr. HALE. Mr. President——

Mr. FORAKER. He makes that clear, if the Senator will bear with me a moment, because he says in another part of his letter that he has been unable to get information as to the condition of these boats at the time when they were purchased. So that necessarily he is speaking of the present condition of the boat, which is now an armed transport.

Mr. BACON. Does the Senator from Ohio speak from definite knowledge when he says the United States Government now has an armed transport known as the *General Alava*?

Mr. FORAKER. I speak from no knowledge except that given

here, that that is the name of it. This report shows that the armed transport *General Alava* is now a part of the United States Navy.

Mr. BACON. We at least can get definite information on that subject.

Mr. HALE. I can tell the Senator that the Government has armed transports.

Mr. BACON. Of course.

Mr. HALE. They call a transport "armed" when they put a single gun on it.

Mr. BACON. Certainly.

Mr. HALE. They go about transporting troops and stores and supplies from one island to another, and they are all armed.

Mr. BACON. There is no doubt about that.

Mr. HALE. Whether this was a private boat and purchased by us the letter shows, but whether a gun was put on it after we bought it or whether the Spanish Government had put a gun on it, makes no difference. It does not seem to me that it is really essential to know whether this transport was armed at one time or another.

Mr. BACON. That is not the question at all.

Mr. HALE. I thought it was.

Mr. BACON. That is not the question; but I submit this to the Senator. He says that the information can not be gotten. The information can be gotten at the Quartermaster-General's Office in this city whether the United States Government has an armed transport named the *General Alava* or not. If it has not, then the designation of it as an armed transport must refer to its having been an armed transport in the service of the Spanish Government. I submit to the Senator in all candor——

Mr. HALE. I do not accept that conclusion.

Mr. FORAKER. I think it is made perfectly clear, if the Senator from Georgia will allow me to interrupt him a moment——

Mr. BACON. Certainly.

Mr. FORAKER. From the document before us it appears that the armed transport *General Alava* is now in our ownership, possession, and use under that name. In the letter of Commander Stuart to which I referred a moment ago, found on page 3, dated at Manila July 22, 1901, occurs this paragraph:

> In reply to a letter addressed to the senior squadron commander and referred by him to the commandant of the naval station, Cavite, the board is informed that the date of receipt of these vessels is not known, nor is it known from whom they were received, nor their condition at the time they were turned over to the naval authorities.

Necessarily, therefore, if he did not know what the condition was when it was received, he could not have been describing it when he referred to it later as "an armed transport" as having been an armed transport at that time. He does not know what it was then. He speaks of it as it exists now. In a subsequent part of his letter and report he speaks of that boat in connection with other boats as a part now of the American Navy, and this particular boat is described as "the armed transport *General Alava*." In the report made by the appraisal board, consisting of three naval officers, they say they have carefully investigated all the records on the subject, being satisfied that all these boats were purchased, although from whom and at just what time they are unable to state. While they do not know what their condition was at the time they were actually received, they report that the amounts so far paid out of this insular fund are fair compensation.

Mr. BACON. The statement of the officers as to the uncertainty of the condition of the boats when they were received evidently refers to the question of the condition of repair, and has no reference whatever to their character prior to that time.

I repeat, Mr. President—I think it is a repetition; I am not sure, but I want to be certain about it—that so far as these boats have been legitimately purchased by the insular funds, and where the boats have been turned over to the United States Government, the United States Government ought to refund the amount. I hope I am not misunderstood on that subject. The sole doubt in my mind as to whether we should now pass upon it is the doubt which apparently arises from the face of this record, as to what was the nature and character of those boats prior to the purchase. If they were Spanish boats, then the person who sold them had no right to sell them. It seems that some of them at least were Spanish boats. I suppose we can ascertain that by a simple inquiry at the Quartermaster-General's Office.

Mr. TILLMAN. I suggest to my friends on the other side that there ought to be somewhere a means of getting at the facts in this matter; that is, there should be a report from the War Department or from the Taft Commission as to the expenditure of the funds which they have collected, and which they designate as insular funds. A large item like this of a half million dollars, or something like that, must appear in that document, or report, or whatever it is. I do not know where to put my hand on such a thing; but I think it is obligatory upon Senators on the other side to satisfy us on this subject. Of course, if they do not choose to do so they have the majority and can go along. We can only call attention to these little loosenesses, so to speak, and the inability to have our books kept over there in the way they ought to be kept.

Mr. TELLER. I do not think there is any question but what the insular government had these boats. Commander Stuart says, on page 3:

> We, however, have official information, furnished from the office of the military governor, which states that these thirteen vessels were purchased by Lieut. Col. F. W. Pope, chief quartermaster, United States Army, at a cost of $315,000 Mexican currency. The letter from the governor-general's office also informs the board that the armed transport *General Alava* and the gunboats *Quiros* and *Villalobos* were purchased by Maj. C. P. Miller, United States Army, on February 21, 1900, at a cost of $215,000 Mexican currency.

The Secretary of the Navy says——

Mr. SPOONER. Will the Senator yield to me a moment?

Mr. TELLER. Certainly.

Mr. SPOONER. To supplement what the Senator is saying, if he will turn to page 4, he will find there:

> In making this recommendation the board would state that the information furnished is incomplete, and the amount of reimbursement recommended—

The information is incomplete, and the amount of reimbursement recommended, they say—

> is the actual amount paid for the vessels, as shown by the records furnished by the office of the military governor.

Mr. TELLER. That is shown in Commander Stuart's statement.

Mr. SPOONER. And also in the report of the Naval Examining Board.

Mr. TELLER. The Secretary of the Navy says:

> As shown by said reports, the value of the property in question, as nearly as could be ascertained, is equal to $450,042.40 Mexican currency, and as the vessels and the ordnance are indispensable to the efficient operations of the Navy in the Philippine Islands, the Secretary of War has consented to the retention of said property by this Department.

That is a declaration that our Government has got the property. Now, what the Senator from Georgia [Mr. BACON] wants to know distinctly is, whether these vessels were sold and whether the insular government had the right to sell them or not; whether they were boats formerly belonging to the Spanish Government, or whether they belonged to individuals. I suppose we might, perhaps, assume that they belonged to individuals, or else the insular government would not have bought them. I do not think there is very much question but that the Spanish Government formerly owned these boats. Now, we have got them and we are paying, as I understand, all the expenses of the war, which do not come out of the insular people at all.

Mr. BACON. I think it is a mistake to suppose that gunboats were purchased by the insular government.

Mr. TELLER. They were purchased by the insular government. The insular government was simply the military government there. They were purchased by the military government, and that was the insular government, as I understand. I may be mistaken, but I think that is the fact.

Mr. BACON. My understanding is that the military government was the insular government, which had certain funds, doubtless derived from revenues collected there, and that the officers of the Army possibly, not having themselves the money to buy these boats, got the money for that purpose from the insular government—the military government.

Mr. TELLER. I think they were probably purchased for the use of the insular government, expecting that that government would use them; that is, the military government would use them for their purposes, and that they were paid for with these funds. I admit that there is a degree of looseness about this entire business that is not very satisfactory; but that will be the case in all these accounts that come to us. I do not know how we are going to revise them so as to know what we ought to pay. We are carrying on a war that is a great charge upon us. The Navy is a charge upon us, and everything of that kind, and all that the insular government or the present civil government collect from revenues they expend not, I suppose, for what might be called war purposes—not for the Navy, not for the Army—but for the protection of themselves, for their own salaries, for internal improvements, and various other things. We do not have any control over them; nobody is looking very closely to see whether they are spending that money as they ought to spend it under supervision on our part. If they are very loose in that regard, I guess they will be pretty loose in other regards.

The PRESIDING OFFICER. The amendment of the Committee on Appropriations will be stated.

The SECRETARY. On page 30, after line 21, the Committee on Appropriations report an amendment to insert the following:

> For the reimbursement of the Philippine insular funds for small gunboats and other craft, ordnance and ordnance stores, turned over by the military

authorities at Manila to the Navy, a sum of money equal to $450,042.40, Mexican currency, at the valuation thereof during the first quarter of the calendar year 1900, $208,819.67, or so much thereof as may be necessary.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. HALE. There is an amendment on page 42 which has not been acted upon.

The PRESIDING OFFICER. The amendment will be stated.

The SECRETARY. On page 42, after the word "Grounds," in line 3, the Committee on Appropriations report an amendment to insert:

And the Superintendent of the Capitol Building and Grounds shall hereafter exercise all the power and authority heretofore exercised by the Architect of the Capitol, and he shall be appointed by the President, by and with the advice and consent of the Senate.

Mr. LODGE. I offer an amendment to that amendment, which I send to the desk.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The SECRETARY. It is proposed to add to the amendment of the Committee on Appropriations the following:

Provided, That no change in the architectural features of the Capitol building or in the landscape features of the Capitol grounds shall be made except on plans to be approved by the Committee on Rules of both houses.

Mr. HALE. That is a good amendment.

The PRESIDING OFFICER. The committee accepts the amendment to the amendment.

Mr. HOAR. I wish to make a suggestion to my colleague. It seems to me that a change of the architectural features of this building, with its superb architecture, having primacy among all the legislative buildings of the world for beauty, should not be under the control of a legislative committee. I know something of the functions of the Library Committee. I was the senior member of that committee for a good many years. I acted as chairman when the term of the chairman expired, or when the chairman was absent, and practically held the chairmanship for a long while. I know how difficult it is to get every member of that committee together to consult in the summer, when these things are likely to be done. I should like my colleague to consider the question whether the Committee on the Library is the best body for the consideration of such a subject.

Mr. LODGE. My amendment proposes to refer such questions to the Committees on Rules. The Committees on Rules of the two Houses are the committees always in charge of the Capitol building.

Mr. HALE. I have no objection to the amendment being amended by providing—I do not know its language—that no distinctive change shall be made in the architecture of the Capitol building or the landscape features of the grounds until further ordered by Congress.

Mr. HOAR. Very well.

Mr. HALE. I should have no objection to such an amendment as that.

Mr. LODGE. "Without the approval of Congress?"

Mr. HALE. Yes. I would strike out the reference to the Committees on Rules and say "without the approval of Congress." I think that is right.

Mr. LODGE. Very well; I will modify my amendment in that way.

Mr. HALE. There will then be no danger of such changes being made, and we do not any of us want them made.

Mr. FAIRBANKS. I should like to have the amendment to the amendment again stated.

Mr. HALE. Let it be again read.

The PRESIDING OFFICER. The amendment to the amendment will be stated.

The SECRETARY. It is proposed to add at the end of the committee amendment the following:

Provided, That no change in the architectural features of the Capitol building or in the landscape features of the Capitol grounds shall be made except upon plans to be approved by Congress.

The PRESIDING OFFICER. The question is on agreeing to the amendment to the amendment.

The amendment to the amendment was agreed to.

The amendment as amended was agreed to.

Mr. HALE. Mr. President, the only item that is left is the amendment on page 44.

Mr. CLAY. Mr. President, I desire to call the attention of the Senator to this amendment, I believe it was passed over while I was out. It is proposed by the Senate committee to strike out the following clause:

That the number of land offices and land districts in the district of Alaska is hereby reduced to one, and the land office of said district will be continued at Sitka. If at the time of the taking effect of this act there should be any business pending in any of the offices to be discontinued such business shall be transferred to the Sitka office.

Now, I wish to call the Senator's attention to the fact that there are at this time five offices, I believe, in Alaska. The provision in the bill as it came from the House on this subject is proposed to be stricken out. I hold in my hand the report of the Commissioner of the Land Office, showing the receipts and expenditures of these five offices. At Sitka we took in $6,467.76 and spent $13,585.93; at the Rampart office we took in $10 and spent $4,249.60; at St. Michael we took in nothing and spent $2,533.33; at Circle City the expenditures were $5,587.41, with no receipts; at Peavy the expenditures were $7,153.12, with no receipts, and at Weare the expenditures were $1,868.30, with no receipts.

The Commissioner says:

With rent charges of $600 per annum at both St. Michael and Rampart, with wood at $15 per cord and coal at from $40 to $75 per ton at St. Michael, with wood at $20 per cord and coal too expensive for fuel at Rampart, some idea can be obtained as to the cost of incidentals at these offices.

Again, he says:

A recapitulation of the above facts shows that while the various offices heretofore maintained in the valley of the Yukon and its tributaries for the accommodation and encouragement of miners have within the short period of time mentioned in each case cost $21,391.76, there has been but one single application filed in any of these offices with a fee of $10.

The Commissioner of the Land Office recommended that these offices be discontinued. The House carried out the recommendation of the Commissioner, and my understanding is that the Senate committee propose to strike out that feature of the bill.

Mr. HALE. The committee had all of this information. It is undoubtedly the fact that in all these districts the business has been very small, in some of them ridiculously so. The office at Sitka costs $7,000 beyond what the Government received, and Sitka is from nine to ten or eleven hundred miles away from that portion of Alaska where all the business is now done. A question arose in the minds of the committee as to why Sitka was selected as the one particular office, when everything had departed from it. Then we looked at the law. The law, section 12 of the act, declares that the President is authorized and empowered in his discretion by executive order at any time to arrange or combine or discontinue land offices in Alaska. We sent to the Interior Department, which has charge of all land offices, and the Secretary sent us a letter. As the law stands it authorizes the President to consolidate the offices and put the office at the proper place. The committee doubted whether Sitka was the proper place, but believed fully that the offices should be consolidated. We received this letter only a few days ago:

DEPARTMENT OF THE INTERIOR,
Washington, January 30, 1902.

SIR: Referring to your personal inquiry in respect to the provisions in the urgent deficiency bill (H. R. 9315) as it passed the House of Representatives, which consolidates into one land district the several existing land districts in Alaska, I beg to say that, while heretofore there has been some doubt as to whether the President was authorized by existing legislation to consolidate these several districts into one, I have, on full consideration of the several statutes upon the subject (Rev. Stat., secs. 2249, 2254; act of August 15, 1892, 27 Stat., 368; sec. 12, act of May 14, 1898, 30 Stat., 414), reached the opinion that the President is clearly authorized by existing legislation to make such changes in these districts as he deems advisable, and to designate the place for the land office in the consolidated district, if the districts be consolidated into one district. Unless Congress desires to make some specific disposition of the matter, existing legislation is such that the provision which is now carried in the urgent deficiency bill is unnecessary.

Very respectfully,

E. A. HITCHCOCK, *Secretary.*

Therefore not knowing, and it seeming doubtful whether we should consolidate these offices into one district and locate the office in a place whence all the business had departed, we reported this amendment. Sitka is of no account now in Alaska. It is 1,100 miles away from the business and all that is done, and therefore the committee, in order to throw it into conference and get other information as may be necessary, propose to strike it out, there being authority on the part of the President to consolidate. I think we ought to consolidate the offices. I doubt very much whether we ought to locate the office at Sitka.

Mr. CLAY. The Senator from Maine speaks about Sitka being an inconvenient location. Is not the President authorized under the law at this time to locate the office at such place as he desires?

Mr. HALE. Undoubtedly; but if the House provision passes, he will not have that authority. That is the very point.

Mr. CLAY. Is it not true that an amendment would cure that very easily by simply authorizing the President to locate the office that may be left at such place as may be convenient to the people of Alaska?

Mr. HALE. He has that authority now. That is why the committee took that action. The President has that authority.

Mr. COCKRELL. I beg to say that, under this amendment as it came from the House, the President of the United States and the Secretary of the Interior will have ample power to do just as they can do now.

Mr. HALE. I do not know about that.

Mr. COCKRELL. There is no question on that point.

Mr. CLAY. I will say to the Senator that these five offices cost

$21,000 per annum during the last five or six years, and the receipts I have read. Here are two reports from the Commissioner of the General Land Office recommending that Congress take hold of this matter and abolish these offices and simply leave one there.

Mr. HALE. Let me read the language of the House provision and see if the President would have any power under it. I hope the Senator from Missouri will follow the reading.

Mr. COCKRELL. I have read it time and again.

Mr. HALE. It provides:

That the number of land offices and land districts in the district of Alaska is hereby reduced to one, and the land office of said district will be continued at Sitka. If at the time of the taking effect of this act there should be any business pending in any of the offices to be discontinued, such business shall be transferred to the Sitka office.

The President can not locate the office at any place except Sitka.

Mr. TILLMAN. Will the Senator allow me to suggest a reason why the office should go to Sitka, coming from the Commissioner of the General Land Office himself? If he will look at the report of that gentleman, page 59, he will find that after making the statement which the Senator from Georgia has quoted and pointing out all the facts that have been used here he goes on to argue the case; and I will condense his argument by saying that he states that the reason why he recommends the location of the office at Sitka is because that is the only place where lands are taken for agricultural uses. He says all these other claims, on the Yukon and at Nome and everywhere else, are mining claims and that it costs too much money for the miners to patent those claims, and they hold them and mine out the minerals and then abandon them, but that wherever agriculture exists, to however limited a degree, the people who want to use the land buy it and get it patented.

Of course if the conferees on the part of the House insist that this clause shall remain in, I presume the Senate committee will trade off some of the other items and let the House have its way. I have noticed that that system sometimes obtains. We have just given $208,000, I think it is, of our money to these insular possessions. I think the only danger is that some of these lovely officers of ours, these sweet-scented characters whom we have been discussing this morning, may continue to hold their jobs in Alaska by reason of the strong pull their friends have at headquarters. I take it that in the interest of economy the House had better have its way. But then the Senate is a liberal body, and I simply throw that out as a reason why the office should go to Sitka.

Mr. HALE. I know nothing whatever except what is in these documents, and the committee thought, under the circumstances——

Mr. COCKRELL. That is, the majority of the committee.

Mr. HALE. I mean the majority of the committee. After examining the letter from the Secretary and examining law, and believing that the President had this authority, the committee thought it was safer to throw the provision out and let the matter go into conference. But it is a matter entirely within the power of the Senate. I do not propose to take up any more time.

Mr. COCKRELL. I hope the amendment of the Senate committee will not be agreed to. I think it is morally and legally wrong.

Mr. TELLER. Mr. President, if we should adopt the House provision, I do not agree with the Senator from Missouri that the President would have the right to move the office away from Sitka. Under the existing law, the general statute, he can do it; he can do it by the Alaska statute; but if we put in a special provision that he shall locate the office at Sitka, there it must be located. We can avoid that difficulty by saying "the number of land offices and land districts in the district of Alaska is hereby reduced to one," and stop at that, and not say that the land office shall be continued at Sitka.

It will not be a great while before there will be a demand to enter placer claims at Nome and other places. The Secretary of the Interior evidently has not been out in the mining country much, and he is excusing the fact that there are no efforts made to patent claims. Under the existing laws a man holds possession, with as good title for the purpose of working a claim as if he had a patent, but when anybody assails his title he has to go back and show the inception of his title. He has to show that he took it at a certain time, that he has continually worked it within the provisions of the law, and all that, but if, upon the other hand, he has a patent, he is relieved from all that, and all he does, if anybody assails his title, is what a man does who has a patent—walk into court and show his patent. No man can take a claim until he has expended $500 on it, and he can take a patent provided he pays for it according to the provisions of law.

There is a land office at Sitka. There are two or three other land offices which are not needed, as everybody knows, and if we want to reduce it to one, I think we ought to reduce it without naming the place where the one office shall be located.

Mr. COCKRELL. I suggest to the Senator from Colorado that he move such an amendment.

Mr. TELLER. I will in a moment. The Senator from South Carolina [Mr. TILLMAN] suggests that the reason why they want the office at Sitka is because it is where the land is entered. Here is rather a significant statement made by the Commissioner:

Not only has there been but one application under the mineral laws in all the offices of northern Alaska—

That is the only place.

But there has never been an application of any kind under any of the other public-land laws extended to Alaska.

Now, there has not been any application to enter land at Sitka at all, nor at any other place, except, probably, at St. Michael.

Mr. COCKRELL. Oh, yes; there has been business at Sitka. The receipts were $6,000 or $7,000. There had to be business in order to be receipts.

Mr. TELLER. This is what the report says.

Mr. COCKRELL. That means in the northern offices.

Mr. TELLER. It says:

Not only has there been but one application under the mineral laws in all the offices of northern Alaska——

Mr. COCKRELL. Northern Alaska; not Sitka.

Mr. TELLER—

But there has never been an application of any kind under any of the other public-land laws extended to Alaska.

Probably it does not mean at Sitka; but if the Department thinks Sitka is the place at which to keep the office, it can keep it there. If later it thinks another one should be established somewhere else, it will have to take it away from Sitka.

This leaves it absolutely within the control of the Executive, and while it does seem somewhat scandalous to think that we have thus paid out twenty-odd thousand dollars, and fourteen or fifteen thousand dollars of it at least where nothing has been done, yet there may come a time when we will need land offices at some of these places.

I rather dislike to see the executive department tied up, so that if they find they need another office up there they can not provide for it. I think the attention of the Executive being called to it, he may conclude that these offices shall be so arranged as to do the business and at the same time not make so great a draft on the Government. I have been informed that very recently we have confirmed some officers for these land offices, which have been in operation for a couple of years and where they have not done any business at all. I think, perhaps, on looking at the statement here, that the Commissioner is speaking of northern Alaska or the section of country beyond Sitka.

Mr. COCKRELL. That is it. There is no question about it.

Mr. TELLER. Sitka is not in Alaska, as we talk about Alaska. It is not in that section of Alaska which produces the gold that is coming out. I do not know, and perhaps some Senator will tell me, just how far it is. I think it is more than a thousand miles from Sitka.

Mr. HALE. Nearly 2,000.

Mr. TELLER. And it is very difficult to get back and forth. I think myself we had better leave the whole matter to the Administration, with a little admonition here that if the office is not needed they had better abandon it, as they can do under the law. That is not only the law as to Alaska, but it has been for thirty years the law of the land that the President of the United States can close any land office that he wants, move it to another place, consolidate two offices, create a new office whenever he wants to, close it whenever in his judgment it is necessary that it should be closed.

Mr. COCKRELL. Mr. President, I hope this amendment will not be agreed to, and that this clause will be left in the bill, with an amendment, if the Senator from Colorado wants it.

Mr. TELLER. I desire to move it.

Mr. COCKRELL. I have no objection to that.

Mr. TELLER. Will the Senator let me offer it now?

Mr. CLAY. Does the Senator from Missouri think it is necessary?

Mr. COCKRELL. No; but it will not hurt anything.

Mr. CLAY. It will not hurt anything, but I do not think it is necessary.

Mr. TELLER. I move to strike out after the word "one," in line 12, down to and including the word "Sitka," in line 13, and then, in line 16, to strike out "the Sitka" and insert "such."

Mr. COCKRELL. I have no objection to that.

The PRESIDING OFFICER. The amendment proposed by the Senator from Colorado will be stated.

The SECRETARY. It is proposed to amend the clause so as to read as follows:

That the number of land offices and land districts in the district of Alaska is hereby reduced to one. If at the time of the taking effect of this act there

should be any business pending in any of the offices to be discontinued, such business shall be transferred to such office.

Mr. TELLER. That will put it in conference just the same as if we struck it out.

Mr. HANSBROUGH. Mr. President, this question is peculiar to all new countries. I recall that in the Territory of Dakota, when land offices were first established there, years elapsed before any business was done to amount to anything. They were a perpetual expense to the Government, and it is so now in all new parts of the country. It was so in Oklahoma for quite a while. Now Oklahoma is paying a hundredfold over the expenses in point of receipts.

Mr. TILLMAN. It is a little different climate.

Mr. HANSBROUGH. You can not regulate climate by legislation, however. The Senator from South Carolina may do it, but the ordinary Senator can not.

There is on file in the Public Lands Committee to-day a very strong petition, with several letters from residents at Juneau, who are up in arms against the proposed consolidation of all these land offices and the location of a single office at Sitka. There is already a local rivalry in that section and great contention between the two towns, which are not very far apart, as Senators all know. Juneau and Sitka are in the southeastern part of Alaska, more than 1,500 miles, perhaps 2,000 miles, away from the business part of Alaska, so eloquently referred to to-day.

I think, having some knowledge of the land situation in that country, that if you are going to make this change, there should be one land office in the northern part of Alaska, and of course there ought to be one in southeastern Alaska.

Mr. HALE. Let me make a suggestion right here. I suggest that the Senator from Colorado change his amendment and provide that the number of offices shall be reduced to two, and then leave it to the President. That will cover the point the Senator from North Dakota makes that there ought to be one office in the upper part of Alaska as well as one below.

Mr. COCKRELL. I do not agree to that.

Mr. TELLER. I would rather do that and leave it to the judgment of the President.

Mr. COCKRELL. I am sure, judging by the past, that the President will do nothing, and the Secretary of the Interior will not do it. That is the reason why I am going to object to it. I am not going to mince any words about it. I have a right to criticise any Executive Administration when they do not carry out the law in the interest of the people and in the interest of economy.

Mr. HALE. If we cut it down to two, the President will be obliged to do it. To whatever number we cut it down, he will be obliged to reduce the number of offices.

Mr. COCKRELL. We will cut it down to one. That is the thing to do now. Let us stop this thing. I appreciate the kindness of the Senator from North Dakota, but I will show here right now—and I can do it—that there is no possibility of a change being made unless Congress does it.

Mr. HALE. We propose to do it.

Mr. COCKRELL. I will read a telegram received from the Commissioner of the General Land Office to-day:

In reply to your telegram this date, registers and receivers of Alaska land offices, with dates of appointments, are as follows: Sitka, Albert J. Apperson, receiver, December 19, 1899; John W. Dudley, register, January 19, 1899. St. Michael, Albert E. Rose, receiver, January 19, 1899.

Notwithstanding this report from the Commissioner of the General Land Office, that this office cost $21,000 and did not produce a cent.

Mr. HANSBROUGH. Oh, no. The Senator does not want to be wrong about it. It is not this one office.

Mr. COCKRELL. This office, with the others.

Mr. HANSBROUGH. The entire outfit of offices in Alaska.

Mr. COCKRELL. All the offices except the Sitka office.

Mr. HANSBROUGH. Precisely.

Mr. COCKRELL. I will read the next one:

Franklin Moses, register, February 4, 1901; Rampart City, William R. Edwards, receiver, May 26, 1900; Patrick M. Mullen, register, December 18, 1901.

Confirmed by the Senate at this session.

Mr. TELLER. At which place?

Mr. COCKRELL. Rampart. So we have officers now at three offices.

Mr. TELLER. How much business was done at that office?

Mr. CLAY. The receipts were $10 and the expenditures were $4,249.60.

Mr. COCKRELL. And no receipts at all at St. Michael.

Mr. HANSBROUGH. I simply repeat——

Mr. COCKRELL. Permit me just a moment.

Mr. HANSBROUGH. Certainly.

Mr. COCKRELL. What the Commissioner of the General Land Office says is in his report directed to the Secretary of the Interior and dated August 31, 1901. I call the attention of the Senator to this, because there is no politics in this. Here is your own Commissioner and your own Secretary of the Interior making the recommendation, and here they lay before you a fact in the face of which you can not justify the continuance of these offices. He quotes the law, and after giving a good deal of what has already been said, he says:

It is worthy of consideration how far we are justified in continuing these expensive offices with no business thus far demanding their continuance. The promises and expectations which prompted their creation are not fulfilled by subsequent experience, and the wisdom of their further continuance is doubtful in the extreme.

It will be observed that the offices at Nulato, Weare, Rampart, and Circle are all located upon or near the Yukon River, while the office of Peavy was on a prominent tributary of that river; and since these offices were established and maintained almost entirely for the sole purpose of accommodating the miners, their lack of patronage seems to demonstrate that their further continuance is unnecessary.

After carefully considering all the facts, and estimating future probabilities—

And they have as good opportunities of estimating future possibilities as any one of us has—

it is believed that both the Yukon and the Circle districts should be abolished, their territory added to the Sitka district, and their offices consolidated with the Sitka office, at least for the present, and until such time as there shall appear some real necessity for an office in the Yukon country.

Now, this letter, which was written to the Senator from North Dakota by the Secretary of the Interior on the 30th day of January, after this trouble came up, would seem to create the impression that before that time they had had a doubt in their minds about the right and power to consolidate these offices.

Mr. TELLER. Oh, no.

Mr. COCKRELL. Read that. I will read it.

Mr. TELLER. I only meant to say the law is so plain——

Mr. COCKRELL. I am not speaking of the law. I am speaking of what is in the mind of the executive branch of the Government. We are dealing with that now. The Secretary of the Interior says:

DEPARTMENT OF THE INTERIOR,
Washington, January 30, 1902.

SIR: Referring to your personal inquiry in respect to the provisions in the urgent deficiency bill (H. R. 9315), as it passed the House of Representatives, which consolidates into one land district the several existing land districts in Alaska, I beg to say that, while heretofore there has been some doubt as to whether the President was authorized by existing legislation to consolidate the several districts into one—

Now, what does the Senator say?

Mr. TELLER. Who writes that?

Mr. COCKRELL. The Secretary of the Interior. It was written to the Senator from North Dakota [Mr. HANSBROUGH] under date of January 30, 1902.

Mr. TELLER. Will the Senator allow me just a word?

Mr. COCKRELL. Yes.

Mr. TELLER. I think it must be assumed here that some clerk wrote that letter.

Mr. COCKRELL. That I do not know. It has the printed signature of the Secretary attached to it. The letter continues:

I have, on full consideration of the several statutes upon the subject (Rev. Stats., secs. 2249, 2254; act of August 15, 1892, 27 Stat., 368; sec. 12, act of May 14, 1898, 30 Stat., 414), reached the opinion that the President is clearly authorized by existing legislation to make such changes in these districts as he deems advisable, and to designate the place for the land office in the consolidated district, if the districts be consolidated into one district. Unless Congress desires to make some specific disposition of the matter, existing legislation is such that the provision which is now carried in the urgent deficiency bill is unnecessary.

Very respectfully,

E. A. HITCHCOCK,
Secretary.

Hon. H. C. HANSBROUGH,
Chairman Committee on Public Lands, United States Senate.

Mr. HALE. If the Senator will permit me, that can only mean that it was done without an examination of the law and the power of the President has not been understood. There is no doubt of what the Senator from Colorado says. The act here is very plain. Let me read it again:

That the President is authorized and empowered, in his discretion, by Executive order, from time to time to establish or discontinue land districts in the district of Alaska, and to define, modify, or change the boundaries thereof and designate or change the location of any land offices therein.

That is just as complete as can be.

Mr. COCKRELL. There is no question about it.

Mr. HALE. There is no question whatever about it. All that letter means is that the attention of the Secretary had not been drawn to the law.

Mr. COCKRELL. Let us see. I am sorry the Senator said that. It compels me to refer to something that I did not care about criticising.

Mr. TELLER. Will the Senator from Missouri allow me?

Mr. COCKRELL. Not now.

Mr. TELLER. Right on that point.

Mr. COCKRELL. Let me read what the Commissioner of the General Land Office said and what the President, the Secretary

of the Interior, and the Commissioner between them have done. Let us look at it and see whether they understood the law or not:

Under section 12 of the act of May 14, 1898 (30 Stats., 414), quoted above, the Peavy land district was created by Executive order of February 14, 1899, from the northern portions of the Yukon and Circle districts, and the land office established at Peavy, on the Kayukuk River, north of the Arctic Circle. The office of Peavy being difficult of access, owing to the late opening and early closing of navigation in that northern region, and its location not having stimulated discoveries in that locality, the further maintenance of the Peavy district was deemed inadvisable, and, accordingly, by Executive order of February 24, 1900, the Peavy district was abolished and its territory consolidated with the Yukon and Circle districts, whose common boundary line was also changed.

Mr. TELLER. Where does the Senator find that?

Mr. COCKRELL. It is in the report of the Commissioner of the General Land Office to the Secretary of the Interior, dated, as I have quoted before, in August, and the report of the Secretary of the Interior quotes from this report.

Mr. President, I am perfectly willing to make provision for every officer that is necessary in the Government, but I am not willing to consent that this Senate shall stultify itself by voting here thousands of dollars to men who have not done one particle of work for the benefit of the Government, who hold mere sinecures which they have had the power and influence to prevent being taken away from them by Executive order.

Mr. HALE. Now, I do not object to that, Mr. President. My only question is that in doing this we do not go so far as to do any injustice and deprive a portion of the Territory there of a land office that it ought to have.

Mr. COCKRELL. Oh, no. Under the amendment which has been agreed to, the President will have all the power that he now possesses. He can to-morrow reestablish these offices if he wants to do so. There is ample provision there.

Mr. HALE. I presume not.

Mr. TELLER. He can create only one office in the Territory. That might be at Sitka or it might be at St. Michael.

Mr. COCKRELL. I am perfectly willing to give him the power to create another office whenever it is necessary. Nobody wants to impose any hardship upon those people there; but we have the statement before us from our own executive officers that here have been $21,000 drawn and not one particle of labor returned for it, and we have it that the Department have modified these offices and changed them because there was no business, and yet they have not the power to make the changes which they recommend here and they have not done it. Since these recommendations have been made by both the Secretary and the Commissioner of of the General Land Office—for I have the Secretary's report here—officers have been appointed for these two offices and we have confirmed them.

Mr. HANSBROUGH. Those were reappointments. They were appointed a year ago.

Mr. COCKRELL. That shows that they had power to keep themselves in, and they will keep themselves in unless this office is abolished. That is all there is about it.

Mr. HALE. Let me see if this amendment will cover it. We all agree it is a scandal that this should be going on, so much money spent and no business done. We do not want that. Instead of the House provision I suggest that we provide as follows:

That the number of land offices and land districts in the district of Alaska is hereby reduced to one, the location of which shall be fixed by the President, and the President shall not hereafter establish any other land office in Alaska unless, in his judgment, the necessities of the service require it.

Mr. COCKRELL. I am perfectly willing for that. I do not want to limit and restrict, but when the executive authority gets so that it can not act, I want to release it.

The PRESIDING OFFICER. The Chair will state that there is an amendment to an amendment pending.

Mr. TELLER. I will withdraw my amendment.

The PRESIDING OFFICER. The Senator from Colorado withdraws his amendment.

Mr. SPOONER. I should like to make a suggetion to the Senator from Maine. That rather carries the implication that some President might be willing to establish a land office in Alaska when, in his judgment, the public interest did not require it. I suggest to the Senator whether it would not be better to say, "That the President shall have authority to establish an additional land office in Alaska whenever"——

Mr. HALE. "Whenever the same may be necessary."

Mr. SPOONER. "Whenever, in his judgment, the public interest may require."

Mr. COCKRELL. That is right. I have no objection to that amendment. Let it be read at the desk.

Mr. TELLER. Let it be read.

The PRESIDING OFFICER. The Secretary will read for information the amendment proposed in lieu of the pending amendment.

Mr. COCKRELL. Read the clause as it will stand when amended. Then we will understand it.

Mr. HALE. I move to strike out the House clause and substitute for it the entire clause: "The number of land offices, etc., is hereby reduced to one."

Mr. TELLER. Let us see what will be substituted for it.

The PRESIDING OFFICER. The amendment will be read.

The SECRETARY. It is proposed to insert, instead of the committee's amendment, the following:

That the number of land offices and land districts in the district of Alaska is hereby reduced to one, the location of which shall be established by the President, and the President shall not hereafter establish any other land offices in Alaska unless, in his judgment, the necessities of the service require it.

Mr. SPOONER. I suggest in place of the last clause, if agreeable to the Senator, this language:

And the President may establish an additional land office and land district in Alaska when, in his judgment, the public interest shall require it.

The PRESIDING OFFICER. Does the Senator from Maine accept the amendment?

Mr. HALE. Yes; I think it is better than my amendment.

Mr. TELLER. The Revised Statutes, which have been in force for many years, contain the following provision:

Whenever the cost of collecting the revenue from the sale of public lands in any land district is as much as one-third of the whole amount of revenue collected in such district, it may be lawful for the President, if in his opinion not incompatible with public interests, to discontinue the land office in such district and to annex the same to some other adjoining land district.

The act of August 5, 1892, contains this provision:

And it shall be the duty of the Secretary of the Interior to consolidate the land-district offices where practicable and consistent with public interests.

The suggestion made in that letter that it has been a doubtful question in the Department is certainly an oversight on the part of the officer who signed it, because they have been consolidating, closing, and making new offices, to my certain knowledge, in the West, under this general authority, for at least twenty-five or thirty years.

Mr. HALE. There is no doubt about the fact, and has not been.

Mr. TELLER. I did not mean to reflect on the Secretary of the Interior. I suppose it went to some clerk, and some clerk wrote it, and the Secretary signed it without paying any attention to it.

Mr. HALE. I have no doubt that is the explanation. Now let the amendment be adopted.

Mr. HANSBROUGH. Mr. President, just a word. I simply want to call attention to the fact that under the provision of this amendment when the President reduces the land offices to one in Alaska he must either place it at Sitka or Juneau, in southeastern Alaska, or in northern Alaska away up near Siberia, fully 2,000 miles away from Sitka. Now, if he places it at Sitka it will require a trip from the northern part of Alaska to get to Sitka, which is out of the way. It is far easier to get from Siberia to San Francisco to-day than from St. Michael to Sitka. On the other hand, if he locates the land office at St. Michael and abandons the office at Sitka the people in southeastern Alaska will be placed under equal hardships. So I think in all fairness there should be at least two land offices in Alaska.

Mr. SPOONER. This amendment authorizes it.

Mr. HALE. This amendment meets the case.

Mr. HANSBROUGH. The amendment, as I understand it, calls for one.

Mr. HALE. No; the amendment transfers the discretion to the President in meeting the situation described by the Senator from North Dakota. If he finds trouble and difficulty in establishing only one office in southern Alaska or in northern Alaska, it gives him the opportunity to establish another, making two in all. That is the purpose of the amendment.

Mr. HANSBROUGH. I think the President will proceed to establish it right away if he can do it under the authority of this amendment.

Mr. HALE. That is the very purpose of the amendment.

The PRESIDING OFFICER. The question is on the amendment proposed as a substitute by the Senator from Maine.

The amendment was agreed to.

Mr. HALE. I believe that concludes the bill.

The PRESIDING OFFICER. If there be no further amendments as in Committee of the Whole, the bill will be reported to the Senate.

Mr. MITCHELL. Mr. President, I desire to recur once more to the amendment that was passed yesterday in regard to the claims of the States upon the General Government. I should like to submit an amendment to the Senator in charge of the bill.

Mr. HALE. Has the Senator his amendment drawn?

Mr. MITCHELL. Yes. I propose to amend on page 69, line 23, after the word "fifteen," in italics, by inserting the words "not heretofore allowed or;" so that it will read:

Eighteen hundred and sixty-two (Twelfth Statutes, p. 615), not heretofore allowed or heretofore disallowed by the accounting officers of the Treasury.

Mr. HALE. There is no objection to that amendment, Mr. President.

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.

BUSINESS OF MORNING HOUR TO-MORROW.

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

Mr. LODGE. Before that motion is put, I wish the Senator would yield to me for a moment.

Mr. CULLOM. Certainly.

Mr. LODGE. I desire merely to give notice that I shall move to proceed with the consideration of the Philippine bill immediately after the routine morning business to-morrow morning.

The PRESIDING OFFICER. The notice given by the junior Senator from Massachusetts will be noted in the RECORD.

Mr. HANSBROUGH. In reference to what the Senator from Massachusetts has said, I wish to state that to-morrow morning after the routine business it was my intention to address the Senate on the question of irrigation for thirty or, perhaps, forty minutes.

Mr. LODGE. We can arrange that.

Mr. HANSBROUGH. I hope the Senator will accommodate himself to that suggestion.

Mr. LODGE. I think I can arrange that to-morrow.

EXECUTIVE SESSION.

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

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After fifty-three minutes spent in executive session the doors were reopened, and (at 5 o'clock and 50 minutes p. m.) the Senate adjourned until to-morrow, Thursday, February 6, 1902, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate February 5, 1902.

COLLECTOR OF INTERNAL REVENUE.

Daniel B. Heiner, of Pennsylvania, to be collector of internal revenue for the twenty-third district of Pennsylvania, in place of James S. Fruit, deceased.

UNITED STATES ATTORNEY.

James S. Young, of Pittsburg, to be United States attorney for the western district of Pennsylvania, in the place of Daniel B. Heiner, whose term expired January 10, 1902.

REGISTER OF LAND OFFICE.

John A. Williams, of Lamar, Colo., to be register of the land office at Lamar, Colo., vice William A. Merrill, whose term will expire March 10, 1902.

POSTMASTERS.

Eli P. Jennings, to be postmaster at New Decatur, in the county of Morgan and State of Alabama, in place of Eli P. Jennings. Incumbent's commission expired July 1, 1901.

Daniel McNiel, to be postmaster at Ozark, in the county of Dale and State of Alabama, in place of Samuel D. Clark. Incumbent's commission expires February 16, 1902.

William C. Starke, to be postmaster at Troy, in the county of Pike and State of Alabama, in place of Stephen A. Pilley. Incumbent's commission expires February 16, 1902.

Frank M. Reardon, to be postmaster at Victor, in the county of Teller and State of Colorado, in place of Frank M. Reardon. Incumbent's commission expired January 10, 1902.

Wilbur T. Norton, to be postmaster at Alton, in the county of Madison and State of Illinois, in place of Wilbur T. Norton. Incumbent's commission expired May 10, 1901.

Fred C. Kile, to be postmaster at Blue Island, in the county of Cook and State of Illinois, in place of Fred C. Kile. Incumbent's commission expired January 10, 1902.

William J. McEldowney, to be postmaster at Chicago Heights, in the county of Cook and State of Illinois, in place of William J. McEldowney. Incumbent's commission expired January 10, 1902.

Ernest G. Howell, to be postmaster at Geneva, in the county of Kane and State of Illinois, in place of Ernest G. Howell. Incumbent's commission expired July 24, 1901.

Edmund C. Kreider, to be postmaster at Jacksonville, in the county of Morgan and State of Illinois, in place of Edmund C. Kreider. Incumbent's commission expires February 18, 1902.

George S. Roush, to be postmaster at Lena, in the county of Stephenson and State of Illinois, in place of George S. Roush. Incumbent's commission expired January 10, 1902.

John A. Walter, to be postmaster at Lockport, in the county of Will and State of Illinois, in place of John A. Walter. Incumbent's commission expired January 10, 1902.

James E. Gregory, to be postmaster at Moweaqua, in the county of Shelby and State of Illinois, in place of James E. Gregory. Incumbent's commission expired January 10, 1902.

Christian A. Kuhl, to be postmaster at Pekin, in the county of Tazewell and State of Illinois, in place of Christian A. Kuhl. Incumbent's commission expired January 10, 1902.

E. O. Rose, to be postmaster at Angola, in the county of Steuben and State of Indiana, in place of Frank W. Carver. Incumbent's commission expires February 18, 1902.

Alfred Welshans, to be postmaster at Danville, in the county of Hendricks and State of Indiana, in place of Alfred Welshans. Incumbent's commission expires February 18, 1902.

Morton Kilgore, to be postmaster at Goodland, in the county of Newton and State of Indiana, in place of Morton Kilgore. Incumbent's commission expires February 18, 1902.

Harry A. Strohm, to be postmaster at Kentland, in the county of Newton and State of Indiana, in place of Harry A. Strohm. Incumbent's commission expires February 18, 1902.

Beryl F. Carroll, to be postmaster at Bloomfield, in the county of Davis and State of Iowa, in place of Beryl F. Carroll. Incumbent's commission expires February 18, 1902.

F. M. Brist, to be postmaster at Hammond, in the parish of Tangipahoa and State of Louisiana, in place of John H. Bliler. Incumbent's commission expired January 12, 1902.

James L. Greenlee, to be postmaster at Kahoka, in the county of Clark and State of Missouri, in place of James L. Greenlee. Incumbent's commission expires February 11, 1902.

Frank I. Swett, to be postmaster at Lebanon, in the county of Laclede and State of Missouri, in place of Frank I. Swett. Incumbent's commission expired January 21, 1902.

Charles F. Bean, to be postmaster at Glendive, in the county of Dawson and State of Montana, in place of J. Harley Miskimen. Incumbent's commission expires February 8, 1902.

Charles H. Richman, to be postmaster at Woodstown, in the county of Salem and State of New Jersey, in place of Charles H. Richman. Incumbent's commission expires February 18, 1902.

F. O. Blood, to be postmaster at East Las Vegas, in the county of San Miguel and Territory of New Mexico, in place of James A. Carruth. Incumbent's commission expires February 14, 1902.

Allen J. Papen, to be postmaster at Las Cruces, in the county of Donna Ana and Territory of New Mexico, in place of Mary J. Cun Iffe. Incumbent's commission expired January 10, 1902.

Eugene N. Hayes, to be postmaster at Boonville, in the county of Oneida and State of New York, in place of Eugene N. Hayes. Incumbent's commission expired July 8, 1901.

James F. Wray, to be postmaster at Reidsville, in the county of Rockingham and State of North Carolina, in place of James F. Wray. Incumbent's commission expired July 1, 1901.

Chester R. P. Waltz, to be postmaster at Delta, in the county of Fulton and State of Ohio, in place of Chester R. P. Waltz. Incumbent's commission expired January 12, 1902.

John B. Strobel, to be postmaster at Ironton, in the county of Lawrence and State of Ohio, in place of John B. Strobel. Incumbent's commission expired February 2, 1902.

W. Sherman Hissem, to be postmaster at Loudonville, in the county of Ashland and State of Ohio, in place of W. Sherman Hissem. Incumbent's commission expires February 18, 1902.

John C. Metzger, to be postmaster at Oakharbor, in the county of Ottawa and State of Ohio, in place of John C. Metzger. Incumbent's commission expired January 12, 1902.

John J. Robinson, to be postmaster at Port Clinton, in the county of Ottawa and State of Ohio, in place of John J. Robinson. Incumbent's commission expired January 12, 1902.

Walter S. Brigham, to be postmaster at Wauseon, in the county of Fulton and State of Ohio, in place of Walter S. Brigham. Incumbent's commission expired January 12, 1902.

John J. Burke, to be postmaster at Norman, in the county of Cleveland and Territory of Oklahoma, in place of John B. Williams. Incumbent's commission expires February 11, 1902.

Samuel M. Turk, to be postmaster at Parkers Landing, in the county of Armstrong and State of Pennsylvania, in place of Samuel M. Turk. Incumbent's commission expired January 10, 1902.

Joseph Marks, to be postmaster at Covington, in the county of Tipton and State of Tennessee, in place of John S. Randall. Incumbent's commission expires February 11, 1902.

Blanton W. Burford, to be postmaster at Lebanon, in the county of Wilson and State of Tennessee, in place of Blanton W. Burford. Incumbent's commission expired July 24, 1901.

Harry W. Rankin, to be postmaster at Hempstead, in the county of Waller and State of Texas, in place of Harry W. Rankin. Incumbent's commission expired January 10, 1902.

William E. Lissenden, to be postmaster at Mariner Harbor, in

the county of Richmond and State of New York. Office became Presidential October 1, 1901.

Herbert C. Huber, to be postmaster at Mountain View, in the county of Washita and Territory of Oklahoma. Office became Presidential January 1, 1902.

William Fleming, to be postmaster at Athens, in the county of Clarke and State of Georgia, in place of Monroe B. Morton. Incumbent's commission expired January 14, 1902.

WITHDRAWAL.

Executive nomination withdrawn February 5, 1902.

Isaac M. Ferguson, to be postmaster at Coopersville, in the State of Michigan.

CONFIRMATIONS.

Executive nominations confirmed by the Senate February 5, 1902.

PROMOTIONS IN THE NAVY.

Medical Inspector Presley M. Rixey, United States Navy, to be Chief of the Bureau of Medicine and Surgery in the Department of the Navy, with the rank of rear-admiral.

Commander Albert R. Couden, to be a captain in the Navy, from the 15th day of January, 1902.

Lieut. Commander Carlos G. Calkins, to be a commander in the Navy, from the 15th day of January, 1902.

PROMOTION IN THE MARINE CORPS.

Corpl. Alonzo C. Baker, United States Marine Corps, to be a second lieutenant in the Marine Corps, to fill a vacancy existing in that Corps.

COLLECTOR OF CUSTOMS.

George A. Farr, of Michigan, to be collector of customs for the district of Michigan, in the State of Michigan.

SURVEYORS OF CUSTOMS.

Cicero M. Barnett, of Kentucky, to be surveyor of customs for the port of Louisville, in the State of Kentucky.

Frank B. Posey, of Indiana, to be surveyor of customs for the port of Evansville, in the State of Indiana.

Robert Calvert, of Wisconsin, to be surveyor of customs for the port of La Crosse, in the State of Wisconsin.

PENSION AGENTS.

St. Clair A. Mulholland, of Philadelphia, Pa., to be pension agent at Philadelphia.

Sidney L. Willson, of Washington, D. C., to be pension agent at Washington.

REGISTERS OF THE LAND OFFICE.

W. A. Green, of Nebraska, to be register of the land office at Lincoln, Nebr.

John J. Boles, of Guthrie, Okla., to be register of the land office at Guthrie, Okla.

RECEIVERS OF PUBLIC MONEYS.

Alvah Eastman, of Minnesota, to be receiver of public moneys at St. Cloud, Minn.

William F. Young, of Oklahoma, Okla., to be receiver of public moneys at Oklahoma, Okla.

POSTMASTERS.

Thomas G. Lawler, to be postmaster at Rockford, in the county of Winnebago and State of Illinois.

S. C. Johnson, to be postmaster at Rush City, in the county of Chisago and State of Minnesota.

Millard T. Hartson, to be postmaster at Spokane, in the county of Spokane and State of Washington.

Charles M. Sain, to be postmaster at Lovelocks, in the county of Humboldt and State of Nevada.

Frank E. Hollar, to be postmaster at Shippensburg, in the county of Cumberland and State of Pennsylvania.

Clayton O. Slayter, to be postmaster at Latrobe, in the county of Westmoreland and State of Pennsylvania.

Fred M. Askins, to be postmaster at Schaghticoke, in the county of Rensselaer and State of New York.

William P. Dickie, to be postmoster at Bunker Hill, in the county of Macoupin and State of Illinois.

Frank T. Moran, to be postmaster at Belvidere, in the county of Boone and State of Illinois.

Louis A. Constantine, to be postmaster at Aurora, in the county of Kane and State of Illinois.

Clarence A. Murray, to be postmaster at Waukegan, in the county of Lake and State of Illinois.

Cornelius T. Beekman, to be postmaster at Petersburg, in the county of Menard and State of Illinois.

Harry D. Hemmens, to be postmaster at Elgin, in the county of Kane and State of Illinois,

Augustus Gibson, to be postmaster at McLeansboro, in the county of Hamilton and State of Illinois.

Richard F. Lawson, to be postmaster at Effingham, in the county of Effingham and State of Illinois.

Cassius K. Northrup, to be postmaster at Ashton, in the county of Lee and State of Illinois.

William G. Baie, to be postmaster at Hinckley, in the county of De Kalb and State of Illinois.

Emory Gregg, to be postmaster at Fairbury, in the county of Livingston and State of Illinois.

Cad Allard, to be postmaster at Beardstown, in the county of Cass and State of Illinois.

A. W. Brewster, to be postmaster at St. Joseph, in the county of Buchanan and State of Missouri.

Harry Duncan, to be postmaster at Cross Fork, in the county of Potter and State of Pennsylvania.

John B. Brown, to be postmaster at New Castle, in the county of Lawrence and State of Pennsylvania.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *February 5, 1902.*

The House met at 12 o'clock m. Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

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

LEGISLATIVE, EXECUTIVE, AND JUDICIAL APPROPRIATION BILL.

Mr. HEMENWAY. Mr. Speaker, I am directed by the Committee on Appropriations to report the following bill (H. R. 10847) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1903, and for other purposes; and I desire to serve notice that after the reading of the Journal to-morrow I will ask the House to resolve itself into Committee of the Whole House on the state of the Union for the purpose of considering it.

Mr. RICHARDSON of Tennessee. Mr. Speaker, I reserve all points of order.

The SPEAKER. The gentleman from Tennessee reserves all points of order on the bill. The bill will be printed and referred to the Committee of the Whole House on the state of the Union.

OLEOMARGARINE BILL.

Mr. HENRY of Connecticut. Mr. Speaker, I move that the House now resolve itself into Committee of the Whole House on the state of the Union for the purpose of considering House bill 9206, and pending that motion I ask unanimous consent that general debate on the bill be closed to-day, and that the bill be taken up to-morrow under the five-minute rule, and a vote taken on the bill and amendments at 4 o'clock. I might say in explanation that this is the arrangement that has been acceded to by the chairman of the committee, Mr. WADSWORTH.

The SPEAKER. The gentleman from Connecticut moves that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of House bill 9206, and pending that motion, asks unanimous consent that all general debate be closed on the bill to-day at 5 o'clock, and that after the reading of the Journal to-morrow it be considered under the five-minute rule, and a vote on the bill be taken to-morrow afternoon at 4 o'clock. Is there objection?

Mr. WILLIAMS of Mississippi. I object, Mr. Speaker.

Mr. HENRY of Connecticut. Then, Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the purpose of considering House bill 9206, and that general debate be closed to-day at 5 o'clock.

The SPEAKER. The gentleman from Connecticut moves that the House resolve itself into Committee of the Whole House on the state of the Union for the purpose of considering House bill 9206, and pending that, moves that all general debate be closed on the bill at 5 o'clock to-day.

Mr. HENRY of Connecticut. And on that I ask for the previous question.

Mr. WILLIAMS of Mississippi. I believe I have a right to be heard on that anyway.

The SPEAKER. The gentleman has no right to be heard on the motion for the previous question.

Mr. WILLIAMS of Mississippi. I ask that the gentleman from Connecticut withhold his motion for the previous question that I may be heard for five minutes.

Mr. HENRY of Connecticut. I withhold that motion, Mr. Speaker.

Mr. WILLIAMS of Mississippi. Mr. Speaker, I am not a parliamentary sharp, and I am sometimes very thankful that I am not. I had a general impression that one had a right to discuss a motion for the previous question ten minutes on a side; but, Mr. Speaker, I want to appeal to the House against this motion. I

feel very much as if I was making a vain and ineffectual appeal, and I do not desire to act the part of an obstructionist or of a filibusterer. That is a thing I never do, except when I consider fundamental constitutional principles at stake.

Now, Mr. Speaker, the minority members of the committee, who have brought in a report against this bill, had no knowledge until yesterday evening, when they were informed of it, that this motion was to be made, and even they—the members of the committee—have not had an opportunity to be heard. The gentleman from New York opened in four or five minutes and reserved the balance of his time, and the gentleman from Kentucky [Mr. ALLEN], a member of the committee, who desires to be heard in opposition, has thus far had no opportunity, and the gentleman from Kansas [Mr. SCOTT], also a member of the committee, has had no opportunity to be heard.

As for myself I am willing to waive my right to be heard in order that friends with less opportunities may have a chance to be heard. Had I been told yesterday morning (and the making of the list on our side was left to me) that the time was going to be cut short, I could have reduced each man's allotment so as to permit all who desired to be heard to come in.

I hope the House will, in the interest of fairness, vote down this proposition. And if that should be done, I propose then to agree to a motion, or I will make the motion myself, that if you give us two days of general debate and one day under the five-minute rule we will come to a vote.

What object can there be in refusing us this additional one day? If the House should be ready to adjourn upon the 7th of June, or the 10th of July, or any other time that may be suggested, the arrangement I now propose will make only this difference, that the adjournment will be one day later than the time proposed. There is no reason connected with this bill itself for not enabling us to thrash this matter out now while it is before the country. This will probably be the last opportunity. Your bill will undoubtedly pass this House. I am afraid it will pass the Senate. But we have a duty resting upon us, and that is to call the attention of the country to the menacing danger of the precedent which you are about to set. I ask that this motion be voted down, and then I will agree that after two days more of general debate and one day under the five-minute rule we shall come to a vote.

Mr. HENRY of Connecticut. Mr. Speaker——

The SPEAKER. The question is upon the motion for the previous question. No gentleman can speak except by unanimous consent.

The question being taken upon the motion for the previous question,

The SPEAKER. The noes appear to have it.

Mr. HENRY of Connecticut. I call for a division.

The question being again taken, there were—ayes 65, noes 74.

Mr. HENRY of Connecticut. I call for the yeas and nays.

The yeas and nays were ordered, 51 voting in favor thereof.

The SPEAKER. The roll will be called, and members as their names are read will respond. The question is on the motion of the gentleman from Connecticut to order the previous question on the motion to close debate at 5 o'clock to-day.

Mr. WILLIAMS of Mississippi. Pending that, I want to ask unanimous consent of the House that there may be given to the further consideration of this bill two more days of general debate and one under the five minute rule, subject to the possibility of this bill being temporarily displaced by any general appropriation bill which may be reported to the House.

The SPEAKER. The gentleman from Mississippi asks unanimous consent that this day and one day more be devoted to further general debate on the pending bill——

Mr. HENRY of Connecticut. I object.

The SPEAKER. And that there then be one day's debate under the five-minute rule. [A pause.] Does the gentleman from Connecticut object? [A pause.] The Chair hears no objection, and it is so ordered. This order will dispense with the call of the roll.

Mr. HENRY of Connecticut. I move that the House now resolve itself into Committee of the Whole on the state of the Union to resume the consideration of House bill 9206, known as the oleomargarine bill.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole on the state of the Union (Mr. LACEY in the chair) and resumed the consideration of the bill (H. R. 9206) to make oleomargarine and other imitation dairy products subject to the laws of the State or Territory into which they are transported, and to change the tax on oleomargarine.

Mr. ALLEN of Kentucky. Mr. Chairman, so much has already been said with regard to the bill pending that I feel I can add very little to the arguments that have been adduced by those who oppose the measure. This bill purports to be a bill to make oleomargarine and other imitation dairy products subject to the laws of the State or Territory into which they are transported, and to change the tax on oleomargarine.

The evident purpose of the bill is not to raise revenue. It is conceded by its advocates that we shall not need, in order to administer the Government, the revenue proposed to be collected by the bill. The bill provides that, instead of the taxation of 2 cents a pound that we already have on all oleomargarine, there shall be a tax of 10 cents a pound upon colored oleomargarine and three-fourths of 1 cent per pound on uncolored oleomargarine. The bill does not purport on its face to be a bill to exercise the taxing power in behalf of one industry as against another, but any man may read as he runs and see that the purpose of the bill is to drive out of the markets of the country one legitimate product of our industries in order that a monopoly may be established in behalf of another product.

Mr. Chairman, it has been contended that this bill will be held to be constitutional in its effect because its purpose is not stated in the title. I deny that such will be the construction of the higher court. I deny that the Supreme Court of the United States is limited in the right to pass upon the constitutionality of a bill by the mere expression in its title. Following the decisions that I shall quote, I hold that the court has the power to go behind the express title of the bill, and if it takes judicial notice of the fact that the purpose of the bill is not as expressed, but to deprive a particular industry of its right among the other industries of the country, then, Mr. Chairman, the court has the right to exercise its high function and declare the act unconstitutional. I want to read to the House from some decisions with regard to this question.

In support of my contention, I read the decision of Mr. Justice Harlan in the case Mugler *vs.* Kansas (123 U. S. Reports, p. 163):

> It belongs to that department (speaking of the legislative department) to exert what are known as the police powers of the State and to determine primarily what measures are appropriate or needful for the protection of the public morals, the public health, or the public safety. It does not at all follow that every statute ostensibly for the promotion of these ends is to be accepted as a legitimate exercise of the police power of the State. There are limits beyond which legislation can not rightfully go.

Further on in the same opinion the court says:

> The courts are not bound by mere forms, nor are they to be misled by mere pretenses. They are at liberty—indeed, are under a solemn duty—to look at the substance of things whenever they enter upon an inquiry whether the legislature has transcended the limits of its authority. If, therefore, a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, or is a palpable invasion of rights secured by fundamental law, it is the duty of the courts to so adjudge, and therefore give effect to the Constitution.

Again, Mr. Chairman, the Supreme Court, in the case of the United States *vs.* Collins, 171 United States, says:

> In whatever language a statute may be framed its purpose must be determined by its natural and its reasonable effect.

Now, Mr. Chairman, applying that to the bill in question, and knowing the natural and the reasonable effect of this bill evidently is for the purpose of suppressing the manufacture of oleomargarine, I believe it would be held unconstitutional by the Supreme Court of the United States.

Furthermore, Mr. Chairman, I want to call the attention of the House to a provision of this bill that seems to me is the most dangerous feature of the bill. That is the proviso in section 1, which proviso I will now read:

> *Provided*, That nothing in this act shall be construed to permit any State to forbid the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will advise the consumer of its real character free from coloration or ingredient that causes it to look like butter.

Now, sir, the Constitution provides that, except with the consent of Congress, the States have no right to pass a law that will prohibit the sale or manufacture of an article of interstate commerce or other article that is wholesome in its effect. Is this a wholesome article? Why, Mr. Chairman, the opinions of chemists, of scientists, of men who are in a position to know, have been given, and I want to add to that evidence the expression of the highest court in this country, the Supreme Court of the United States, which in the Shollenbarger case, speaking by Mr. Justice Peckham, said:

> There has not one witness appeared to testify about the wholesomeness or the nutritiousness of this article. There has not a witness appeared to tell us about the constituents of it, but we take judicial notice of the fact that it has been a known article of commerce for a quarter of a century. We take judicial notice of the fact that in all the reports of the chemists and in all reports of the Department of Agriculture, of the States and of the United States, this thing has been probed, and we are bound to say, as the court of last resort and the highest judicial authority of this land, that the stamp of wholesomeness and of nutritiousness is on this article, and it is a fit subject of commerce.

So we have not only the evidence of the scientists, not only the evidence of the manufacturers, but the conclusions, the judicial notice of the Supreme Court of the United States, that this article is a wholesome article and can not be interfered with, and the court in construing this act must take judicial notice of these facts and conclusions.

What is the object of this provision? It means by implication that the States may forbid the manufacture or sale of oleomargarine that contains an ingredient that causes it to look like butter.

What does that mean, Mr. Chairman? It means this: It is admitted and conceded that milk, cream, and butter are constituent articles in the production of oleomargarine. It means, if that contention is right, that any ingredient tending to color this butter can be eliminated. It means that the Congress delegates to the State, or gives consent that the State may enact a law which will deprive the farmers of this country—the milkmen of this country—selling to the oleomargarine factories an ingredient that enters into the composition of that article to the extent of 25 or 30 per cent and which contributes to its color.

That is the purpose of it, Mr. Chairman; and I want to say now that in the discussion or in the hearing of the matter before the Committee on Agriculture, of which I have the honor to be a member, recognizing that fact, and believing it to be important that some amendment should be added, I offered the following:

Amend section 1, by adding after "butter," in the seventh line of said section, the following:

"*And provided further*, That the use of pure milk, cream, or butter as an ingredient of oleomargarine shall not be prohibited."

The majority of that committee saw fit to vote down that amendment. If it did not do any harm—if you did not mean to exclude the said ingredients—what was the necessity that it should be voted down? I give notice now, Mr. Chairman, that at the proper time I shall again offer this amendment to this bill.

I do not contend, Mr. Chairman, that the States have not the right to exercise police powers, but I do contend that the Federal Government has no right to delegate to the State or to attempt to delegate to the State a power, exercised in its police capacity, that will deprive a healthful article of food of the right to be sold in the markets of this country.

Now, Mr. Chairman, I want to quote to you or refer you to the evidence of Mr. Gage, that this bill is not a bill for revenue.

On page 561 of the Senate hearings he says:

There is, in my opinion, an objection to the bill on either theory. If it is a revenue producer, it is superfluous; we do not need it. If it is not a revenue producer, then the title of the bill is a misnomer, and it is inoperative in the name of revenue. It seems to me that on either theory there are serious objections to it.

Now, Mr. Chairman, the title of this bill is a misnomer and the evident purpose, or at least the asserted purpose of the advocates of this bill, is that it shall drive out fraud that is now being perpetrated in the sale of oleomargarine. But that is not their purpose. The purpose of the bill is to drive out competition for butter through the operation of this bill, and the bill, so far as its title is concerned, is a misnomer. These gentlemen who in their eagerness, zeal, love, and affection for the farmer would protect the great dairy interests (as they say) of this country, come to Congress and present a bill the face and title of which shows that it is a fraud. That instead of being a bill for the purpose of raising revenue it is a bill to suppress a legitimate industry of the country.

Mr. Chairman, why should oleomargarine be suppressed? Can any man give reason for it, save the dairy interests? They tell you that it ought to be suppressed because it comes in competition with the dairy interests of this country. They are not philanthropists enough to say that they speak in behalf of the toiling workingmen of this country. I want to say to this committee that in all the hearings of the Committee on Agriculture on this question not a single laboring man or a representative of the laboring men has asked the committee that this bill should be presented or reported to the House. They want to protect the interests of the dairymen, and why? This is not an unhealthy food; it is a healthful product, which enters into consumption all over the country. A great majority of the people who buy this product know what they are buying it for and use it for what they are buying it.

The evident intent and purpose of those gentlemen when destroying this industry is not to benefit any other class, but simply to help their own class. What is the position of the workingmen of this country on this bill? They say that they have not heard from the workingmen. I deny the fact, Mr. Chairman. I want to call your attention now to the evidence of Mr. Patrick Dolan, which appears in Senate Hearings on page 308. Mr. Dolan represents the Union Mine Workers' Association, and here is what he says, in part:

Our people, Mr. Chairman, are against the passage of the measure. I represent over 40,000 miners and their families, and I know from the sentiment in other sections of the country to which I go, from talking to people who are interested in our organization, that they do not want to be deprived of the ability to purchase this wholesome article of food. If it is not made in a wholesome way, then they do not want it; but if it is just as good to them to spread their bread with as 35-cent butter, they do want it. And if this measure passes, the chances are that butter will go up to 50 cents, and poor people will not be able to purchase it at all.

Mr. John Pierce, representing the Amalgamated Association of Iron and Steel Workers, said:

Colored oleomargarine is at present retailed at from 12½ to 20 cents per pound. On investigation I am satisfied that most of our people are paying about 15 cents per pound for it, and I can not admit that those who buy it can afford to pay more. I therefore arrive at the conclusion that they must either find 10 cents per pound more to pay this proposed robbery (for I can not dignify it by the name of tax) or buy and eat white oleomargarine. And this to satisfy the greed of the manufacturers of butter, who think that white oleomargarine is good enough for those who can not afford to pay 10 cents additional for yellow, or the 20 cents or more additional for creamery butter, or use the off grades of butter now unsalable as food.

Shall those thus defrauded of what should be their inalienable constitutional right be compelled either to wear in their homes, on their very tables, flaunting before the eyes of their children and of those who may share their board, a badge of their poverty and an emblem of their inability to pay a legalized robbery; or, on the other hand, to contribute from their meager board to the hellish greed of the butter interests, of whom it has been doubtless truly said that they seek to follow the fashion and form a trust, but are deterred by the existence of oleomargarine?

Mr. John F. McNamee, vice-president and chairman legislative committee Columbus Trades and Labor Assembly, Columbus, Ohio, said:

Gentlemen, there are hundreds of thousands of our citizens in moderate circumstances who are now looking to the United States Senate for protection against the perpetration of such a gross injustice. They are depending absolutely upon that sense of justice, that sense of honor, fair play, and conservatism which has always characterized this body to protect them from this, one of the most culpable violations of their rights which any individual or combination of individuals has ever attempted to perpetrate upon the American public.

They are looking to this body with the firm hope that its traditional love of justice will prevail and predominate in this crisis. Should this measure become a law, arising from the mists of the near future there will come a monster into whose insatiable maw the contributions of our citizens shall continually flow, and whose appetite shall be increased by all attempts at its gratification. This monster we have all, in our apprehensive conviction of the certainty of its existence, learned to regard as the creamery trust of the future—the combination of creamery interests into one great organization, which shall monopolize the manufacture not only of the food product known as butter, but of everything of that nature.

These men come before you in their representative capacity, knowing the needs, the wants, and desires of the members of their respective unions, and they tell you that this bill is not demanded by any of them.

But, Mr. Chairman, if this legislation is to be had for the benefit solely of the dairy interests, how is it to be justified? I contend, and shall do so without fear of successful contradiction, that the dairy interests of this country are not needing such legislation as this bill proposes to give them. Why, they are more prosperous, their farms are representing more money, their products are commanding a better price, the whole industry is more thriving than ever before in the history of this country.

But these men recognize the wholesomeness of this product, and as an important article entering into the commerce of the United States. They can look out into the future and see the development of the farming interests of this country—the corn, the cotton, the hogs, and the cattle; they can see that this product emanating from those sources will some day rise to the magnitude that it will be a competing industry with dairy butter in its mission to feed the millions.

They talk to you about the farmers. Mr. Chairman, who are the farmers of this country? Is it the man who keeps his bobtail brindle dairy cow on the north side of the hills of Virginia or North Carolina, or is it the man who, toiling from early morn to the close of day, produces the great products of this country that go to sustain the life of the business and commerce of the nation? Why, my farmer friend, you who represent the farmer that feeds his cow upon the broom sedge and pine bushes that grow upon the side of the hill, let me say to you that his market will not be damaged by this industry.

His market will not be and is not damaged by the production of oleomargarine, nor will the price of his butter decrease. Why, Mr. Chairman? Because there is not a man here representing a rural constituency who has a market in the town within that community who does not know that every housewife takes her butter, whether it be yellow or white, to the country merchant as a matter of barter, and he has got to take it in order to hold the trade of that good woman.

There is not a man on the floor that does not know that that is the exact case. They tell you that you must not bring oleomargarine in here in the shape or in the dress of the dairy butter; that oleomargarine must come in on its own color; must not imitate in dress the dairy butter of the country. Why, Mr. Chairman, the oleomargarine dealer can claim with all due consideration that there is at least one part of the dress wherein oleomargarine does not imitate all butter, and that is it doesn't have to have its hair combed before it goes to the market. [Laughter.]

Now, Mr. Chairman, I want to say to the dairy interests of this country that your business is prospering, and I do not want you to take my opinion for that. Mr. Lestrade, a butterman, before the Senate committee (pp. 166 and 171) says that the buttermen are making better profits than ever before. Mr. Kimball, on page 55 of the House hearing, says that butter was then 2 cents a pound higher than formerly.

Mr. Sharpless says (Senate hearings, p. 228) that he receives 35 cents per pound for his entire output, and that his neighbors

receive from 25 cents up. C. H. Royce (p. 379) says he gets 50 cents a pound. But particularly I want to refer you to the statement of Governor Hoard, the godfather of this proposed legislation (p. 64 of the House hearings), to the effect that the dairy industry has made more rapid strides than any other industry in the country. I also want to refer you to page 439, where Mr. Jett asked Mr. Adams (another earnest worker for this bill) if the industry was not more prosperous than ever before, to which Mr. Adams answered, "Yes, sir."

Again, on page 234 of the present hearing, let me call your attention to the further evidence in that particular. Mr. WILLIAMS of Mississippi, of the Committee on Agriculture, said to Mr. Adams:

I would like to ask you this: Taking the different agricultural interests of this country and comparing them, the ranchman, the wheat man, the cotton raiser, and all that, is not the most prosperous man to-day in the great dairy sections, Ohio, Wisconsin, New York, wherever they exist? Is not the land higher, and are not the farmers in those sections more prosperous than anywhere else?

Mr. ADAMS. Yes, sir.

Mr. Chairman, we find from the evidence in this case—and I want to look at it from the evidence—that there is no such danger of affecting the industry of the dairies of this country at this time (or any other time, for that matter) that should bring them before the Congress of the United States to ask that it pass this restrictive legislation against oleomargarine. But it is the selfish motive, a motive looking into the future, which persuades them. They can for years to come, with all competition driven out of the market, provide a trust that will dictate to the consumer, the rich man and the poor man, and every other citizen, the price which he will pay for the dairy butter, or else that he shall do without it.

There is not an ingredient entering into the manufacture of oleomargarine that is not a product of the farm. It is made wholly of beef fat, hog fat, the finest grade of cotton-seed oil, milk, cream, and butter; and whenever the Congress strikes down this great industry, as it will do by the suppressive taxation provided for in this bill, it stabs the interests of every farmer in this broad land except the so-called dairy farmer or creamery farmer.

Now, Mr. Chairman, with regard to the provisions of this bill as calculated to prevent fraud, I should like some distinguished member on the other side to show me how this bill will prevent the fraud that is now being practiced. What is this fraud? I am not in sympathy with it. I want to say to this House that I would vote for any measure which in my opinion would serve to restrict to the minimum amount the fraud practiced by the oleomargarine people. I would be willing to provide for any punishment which may tend to procure that result. But does this bill do that? The contention has been—and it is a fact—that the fraud in this case has been practiced by the retail dealer in oleomargarine.

Under the provisions of the present law he is allowed to sell, not the package as it comes from the manufacturer, but from the package, and in doing this he takes from the firkin of oleomargarine such quantity as he is called upon to sell, wraps it up, brands the paper, folds it over, and then hands it to the customer—with the knowledge possibly of the customer that it is oleomargarine or with the knowledge possibly that it is not. Now, if your purpose is not to tax this industry out of existence, I ask you to tell me how, under the existing law, you are going to obviate the same species of fraud under the working of this bill?

You say to me that because of the fact that the profit will not be great the fraud will be less. I deny it. I take the position that this is an industry that has come to stay, that if you undertake to restrict it you can not prevent the fraud, because I believe that to protect their interests the manufacturers of this article will, if driven to that point, be induced to make it upon a cheaper scale and put into it articles less healthful, less wholesome, and to that extent the injury will fall upon the public.

Not only that, Mr. Chairman, I believe that the small profit there will be in the business by reason of the increased taxation, instead of deterring retail dealers from the attempt to practice fraud, will be an incentive in that direction, because of the fact that they will have to sell more of the product in order to make the business a prosperous one. Along that line I want to call your attention to the evidence of Secretary Gage on page 564 of the Senate Hearings, which I hold in my hand and to which I have already adverted. Says Senator MONEY:

You say the greater the protection the greater the incentive to fraud. A similar rule would apply here, would it not?

Secretary GAGE. Undoubtedly.

Now, Mr. Chairman, that is the evidence of a man whose business it has been to supervise the execution of the law with reference to this article of oleomargarine and all other revenue-yielding products of this country. It is his judgment; and however much you or I may differ from him politically, we are confronted with the fact that he is a man of ability, a man of sense, man of judgment, and that his evidence is entitled to great weight. I place it against the views of the gentlemen on the other side who say that no fraud will be practiced by reason of the operation of this bill.

Now, Mr. Chairman, gentlemen supporting this legislation come to us and say, "We are unable to procure the enforcement of the State laws with regard to oleomargarine." They flaunt in our faces the fact that 32 States of this Union have enacted laws against the sale of colored oleomargarine. But I undertake to say, upon my own responsibility, however, that such legislation has been procured in the different States—as this legislation is sought to be procured—by the lobbyists of the dairy interests of this country going to the legislatures, and without disclosing the real object and intent of their bill, foisting upon the respective States legislation providing for the sale of uncolored oleomargarine. Why do I say this? Because all the statutes of all the different States are in almost identically the same words, and those are the words embraced in the proviso of this bill.

But you say the States will not enforce the law. Ah, gentlemen, what a commentary that is upon the judiciary of this country. How do you account for it? You say that there is a public sentiment against the enforcement of this law. Mr. Chairman, public sentiment rules the country. You are here by reason of the public sentiment which says that you should be here. A law that is not enforced because of a public sentiment against it does not reflect the opinion of the people standing behind the law. So far as concerns the State which in part I have the honor to represent here, and which has placed on its statute books a provision like this, I wish to say that, within my individual knowledge, I do not know of a single criminal prosecution in my part of the State under the statute prohibiting the sale of colored oleomargarine, even though it is the fact that over 2,000,000 pounds have been sold in that State during the year 1900.

You can not, gentlemen, buck up, if I may use that expression, against this public sentiment. You are pandering to it now in your section of the country in advocating this bill. But, gentlemen, it is a sentiment that will always rule legislation. It is a sentiment that will always control the enactments for the government of the States. And it is a sentiment, gentlemen, that should control, that no man ought to try to "down," for he can not succeed in downing it.

Now, Mr. Chairman, there are gentlemen here who profess that they want to protect the consumer. I want to ask those gentlemen, especially the honorable member from Connecticut, who reported this bill [Mr. HENRY], if he desires to protect the citizens and the people of this country from imposition in food matters, I want to ask him what he has to say with regard to renovated butter?

Mr. HENRY of Connecticut rose.

Mr. ALLEN of Kentucky. I yield to the gentleman from Connecticut.

Mr. HENRY of Connecticut. I think the question of renovated butter has been discussed in this House pretty fully. The question has been asked me several times. I want to say again, emphatically, that I would favor separate legislation to restrict the sale of renovated butter, to compel it to be sold for just what it is.

Mr. STEPHENS of Texas. Why did not your committee put it in this bill, then?

Mr. HENRY of Connecticut. As my friend well knows, it has no place on this bill. We will discuss that at the proper time, and I am sure that we will stand shoulder to shoulder upon that proposition when that time comes.

Mr. SLAYDEN. Will you vote for a bill to prevent the sale of colored butter?

Mr. ALLEN of Kentucky. I am going to test the gentleman's candor. In the Committee on Agriculture I offered an amendment relating to renovated butter. My friend and his associates on that committee defeated that amendment. I want, at the proper time, to offer the amendment which I send to the Clerk's desk and which I ask to have read.

Mr. HENRY of Connecticut. If the gentleman will allow me one minute.

Mr. ALLEN of Kentucky. Yes.

Mr. HENRY of Connecticut. In order that there may be no misunderstanding, I certainly shall object, on behalf of the majority of the committee, to any amendments to this bill except such as are authorized by the committee.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

SEC. 5. That the Secretary of Agriculture is hereby authorized and required to cause a rigid sanitary inspection to be made from time to time, and at such times as he may deem necessary, of all factories and storehouses where butter is renovated; and all butter renovated at such places shall be carefully inspected in the same manner and to the same extent and purpose that meat products are now inspected. The quantity and quality of butter renovated shall be reported monthly. All renovated butter shall be designated as such by marks, brands, and labels, and the words "Renovated butter" shall be printed on all packages thereof, in such manner as may be prescribed by the

Secretary of Agriculture, and shall be sold only as renovated butter. Any person violating the provisions of this section shall, on conviction thereof, be deemed guilty of a misdemeanor, and shall be fined not less than $50 nor more than $500 and imprisoned not less than one month nor more than six months.

The Secretary of Agriculture shall make all needful sanitary and other rules and regulations for carrying this section into effect, and no renovated butter shall be shipped or transported from one State to another or to foreign countries unless inspected as provided in this section.

Mr. ALLEN of Kentucky. Now, Mr. Chairman, if the proponents of this bill are so inordinately in love with the people of this country who are being imposed upon, if they have so much at heart the health of the people of these United States that they want to protect them, I want to ask, in the name of justice, in the name of humanity, in the name of decency, and in the name of right, upon what ground can they afford to vote against that amendment?

The gentleman has said that he did not think it was expedient at this time. Why, sir, I want to quote an authority with whom he seems to be in love, and whom that side of the House have referred to, and that is Secretary Wilson, the Secretary of Agriculture, a gentleman for whom I have the highest respect, the man to whom they look as their oracle, their Moses who shall lead them out of the wilderness, in dictating the policy of this legislation. They called him in; and I want to read to you what he said in his evidence with regard to the provision for renovated butter. In the Senate hearings, page 419, we find the following:

Senator MONEY. The testimony here has been that there are several grades of butter, as well as of oleomargarine, and there is a grade of butter which is denominated by some "renovated" and by some "resurrected" butter, and they said that it was white, sour, rancid, and had a great many other obnoxious features to it; that it had gone through a certain process of ladling; that a little oil was added to it, and different things that go into the composition of oleomargarine were added to it, and then the coloring. Does that deceive anybody?

Secretary WILSON. It does.

Senator MONEY. You then favor putting in a clause here that will prevent everybody from coloring butter?

Secretary WILSON. No, I would not. I would have no objection to a clause which would prevent the coloring of renovated butter. Cow butter is naturally yellow.

And again:

Senator MONEY. What about the man who colors the poor butter; is he a thief also?

Secretary WILSON. The renovated butter is as much of a swindle as oleomargarine.

Now, again, Secretary Wilson (Senate Hearings, p. 422) says in answer to a question of the chairman, speaking of this renovated butter:

Secretary WILSON. Exactly. It is shipped by these people to the markets and sold for what they can get; and generally the merchant handles it without profit, because he sells goods by it.

The CHAIRMAN. So that self-interest would tend to——

Secretary WILSON. Yes. They take a mass of this stuff with as many colors as Jacob's coat and reduce it to one color, and they use chemicals. I have known lime to be used for that purpose. That kind of butter gets a bacteria, the bacteria of decomposition, and they have to use strong chemicals in order to destroy and kill that bacteria. Then they put the thing on the market, and if we happen to eat it we have to take chances on those chemicals.

Is my friend going to permit the dear, beloved people of this country to take the chances of ruining the alimentary canal by what they eat in butter of that kind? If he is not, I give him the opportunity to say so now.

Mr. HENRY of Connecticut. The gentleman's eloquence almost convinces me; and I am quite convinced that he is right in so far as he denounces renovated butter; and I am also in accord with Secretary Wilson in his statement. But under present conditions we shall have to insist that they be considered in a different bill.

Mr. ALLEN of Kentucky. When will you do that?

Mr. HENRY of Connecticut. Whenever the gentleman will unite with me in the committee in bringing in a bill.

Mr. ALLEN of Kentucky. What is the present condition that prevents it being brought in now? Will the gentleman answer that question?

Mr. HENRY of Connecticut. For the present, if possible, we propose to vote upon this bill precisely as the committee reported it to the House.

Mr. ALLEN of Kentucky. Why does my friend say that? Is he going to bind this House arbitrarily? Is he making the assertion that if something is offered that would be a benefit to the public that he will not support it because he did not introduce it?

Mr. HENRY of Connecticut. Oh, no.

Mr. STEELE. It looks that way. [Laughter.]

Mr. ALLEN of Kentucky. It looks very much that way, as the gentleman from Indiana states. [Renewed laughter.] Why, my friend, if this renovated butter process continues, you will go into the graveyards of the poor men of your State and you will see a slab raised to the memory of some man and all that remains of him, and you will find inscribed thereon that he died of "renovated butter." [Laughter.] And yet my friend will vote against inserting a provision to prevent its sale. Why, Mr. Chairman, I respect my honored friend from Connecticut. He is a good man, a man of character, and I have been impressed by his ability. Why, sir, sometimes when I think of him I recall the eulogy of Pollok upon Lord Byron, when he said:

Where fancy halted, weary in his flight
In other men, his, fresh as morning rose,
And soared untrodden heights, and seemed at home
Where angels bashful looked. * * *
Stood on the Alps, stood on the Appenines,
And with the thunder talked, as friend to friend;
Then turned, and with the grasshopper, who sang
His evening song beneath his feet, conversed.
* * * * * *
All thoughts, all maxims, sacred and profane;
All creeds, all seasons, Time, Eternity;
All that was hated, and all that was dear;
All that was hoped, all that was frank by man,
He tossed about as tempest-withered leaves,
Then, smiling, looked upon the wreck he made.

Mr. Chairman, I feel that eulogy is due to the gentleman from Connecticut. [Laughter.]

Mr. HILL. Is that a eulogy on oleomargarine?

Mr. ALLEN of Kentucky. I did not hear the gentleman.

Mr. HILL. Is that a eulogy on oleomargarine?

Mr. ALLEN of Kentucky. It is a eulogy upon the magnificence, grandeur, and sublime ideas of the gentleman from Connecticut, and you may include renovated butter.

Mr. HENRY of Connecticut. Has this any connection with renovated butter?

Mr. ALLEN of Kentucky. Well, Mr. Chairman, it certainly has, if you can connect the gentleman with the rancid butter.

Now, Mr. Chairman, again I find here that this dairy interest has brought to its relief Mr. Aaron Jones, chairman of the National Grange of the United States. To give evidence? No. To present a single petition from a single grange of this country before that committee? No. Not to present a petition; but the substance and the bulk of his statement is that if you gentlemen on this side and you gentlemen on the other side do not vote for this bill your constituents will remember you when you run again for Congress.

Mr. Chairman, has it come to that state of affairs; have we that condition in this magnificent country of ours that any man, whether he represents a grange or anybody else, can come before a great committee of the House of Representatives and say to that committee, unless you vote for this bill you shall not return to Congress. Mr. Chairman, I believe that every member here ought to have, and I further believe that every member does have, the confidence of his constituency, and if he has not he has no business coming back here.

Furthermore, I believe that there is not a constituency, sir, that will force any member to vote for any measure which is against his conscientious principles and honest opinions under the oath he has taken as a member of this House. I know that I speak for my district. I am not a farmer and not a dairyman. I have no interest in these matters save and except as they affect the public at large.

I want to state to you that Mr. Charles Y. Knight, the industrious, the vigilant, and, I might almost say, the unscrupulous secretary of the National Dairy Union, flooded my district last year, when I was a candidate for renomination, with any number of these postal cards, asking that they be signed and sent here requesting me to vote for that bill. But I want to say to you, Mr. Chairman, and I am proud to speak for the honor and intelligence of my community and of my constituency, that only one of these cards ever reached my desk requesting my support of the bill, while I received numerous letters, inclosing such cards unsigned, stating to me: "Do as you please with this thing; I do not know anything about it." [Laughter.]

There was one man, Mr. Chairman, who raised against me a personal objection in one of my counties—the owner of a dairy—who, and I will say was honest in his opinion, was convinced that I ought to support this bill. He raised that objection to me, but it was not voiced by any number of the voters of my district, and I am proud to say to you that I received the nomination of my party without any opposition whatever. That shows what the sentiment is there, Mr. Chairman.

Mr. SIMS. Will the gentleman allow me an interruption right there?

Mr. ALLEN of Kentucky. Certainly.

Mr. SIMS. You live in Kentucky and in a good dairy country?

Mr. ALLEN of Kentucky. I live in Kentucky, but not in a dairy section.

Mr. KLUTTZ. Where they produce beef?

Mr. ALLEN of Kentucky. Yes; a beef, hog, corn, and wheat producing country, and I am glad that we can give you something to eat, for from what I have seen of the hills of North Carolina you can not raise it there.

Mr. KLUTTZ. We furnished the best blood of Kentucky and the best stock they have got.

Mr. ALLEN of Kentucky. Maybe that is why it is now scarce in North Carolina.

Mr. HAUGEN. Do you raise cotton in your district?

Mr. ALLEN of Kentucky. No; not cotton; but I am here to stand solid against this bill, which proposes to injure the cotton industries of the South. I believe in exact justice. I am an advocate of that principle engrafted into the spirit of our institutions which says: "Equal justice to all, and exclusive rights to none."

Mr. HAUGEN. How much will it injure the cotton industry?

Mr. ALLEN of Kentucky. Oh, I will leave that to the gentlemen of the South who have already spoken upon that subject. Now, you talk about the farming interests of this country. Why, sir, this bill is most loudly advocated by the gentleman from Connecticut [Mr. HENRY] and the gentleman from Vermont [Mr. HASKINS]. I want to say to you that I represent a district that produces more wheat, that produces more corn, that produces more tobacco, that produces more cattle, that produces more hogs than the whole States of Vermont and Connecticut combined [applause]; and I represent back of that, Mr. Chairman, a constituency that yields to no man from Connecticut or Vermont or anywhere else in industry, courage, patriotism, and devotion to the interests of his country. [Applause.]

Mr. HEATWOLE. How much tallow does your district produce?

Mr. ALLEN of Kentucky. I do not know; we produce beef cattle and ship them to Chicago. Our greatest interest is in the production of wheat, corn, and tobacco. I have one city in my district—the city of Henderson—that last year put up over 20,000,000 pounds of leaf tobacco.

Furthermore, I want to say that my district produces more than one-third of the whole coal that is mined in the State of Kentucky, and, further, that the people who mine that coal, who take it from the ground, are opposed unqualifiedly to the enactment of this bill.

Mr. HEATWOLE. Is that the reason you oppose it?

Mr. ALLEN of Kentucky. Not wholly. I oppose it because it is unjust in principle, because it is class legislation, because it is wrong, and because you seek to build up one industry by striking down another. [Applause.]

Mr. SIMS. One more question, if the gentleman please.

Mr. ALLEN of Kentucky. Certainly.

Mr. SIMS. I went and priced butter this morning. I am buying it all the time. The first class was 50 cents, the second class was 45 cents, and the third class 35 cents, right here at James F. Oyster's. Now, I want to ask if any laboring man can eat anything above third-class butter at that price?

Mr. ALLEN of Kentucky. No. My friend is entirely right.

Mr. HEATWOLE. Is the gentleman sure it was butter?

Mr. SIMS. If it was not it ought to have been. Mr. Oyster is a most reputable dealer.

Mr. ROBB. Will the gentleman from Kentucky allow me a suggestion?

Mr. ALLEN of Kentucky. Yes.

Mr. ROBB. I would like to know if he thinks we should, by passing legislation, or the refusal to enact legislation, encourage economic conditions in the country which prescribe one character of food for the poor man and laboring man and another character for the rich man?

Mr. ALLEN of Kentucky. Mr. Chairman, in answer to the gentleman's question, I say certainly not. I believe in individual personal liberty. I believe in opening the market to any man, rich or poor, and letting him exercise his right as a citizen and buy in whatever market he can.

Now, Mr. Chairman, I see that my time is almost consumed. I shall support the substitute bill reported by the minority. I shall not go into details of that bill. From the standpoint I occupy, from the evidence of the Commissioner of Revenue, Mr. Wilson, who is now dead, backed up by the evidence of Secretary Gage of the Treasury, who is now retired, it is my opinion that that bill will meet every demand that the dairy interests of this country are endeavoring to enact into law, and will accomplish a purpose that this majority bill can never accomplish, and for that reason I shall support the substitute bill, believing it to be the best for the whole people of the country. [Applause.]

From Senate hearings, page 566, I quote the following evidence of Secretary Gage with regard to manufacture and sale of oleomargarine packages under the minority substitute:

Secretary GAGE. It provides a method of putting up oleomargarine in packages of 1 pound, or not more than 2 pounds, I believe. Am I right?

Mr. SPRINGER. Yes, sir; that is right.

Secretary GAGE. They are, as I understand, required to be separate and distinct from each other, with the revenue stamp wound around them and sealed as effectively as a box of cigars is with its stamp. I can not imagine any reason why that would not be a very effective means of preventing the dealer from opening packages and selling the product as butter. The abuse in that respect would be reduced to an infinitesimal amount. Of course the dealer could cut a package in two, obliterate the stamp, and sell half a pound at a time as butter.

Senator MONEY. That is possible with cigars and everything else, is it not?

Secretary GAGE. It is possible in every department; but the temptation would be so small, and the penalties so great, that my opinion is that such deception would scarcely be practiced at all.

Mr. SPRINGER. That is to say, if the dealer is required to sell it to the consumer in the original packages and is not allowed to break them?

Secretary GAGE. That is what I mean.

Mr. SPRINGER. It would almost do away with the possibility of fraud on the consumer?

Secretary GAGE. Yes, sir.

Now, Mr. Chairman, in concluding what I have to say, let me remark that I impugn the motives of no man. I concede to every Representative on this floor the right to vote as he may deem proper, whether he be influenced by the pressure of his constituency or by his conscientious convictions. And I reserve the same right for myself. Let me say further, Mr. Chairman, that I am proud of my country; that I am proud of its laws; that I am proud of its institutions; that I am proud of the Constitution that has guaranteed to us the right of free citizenship which we have enjoyed for so many years.

But I do not want to see that instrument abused. I do not want to see it trampled under foot. I want to see that Constitution spread its broad wings of protection over every industry of this country, so that none may flourish by reason of legislation as against another; that no man's rights may be oppressed by legislation favoring any other individual; so that when we look out upon our grand institutions we may rejoice that we live in the proudest country that God Almighty has ever permitted man to rule, where liberty, equality, and justice reign supreme, and where every man has a right of protection in his business as well as in his domicile. [Applause.]

APPENDIX.

VIEWS OF THE MINORITY.

The minority of the Committee on Agriculture of the House of Representatives beg leave to submit the accompanying bill, which we offer as a substitute for H. R. 9206.

We first wish to bring to the attention of the House proof positive that oleomargarine is a wholesome and nutritious article of food, and is therefore entitled to a legitimate place in the commerce of our country. In substantiation of this statement we beg to submit the following testimony:

OPINIONS OF LEADING SCIENTISTS.

"Prof. C. F. Chandler, professor of chemistry at Columbia College, New York, says: 'I have studied the question of its use as food, in comparison with the ordinary butter made from cream, and have satisfied myself that it is quite as valuable as the butter from the cow. The product is palatable and wholesome, and I regard it as a most valuable article of food."

"Prof. George F. Barker, of the University of Pennsylvania, says: 'Butterine is, in my opinion, quite as valuable as a nutritive agent as butter itself. It is perfectly wholesome, and is desirable as an article of food. I can see no reason why butterine should not be an entirely satisfactory equivalent for ordinary butter, whether considered from the physiological or commercial standpoint.'

"Prof. Henry Morton, of the Stevens Institute of Technology, New Jersey, says: 'I am able to say with confidence that it contains nothing whatever which is injurious as an article of diet, but, on the contrary, is essentially identical with the best fresh butter, and is superior to much of the butter made from cream alone which is found in the market. The conditions of its manufacture involve a degree of cleanliness and consequent purity in the product such as are by no means necessarily or generally attained in the ordinary making of butter from cream.'

"Prof. S. W. Johnson, director of the Connecticut Agricultural Experiment Station, and professor of agricultural chemistry in Yale College, New Haven, says: 'It is a product that is entirely attractive and wholesome as food, and one that is for all ordinary and culinary purposes the full equivalent of good butter made from cream. I regard the manufacture of oleomargarine as a legitimate and beneficent industry.'

"Prof. S. C. Caldwell, of Cornell University, Ithaca, N. Y., says: 'While not equal to fine butter in respect to flavor, it nevertheless contains all the essential ingredients of butter, and since it contains a smaller proportion of volatile fats than is found in genuine butter it is, in my opinion, less liable to become rancid. It can not enter into competition with fine butter, but so far as it may serve to drive poor butter out of the market its manufacture will be a public benefit.'

"Prof. C. A. Goessmann, of Amherst Agricultural College, says: 'Oleomargarine butter compares in general appearance and in taste very favorably with the average quality of the better kinds of dairy butter in our markets. In its composition it resembles that of ordinary dairy butter, and in its keeping quality, under corresponding circumstances, I believe it will surpass the former, for it contains a smaller percentage of those constituents which, in the main, cause the well-known rancid taste and odor of a stored butter.'

"Prof. Charles P. Williams, professor in the Missouri State University, says: 'It is a pure and wholesome article of food, and in this respect, as well as in respect to its chemical composition, fully the equivalent of the best quality of dairy butter.'

"Prof. J. W. S. Arnold, professor of physiology in the University of New York, says: 'I consider that each and every article employed in the manufacture of oleomargarine butter is perfectly pure and wholesome; that oleomargarine butter differs in no essential manner from butter made from cream. In fact, oleomargarine butter possesses the advantage over natural butter of not decomposing so readily, as it contains fewer volatile fats. In my opinion, oleomargarine is to be considered a great discovery, a blessing for the poor, and in every way a perfectly pure, wholesome, and palatable article of food.'

"Prof. W. O. Atwater, director of the United States Government Agricultural Experiment Station at Washington, says: 'It contains essentially the same ingredients as natural butter from cow's milk. It is perfectly wholesome and healthy and has a high nutritious value.'

"Prof. Henry E. Alvord, formerly of the Massachusetts Agricultural College, and president of the Maryland College of Agriculture, and now Chief of the Dairy Division of the United States Department of Agriculture, and one of the best butter makers in the country, says: 'The great bulk of butterine and its kindred products is as wholesome, cleaner, and in many respects better, than the low grades of butter of which so much reaches the market.'

"Prof. Paul Schweitzer, Ph. D., LL. D., professor of chemistry, Missouri

State University, says: 'As a result of my examination, made both with the microscope and the delicate chemical tests applicable to such cases, I pronounce butterine to be wholly and unequivocally free from any deleterious or in the least objectionable substances. Carefully made physiological experiments reveal no difference whatever in the palatability and digestibility between butterine and butter.'"

Professor Wiley, Chief of the Division of Chemistry of the United States Department of Agriculture, also appeared before the committee and testified to the nutritive and wholesome qualities of oleomargarine.

The Committee on Manufactures of the United States Senate, in a report dated February 28, 1900, finds, from the evidence before it, "that the product known commercially as oleomargarine is healthful and nutritious."

Dr. George M. Kober, professor of hygiene, Georgetown University, District of Columbia, says:

"As a teacher of hygiene, I have urged upon my students for years to bring the merits and nutritive value of this food stuff to the attention of the public, and in the interest of the wage-earners of this country to correct, as far as possible, the prejudice which has been created against the use of this product, provided always it is sold under its true name and at its real value. In this opinion I am glad to be supported by the highest scientific authorities in this country and abroad."

Charles Harrington, assistant professor of hygiene in the medical school of Harvard University, in his Manual of Practical Hygiene, 1901, page 112, says:

"Oleomargarine has been misrepresented to the public to a greater extent, probably, than any other article of food. From the time of its first appearance in the market as a competitor of butter there has been a constant attempt to create and foster a prejudice against it as an unwholesome article made from unclean refuse of various kinds, a vehicle for disease germs, and a disseminator of tapeworms and other unwholesome parasites. It has been said to be made from soap grease, from the carcasses of animals dead of disease, from grease extracted from sewer sludge, and from a variety of other articles equally unadapted to its manufacture."

The truth concerning oleomargarine is that it is made only from the cleanest materials in the cleanest possible manner, that it is quite as wholesome as butter, and that when sold for what it is and at its proper price it brings into the dietary of those who can not afford the better grades of butter an important fat food much superior in flavor and keeping property to the cheaper grades of butter which bring a better price. Oleomargarine can not be made from rancid fat, and in its manufacture great care must be exercised to exclude any material however slightly tainted.

Judge Hughes, of the Federal court of Virginia, in a decision, says:

"It is a fact of common knowledge that oleomargarine has been subjected to the severest scientific scrutiny, and has been adopted by every leading government in Europe as well as America for use by their armies and navies. Though not originally invented by us, it is a gift of American enterprise and progressive invention to the world. It has become one of the conspicuous articles of interstate commerce, and furnishes a large income to the General Government annually."

Believing that this testimony establishes beyond controversy that oleomargarine is a nutritious and wholesome article of food, the main question to be considered is the complaint that fraud is practiced in its sale.

In this connection the minority directs attention to the fact that the charge of fraudulent sale is not made against the manufacturer. It is conceded that the manufacturers of oleomargarine make no effort to evade the existing law, but that their product is always so marked and branded as to advise the customer who buys direct from the manufacturer as to the nature of the product.

It is charged, and doubtless truly, that the present law is violated by unscrupulous retailers. In view of these two facts, viz, that the manufacturer does not violate the law, and that by reason of his being constantly under the eye of Government inspectors there is no danger of his doing so, and that the retailer does violate the law (when it is violated), the minority holds that the only proper legislation is that which directs the penalties against the retailer, and not against the manufacturer—in other words, against the man who commits the crime and not against the man who does not. H. R. 9206 violates this fundamental principle of equity and jurisprudence by directing its penalties against the manufacturer who is already surrounded by such restrictions as to effectually prevent even the attempt at fraud, while it in no way either diminishes the temptation or increases the difficulty involved in the violation of the law by the retailer.

The fact just stated, that H. R. 9206 is directed against the manufacturer (who is not even charged with violating the law) and not against the retailer, through whom, if at all, the fraud is committed, seems to justify the conclusion that the real object of this measure is to prevent the use of oleomargarine as a substitute for butter, and not merely to stop the fraudulent sale of oleomargarine as butter. Indeed, the radical advocates of the legislation proposed by H. R. 9206 have not hesitated to declare that their wish and expectation is that the passage of this bill will result in seriously crippling the oleomargarine industry, and the elimination of oleomargarine from the market as a food product.

In substantiation of this assertion we quote the following.

Mr. Adams, pure-food commissioner of the State of Wisconsin, in his testimony before the committee on March 7, 1900, said:

"There is no use beating about the bush in this matter. We want to pass this law and drive the oleomargarine manufacturers out of the business."

Charles Y. Knight, secretary of the National Dairy Union, in a letter to the Virginia Dairymen, dated May 18, 1900, writes:

"Now is the time for you to clip the fangs of the mighty octopus of the oleomargarine manufacturers who are ruining the dairy interests of this country by manufacturing and selling in defiance of law a spurious article in imitation of pure butter. We have a remedy almost in grasp which will eliminate the manufacture of this article from the food-product list. The Grout bill, now pending in the Agricultural Committee of the House of Representatives in Congress, meets the demand."

W. D. Hoard, ex-governor of Wisconsin and president of the National Dairy Union, stated in his testimony before the committee on March 7, 1900, as follows:

"To give added force to the first section of the bill, it is provided in the second section that a tax of 10 cents a pound shall be imposed on all oleomargarine in the color or semblance of butter. In plain words, this is repressive taxation."

And on January 13, 1902, in his testimony before the Committee on Agriculture, House of Representatives, the same witness, replying to the question as to "whether this bill (H. R. 9206—or similar measure) would be demanded if, after its passage, just as much oleomargarine would be manufactured and put on the market as is now manufactured and sold," said:

"In that case, sir, I would come before Congress and demand a still higher tax."

In view of this testimony (and much more of a similar character might be cited) the minority feel amply warranted in claiming that the purpose of H. R. 9206 is to cripple the business of the legitimate oleomargarine manufacturers. In just the extent to which this purpose is realized Congress will be responsible—in the event of the passage of H. R. 9206—for injuring or ruining one American industry at the demand of another; a thing which, as all will concede, Congress ought not to do. The minority believe it to be class legislation of the most pronounced kind and would establish a precedent which, if followed, would create monopolies, destroy competition, and militate against the public good.

THE SUBSTITUTE BILL.

The purpose of the substitute bill, offered by the minority, is not to prevent the manufacture of oleomargarine or its legitimate sale, but to prevent it from being fraudulently sold for butter. To accomplish this end, it throws such safeguards about the retail sale of the article (the only operation in which, under existing law, it is possible for fraud to be committed) as, in our opinion, to entirely eliminate all possibility of fraud in such retail sales and compel all dealers in oleomargarine to sell it for what it really is and not for butter. The substitute offered is really an amendment to sections 3 and 6 of the existing oleomargarine law. The annual licenses for the manufacture and sale of oleomargarine ($600 for manufacturers; $480 for wholesalers, and $48 for retailers) are not lessened, while the penalties imposed for violation of the law are materially increased.

The minority respectfully submit that the enforcement of these provisions would effectually eliminate all possibility of fraud in the sale of oleomargarine, and that, in our opinion, is as far as Congress can legitimately go.

One of the claims made by the friends of H. R. 9206 and similar measures is that it will protect the interests of the farmer. We call attention to the fact that every ingredient that enters into the manufacture of oleomargarine is as much a product of the farm as is butter, and that such ingredients are made more valuable on account of their use in the manufacture of oleomargarine.

In support of this statement we cite the following resolution adopted by the National Live Stock Association at its meeting in Chicago, December 3, 1901.

"*Resolved*, That the National Live Stock Association, in convention assembled, representing more than $4,000,000,000 of invested capital, reiterates its former expressed disapproval of such class legislation as the old Grout bill, and we protest against the passage of any law of this nature, firmly believing that such legislation is unjust, unconstitutional, and unfair, and not to be tolerated in a free country."

The National Live Stock Association is a voluntary organization, comprising 117 subordinate local organizations of the cattle, sheep, and swine raisers and breeders of 26 States and Territories of the Union, and representing more than four billions of invested capital.

The annual meeting at which the foregoing resolution was adopted was attended by 1,500 delegates, and we submit that the unanimous protest of the accredited representatives of substantially all the live-stock interests of the United States (except those engaged in the dairy business) is entitled to respectful consideration. Representatives of this association, and also representatives of the cotton industry, came before this committee and were unanimous in expressing the opinion that the enactment of such legislation as is contemplated by H. R. 9206 would lower the price of their products and materially damage their industry.

The minority directs attention also to the significant fact that the passage of House bill 9206 (or similar measure) is demanded solely by the producers of butter and not by consumers, who might naturally be supposed to ask for protection from a fraudulent product if they felt themselves in need of it. On the contrary, the consumers, as represented by hundreds of labor organizations representing many thousands of workingmen, have protested against the passage of this measure as one calculated to deprive them of a cheap, wholesome, and nutritious substitute for butter.

The claim that the fraudulent sale of oleomargarine interferes with the growth and prosperity of the butter industry is not borne out by the evidence before the committee. Statistics show that the total manufacture of oleomargarine in the United States last year was 104,000,000 pounds, as against 1,500,000,000 pounds of buter. As to the amount of oleomargarine sold fraudulently, exact statistics can not, of course, be obtained, but it would certainly be a liberal estimate to place the sum of the fraudulent sales at 25 per cent of the total product. Is it reasonable to suppose that the price of the 26,000,000 pounds thus fraudulently sold materially affected the price of the 1,500,000,000 pounds of butter used? Even assuming that the total oleomargarine output was sold fraudulently, it yet represents so small a proportion (about 7 per cent) of the total amount of butter produced as to render it unlikely that it in any way reduced the average price of butter.

And as further supporting the conclusion that the butter industry is not materially damaged by the sale of oleomargarine, the minority directs attention to the significant fact that those sections of our country which are most exclusively devoted to the dairy interests are blessed with the greatest prosperity, as brought out in the testimony of ex-Governor Hoard of Wisconsin, before our committee, who said that a few years ago land was worth only $15 an acre in that State, but as the State began to be devoted more exclusively to the dairy interests land had rapidly appreciated in price, and that farmers had gotten out of debt, had paid their mortgages, and the land is now worth the sum of $80 per acre, this price averaging much higher than agricultural lands in other parts of the country.

In conclusion, the members of the Committee on Agriculture who have joined in this minority report beg to assure the House and the country in the most solemn manner possible that it has been their earnest intention, and is now their determination, to do everything possible to be done to enforce the sale of oleomargarine as oleomargarine and to prevent its sale as butter. To prevent fraud and not to injure or hamper a legitimate industry has been and is our purpose. We believe that it ought to be the sole purpose of all legislation and the sole motive of all just men.

The substitute bill presented by the minority is as follows:

Bill offered as a substitute for H. R. 9206 by the minority of the Committee on Agriculture of the House of Representatives.

A bill to amend sections 3 and 6 of an act entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886.

Be it enacted, etc., That sections 3 and 6 of an act entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886, be amended so as to read as follows:

"SEC. 3. That special tax on the manufacture and sale of oleomargarine shall be imposed as follows:

"Manufacturers of oleomargarine shall pay $600 per annum. Every person who manufactures oleomargarine for sale shall be deemed a manufacturer thereof.

"Wholesale dealers in oleomargarine shall pay $480 per annum. Every person who sells or offers for sale oleomargarine in quantities greater than 10 pounds at a time shall be deemed a wholesale dealer therein; but a manufacturer of oleomargarine who has given the required bond and paid the required special tax, and who sells oleomargarine of his own production only at the place of its manufacture in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer on account of such sales.

"Retail dealers in oleomargarine shall pay $48 per annum. Every person who sells or offers for sale oleomargarine in quantities not greater than 10

pounds at a time shall be regarded as a retail dealer therein. And sections 3232, 3233, 3234, 3235, 3236, 3237, 3238, 3239, 3240, 3241, and 3243 of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section, and to the persons upon whom they are imposed: *Provided*, That in case any manufacturer of oleomargarine commences business subsequent to the 30th day of June in any year, the special tax shall be reckoned from the 1st day of July in that year, and shall be $500."

"SEC. 6. That all oleomargarine shall be put up by the manufacturer for sale in packages of 1 and 2 pounds, respectively, and in no other or larger or smaller package; and upon every print, brick, roll, or lump of oleomargarine, before being so put up for sale or removal from the factory, there shall be impressed by the manufacturer the word 'Oleomargarine' in sunken letters, the size of which shall be prescribed by regulations made by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury; that every such print, brick, roll, or lump of oleomargarine shall first be wrapped with paper wrapper with the word 'Oleomargarine' printed on the outside thereof in distinct letters, and said wrapper shall also bear the name of the manufacturer, and shall then be put up singly by the manufacturer thereof in such wooden or paper packages or in such wrappers, and marked, stamped, and branded with the word 'Oleomargarine' printed thereon in distinct letters, and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, shall prescribe, and the internal-revenue stamp shall be affixed so as to surround the outer wrapper of each one and two pound package: *Provided*, That any number of such original stamped packages may be put up by the manufacturer in crates or boxes, on the outside of which shall be marked the word 'Oleomargarine,' with such other marks and brands as the Commissioner of Internal Revenue shall, by regulations approved by the Secretary of the Treasury, prescribe.

"Retail dealers in oleomargarine shall sell only the original package to which the tax-paid stamp is affixed, and shall sell only from the original crates or boxes in which they receive the pound or two pound prints, bricks, rolls, or lumps; which said crates or boxes shall be at all times so placed as to expose to the customer the mark or brand affixed thereon by the requirements of this act.

"Every person who knowingly sells or offers for sale, or delivers or offers to deliver, any oleomargarine otherwise than as provided by this act, or contrary to the regulations of the Commissioner of Internal Revenue made in pursuance hereof, or who packs in any package any oleomargarine in any manner contrary to law, or who shall sell or offer for sale, as butter, any oleomargarine, colored or uncolored, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for the first offense not less than $100 nor more than $500 and be imprisoned not less than thirty days nor more than six months, and for the second and every subsequent offense shall be fined not less than $200 nor more than $1,000 and be imprisoned not less than sixty days nor more than two years."

J. W. WADSWORTH.
WM. CONNELL.
CHAS. F. SCOTT.
JOHN S. WILLIAMS.
HENRY D. ALLEN.

Mr. SNOOK. Mr. Chairman, I had not intended to take part in this discussion and thought I would be content with recording my vote in favor of the bill reported by the majority of the committee, but inasmuch as certain gentlemen, in the course of this debate, have seen fit to attack the people who urge the adoption of this measure, and to impugn the motives of the members who support it on the floor of this House, I feel called on to at least give some expression to the reasons which lead me to the conclusion that this is a just bill.

Gentlemen have gone so far as to say that those of us who vote for it will feel called on in private to apologize for our action. I have the honor in part to represent a State whose legislative policy so far agrees with the course I now pursue that it has adopted a law prohibiting the manufacture and sale of oleomargarine colored in semblance of butter. I have the further honor of representing one of the most magnificent agricultural districts in the Union. While, therefore, I may incur the criticism of certain gentlemen who do not agree with me, I shall have the satisfaction of knowing that I will owe no apology to the people of my State nor to the 20,000 and more farmers of my district, their wives and children, all upright, industrious, honest citizens, who appeal to me to support this bill.

The opposition to this measure, on both sides of the House, appeal most passionately to the Constitution and invoke the shades of Thomas Jefferson. Now, Thomas Jefferson was a plain man; the simplicity of his character is one of his most precious memories. He loved the common people as few men have loved them. He hated wrong and despised deceit and fraud.

I have no doubt, if he were alive to-day, he would find the Constitution broad enough to furnish ample protection to any industry whose existence was threatened by the onslaught of fraud and deceit. At this session of Congress the various schools of thought have almost daily been giving utterance to that interpretation of the Constitution which seemed to them best, and these expressions of opinion have embraced all shades of thought, from the very broadest, as expressed by the distinguished gentleman from Illinois [Mr. CANNON], to the strict construction, as expressed by the distinguished gentleman from Alabama [Mr. CLAYTON].

The gentleman from Illinois has told us over and over again that the Constitution went out to the people of the Philippine Islands and was broad enough and strong enough to throw out its arms and include the people of these islands within its beneficent embrace. To be sure, he did not inform us which arm it was that was so benevolently thrown out, whether, indeed, it was the arm that included within its embrace the blessings vouchsafed in the Bill of Rights or that arm whose touch brings the right of trial by jury or the arm whose loving caress insures the right of habeas corpus.

Thus, while the gentleman from Illinois believes in a broad and liberal construction of the Constitution, others contend for a strict construction of that instrument and argue that under its provisions we are powerless to relieve that class of American citizens which constitute the largest body of men engaged in a single industry from the ruinous competition of a counterfeit article passing current by the aid of deceit as genuine.

But, after all, no matter to what school of thought we may belong, no matter what our teachings may have been, no matter how loudly we may protest, no matter what interpretation we think ought to be put on the Constitution, that instrument has been construed by our highest judicial tribunal, and that construction permits the taxing power to be invoked in aid of the police power. That construction permits bills raising revenue, which incidentally carry protection to certain industries, to stand as the law of the land.

These doctrines have been announced so often and are so well settled that it seems to me there can be no doubt as to the constitutionality of this measure. I protest that it is in accord with the law of the land. It is the policy of the party in power, and now, forsooth, when for almost the first time these principles are invoked in aid of the farmer, for the purpose of protecting him from that deceit from which he is absolutely powerless to protect himself, gentlemen stick in the bark and say that it can not be done.

They insist that I shall vote to permit the continuance of a practice which will eventually wipe out of existence one of the leading products of the greatest industry in the world. For my part I have made up my mind to not pose as an objector. I shall take the advice of the distinguished gentleman from Ohio, when on another occasion he plead with us to join the roll of the constructive statesman, which he now deserts, and by my vote confer a benefit on a class of citizens who, comparatively speaking, have received but few actual benefits at the hands of this House.

Gentlemen raise their hands in holy horror, and especially those gentlemen that happen to represent districts where oleomargarine factories flourish (in many instances under the name of dairies and creameries), and protest that we seek to wipe out a legitimate industry. A legitimate industry? When did this business derive the right to stand before the world and claim to be legitimate? Legitimate means "genuine, real, not false, counterfeit, or spurious." The sole and only object of the men who have operated these institutions, from the day the first pound of oleomargarine was made to this, has been to manufacture a spurious and counterfeit butter.

Every thought that has been exerted along this line has been exerted not only for the purpose of making a product that resembled butter, but for the purpose of making a counterfeit that could be palmed off on the public as real and genuine. Is this a legitimate industry? Is it legitimate to go into the business of deceiving the public? Is it legitimate by deception and fraud to destroy an honest industry that has been built up by ages of toil? The premises of every argument that has been offered on the floor of this House in favor of colored oleomargarine is that the business as conducted at present is an honest industry.

I deny the premises. This business was conceived in fraud, born in deceit, and baptized in deception. It has never known an honest hour when it was willing to strip off its mask. It absolutely refuses to sail on the commercial seas under its own color. It always has resisted, as it now resists, every honest measure proposed to compel it to pass for what it really is. It has become so greedy and arrogant that it defies all law and willfully plies its business in the States where its manufacture and sale is prohibited by statute. And some gentlemen in the course of this argument have claimed this defiance of law as a telling argument in favor of its great merit.

The truth is it is a violator of the law, a deceiver, and a counterfeit, and no man in the face of the known facts can stand on the floor of this House and justly claim that it is a legitimate industry. One gentleman even says an honest competitor of butter. I deny the assertion. It has never sought to be a competitor. That we claim is the very object of this bill, we demand that it drop the rôle of the counterfeit and stand forth on its merits as a competitor. Give us what your premises assume, make it a legitimate, honest competitor; do that and we shall ask for no more. But in order to hide the deception which you practice, and to cloud the issue involved, you claim that butter is also often colored. But by that means it never seeks to pass as anything but butter.

It makes no claim to the public that it is what it is not. The coloring is harmless, and it is still a product made from the milk of the cow. By this means it never seeks to cover its identity and rob some other product of the market that rightfully belongs to it. This cry is no answer to the argument for this bill. I

submit that involved in this matter is a great moral question which appeals to the integrity of the Government.

The Government will not permit its citizens to manufacture and pass as genuine counterfeit coin or currency, for this would destroy the business of the country. The same reason, the same sense of right and justice, calls on it to interfere when the manufacture and sale of a counterfeit product threatens to destroy one of the principal industries of the largest class of individuals who make up that Government.

But the opponents of this measure ask us what we expect to accomplish by its passage. We answer there now is and always has been a demand on the part of the people of this country for butter. We expect that this law when enacted will permit the people to satisfy that demand free of imposition and fraud. For years the farmers of this country supplied that demand with an honest product.

By exercising patience, care, and honesty they have built up for themselves an industry of the highest value. To its development and perfection the farmers of this country have devoted years of their best effort and endeavor on the theory that the Government justly owed them its protection in the honest enjoyment of the fruits of their toil, and now in the hour of their need, when deceit and fraud threaten to deprive them of that which it has taken years to acquire, we believe that we rightly invoke the aid of the Government in enforcing honesty and morality and protecting them in the rights they have acquired. Beyond this, however, there is an important interest that seems to have been overlooked in this discussion. I refer to the butter made by the farmers' wives and sold to the residents of the country towns. This is a very fruitful source of revenue, from which the wants of the farmer's family are supplied and by means of which the mother is able to supply herself and children with a few of the luxuries of life. Already the manufacturers of oleomargarine, lured by the immense profits that have followed their course of deception, are reaching out after this market.

I believe that this measure is necessary to preserve for the farmer's wife the country market. The passage of this bill is not sought for the purpose of advancing the price of butter, nor for the purpose of avoiding honest competition, but its adoption is demanded to preserve for the farmer his market, and so that the demand for honest butter may be honestly satisfied.

The gentleman from Texas [Mr. BURLESON], after making an eloquent appeal against the bill on the ground of its unconstitutionality, displays the true reason of his opposition and the ground of his unwarranted invective against Democratic members who support the measure by saying "we aid the dairyman to push his hand into the pocket of our cotton grower and cattle grower and cotton-seed oil manufacturers and steal a certain per cent of the value of their products."

But permit me to gently remind the gentleman that for years, by the use of every method that deception could bring to bear, the business which he so eloquently champions has induced the public to believe that it was purchasing something produced by the farmers and dairymen of my district; that the counterfeit to which he gives his support has not only robbed the people of my district of a part of the value of their product, but bids fair, if unrestrained by legislation, to destroy one of their most important industries. You tell us, when driven by force of the facts to acknowledge that fraud is practiced in the manufacture and sale of oleomargarine, that the substitute offered by the minority of the committee would afford a complete relief. I answer that in my own State of Ohio we had a law embodying every good feature contained in the Wadsworth bill, so far as the same would be applicable in a State law, and yet it wholly failed to remedy the evil.

We even went further and absolutely prohibited the manufacture and sale of colored oleomargarine, and yet if we are to give full credit to the statements of the distinguished gentleman from Ohio [Mr. GROSVENOR] the citizens of his district, in open defiance of law, march up by the thousands, shouting the praises of butterine, purchase, and carry away this product, while butter is allowed to spoil and grow rancid on the grocers' shelves. The gentleman has only added emphasis to the fraud which every member of this House knows is practiced daily. I shall not undertake to criticise either the gentleman or the people of his district for countenancing this open violation of the law.

But he has made plain the truth that the remedy afforded by the Wadsworth bill is inadequate. The punishment afforded by these measures never include imprisonment, and some mysterious force always stands ready to encourage the retail dealer to push the sale, and when arrest comes this same force furnishes a skilled lawyer, who invokes all the law's delays, and when the end of the trial is finally reached this same force is ever ready to liquidate the fine and costs and to urge the grocer on to a second infraction of the law.

Gentlemen with utmost skill use illustrations to show how unfair this principle is when applied to competing industries in the same line. But I submit the illustrations are not parallel. Never before in the commercial history of this country has a counterfeit been so successful in assuming the rôle of the real product that it was fraudulently made to resemble as to threaten to destroy the market of the genuine product.

But you say we will take away from the consumer a cheap food product that is demanded by him, and that we do an injustice to the laboring man. This argument has been refuted so many times during the course of this discussion that I feel like offering an apology for again offering the answer; but inasmuch as it is urged so vehemently, I desire once more to refute it.

Under the provisions of this bill the uncolored product, in every respect as wholesome and nutritious as the colored, can be had at a great reduction in price, and if there is still an honest demand to have it colored, this can be effectually done in any home by any housewife as easily as any other product of the household can be prepared for the meal.

The evil is great, and the remedy must correspond to the evil. It can be cured in no other way than by invoking the aid of the taxing power of the Government. All other remedies have been tried and failed. I for one do not hesitate; I for one am in favor of a remedy that will correct the evil, and on that decision I am willing to appeal to my constituency. Many of those who oppose this measure recognize the worth of the farmer. Indeed, many voice their opposition in one breath and in the next claim eternal devotion to the tillers of the soil. Some even protest their loyalty in most eloquent flights of oratory.

I knew it was quite a common practice with many to employ this method in their campaigns to secure the farmers' vote, but I had hardly looked for the use of this method here, where their vote did not support their protestations. The farmer, as I know him, is an intelligent man, thoroughly posted on the questions which affect his interests, and I warn many gentlemen who have protested during the course of this debate that they represent the farmer and his interests that, unless they repent before the vote is taken on this bill, their honeyed words of hollow flattery will avail them but little.

Indeed, I congratulate myself that the first time I have had the privilege of addressing the House the remarks I have made are in defense of the interests of the farmer. Aye, more than that. I glory in the fact that, though what I have said has but poorly expressed the necessity of this legislation, I shall be able to meet that necessity by voting to relieve the American farmers, who compose the greatest industrial army in the world, from the oppression of fraud and deceit.

Mr. LAMB obtained the floor and said: I yield ten minutes to the gentleman from Tennessee [Mr. MOON].

Mr. MOON. Mr. Chairman, it certainly must be recognized that in ten minutes I can not cover this vast field which other gentlemen have gone over in this discussion. I wish merely to call attention to the sections of this bill and to invoke the candid judgment of this House upon the propriety of its passage. I am not here as the partisan advocate of the majority or the minority report of this committee, but to secure if possible some legislation in effective shape that will suppress a conceded evil. The minority report does not go as far as it ought to go in the suppression of this wrong, yet in the absence of anything better I would accept that.

The bill presented by the majority, while a proper measure in some respects, is fatally defective in others for the purpose which it seeks to accomplish. It must be conceded that unless the present method of manufacturing and selling oleomargarine in interstate traffic is a fraud upon the commerce and upon the people of the United States the Congress has no right to exercise its taxing powers in the suppression of the same. But I deny the proposition that if it be once established that this business is so carried on as to be a crime against the commerce and the best interests of this country; that Congress has not the power to exercise in a plenary way every right, every prerogative that it possesses under the commerce clause of the Constitution or under any other clause (whether the exercise of such power involves the invoking of the taxing power or any other) for the suppression of the evils connected with the business. Who shall undertake to control the legislative discretion of Congress in a revenue bill or other measure directly or incidentally destroying an evil injurious to the enforcement of the laws and against sound public policy?

Are we correct in the proposition that oleomargarine to-day is sold in the United States in a manner that demands on the part of Congress some restrictive measures for its suppression? It is not necessary that we go to the hearings before the committee for the proof of this fact. The condition, the status, of this legislation establishes that fact. Why should the minority report propose this stringent legislation against the existing method of manufacture and sale of oleomargarine if there be no necessity for it? The majority say that it is a fraud; the minority concede

that it is a fraud; by the introduction of the substitute bill they are estopped from its denial. The only question then is as to how this fraudulent business is to be suppressed. Shall a mild remedy be applied or a stringent one?

It has been said on this floor by gentlemen who assume to be better Democrats than others, because they may differ with them, that those who approve of the first section of the majority bill are not Democrats. Why? Because, as they say, it is a violation of a cardinal doctrine of the Democratic party for the Congress of the United States to cede to the States any part of its constitutional authority. Assume that that is correct; let us admit (and it is sound doctrine) that the Congress of the United States in the exercise of its powers is absolute and sovereign, and that it has no more right to delegate its power to a State legislature than the State legislature would have to assume the power of Congress. This fundamentally is a correct proposition. Is it violated by the first section of the majority bill? I think not. It is in effect an act of Congress approving and ratifying the legislation of the States on this very subject-matter. This is not an abnegation of the powers of Congress, but rather an acquiescence on the part of Congress in local control of the whole subject, both as to State and interstate commerce. Until Congress acts the power of the State is free to control the traffic of all commodities coming into the State. This is not a surrender of Federal authority to the States.

Whoever heard before this of a Democrat objecting to State rights and local control? The relations between the State and General Government ought to be closer. Real Democrats recognize the people only as a sovereign, and the United States and each State thereof as sovereign within their respective constitutional orbits. If, indeed, there should be any jealousy on the question of the exercise of power, it is because of the exercise of too much and not too little power by the Federal Government. But this section is only an acceptance by Congress, as I said, of State control and regulation of this subject, and affords no just ground of alarm to the guardians of the Constitution.

Mr. BARTLETT. Will my friend pardon me just for a moment?

Mr. MOON. Yes, sir.

Mr. BARTLETT. Is it not a fact that under the law as it has been construed by the Supreme Court of the United States the laws of the various States which forbid the sale of oleomargarine or other substance colored like butter, under any form or pretense, can be enforced in the various States, although the article against which it is attempted to be enforced is in a package brought from another State?

Mr. MOON. If that be true, what is the objection to Congress saying the same? That is substantially all that is undertaken.

Mr. BARTLETT. What necessity is there for this provision, if that be true?

Mr. MOON. If now the law by construction merely, it would be preferable by legislation. It will not then be uncertain, and there can be no objection to this section reenacting the law, if my friend is correct, which I do not now question.

Mr. BARTLETT. I do not specially object to the first section.

Mr. MOON. I am now discussing the first section, and only the first section, of the bill.

Mr. BARTLETT. I do not desire to take up the gentleman's time, but the Supreme Court have decided in the case of Massachusetts and in the case of Pennsylvania that the laws of those States which forbid the sale of oleomargarine colored as butter, or pretending to be anything else except oleomargarine, are valid. They have sustained those laws, although enforced against packages brought from an adjoining State.

Mr. MOON. That is utterly immaterial to the question I am discussing. I am discussing the question of the propriety of Congress recognizing the superior advantage and right of the various Commonwealths of this Union to control the sale of oleomargarine as butter where it is a subject of interstate commerce, and this section is no violation of the Federal Constitution, and no violation of sound public policy.

But, Mr. Chairman, while I fully concur and fully agree with the propriety of the enactment of this first section, I have very grave and serious doubts as to the third and vital section of this bill.

As I remarked before, I care not which of these bills, when properly amended, may be passed, so that we have some law that shall be effective upon this subject. If the drafting of a bill upon this question were committed to my charge, I perhaps would not adopt either of these measures. But while I do believe that we have the right to exercise the taxing power of the United States, not merely for the purpose of raising revenue as primarily provided in the Constitution, but as an incident to this and as a means of enforcing the other constitutional provisions, because every provision of the Constitution stands together as one and forms a great unit upon which the Republic must depend for its support—aside from that, Mr. Chairman, I am in favor of its exercise, not merely as a taxing power, but for repressive legislation, if you see fit so to call it, against fraud—that is, in its extermination on all Federal questions. The only question is, How shall it be done? Shall it go to the extent of destroying the article to be manufactured by the repressive legislation, or shall it be a regulation upon it?

The time of Mr. MOON having expired—

Mr. LAMB. I yield to my colleague five minutes more.

Mr. MOON. Therefore if this section provides, not for the mere suppression of fraud as an incident to the taxing power, but if in its legal effect it be a destruction of the legitimate production of oleomargarine, then, in my humble judgment, it is not only obnoxious to the Federal Constitution, but even if it could be supported by it, it would be a most unwise exercise of Federal power. And I desire to call the attention of the gentleman in charge of this bill to this proposition: You provide in the third section for an amendment to the act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine, and that a tax of one-fourth of 1 cent per pound shall be laid upon the same when not in imitation of butter, but when made in imitation of butter a tax of 10 cents.

Now, let us look at the legal status of this question, and see if the effect of that legislation is to destroy altogether the manufacture of oleomargarine, or is it merely to impose a legitimate tax, as I conceive it to be the intention to do, for the suppression of fraud in the sale of oleomargarine. If that section be susceptible of the latter construction, I am prepared to vote for it. If it be not, I can not vote for it, because it would be a violation of your oath of office and my oath of office to sustain it. Butter has a legal definition, and when we speak of it we speak of it in its legal sense, in that view which a judicial tribunal would take of it. Oleomargarine also has a legal definition.

The act of 1886 provided—

> That for the purposes of this act the word "butter" shall be understood to mean the dairy-food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, and with or without additional coloring matter.

Section 2 defines oleomargarine, and provides that—

> All mixtures and compounds of tallow, beef fat, suet, lard, lard oil, vegetable oil, annotto, and other coloring matter, intestinal fat, and offal fat made in imitation or semblance of butter, or when so made calculated or intended to be sold as butter or for butter.

There you have a legal definition of butter and a legal definition of oleomargarine. The definition of oleomargarine is a combination of these substances in imitation of butter. Then there can be no oleomargarine as a matter of law under existing statutes unless it be in imitation of butter. That, I take it, will be conceded.

Now, when you lay your tax of one-quarter of 1 cent on oleomargarine not in imitation of butter, on what do you lay the tax? There is no legal definition of oleomargarine known to the courts that does not describe it as made in imitation of butter. Therefore, you lay no tax on any article known to the law of the land, and this is merely amendatory, and you give no definition of oleomargarine, which you propose to tax one-fourth of 1 cent per pound. You say that 10 cents shall be laid per pound on oleomargarine made in imitation of butter. When you say this you give the legal definition of oleomargarine as provided in the statute as it does exist. Therefore, you tax oleomargarine as it legally exists 10 cents a pound, and you provide no definition for the oleomargarine under the law to be taxed one-fourth of 1 cent. The result, therefore, is, without an amendment made in definition of the meaning of oleomargarine to bear the tax of one-fourth of 1 cent per pound, that all oleomargarine will be taxed 10 cents per pound under this bill. This would destroy the manufacture of the article. The legitimate would go down with the fraudulent. We could not support this theory in legislation.

The CHAIRMAN. The time of the gentleman has expired.

Mr. LAMB. I yield three minutes more to the gentleman.

Mr. MOON. This question can not be fully discussed in the time I have had, and I have been forced to run over the various points; but I want to make a suggestion to the gentleman, that if I be correct in this construction of the law, if it be clear, and it is clear as possible to me, that this bill (and I concede that you did not intend it that way) taxes out of existence legal oleomargarine, your bill ought to be amended to cover that proposition and protect the legitimate production and sale of oleomargarine while suppressing the fraudulent as far as the tax will do so.

Mr. HENRY of Connecticut. There is no intention on the part of our committee to eliminate or obliterate oleomargarine as a legitimate product.

Mr. MOON. I am satisfied that it was not the intention of the committee, and yet I am equally satisfied that as a legal proposition you have done it. [Applause.]

Mr. HENRY of Connecticut. If that is the case, there ought to be an amendment. That matter shall be carefully considered

here by the committee, and I will be glad to support an amendment for that purpose.

Mr. LAMB. That matter has been considered by the committee.

Mr. HENRY of Connecticut. That is true.

Mr. LAMB. I now yield ten minutes of my time to the gentleman from North Carolina [Mr. KLUTTZ].

Mr. KLUTTZ. Mr. Chairman, I have no disposition, as I shall not have the time, to thrash over the old straw of this discussion. As a nonstrenuous member of this House, representing a constituency which is interested equally in butter and in cotton seed, the debate has been to me somewhat amusing. We have had a good deal of virtuous self-assertion upon the part of gentlemen who oppose this bill. We have had the shade of Jefferson disturbed in his tomb at Monticello and brought out in opposition to this bill. We have had the Constitution of the United States waved in behalf of the Texas steer, Kentucky beef, and the cotton oil of the far South.

We have had the Chicago and Kansas City platforms waved over our heads in an endeavor to beat us into opposition to this bill; and I have been somewhat amused, sitting in my seat, in taking the geographical bearings of the gentlemen who have opposed this bill so strenuously. We have had the distinguished gentleman from Texas Mr. [BURLESON], himself one of the largest cotton planters in his State, with only 1 per cent of the cotton oil of Texas and a small percentage of the caul fat of the Texas steer threatened, spring into the arena, with the Constitution in one hand and the Democratic platform in the other, to read every man out of the Democratic party who dares sustain this beneficent legislation in the interest of the American farmer.

Then, when the interests of the great oleomargarine manufacturers of Chicago were supposed to be assailed, we had the gentleman from Chicago [Mr. FOSTER] taking the stand and denouncing every member of the Democratic party who was not standing in favor of oleomargarine factories as against the American farmer and consumer; then again, when the supposed interests of the blue-grass region of Kentucky, which the gentleman from that State [Mr. ALLEN] says is raising beef that feeds North Carolina, were supposed to be in danger we had him rise in his place to benevolently inform us that we are attempting a work of supererogation, and that if we dare enact this legislation the Supreme Court of the United States will promptly undo what we have done. I wish, however, to do the gentleman the justice to say that he has made by far the best speech on his side of the question in the progress of this debate. I have been interested here in observing the geographical locations of these gentlemen. It is manifest that this is not a constitutional or political question, but one of locality.

Mr. BURLESON. Will the gentleman permit me?

Mr. KLUTTZ. I have only ten minutes and can not yield to my friend. Then, too, Mr. Chairman, we have had the flout thrown out that those of us who favor this legislation are cowards and cringing before the demands and prejudices of our constituents. I repel that insinuation, and I know that it was only made in the heat of debate, only in the frenzy of certain defeat, and I claim for myself here the right to vote as I see fit, and I shall exercise and defend that right without cant or hypocrisy, regardless of the sneers and flaunts of the interested opponents of this measure.

The Supreme Court of the United States has settled for me its constitutionality, and for Democratic precedent I call the attention of my party associates to the first oleomargarine bill passed by a Democratic House, in 1886.

I am for butter against butterine, for the cow against the cotton-oil trust, for the people on the farm, in the mines and mills and homes and workshops, against the combination which controls the manufacture of oleomargarine.

I maintain, as a Representative of the Seventh district of North Carolina, that I have a right and that it is my duty within constitutional limitations, to stand for the rights and interests of my constituents upon this floor, and especially when standing by the rights of my constituents puts me in advocacy of the rights of the great farming, consuming, and agricultural classes of this country against the interests of these manufacturers who, by reason of admitted frauds are entitled to no day in court and to no consideration in this discussion.

I have no apologies to make for supporting this bill. I stand, not with the gentlemen from Missouri [Mr. COWHERD] who was afraid that all the refuse of the factories might again be turned into the rivers, and that the pellucid waters of the Missouri and the Mississippi might be rendered unwholesome for the dwellers on their banks.

I stand by the farmer, but I stand not for the farmer who stays in his office at Chicago and Kansas City, and who puts on the market a fraudulent imitation of a great food product of the farmer and sends it out to drive that product out of the market; but I stand for the farmer who makes two blades of grass grow where one grew before, the farmer who digs and delves in the soil, the farmer who in the frosts and snows of winter and in the bright sunlight of summer labors early and late to feed us all.

I stand by that real farmer and not by the oleomargarine manufacturing farmer in Kansas City and Chicago and Kentucky. [Applause.] Ah, gentlemen, the trouble with some erudite and estimable gentlemen on this side of the House is that they turn their backs on the necessities and opportunities of the present, upon the glowing and glorious prospects of the future, and for their political mentors beckon only the moldy graves of past political defeats.

Proposed legislation for the benefit of the masses is too often measured and judged not by its necessity, not by its utility, not even by its constitutionality, but it is rather attempted to be squared with some ephemeral platform utterance of the past, which was inspired only by the circumstances and the necessities of the hour, and which, having served its purposes, too often that of defeat, should be allowed to rest in peace.

Gentlemen too often forget that a cardinal principle of Democratic legislation is the greatest good to the greatest number, and that within constitutional limitation this principle should govern. I am no iconoclast. I have, I trust, a due veneration for the wisdom of the Democratic sages of the long ago and a due loyalty to party deliverances, but I am not willing to be irretrievably fettered to the dead body of exploded utterances and platform experiments of the past.

We can only hope for success, we can only do our duty to the present, while adhering to the fundamental principles of constitutional democracy, by resolutely meeting and legislating for conditions, circumstances, and necessities as they arise, even though some cherished fetich of the past be thereby dislodged. [Applause.]

Mr. SCOTT. Mr. Chairman, in order that the real issue in this controversy may not be lost sight of or forgotten, I deem it an opportune time in this debate to recall to the attention of the committee the common ground upon which the advocates of both the pending bills stand, to submit in the beginning what the lawyers would call an agreed statement of facts.

It is agreed, in the first place, that oleomargarine, whether colored or white, is a pure, wholesome, and nutritious food product. This being conceded, it can not be denied that it is a legitimate article of commerce. It is agreed, further, that considerable quantities of oleomargarine are sold to customers who ask for and think they are receiving butter, and that such sales are fraudulent and should be prevented or punished. The only question properly at issue, therefore, is how best to prevent or punish the fraudulent sale of oleomargarine. The view of the majority of the Committee on Agriculture is that such sale can be best prevented by imposing what is intended to be a prohibitive tax upon oleomargarine colored as butter. In the opinion of the minority this measure is open to three objections: First, it is an unjust discrimination against what is conceded to be a legitimate industry, and is therefore class legislation; second, it directs its penalties against the manufacturer, who is not even charged with violating any law, and not against the retailer, by whom, if at all, the fraudulent sale is committed; and, third, that for both the foregoing reasons it will fail to accomplish the object sought.

In asserting that the bill reported by the majority is open to the charge of class legislation, I do not wish to be understood as expressing the opinion that if this bill should become a law it would be held by the courts to be unconstitutional, although many able lawyers are of that opinion. I do wish to be understood, however, as declaring that it is class legislation in spirit and purpose. The gentleman from Illinois [Mr. GRAFF], in reply to a question, gave it as his opinion on this floor the other day that the passage of the majority bill would not materially advance the price of butter, and other gentlemen who support that measure have expressed the same opinion. I am of that opinion myself, for reasons that will appear further on in my remarks; but I am thoroughly convinced that if this opinion were the generally accepted one there would be no demand whatever for the passage of this bill.

On what ground is this legislation urged? Solely on the ground that it will promote the interest of the manufacturer of butter. But how can it promote his interest if it does not advance the price of his product? In the State which I have the honor to represent in this Chamber practically every farmer who sells butter also markets hogs and cattle. Representatives of the live-stock associations of the country estimate that the passage of the majority bill will inflict an average loss of $2 in the value of each head of cattle and of 20 cents on each head of swine. Even the supporters of the majority bill admit that the loss to the live-stock industry by reason of the passage of this bill may reach 40 cents a head on all cattle and 5 cents a head on all swine marketed in this country—an aggregate loss of several million dollars. Now, if the price of their butter product is not to be advanced, and if the value of their

live-stock product is to be reduced, what possible interest have the farmers of the United States in the passage of this bill? If this bill should become a law, and if it should result, as its foremost advocates on this floor assert and admit that it will, in not advancing the price of butter and in actually depressing the value of live stock, may not our farmers well wonder to what end they have been so passionately implored to demand of their Representatives the passage of this measure?

It is argued that, although it would not advance the price of butter, it would create a demand for more butter, which would result in an increase in the number of those engaged in the dairy business. This argument implies that the dairy industry is now languishing. But this implication is not borne out by the facts. The facts, as presented by the advocates of the majoity bill, and as shown in the report accompanying the minority bill, all go to show that this industry is already in a most flourishing condition. I repeat the assertion, therefore, that the only way in which the passage of the majority bill can promote the interest of the manufacturers of butter is by advancing the price of their product. The demand for legislation for this purpose, therefore, is in plain terms a demand on the part of one industry for legislation which will promote its interest at the expense of another industry. The American Congress, in my judgment, may properly enact discriminative legislation to protect American enterprise against the ruinous competition of foreign industries. But who will say that this Congress can properly lay burdens upon one legitimate American industry in order that another American industry may reap richer profits?

And let me say here that I deny the assertion so often repeated upon the floor of this House and elsewhere. that this legislation is demanded by the farmers of the United States. If there is one class of our citizens in whom the sense of fair play is more fully developed than in any other; if there is one class more utterly opposed than another to class legislation, it is the farmers. And they would no more knowingly demand the passage of a law discriminating unjustly in their favor than they would willingly submit to a law unjustly discriminating against them.

Mr. BURLESON. Is it not a fact that the demand for this legislation before the Committee on Agriculture came from those interested in the product competing with oleomargarine, and not from the consumers of oleomargarine?

Mr. SCOTT. The gentleman has stated exactly the condition that was developed before the committee. So far as the committee was advised there was no man appearing before it who represented or pretended to represent the consumer, either of oleomargarine or of butter.

Mr. BURLESON. Right on that point, will the gentleman permit another question?

Mr. SCOTT. Certainly.

Mr. BURLESON. Is it not a fact that hundreds of protests were received by the committee from labor organizations from one end of the country to the other, protesting against this legislation upon the ground that they were the consumers of oleomargarine and would be affected thereby?

Mr. SCOTT. Such protests, representing in the aggregate many thousand laboring men, were received during the last Congress and have been published in the hearings that were given before the committees during the Fifty-sixth Congress.

I do not deny that this legislation is favored by many farmers, but I believe this is so because they have been misled as to the real character of the measure and as to the results it will accomplish. To illustrate what I mean by this statement, let me call the attention of the committee to the very important difference between the pending majority bill and the original Grout bill. I do not need to remind those who were members of the last Congress with what whip and spur the Grout bill was passed through this House last year. It was declared then that the farmers were unanimous in favor of that bill, and many men who voted against it were denounced as the enemies of the farmer.

And yet the most uncompromising advocates of the original Grout bill have now admitted, by the incorporation of section 2 in the pending bill, that the passage of the original measure, instead of closing the door to fraud, would have thrown it wide open, making it not only easier, but more profitable, to sell oleomargarine fraudulently than it is now under the existing law; and it may not be out of place to call attention here to the fact that the gentlemen having this bill in charge owe to the minority of the Committee on Agriculture the amendment which alone makes the measure of any value, even from their own standpoint. I wish to read, in support of this statement, the following extract from the testimony of Mr. Adams, vice-president of the so-called National Dairy Union, before the Committee on Agriculture. I read from the printed "hearings," page 237:

Mr. ADAMS. I want to make this suggestion: A point was made last week; the question was raised by Mr. SCOTT, I think, in a question to Mr. Springer, which was as follows: In case the retail merchants shall buy uncolored oleomargarine and color it in imitation of butter and sell it, would he be a manufacturer within the meaning of the law? As I recollect it, Mr. Springer said no. I understand that a good many good lawyers say no. Now, if that is true, this bill should be corrected in that particular in this committee, and the first section ought to be amended, or the oleomargarine law should be amended, and the manufacturer defined. You should amend that portion of the oleomargarine act defining the manufacture and include within it any man who colors oleomargarine in imitation of yellow butter and sells it in imitation of yellow butter.

It is perfectly clear to everybody now that if the Grout bill had become a law in the form in which it passed this House in the last Congress, it would have opened the door to the most flagrant fraud, simply because it would have imposed no penalty whatever upon the retailer who purchased his oleomargarine white and colored it to suit the taste of his customers. Now, if the gentlemen who have this measure in charge and who had it in charge during the last Congress were so greatly mistaken then, may they not be equally in error now?

The farmers of the United States are fair men. They demand that their business shall not be injured by deception and fraud. In that demand they are right, and the minority bill is framed expressly to meet that demand. They do not demand that any legitimate American industry shall be hampered and destroyed, even though the result might directly or indirectly benefit them.

But objectionable as is the pending majority bill on the ground that it is class legislation, it is open to yet more serious objection on the ground that it directs all its penalties against the manufacturer of oleomargarine, who is not even accused of violating the existing law, and not against the retailer by whom, if at all, the fraudulent sale is made, thus violating every principle of law and equity. Under the existing law an officer of the United States is stationed in every oleomargarine factory, and the business is so hedged about by regulations and restrictions that violations of the law by the manufacturer are practically impossible and are unknown.

Mr. SNOOK. Is the gentleman aware—I have no doubt he is—that in the different States of the Union there has been for years legislation prohibiting the sale of oleomargarine colored in the semblance of butter, especially in the State of Ohio?

Mr. SCOTT. I am aware of that fact.

Mr. SNOOK. Does not the gentleman know that in every instance, almost without exception, where there has been a prosecution of a retail dealer under those State laws, the manufacturers of oleomargarine, who the gentleman says are not parties to the fraud, have furnished the money for the defense and have encouraged the retailers to go on in the business?

Mr. SCOTT. So far as appeared in the hearing before our committee that charge was made and reasonably sustained against one manufacturer only of butterine. But even if the charge could be sustained against all the manufacturers of oleomargarine it does not in the least contravene the statement which I have just made.

Mr. SNOOK. If that is true, how can the gentleman maintain on the floor of this House that the manufacturer has taken no part in the fraudulent carrying on of this business?

Mr. SCOTT. I am simply asserting, what every man on the floor of this House knows of his own knowledge, that the wholesaler and the jobber who buy oleomargarine from the manufacturer get what they call for and know what they are getting.

Mr. SNOOK. Is it not a fact that these different State laws embody every principle that is contained in this minority report, and that the reason they have failed in their execution is that the oleomargarine people encouraged the retailer to keep on with his business, and furnished the money for his defense?

Mr. SCOTT. My judgment is that the reason why they have failed of enforcement is that the public sentiment in States where they have been enacted did not support them. I know something of what it means to try to enforce a law that is against public sentiment. I regret to say that I can take the gentleman to my own State and show him there many communities in which the State law prohibiting the sale of intoxicating liquors is violated openly and with impunity. We can not enforce the law in certain sections of the State because the public sentiment of the community is against it; and if the gentleman can suggest any way in which the United States Congress can reach its strong arm out into the Commonwealth of Kansas and help us there to enforce the prohibition law as we are now asked to go into the other States and assist in the enforcement of their antioleomargine laws, I should consider it a great favor.

I repeat, therefore, that if any fraud is committed—and that fraud is committed is not denied—it is by the retailer and not by the manufacturer. From what possible standpoint, then, can a law be defended if it directs all its penalties against the manufacturer and not one against the retailer; against the innocent and not against the guilty? And is not the fact that the pending majority bill is directed against the manufacturer, and not against the retailer, further evidence that the real purpose of this measure is not to compel this industry to be honest, but to crush it? That

is a serious charge, a most damaging charge, and I am not surprised that gentlemen defending the majority bill on this floor have sought to lessen the force of it by emphatic denial. As an illustration of the position taken by the advocates of the majority bill, I will quote, because I have it convenient, the assertion made yesterday by the distinguished gentleman from Iowa [Mr. HEPBURN]. He said:

Just what is proposed in this bill? It does not prohibit any man from making oleomargarine. There is no limitation placed upon the manufacture of it, and no man has a right to say that a less number of pounds will be made next year than were made last year, even if this bill passes. The gentleman and others have discussed this bill as though it was the purpose of it to drive a well-established industry out of the country. Not so. Every manufacturer of oleomargarine will be as free to make it after the passage of this act as he was before.

I have no doubt that statement expressed the honest convictions of the gentleman who made it; but that it is far from representing the determination of those who have been the foremost advocates of this measure, I propose to demonstrate to this House. I wish to direct the attention of the committee again to the hearing before the Agricultural Committee, and I wish to read a part of the record of that hearing. I trust I may be pardoned if my own name appears in this record oftener than modesty, perhaps, suggests that it should, but it happens that the point I wish to make was brought out by questions which I, as a member of the committee, asked. General Grout, whose name is so inseparably connected with this bill that it can never be dissociated from it, was before the committee, and I asked him this question:

Could you distinguish by its color the oleomargarine you hold in your hand from uncolored butter made from the average dairy herd at this time?

The situation, let me explain, was this: The committee had before it a sample of uncolored oleomargarine. It had also a sample of uncolored butter, made by a member of the committee. Mr. Grout's reply to my question as to whether he could distinguish by the eye between these two substances was:

Mr. GROUT. No; there is the very trouble.
Mr. SCOTT. Then how are you going to prevent the fraudulent sale of oleomargarine by your bill? Can you do it in any way except by coloring butter?
Mr. GROUT. I will tell you. The oleomargarine fellows under this bill will have no rights, will have no right whatever, if the bill is drawn as I left it and as it was passed last Congress, to use any ingredient, whether it is an integral part of the product or otherwise, which will give it a color like butter.
Mr. ALLEN. They will not be allowed to use milk?
Mr. GROUT. No, sir.

Listen, gentlemen! They will have no right to use any ingredient, whether it is an integral part of the product or otherwise.

Mr. SCOTT. Suppose it was impossible to manufacture oleomargarine without giving it a butter color; do you think Congress would be warranted in prohibiting its manufacture?
Mr. GROUT. I do.
* * * * * * *
Mr. SCOTT. You stated a moment ago that if milk or cream was employed in the manufacture of oleo it was done for the purpose of giving it flavor and taste.
Mr. GROUT. Exactly, and some color.
Mr. SCOTT. And therefore it is a necessary ingredient of butterine.
Mr. GROUT. No. It is if you want to serve it up as butter, but if you want to serve it up as the simple grease it is—the grease of the beef and the hog, together with cotton-seed oil—then it is not.

I hope gentlemen will consider well the meaning of this declaration on the part of Mr. Grout. We all understand the difference between grease and butter. We know that we do not spread our bread with lard or with cotton-seed oil or with oleo, and we know that a combination of them without the flavor and taste which is given to them by the use of milk or butter would not be considered by anybody as a proper substitute for butter. It is true that under this bill, as interpreted by the author of it, the manufacturers of oleomargarine could continue to manufacture grease fit to use in cookery, perhaps, but utterly unfit to go upon the table as butter, and I declare and assert, upon the authority of the statements which I have read to you, that the purpose of this bill, as shown by the construction that was put upon it by the author of it, is to prevent absolutely the manufacture of an article which can be used as a substitute for butter; it is not to prevent the fraudulent sale of that article.

Reminding the committee further of the assertion made by Mr. Grout that he would not allow milk to be put in oleomargarine for fear it would give it a flavor and a taste that would resemble butter, let me call attention to a statement furnished this House last year by the Secretary of the Treasury, in which it is shown that of the 83,000,000 pounds of oleomargarine manufactured in the year ending June 30, 1899, over 14,000,000 pounds of milk were used, constituting more than 15 per cent of the product; and it is a matter of general knowledge that milk is as much a constituent part of oleomargarine as oleo oil or cotton-seed oil or neutral lard, and yet the originator of this bill, a man who comes down here all the way from Vermont to insist upon its passage, declares that if that bill becomes law it will not be permitted to any manufacturer of oleomargarine to use what is conceded to be a necessary constituent of his product. In other words, it will be impossible to manufacture oleomargarine at all, and therefore the gentlemen who think that by voting for the majority bill they are simply reducing the price of the poor man's butter are utterly mistaken. They are simply removing the poor man's butter from his table.

But in spite of its drastic provisions, and for the very reason that it directs its penalties against the innocent and not against the guilty, it is the opinion of the minority of your committee that the majority bill will fail of the only purpose it dares openly to avow, namely, the prevention of fraudulent sales of oleomargarine for butter. Consider the conditions as they exist in the markets in this city. The statement was made here a few moments ago that the price of butter in Washington to-day ranges from 35 to 50 cents a pound. Oleomargarine is now sold here for 20 cents. Substitute a 10-cent tax for the existing 2-cent tax, and oleomargarine could be sold for 28 cents. But this is still 7 cents cheaper than the cheapest butter. Is not that margin enough to tempt the unscrupulous dealer to substitute oleomargarine for butter? And yet if he did so there is no single line in this bill to punish him for the fraud. It was shown in the course of the hearings before your committee that the trend of public taste is in the direction of lighter colored butter. In some of the most fashionable restaurants in this city and in New York to-day only uncolored butter is served. It was also shown before your committee that uncolored oleomargarine and uncolored butter at this season of the year are so perfectly similar in tint that the keenest eye can not discriminate between them. But there is not a syllable in this bill to punish the dishonest dealer who sells uncolored oleomargarine to a customer who asks for uncolored butter.

The minority bill, on the contrary, is not open to any of these objections. It does not seek to tear down any American industry, and it does not attack the innocent and let the guilty go free. It goes straight to the real issue. And that real issue, let me again remind the committee, is not the restriction of competition, but the prevention and punishment of fraud. I believe I am violating no confidence when I say that what is known as the Wadsworth bill, in all its substantial features, was drawn by the revenue law officers of the Government. Their endeavor and their one purpose was to throw such restrictions and safeguards around the retail sale of oleomargarine as to protect the purchaser absolutely from imposition. That they have succeeded in constructing a measure that will make fraud in the sale of oleomargarine practically impossible, I do not believe anyone who reads the minority bill can doubt or deny. And that is all this Congress can properly do. It is all there is any demand upon it to do.

I do not yield to any man on the floor of this House in the earnest sincerity of my wish to do all in my power to stamp out fraud, imposition, and dishonesty wherever found. But I want to stamp out fraud; I do not want to crush an American industry. I believe that oleomargarine is a pure, wholesome, and nutritious food product. I believe there is a large genuine demand for it by those who can not afford to buy butter. I believe this demand can be supplied without in the least interfering with the prosperity of the butter maker, because by far the greater proportion of oleomargarine now sold is bought by those who would not buy butter if oleomargarine were not on the market. I believe also that the buyers of oleomargarine have as much right to demand that the product which serves them as butter be colored to suit their taste as the buyers of real butter have to demand that this product be colored to suit their taste.

I do not believe it is essentially a fraud to color oleomargarine to please the taste of the man who buys it any more than it is essentially a fraud to color cotton cloth, which we all know is originally white, to suit the taste of the customer. I do believe it is a fraud to sell oleomargarine when butter is asked for, and it is because it seems clear to me that the minority bill is more certain to prevent such fraud than is the bill presented by the majority, together with the fact that the principle underlying the majority bill is wholly vicious and indefensible, that I have felt constrained to give my unqualified support to the former measure. [Applause.]

Mr. HAUGEN. Does not the gentleman believe that under section 6 the wholesale sale of yellow-colored oleomargarine will be permitted under the minority bill, notwithstanding the State laws of 32 States?

Mr. SCOTT. I am not of the opinion that the passage of this bill, and the section to which the gentleman refers, would open the door to wholesale fraud.

Mr. HAUGEN. Wholesale sale?

Mr. SCOTT. Wholesale sale, undoubtedly. We must leave some matters, the gentleman will surely concede, to the efficacy of State laws.

Mr. HAUGEN. Is it not a matter that States have legislated on, as to the color of oleomargarine, and not allow it to be sold?

Mr. SCOTT. I have no difficulty in that matter. I have been trying to show that the Congress of the United States had no right

to impose what the gentleman knows is intended to be restrictive and prohibitive legislation upon what we all concede to be a legitimate industry.

Mr. ALLEN of Kentucky. Allow me to suggest to the gentleman, in further answer, that while some might be sold by the wholesaler, yet it would be in the 1-pound and 2-pound packages, marked and stamped.

Mr. HAUGEN. And still it would be sold under the provisions of this law, notwithstanding the States have prohibited the sale.

Mr. ALLEN of Kentucky. If they sell it at all, they will be bound to sell it that way.

Mr. SCOTT. In further reply to the gentleman from Iowa [Mr. HAUGEN], and also in reply to the assertion made by the gentleman from Illinois [Mr. GRAFF], I wish to make this statement: In his remarks upon this subject the gentleman from Illinois made the declaration that there is nothing in the minority bill to prevent the retailer from unwrapping his oleomargarine as he receives it and pounding it and working it up in such a way as to destroy the marks placed upon it by the revenue officer, and then selling it as butter. I am very much surprised that any gentleman upon the floor of this House should make such a declaration, because surely if he had read the minority bill he would find that it was framed to prevent this very thing. It is possible, to be sure, that a retailer might remove the revenue stamp and remove all the marks placed upon the oleomargarine——

Mr. HENRY of Connecticut. Is the gentleman correct in saying that Mr. GRAFF made that statement?

Mr. SCOTT. I would not, of course, intentionally misrepresent the gentleman, and I think the RECORD will show I have correctly quoted him. It is true, as I have said, that the retail dealer might remove the revenue stamp and other marks placed upon oleomargarine by the revenue officers, but in doing so he would violate this law. And that is what I wish to say in reply to the gentleman from Illinois, whom I understood to make this assertion.

Mr. HAUGEN. But that would not apply to the hotel keepers or the restaurant keepers in serving it on the table.

Mr. SCOTT. The gentleman from Iowa calls attention to the fact that the minority bill would not impose any restriction upon the restaurant or hotel keeper in deceiving his guests. There are two answers to that objection which to my mind seem conclusive. One is that no restaurant or hotel keeper could use oleomargarine on his table without his hired help finding it out. I never have observed that the employees of hotels or restaurant keepers are the most secure repository of secrets. It seems reasonably conclusive that the use of oleomargarine by any hotel or restaurant keeper would soon become known to his customers. The other answer is that we can certainly leave something to State legislation. If the abuse which the gentleman suggests reaches such proportions as to create a great popular revolt in any State in this Union, the legislature would certainly respond to that sentiment, and would pass a law imposing a penalty upon the restaurant or hotel keeper who imposed upon his customers by serving oleomargarine in place of butter. It seems to me not unreasonable to leave something to State legislation.

Mr. MONDELL. Will the gentleman allow me a suggestion?

Mr. SCOTT. Certainly.

Mr. MONDELL. Even though it were possible for the abuses that have been referred to to exist under the law which is recommended by the minority, does the gentleman believe that this Congress is justified in setting up the inquisitorial machinery that would be necessary, by the invasion of the pantries and kitchens of the land, to discover the use of oleomargarine as butter by hotel keepers and restaurant keepers? Does the gentleman believe that Congress is justified in doing that sort of thing, even though it is possible under the minority bill that there might be some use of oleomargarine as butter?

Mr. SCOTT. The suggestion which the gentleman from Wyoming makes in the form of a question is a pertinent one, and my opinion is wholly in line with the opinion which the question seems to indicate the gentleman himself holds. I repeat in that connection that we can certainly, properly, and that we ought to, leave to the State legislature the regulation and enforcement of the minor details connected with the proper use of this food product.

Mr. HAUGEN. I understood the gentleman to say that the purpose of this majority bill was to stamp out one industry to build up another; and I also understood him to say that the difference in price of oleomargarine in the city of Washington is 20 and 30 cents a pound. If we increase the tax 8 cents, how can the tax of 8 cents more stamp this industry out of existence?

Mr. SCOTT. The gentleman knows, of course, that any industry involving the investment of many million dollars capital must have a steady market the year round. The conditions which exist in this city at this time are not the conditions that exist in the general market over the entire country during the entire year, and it is reasonable to suppose that the tax of 10 cents a pound imposed all the year round on oleomargarine would be a prohibitive tax. The gentleman will admit that such is the intention of the framers of the majority bill, for one of the advocates of that bill—the president of the so-called National Dairy Union—in his hearing before the Agricultural Committee, declared that if it should prove to be true that under the 10-cent tax the oleomargarine industry could still thrive, he would come back and demand a higher tax.

Mr. HAUGEN. But that does not voice the sentiments of the members of the committee.

Mr. SCOTT. I trust it does not.

Mr. McCLEARY. Will the gentleman from Kansas allow me a question?

Mr. SCOTT. Certainly.

Mr. McCLEARY. We have heard about the prohibitive tax. Does not the gentleman really understand and believe that the thing to be prohibited is the fraud and not the manufacture of oleomargarine?

Mr. SCOTT. I do, and that is the reason I support the minority bill. It seems as if the majority bill is drawn on an opposite theory—upon the theory that the thing to do in order to prevent the fraud is to crush out the industry; that the thing to do in order to kill the rats is to burn the barn. The minority bill is framed on a wholly different principle.

Mr. MANN. Will the gentleman from Kansas allow me a question?

Mr. SCOTT. Certainly.

Mr. MANN. How is it possible by putting a tax on oleomargarine in the hands of the manufacturers to prevent the fraud upon the purchaser from the retailer?

Mr. SCOTT. I have endeavored, in the remarks I have already made, to demonstrate that that can not be done.

Mr. MANN. I think the gentleman has done it very well——

Mr. SCOTT. I thank you very much.

Mr. MANN. But not well enough to get that conclusion firmly implanted in the minds of many gentlemen here.

Mr. SCOTT. I furnish only arguments. I am sorry I can not furnish understanding. [Laughter.]

Mr. Chairman, I will reserve the remainder of my time, and will ask that the bill reported by the minority be inserted as a part of my remarks.

The substitute bill presented by the minority is as follows:

Bill offered as a substitute for H. R. 9206 by the minority of the Committee on Agriculture of the House of Representatives.

A bill to amend sections 3 and 6 of an act entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886.

Be it enacted, etc., That sections 3 and 6 of an act entitled "An act defining butter, also imposing a tax upon and regulating the manufacture, sale, importation, and exportation of oleomargarine," approved August 2, 1886, be amended so as to read as follows:

"SEC. 3. That special tax on the manufacture and sale of oleomargarine shall be imposed as follows:

"Manufacturers of oleomargarine shall pay $600 per annum. Every person who manufactures oleomargarine for sale shall be deemed a manufacturer thereof.

"Wholesale dealers in oleomargarine shall pay $480 per annum. Every person who sells or offers for sale oleomargarine in quantities greater than 10 pounds at a time shall be deemed a wholesale dealer therein; but a manufacturer of oleomargarine who has given the required bond and paid the required special tax, and who sells oleomargarine of his own production only at the place of its manufacture, in the original packages, to which the tax-paid stamps are affixed, shall not be required to pay the special tax of a wholesale dealer on account of such sales.

"Retail dealers in oleomargarine shall pay $48 per annum. Every person who sells or offers for sale oleomargarine in quantities not greater than 10 pounds at a time shall be regarded as a retail dealer therein. And sections 3232, 3233, 3234, 3235, 3236, 3237, 3238, 3239, 3240, 3241, and 3243 of the Revised Statutes of the United States are, so far as applicable, made to extend to and include and apply to the special taxes imposed by this section, and to the persons upon whom they are imposed: *Provided*, That in case any manufacturer of oleomargarine commences business subsequent to the 30th day of June in any year the special tax shall be reckoned from the 1st day of July in that year, and shall be $500."

"SEC. 6. That all oleomargarine shall be put up by the manufacturer for sale in packages of 1 and 2 pounds, respectively, and in no other or larger or smaller package; and upon every print, brick, roll, or lump of oleomargarine, before being so put up for sale or removal from the factory, there shall be impressed by the manufacturer the word 'Oleomargarine' in sunken letters, the size of which shall be prescribed by regulations made by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury; that every such print, brick, roll, or lump of oleomargarine shall first be wrapped with paper wrapper with the word 'Oleomargarine' printed on the outside thereof in distinct letters, and said wrapper shall also bear the name of the manufacturer, and shall then be put up singly by the manufacturer thereof in such wooden or paper packages or in such wrappers, and marked, stamped, and branded with the word 'Oleomargarine' printed thereon in distinct letters and in such manner as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, shall prescribe, and the internal-revenue stamp shall be affixed so as to surround the outer wrapper of each 1 and 2 pound package: *Provided*, That any number of such original stamped packages may be put up by the manufacturer in crates or boxes, on the outside of which shall be marked the word 'Oleomargarine,' with such other marks and brands as the Commissioner of Internal Revenue shall, by regulations approved by the Secretary of the Treasury, prescribe.

"Retail dealers in oleomargarine shall sell only the original package to which the tax-paid stamp is affixed, and shall sell only from the original

crates or boxes in which they receive the pound or 2-pound prints, bricks, rolls, or lumps; which said crates or boxes shall be, at all times, so placed as to expose to the customer the mark or brand affixed thereon by the requirements of this act.

"Every person who knowingly sells or offers for sale, or delivers or offers to deliver any oleomargarine otherwise than as provided by this act, or contrary to the regulations of the Commissioner of Internal Revenue made in pursuance hereof, or who packs in any package any oleomargarine in any manner contrary to law, or who shall sell or offer for sale, as butter, any oleomargarine, colored or uncolored, or who falsely brands any package or affixes a stamp on any package denoting a less amount of tax than that required by law, shall be fined for the first offense not less than $100 nor more than $500 and be imprisoned not less than thirty days nor more than six months, and for the second and every subsequent offense shall be fined not less than $200 nor more than $1,000 and be imprisoned not less than sixty days nor more than two years."

J. W. WADSWORTH.
WM. CONNELL.
CHAS. F. SCOTT.
JOHN S. WILLIAMS.
HENRY D. ALLEN.

[Mr. BOUTELL addressed the committee. See Appendix.]

[Mr. McCLEARY addressed the committee. See Appendix.]

Mr. CROWLEY. So far as respects my position on this subject, I am only able to express my views briefly through the kindness of the gentleman who extended me time, knowing I was not able to remain throughout the discussion of this important measure.

I desire to say that while I have listened with pleasure and studied with candor the views of the gentlemen who have spoken in opposition to this bill as reported by a majority of the committee, and while I accord to each gentleman a right to his view, I feel, as an American citizen, that I have a right to mine.

If I disagree with some gentleman from the cotton-belt region, that is no reason that my politics are polluted and his are pure; and when a colleague of mine on this side of the House walks down the aisle and says that a Democrat whose ideas are so narrow as to permit him to vote for this bill is no Democrat, and that he would disturb the father of Democracy in his grave, that he ought to resign his position in the House and get out of the Democratic party, that gentleman makes an assertion greater than his own position in the party warrants.

If the gentleman from Texas who described all Democrats who are for this bill as being in this narrow-minded class does it on account of his perverted taste, preferring butter made from the fat of the Texas steer, the razor-back pig, and the cotton-seed oil, to that of butter made from pure Jersey cream, then I can forgive him. But I will not apologize to the creator of Democracy, nor to the gentleman from Texas, for my views in favor of this bill.

[Here the hammer fell.]

Mr. THAYER. I move that the gentleman have five minutes more in order to explain what is the touchstone that determines true Democracy.

Mr. CROWLEY. I thank the gentleman for having my time extended. This can not in any sense be made a political question. It is a question that affects different sections of our country differently.

The peculiar earnestness from a number of gentlemen from the cotton belt can be readily understood from this fact. Nearly every one of them professes undying affection for the American hog in this connection on account of the amount of oil he furnishes for the manufacture of oleomargarine.

Oh, how they love the hog! But you will not find one of them admitting how many million pounds of cottolene is made from cotton-seed oil and sold as pure lard, to the hog's displacement. Another fact claimed is that each man who sells a steer derives the benefit of the increased value on account of the increased value of oleo oil over tallow; but the steer is always sold by the farmer on the basis of meat price, and not on the basis upon which oleo is selling.

The farmer does not get this difference in price.

My friend from Alabama raised the question yesterday as to the ability of the people of the United States to furnish in a pure state the amount of butter required by all the people, including the laboring class, without greatly enhancing the price. He asked, with a laughing gesture, How many cows have you in the country now?

I answer, take away this humbug product that you propose to sell as butter and let the cow furnish, as God Almighty designed, and those who are interested in furnishing this healthful natural product will increase the number of cows.

A statement has been made on the floor of this House that only 19 pounds of pure butter per capita is furnished, and asks what would be done if oleomargarine were taken away, and asks how much of this would the laboring man get at the price it would sell at. I answer him again, take away this deception and there will be no reason for this inquiry. The number of cows necessary to supply the market will at once be increased.

A MEMBER. Would not the price of butter increase?

Mr. CROWLEY. Does the price of wheat increase because you increase the acreage? Does not the demand fix the price; and can not the number of cows be increased to meet the demand? Let this demand come, and the supply will be found of a wholesome product from the source of God-given nature.

This imitation product has come as the farmers' competitor. It has been branded as a tramp and a fraud by 37 States in this Union, I believe. Farmers in my Congressional district can not survive on a price of 6 to 10 cents per pound for butter. For almost twenty years there has been a struggle to keep this swindle and imitator to itself. The farmers are invoking a remedy from this legislative body. As a class they do not often appeal.

They only ask that this swindle be sold under its own name and in its natural color. Nearly every gentleman who has extolled the virtues of this imitation is now claiming that the manufacturers of oleomargarine were proud of their production and wanted to sell it under its own name, and wanted it branded with its own name.

If they are so proud of it, why have not they for all these years been voluntarily branding it and selling it under its own name? Why compel them to do so now with this substitute bill? I will tell you why. You want to enter a plea of guilty to a misdemeanor instead of a capital offense. You want to admit your guilty name but still hide beneath your guilty color.

Mr. EDDY. Mr. Chairman, after the lengthy discussion of this bill, which has extended over two days, I do not feel that I can throw any light upon it, either from a legal, a scientific, or an intellectual standpoint. In fact, I feel that if when I have finished my remarks the members of this committee know as much about the question here presented as when I commenced I shall be more than satisfied. [Laughter.]

I would not detain the committee at this time but for the fact that the district which I represent is very largely engaged in the dairy business, and when all its undeveloped capacities shall have been developed, it will be one of the greatest dairy districts in the United States.

During this discussion we have had offered to us the opinions of the most learned lawyers of this country upon the constitutionality or the unconstitutionality of the proposed measure, and, as usual, those who desire the passage of this legislation insist that it is constitutional and those who are opposed to it insist that it is not.

The most eloquent orators in the country have almost exhausted their powers of eloquence in trying to convince us that this is a measure of justice and right, or of inequality and injustice, according to their respective views of the case.

But I may be permitted to suggest that the Constitution of the United States was promulgated by statesmen, who were at least as wise as the majority of the membership of this House, for the purpose of protecting the business and political rights of citizens and of promoting justice between man and man; and if this measure should be enacted into law, and it is a measure of inequality and injustice, it is safe to assume that it will be overthrown by the courts.

To my mind, Mr. Chairman, this is not so much a question of principle as it is a question of interest. We have two great interests arrayed one against the other in a gigantic struggle for supremacy. We find the makers of natural butter—or rather we find the representatives of the makers of natural butter—and the representatives of the makers of artificial butter lined up in conflict. We might as well be honest about the matter.

Fine words and elegant phrases may please audiences and tickle constituencies, but they can not conceal plain truths. There is not a man on the floor of this House but is aware of the fact that one of the reasons why we favor the passage of this measure, those of us who are in favor of it, is because we believe that the financial interest of the farmers and the dairymen will be improved.

And there is not a man here whose intellect is so dense that he does not know that one of the reasons, at least, why others are opposing it is because they believe that the financial interests of the manufacturers of oleomargarine and those who produce some of the ingredients that enter into the composition of that article will be injured.

But, Mr. Chairman, there has never a question arisen upon which the minds of men divide without a question of principle being involved. There never was a measure offered before any legislative body under the bending heavens but what was either right or wrong. There never was a measure enacted into law but what that law was either a just or an unjust one. Then this measure must be either right or wrong, must be either just or unjust. And it is not necessary for me, for a single moment, nor for anyone else, to argue that if a man believes this is an unjust measure he ought to oppose it, and if he believes it is a just measure he ought to favor its passage.

It is one of the fundamental laws of civilization that every individual and every business enterprise should stand upon its own merits. It is an equally fundamental law that no individual and no legitimate business enterprise should be discriminated against by legislation. For illustration, suppose that I am engaged in the manufacture of cornstarch. I have no moral or legal right to ask for any kind of legislation that will prohibit or hinder my neighbor from engaging in the manufacture of a similar article.

I have no right to ask for legislation of any sort to prohibit or hinder him from the manufacture of potato starch; but it does seem to me that I have a right, and the consumer has the right, to ask that the man who manufactures potato starch shall not put it upon the market and sell it as cornstarch. And there is no doubt that if he can manufacture his article for 3 cents a pound, and it costs 6 for me to manufacture mine, but that it will be detrimental to my interest. He has a perfect right to manufacture his article and put it upon the market for what it is, but I insist that he has no right to claim that an article manufactured out of tubers is manufactured out of corn.

I am not going for a moment into the discussion of the healthfulness or the unhealthfulness of oleomargarine. There has been much scientific testimony introduced to prove that it is just as healthful as butter. For my part, all the scientists in the world can never convince me that a food article manufactured in the laboratory of man is as healthful to the human system as an article manufactured in the laboratory of nature.

I do not believe that artificial honey is ever as good as honey that is gathered by bees from fragrant blossoms. I do not believe that artificial butter, made out of cotton-seed oil, lard, stearin, annotto, and the Lord only knows what, is as nutritious as butter made from the milk of cows. As I said a moment ago, the scientists have produced testimony that it is, and if anyone desires to believe that proposition, he is at perfect liberty to do so. I will not enter into any contention or disputation of the fact; but I will remain a doubting Thomas just the same.

But there is no doubt in my mind that oleomargarine is as healthful and as wholesome as a thousand and one food articles that are manufactured and put upon the market for consumption and sale. I am very frank to say that if we who favor the passage of this bill had nothing to urge but the unhealthfulness of the product we would have but comparatively little ground upon which to stand.

There is not any doubt in my mind but that those who so vigorously oppose this measure have just as much right to manufacture oleomargarine and to put it upon the market as I have to manufacture butter and offer it for sale, and I will go further and say they have just as much right to manufacture oleomargarine and color it and sell it under the guise of butter as I would have to manufacture butter and sell it for oleomargarine.

I would have the unquestioned right to go into any bank in this city and tell them who I was and sign any name to a note for a thousand dollars if I could find a banker sufficiently foolish to let me have the money on the note [laughter]; but I would have no right to put on a wig or false whiskers, represent myself to be some one else, sign his name to the note, and get that money by such misrepresentation; and if I did that I would be very promptly and very properly put in jail.

It seems to me that the profits made on every pound of oleomargarine, colored as butter and sold as such, or on every ounce of oleomargarine consumed as butter, is a fraud—is money obtained by false pretenses—just exactly the same as if I represented myself to be another man and obtained money on that representation.

Mr. BOUTELL. Will the gentleman yield to me for a question?

Mr. EDDY. Certainly.

Mr. BOUTELL. Do you think the National Government ought to allow a man to put on a wig or false whiskers and then tax him for it?

Mr. EDDY. If I understand the gentleman's question it is if I would authorize the National Government to tax a man to misrepresent and get money by false pretense. He would be taxed in an indirect way by being put in a penitentiary and made to work for the benefit of the public. [Laughter and applause.]

Mr. BOUTELL. Will the gentleman yield for another question?

Mr. EDDY. Certainly.

Mr. BOUTELL. Would not that be a proper thing to do to a man who put colored oleomargarine off for butter.

Mr. EDDY. We have not gone that far. I do not know how far I would go.

Mr. TAWNEY. This does not authorize the sale of colored oleomargarine as butter; it allows the sale of it as oleomargarine, just the same.

Mr. EDDY. There is very little colored oleomargarine sold as oleomargarine, and I am coming to that point now. Why, Mr. Chairman, I have given this matter some investigation. I have asked in a hundred or more grocery stores for oleomargarine and I have not found a single one who admitted that he kept it. They told me they could send out and get it, but did not keep it in stock. [Laughter.]

I have seen hundreds and thousands of groceries advertising "dairy butter" and creamery butter, but I never saw one of them advertising oleomargarine or butterine in my life. [Laughter.] I have stopped in all kinds of hotels in my varied career. I have had supper, bed, and breakfast for 25 cents, and I have been where you paid $6 for taking off your overcoat in the sixteenth story. [Laughter.] I have satisfied hunger in all kinds of restaurants, good, bad, and indifferent. I have feed waiters in the dining cars for bringing a meal, but I never saw the word oleomargarine printed on a bill of fare, and never tipped a waiter who announced the fact that he furnished bread and oleomargarine free with each meat order. [Laughter.]

Oleomargarine has no standing in the business world. I want to call your attention to the markets of Chicago. It is not quoted in the market reports. I have in my desk, Mr. Chairman, copies of every one of the leading daily papers in that great city. Almost every article of food known to the culinary art is quoted. Prices are quoted on from four to eight different grades of butter, but oleomargarine is never mentioned.

Is there any oleomargarine manufactured in the city of Chicago? Do not any of the grocers sell it? Do not any commission men handle oleomargarine? Has there been any pressure brought to bear upon the members of this House from any Chicago representatives opposed to the passage of this bill? Chicago business men are not particularly modest. I never saw a modest business man from Chicago. [Laughter.]

Mr. BOUTELL. We are not here for business, we are here for pleasure.

Mr. EDDY. Modest business men from Chicago are as scarce as packages of colored oleomargarine sold for what it really is. The Chicago business men are hustlers, every one. Now, if this article is such a good thing, if so many people prefer it to genuine butter, why do not they advertise it in the papers like any other business, and why do not they insist upon it being quoted in the market reports? And what I have said of Chicago is equally true of every other city in the country.

What is the reason? The question is absolutely so simple that it answers itself. There is no question in my mind, whatever there may be in the minds of others, that all of the profit derived from the sale of oleomargarine colored, sold, and consumed as butter is illicit gain. Just as much illicit gain as would be the getting of money under any other false representation.

Now, Mr. Chairman, one of the very amusing things that have occurred in this discussion is the strenuous insistence of the opponents of this measure that oleomargarine is colored yellow for the sake of making it more pleasant to the eye. No one for a moment in all this discussion has ever heard anyone contend that the yellow color injected into oleomargarine is to make it more palatable, to improve its keeping qualities, or to do anything in the world to it except to make it more saleable.

Now, why does it make it more saleable? Because it makes it look like butter. It seems to me a ridiculous proposition that one should assert we demand that food articles should be yellow in order, through association with the eye and taste, they would be more palatable. Do we call for yellow bread, yellow potatoes, or yellow meat, or any other yellow article except butter? I can not recall but four articles of food that are bright yellow; that is, johnny cake, corn-meal mush, mustard, and fine butter. [Laughter.]

Why, we have food delicacies placed on the table in every season of the year, of all the colors of the rainbow, and none of us kick because they are not yellow. [Laughter]. I would like to ask the friends who are insisting on the passage of this measure if they would pay more for a yellow dog than they would for a dog of any other color? [Laughter]. The idea that the people are clamorously demanding something yellow to eat on their bread may contribute to the gaiety of the discussion, but it is too childish for argument.

Mr. FEELY. Will the gentleman permit me an interruption?

Mr. EDDY. I can not; the gentleman will see that I have only five minutes of time left, and I have about twenty-five minutes of talk. [Laughter.] In the evolution of food products one article has been often substituted for another. Nothing more stongly exemplifies this than in the case of breakfast foods.

We can all remember when the signs on billboards advertising oatmeal the words of "the world's breakfast" was almost absolutely true. Then came "Pettijohn's" breakfast food and "Cream of wheat" and "Grape nuts" and almost an unending array of

breakfast foods, and to a certain extent they injured and supplanted the oatmeal business. They were invented for the express purpose of supplementing oatmeal as breakfast food. Did those who produced oats or who manufactured oatmeal come to Congress and ask for protection against substitutions? No. Why? Because from the very nature of things one could not by any possibility be mistaken for the other.

The buyer's right of choice, the consumer's right of choice, was not hindered in any way by deception. Does any man believe if they had put an article on the market that looked exactly like oatmeal and claimed that it was manufactured of oats and sold it under the name of oatmeal that there would not have been the same demand for protection that we will receive in this bill?

Now, Mr. Chairman, there is another very interesting feature connected with the discussion of this case, and although it may not have any direct bearing on the subject, I want to refer to it just a moment. It is a well-known fact that the great majority engaged in the dairy business are small, independent, individual holders of property. The profits derived out of the dairy business are divided among more people, in smaller sums, than any other business I am aware of.

On the other hand, the vast profits which are derived from the manufacture of oleomargarine go very largely into the coffers of corporations and trusts. One speaker has defined oleomargarine as "a nutriment taken from canned meats by the trust, reinforced with a little cotton-seed oil from the Southern planter." This is not my definition, however. I have sat in this House for three sessions and listened to the friends on the other side declaim against the evils of trusts and corporations.

This is the first opportunity since I have been a member that we have had the chance to vote directly on a measure that may very properly be termed "the people against the trusts." I am curious to know how many Democrats will line up on the side of the righteous against the hosts of the mighty when the roll comes to be called. No one on the floor of this House has been more vigorous in his denunciations of corporate greed and the evils of amalgamated wealth and their encroachment on the rights of the toiling masses than the gentleman from Mississippi who is so vigorously leading the opposition to this bill.

But when the first chance comes for a measure upon which he can act in the interest of the independent individual holders of property against the corporations, he turns a complete somersault and champions vigorously their interests. He has many an eminent example. We have all listened on the floor of Congress to the denunciations of the evils of corporate power; these denunciations have come from very many eloquent Democrats.

But the very first time they got a chance, how willingly, how gladly, they clasped hands with the money devil and merrily danced a hornpipe with the monster in order that they may profit from the golden streams which the public are willing to pour out in return for the privilege of witnessing such a performance. [Laughter and applause.]

Mr. Chairman, I do not believe that any honest dairyman or farmer or any legislator of integrity has any desire to deprive oleomargarine of its legitimate market. Certainly I have not. I believe that the only general desire is to deprive this commodity of every device of deception. I believe that the majority bill will come nearer to accomplishing that result than any other measure now before the Honse, and I shall support it. [Applause.]

Mr. FEELY obtained the floor, and said: Mr. Chairman, I have some remarks to submit on this question at a later stage of the discussion. For the present, I yield to the gentleman from Connecticut [Mr. HENRY], reserving my time.

Mr. HENRY of Connecticut. I move that the committee rise.

The motion was agreed to.

The committee accordingly rose; and the Speaker having resumed the chair, Mr. LACEY reported that the Committee of the Whole House on the state of the Union had had under consideration House bill No. 9206 (known as the oleomargarine bill), and had come to no decision thereon.

ENROLLED BILLS SIGNED.

Mr. WACHTER, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled a bill of the following title; when the Speaker signed the same:

H. R. 5814. An act to provide for the execution in the Philippine Islands and in Porto Rico of deeds for lands situate in the District of Columbia or the Territories of the United States.

The SPEAKER announced his signature to enrolled bills and joint resolution of the following titles:

S. R. 49. Joint resolution increasing the membership of the Joint Committee of Congress upon the Library;

S. 74. An act to authorize the Southern Missouri and Arkansas Railroad Company to build a bridge across the Current River in Arkansas; and

S. 1747. An act to prevent the sale of firearms, opium, and intoxicating liquors in certain islands of the Pacific.

COPY OF A LOST BILL.

The SPEAKER. The Chair lays before the House the draft of an order providing for a duplicate copy of a bill which has been lost.

The Clerk read as follows:

Ordered, That the Clerk be directed to request the Senate to furnish to the House a copy of the engrossed bill of the Senate (S. 1670) granting permission to Capt. B. H. McCalla, United States Navy, to accept a decoration tendered to him by the Emperor of Germany, to replace the original copy, which has been lost.

The SPEAKER. Is there objection to this order? The Chair hears none, and it is adopted.

And then, on motion of Mr. HENRY of Connecticut, the House (at 5 o'clock and 5 minutes p. m.) adjourned.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the findings of fact in the case of Charles G. Beggs, administrator of the estate of Benjamin F. Rohrback, against the United States—to the Committee on War Claims, and ordered to be printed.

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of fact and law in the French spoliation cases relating to the brig *Industry*, James Very, master, against the United States—to the Committee on Claims, and ordered to be printed.

A letter from the Secretary of the Navy, submitting a statement of expenditures of contingent appropriations of the Navy Department—to the Committee on Expenditures in the Navy Department, and ordered to be printed.

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the findings of fact in the case of W. O. Gordon, administrator of estate of Jack Frank, against the United States—to the Committee on War Claims, and ordered to be printed.

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of fact and law in the French spoliation cases relating to the brig *Sally*, Samuel Wells, master, against the United States—to the Committee on Claims, and ordered to be printed.

A letter from the assistant clerk of the Court of Claims, transmitting a copy of the conclusions of fact and law in the French spoliation cases relating to the brig *Good Intent*, Oliver C. Blunt, master, against the United States—to the Committee on Claims, and ordered to be printed.

A letter from the Commissioner of Labor, transmitting a report on the condition of the laboring classes in Hawaii—to the Committee on Labor, and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. DAVEY of Louisiana, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the House (H. R. 199) for the establishment of a light station on Bluff Shoal, Pamlico Sound, North Carolina, reported the same with amendment, accompanied by a report (No. 415); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. COOMBS, from the Committee on Interstate and Foreign Commerce, to which was referred the bill of the House (H. R. 72) to establish dwelling for keeper of the fog signal at Robinson Point, State of Washington, reported the same without amendment, accompanied by a report (No. 416); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

He also, from the same committee, to which was referred the bill of the House (H. R. 73) to establish a fog signal at Battery Point, State of Washington, reported the same without amendment, accompanied by a report (No. 417); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

He also, from the same committee, to which was referred the bill of the House (H. R. 74) to increase limit of cost of light-house and fog signal at Browns Point, State of Washington, reported

the same without amendment, accompanied by a report (No. 418); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

He also, from the same committee, to which was referred the bill of the House (H. R. 75) to establish a light-house and fog signal at Burrows Island, Rosario Strait, State of Washington, reported the same without amendment, accompanied by a report (No. 419); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. COUSINS, from the Committee on Foreign Affairs, to which was referred the bill of the Senate (S. 660) to provide for the refundment of certain moneys to the Republic of Mexico, reported the same without amendment, accompanied by a report (No. 420); which said bill and report were referred to the Committee of the Whole House on the state of the Union.

Mr. MINOR, from the Committee on the Merchant Marine and Fisheries, to which was referred the bill of the House (H. R. 7644) to amend section 4426, Revised Statutes, relating to regulation of steam vessels, reported the same with amendment, accompanied by a report (No. 421); which said bill and report were referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. DARRAGH, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2391) granting a pension to Cornelius Springer, reported the same with amendments, accompanied by a report (No. 380); which said bill and report were referred to the Private Calendar.

Mr. SULLOWAY, from the Committee on Invalid Pensions, to which was referred the bill of the Senate (S. 2441) granting an increase of pension to Ziba S. Woods, reported the same without amendment, accompanied by a report (No. 381); which said bill and report were referred to the Private Calendar.

Mr. APLIN, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 3180) granting a pension to Edward S. Dickinson, reported the same with amendments, accompanied by a report (No. 382); which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 9848) granting an increase of pension to Joseph Cowgill, reported the same with amendment, accompanied by a report (No. 383); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 8631) granting a pension to Mary E. S. Hays, reported the same with amendments, accompanied by a report (No. 384); which said bill and report were referred to the Private Calendar.

Mr. NORTON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 8788) granting an increase of pension to Jacob Weidel, reported the same with amendment, accompanied by a report (No. 385); which said bill and report were referred to the Private Calendar.

Mr. RUMPLE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 10165) granting a pension to Delia E. Slocum, reported the same with amendments, accompanied by a report (No. 386); which said bill and report were referred to the Private Calendar.

Mr. DARRAGH, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 8782) granting an increase of pension to Myron C. Burnside, reported the same with amendments, accompanied by a report (No. 387); which said bill and report were referred to the Private Calendar.

Mr. CALDERHEAD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 4172) granting an increase of pension to George R. Chaney, reported the same with amendment, accompanied by a report (No. 388); which said bill and report were referred to the Private Calendar.

Mr. SAMUEL W. SMITH, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 7105) granting an increase of pension to Silas Stotts, reported the same with amendment, accompanied by a report (No. 389); which said bill and report were referred to the Private Calendar.

Mr. NORTON, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 7369) granting an increase of pension to Perry H. Alexander, reported the same with amendments, accompanied by a report (No. 390); which said bill and report were referred to the Private Calendar.

Mr. APLIN, from the Committee on Invalid Pensions, to which was referred the bill of the Senate (S. 1036) granting an increase of pension to Benjamin G. Sargent, reported the same without amendment, accompanied by a report (No. 391); which said bill and report were referred to the Private Calendar.

Mr. DEEMER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 7424) granting an increase of pension to John Craig, reported the same with amendment, accompanied by a report (No. 392); which said bill and report were referred to the Private Calendar.

Mr. KLEBERG, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 7148) granting a pension to Harmon S. Gatlin, reported the same with amendment, accompanied by a report (No. 393); which said bill and report were referred to the Private Calendar.

Mr. CALDERHEAD, from the Committee on Invalid Pensions, to which was referred the bill of the Senate (S. 1923) granting an increase of pension to Fred F. B. Coffin, reported the same without amendment, accompanied by a report (No. 394); which said bill and report were referred to the Private Calendar.

Mr. SAMUEL W. SMITH, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 4153) granting a pension to Jane Hale, reported the same with amendment, accompanied by a report (No. 395); which said bill and report were referred to the Private Calendar.

Mr. DARRAGH, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2436) granting an increase of pension to James W. Roath, reported the same with amendments, accompanied by a report (No. 396); which said bill and report were referred to the Private Calendar.

Mr. MIERS of Indiana, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 725) granting an increase of pension to Joseph B. Arbaugh, reported the same with amendment, accompanied by a report (No. 397); which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 1476) granting an increase of pension to Henry F. Benson, reported the same with amendments, accompanied by a report (No. 398); which said bill and report were referred to the Private Calendar.

Mr. RUMPLE, from the Committee on Invalid Pensions, to which was referred the bill of the Senate (S. 1616) granting an increase of pension to Enoch A. White, reported the same without amendment, accompanied by a report (No. 399); which said bill and report were referred to the Private Calendar.

Mr. DEEMER, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2223) granting a pension to John Laughlin, reported the same with amendments, accompanied by a report (No. 400); which said bill and report were referred to the Private Calendar.

Mr. MIERS of Indiana, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 3264) granting an increase of pension to William B. Matney, reported the same with amendment, accompanied by a report (No. 401); which said bill and report were referred to the Private Calendar.

Mr. APLIN, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 3288) granting an increase of pension to Elmer L. Starkey, reported the same without amendment, accompanied by a report (No. 402); which said bill and report were referred to the Private Calendar.

Mr. CROWLEY, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 1740) granting a pension to John Fisher, reported the same with amendment, accompanied by a report (No. 403); which said bill and report were referred to the Private Calendar.

Mr. SAMUEL W. SMITH, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2770) for the relief of Otellia M. Smoot, reported the same with amendments, accompanied by a report (No. 404); which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the Senate (S. 2460) granting an increase of pension to Cornelius Springer, reported the same without amendment, accompanied by a report (No. 405); which said bill and report were referred to the Private Calendar.

Mr. RUMPLE, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 5258) granting an increase of pension to William Eastin, of Louisburg, Kans., reported the same with amendments, accompanied by a report (No. 406); which said bill and report were referred to the Private Calendar.

Mr. HOLLIDAY, from the Committee on Invalid Pensions, to which was referred the bill of the Senate (S. 1197) granting an increase of pension to Mahale Litton, reported the same without amendment, accompanied by a report (No. 407); which said bill and report were referred to the Private Calendar.

Mr. APLIN, from the Committee on Invalid Pensions, to which

was referred the bill of the House (H. R. 6435) granting a pension to Susan P. Crandall, reported the same without amendment, accompanied by a report (No. 408); which said bill and report were referred to the Private Calendar.

Mr. CALDERHEAD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 2287) granting a pension to George McDaniel, reported the same with amendments, accompanied by a report (No. 409); which said bill and report were referred to the Private Calendar.

Mr. APLIN, from the Committee on Invalid Pensions, to which was referred the bill of the Senate (S. 2391) granting an increase of pension to Elvira L. Wilkins, reported the same without amendment, accompanied by a report (No. 410); which said bill and report were referred to the Private Calendar.

Mr. CALDERHEAD, from the Committee on Invalid Pensions, to which was referred the bill of the House (H. R. 4468) granting an increase of pension to John B. Kurth, reported the same with amendments, accompanied by a report (No. 411); which said bill and report were referred to the Private Calendar.

Mr. JONES of Washington, from the Committee on the Merchant Marine and Fisheries, to which was referred the bill of the Senate (S. 1970) to provide an American register for the barkentine *Hawaii*, reported the same without amendment, accompanied by a report (No. 413); which said bill and report were referred to the Private Calendar.

Mr. MONDELL, from the Committee on Military Affairs, to which was referred the bill of the House (H. R. 3690) for the relief of Jacob L. Hanger, reported the same with amendment, accompanied by a report (No. 414); which said bill and report were referred to the Private Calendar.

Mr. RICHARDSON of Alabama, from the Committee on Pensions, to which was referred the bill of the House (H. R. 622) granting a pension to Dicey Woodall, reported the same with amendment, accompanied by a report (No. 422); which said bill and report were referred to the Private Calendar.

Mr. WILEY, from the Committee on Pensions, to which was referred the bill of the House (H. R. 1380) for the relief of Mrs. Mary Tate, reported the same with amendments, accompanied by a report (No. 423); which said bill and report were referred to the Private Calendar.

Mr. SELBY, from the Committee on Pensions, to which was referred the bill of the House (H. R. 5712) granting a pension to Alice Bozeman, reported the same with amendment, accompanied by a report (No. 424); which said bill and report were referred to the Private Calendar.

Mr. DE GRAFFENREID, from the Committee on Pensions, to which was referred the bill of the House (H. R. 10415) granting a pension to Sarah M. Smith, reported the same with amendments, accompanied by a report (No. 425); which said bill and report were referred to the Private Calendar.

Mr. RICHARDSON of Alabama, from the Committee on Pensions, to which was referred the bill of the House (H. R. 6080) granting an increase of pension to Mariah J. Anderson, reported the same with amendments, accompanied by a report (No. 426); which said bill and report were referred to the Private Calendar.

He also, from the same committee, to which was referred the bill of the House (H. R. 2123) granting a pension to Mrs. Elizabeth Folds, of Butts County, Ga., reported the same with amendments, accompanied by a report (No. 427); which said bill and report were referred to the Private Calendar.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills; which were thereupon referred as follows:

A bill (H. R. 10412) for the payment to Henry B. Davis, of balance due him for surveying public lands—Committee on Claims discharged, and referred to the Committee on the Public Lands.

A bill (H. R. 5303) granting a pension to E. H. Clark—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

A bill (H. R. 7527) granting a pension to Hugh C. MacEwan—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

PUBLIC BILLS, MEMORIALS, AND RESOLUTIONS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. HEMENWAY, from the Committee on Appropriations: A bill (H. R. 10847) making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1903, and for other purposes—to the Union Calendar.

By Mr. NEEDHAM: A bill (H. R. 10848) for the relief of certain Mission Indians of California, and for other purposes—to the Committee on Indian Affairs.

By Mr. PUGSLEY: A bill (H. R. 10849) to designate governmental depositories for surplus funds of the United States Treasury—to the Committee on Banking and Currency.

By Mr. RYAN: A bill (H. R. 10850) to amend section 4 of the act of January 18, 1898, making appropriations for the postal service—to the Committee on the Post-Office and Post-Roads.

By Mr. RAY of New York: A bill (H. R. 10919) to incorporate the Society of the American Cross of Honor—to the Committee on the Judiciary.

By Mr. McCALL: A bill (H. R. 10920) to amend section 29, paragraph 5, of the act of March 2, 1901, amending the war-revenue act—to the Committee on Ways and Means.

By Mr. NEWLANDS: A joint resolution (H. J. Res. 142) providing for a reduction of duty on Cuban sugar and inviting Cuba to become a part of the United States—to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills of the following titles were presented and referred as follows:

By Mr. ACHESON: A bill (H. R. 10851) granting a pension to G. W. Baldwin—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10852) granting a pension to Dr. Samuel G. McLaughlin—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10853) granting an increase of pension to David Phillips—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10854) to correct the military record of Harvey H. Young—to the Committee on Military Affairs.

Also, a bill (H. R. 10855) to correct the military record of John Blue—to the Committee on Military Affairs.

By Mr. BARTLETT: A bill (H. R. 10856) granting a pension to Jacob Findley—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10857) granting an increase of pension to Sallie B. Wilson—to the Committee on Invalid Pensions.

By Mr. BLAKENEY: A bill (H. R. 10858) granting an increase of pension to John H. Dittman—to the Committee on Invalid Pensions.

By Mr. BANKHEAD: A bill (H. R. 10859) for the relief of the estate of Thomas J. Price, deceased, late of Alcorn County, Miss.—to the Committee on War Claims.

Also, a bill (H. R. 10860) granting a pension to Mary E. Saffold—to the Committee on Pensions.

Also, a bill (H. R. 10861) for the relief of the surviving heirs of Isaac Hulse, deceased—to the Committee on Claims.

By Mr. BROWNLOW: A bill (H. R. 10862) for the relief of R. R. Robinson—to the Committee on Claims.

By Mr. CONNER: A bill (H. R. 10863) granting an increase of pension to George W. Myers—to the Committee on Invalid Pensions.

By Mr. COOPER of Wisconsin: A bill (H. R. 10864) to grant an increase of pension to Mrs. Jane McManus, widow of Patrick H. McManus, late of Company B, Thirty-first New York Volunteer Infantry—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10865) granting a pension to James H. Van Wagenen—to the Committee on Invalid Pensions.

By Mr. COOPER of Texas: A bill (H. R. 10866) for the relief of the legal representatives of Mrs. Anna H. Gunderman, deceased—to the Committee on War Claims.

Also, a bill (H. R. 10867) for the relief of Louis Levy, of Jefferson County, State of Texas—to the Committee on War Claims.

By Mr. CURRIER: A bill (H. R. 10868) granting an increase of pension to John C. Blake—to the Committee on Invalid Pensions.

By Mr. DARRAGH: A bill (H. R. 10869) granting an increase of pension to Michael K. Strayer—to the Committee on Invalid Pensions.

By Mr. DE GRAFFENREID: A bill (H. R. 10870) granting a pension to G. V. Adams—to the Committee on Pensions.

By Mr. DINSMORE: A bill (H. R. 10871) for the relief of Jonathan Pigman, executor of last will of Benjamin Pigman—to the Committee on War Claims.

By Mr. ESCH: A bill (H. R. 10872) to enable the President to restore Second Lieut. Henry Ossian Flipper, United States Army, to duty, his former rank, and status in the United States Army—to the Committee on Military Affairs.

By Mr. FITZGERALD: A bill (H. R. 10873) to increase the pension of Sadie M. Ellis, widow of George Henry Ellis, late chief yeoman of the United States cruiser *Brooklyn*—to the Committee on Pensions.

By Mr. GARDNER of Michigan: A bill (H. R. 10874) granting an increase of pension to Abraham S. Van Fleet—to the Committee on Invalid Pensions.

By Mr. HEMENWAY: A bill (H. R. 10875) to extend the term of patent No. 314359—to the Committee on Patents.

By Mr. HEPBURN: A bill (H. R. 10876) granting an increase in the pension of Joseph Mote—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10877) granting a pension to Charity E. Cook—to the Committee on Invalid Pensions.

By Mr. HILDEBRANT: A bill (H. R. 10878) granting a pension to Thomas Leever—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10879) granting a pension to Hill C. Crawford—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10880) granting an increase of pension to Jacob Dunham—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10881) granting an increase of pension to Thomas B. Tucker—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10882) granting an increase of pension to Henry B. Campbell—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10883) granting an increase of pension to Ann C. Burck—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10884) granting an increase of pension to Samuel Y. Hamilton—to the Committee on Invalid Pensions.

Also, a bill (H. R 10885) for the relief of John Hermann, alias John Homan—to the Committee on Military Affairs.

Also, a bill (H. R. 10886) to amend the military record of Samuel Anderson—to the Committee on Military Affairs.

Also, a bill (H. R. 10887) to amend the naval record of John W. Thompson, and secure for him an honorable discharge—to the Committee on Naval Affairs.

Also, a bill (H. R. 10888) to remove the charge of desertion against the military record of William H. Ludwick—to the Committee on Military Affairs.

Also, a bill (H. R. 10889) to remove the charge of desertion from the military record of Allen Moore—to the Committee on Military Affairs.

Also, a bill (H. R. 10890) to remove the charge of desertion from the military record of James H. Troy—to the Committee on Military Affairs.

Also, a bill (H. R. 10891) to remove the charge of desertion from the military record of Jasper L. R. Reed, alias Jasper Reed—to the Committee on Military Affairs.

Also, a bill (H. R. 10892) to remove the charge of desertion from the military record of James Boatman, alias James M. Boatman—to the Committee on Military Affairs.

Also, a bill (H. R. 10893) to remove the charge of desertion from the military record of D. C. Kindle—to the Committee on Military Affairs.

Also, a bill (H. R. 10894) to remove the charge of desertion from the military record of Bruno Noble—to the Committee on Military Affairs.

Also, a bill (H. R. 10895) to remove the charge of desertion from the military record of Julius Shelley—to the Committee on Military Affairs.

By Mr. HUGHES: A bill (H. R. 10896) for the relief of Mary A. Coleman—to the Committee on Claims.

Also, a bill (H. R. 10897) for the relief of James Thompson's heirs—to the Committee on Claims.

By Mr. KEHOE: A bill (H. R. 10898) granting an increase of pension to Frederick Arn—to the Committee on Invalid Pensions.

By Mr. LEWIS of Pennsylvania: A bill (H. R. 10899) granting an increase of pension to William Warner, Company A, Two hundredth Regiment Pennsylvania Volunteer Infantry—to the Committee on Invalid Pensions.

By Mr. MIERS of Indiana: A bill (H. R. 10900) granting a pension to Robert Gilmore—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10901) granting an increase of pension to John Savoree—to the Committee on Invalid Pensions.

By Mr. MUTCHLER: A bill (H. R. 10902) to remove the charge of desertion now standing against George Brownlay, or Brownlee, late of Company A, Sixty-ninth New York Infantry Volunteers, and grant him an honorable discharge—to the Committee on Military Affairs.

By Mr. POWERS of Maine: A bill (H. R. 10903) granting an increase of pension to Joseph Cyr—to the Committee on Invalid Pensions.

By Mr. SHOWALTER: A bill (H. R. 10904) granting an increase of pension to James W. White—to the Committee on Invalid Pensions.

By Mr. HENRY C. SMITH: A bill (H. R. 10905) granting an increase of pension to William J. Vreeland, of Flatrock, Mich.—to the Committee on Invalid Pensions.

By Mr. SULLOWAY: A bill (H. R. 10906) granting a pension to John W. Meade—to the Committee on Invalid Pensions.

By Mr. SUTHERLAND: A bill (H. R. 10907) granting an increase of pension to Samuel N. King—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10908) granting an increase of pension to Aaron S. Post—to the Committee on Invalid Pensions.

By Mr. TOMPKINS of New York: A bill (H. R. 10909) to refer the claim of Louis A. Guerber to the Court of Claims—to the Committee on Claims.

By Mr. WATSON: A bill (H. R. 10910) to provide compensation for injuries received by George E. O'Hair, of Indianapolis, Ind., at Ford's Theater disaster, which occurred June 9, 1893—to the Committee on Claims.

By Mr. WILEY: A bill (H. R. 10911) granting a pension to William T. Alford—to the Committee on Pensions.

By Mr. BROUSSARD: A bill (H. R. 10912) for the relief of the legal representatives of Nathaniel and William Offutt, late of the parish of St. Martin, La.—to the Committee on War Claims.

Also, a bill (H. R. 10913) for the relief of Marian Simoneaux—to the Committee on War Claims.

Also, a bill (H. R. 10914) for the relief of the estate of Dr. Joseph Richard Martin—to the Committee on War Claims.

Also, a bill (H. R. 10915) for the relief of Marie Vives—to the Committee on War Claims.

Also, a bill (H. R. 10916) for the relief of Mrs. Joseph Kittredge—to the Committee on War Claims.

Also, a bill (H. R. 10917) for the relief of Leo P. Dupuis, administrator—to the Committee on War Claims.

By Mr. McCALL: A bill (H. R. 10918) for the relief of William Adams Munroe, Seth Mendell, and Henry Hinckley, executors of the will of Daniel Sharp Ford, deceased—to the Committee on Claims.

By Mr. GRAFF: A bill (H. R. 10921) for the relief of Charles A. Cutler—to the Committee on Claims.

By Mr. MARSHALL: A bill (H. R. 10922) granting an increase of pension to Joseph Fieldhausen—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10923) granting an increase of pension to William A. Bentley—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10924) granting an increase of pension to Elias M. Haight—to the Committee on Invalid Pensions.

Also, a bill (H. R. 10925) granting an increase of pension to William Paul—to the Committee on Invalid Pensions.

By Mr. ACHESON: A bill (H. R. 10926) for the relief of J. J. Graham—to the Committee on Military Affairs.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By Mr. ACHESON: Resolution of United Labor League of Western Pennsylvania, favoring extension of the Chinese-exclusion act—to the Committee on Foreign Affairs.

By Mr. ALEXANDER: Resolution of Monumental Lodge, No. 438, Brotherhood of Railroad Trainmen, Baltimore, favoring the passage of the anti-injunction bill—to the Committee on the Judiciary.

By Mr. BELL: Resolutions of Colorado State Grange, Patrons of Husbandry, favoring Government reclamation of arid lands—to the Committee on Irrigation of Arid Lands.

Also, resolutions of Black Hawk Union, No. 137, of the Western Federation of Miners, favoring Senate bill 118, against extending the power of anti-injunction—to the Committee on the Judiciary.

Also, resolutions of Wood, Wire, and Metal Lathers' Union No. 48, of Colorado Springs; Local Union No. 475, of Florence, and Bricklayers and Masons' International Union No. 6, of Cripple Creek, all of Colorado, favoring the construction of war vessels in the United States navy-yards—to the Committee on Naval Affairs.

By Mr. BURKETT: Papers to accompany House bill 6469, granting a pension to D. P. Babb—to the Committee on Invalid Pensions.

By Mr. CRUMPACKER: Protest of Chaplain Brown Post, No. 106, Grand Army of the Republic, of Valparaiso, Ind., against bill providing for payment of pensions monthly—to the Committee on Invalid Pensions.

By Mr. DALZELL: Petition of Lodge No. 18, O. P. I. A., of Wilkinsburg, Pa., favoring an educational test in the immigration law—to the Committee on Immigration and Naturalization.

By Mr. DRAPER: Petition of New York Odontological Society, favoring Senate bill 2519, to provide for a corps of dental surgeons in the United States Navy—to the Committee on Naval Affairs.

Also, resolutions of Central Federated Union, favoring House bill 6279, to increase the pay of letter carriers—to the Committee on the Post-Office and Post-Roads.

Also, resolution of Cigar Makers' Union No. 136, of Hudson, N. Y., favoring a law for the further restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. EDWARDS: Petition of Carpenters' Union No. 112 and of Plumbers' Local Union No. 41, of Butte, Mont., favoring the construction of war vessels in the Government navy-yards—to the Committee on Naval Affairs.

Also, petition of Plasterers' Union, of Butte, Mont., favoring a further restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. EMERSON: Resolutions of Laborers' Protective Union No. 9259, of Fort Edward, N. Y., favoring the reenactment of the Chinese-exclusion law—to the Committee on Foreign Affairs.

By Mr. GAINES of Tennessee: Petition of Tobacco Board of Trade of Clarksville, Tenn., asking that the internal-revenue laws be amended so as to abolish the license charge upon tobacco dealers—to the Committee on Ways and Means.

Also, petition of Hod Carriers' Union No. 9288, of Nashville, Tenn., favoring the construction of war ships at the navy-yards—to the Committee on Naval Affairs.

By Mr. GARDNER of Michigan: Paper to accompany House bill 10874, for the relief of Abraham S. Van Fleet—to the Committee on Invalid Pensions.

By Mr. GOLDFOGLE: Petition of Charles A. Orr, department commander of the Grand Army of the Republic, advocating the passage of House bill 5796, to promote the efficiency of the Revenue-Cutter Service—to the Committee on Interstate and Foreign Commerce.

By Mr. HENRY of Connecticut: Resolution of Connecticut State Grange, favoring bill for the establishment and maintenance of schools of mining in every State where they do not now exist—to the Committee on Mines and Mining.

By Mr. HILL: Petition of Clifford C. Dunham and others, of Danbury, Conn., for the classification of clerks in first and second class post-offices—to the Committee on the Post-Office and Post-Roads.

Also, resolution of Connecticut Dairymen's Association, of Hartford, Conn., in favor of bill providing for the establishment and maintenance of schools of mining in every State where they do not now exist—to the Committee on Mines and Mining.

Also, resolution of Master Plumbers' Association of Bridgeport, Conn., with reference to contracts for public buildings—to the Committee on Public Buildings and Grounds.

By Mr. JACK: Petition of A. C. Shrader and other citizens of Freeport, Pa., for amendment of Constitution to prohibit and punish polygamy and defining legal marriage—to the Committee on the Judiciary.

By Mr. KEHOE: Petition of John T. Parker Post, No. 57, Grand Army of the Republic, of Vanceburg, Ky., favoring the construction of war vessels in the United States navy-yards—to the Committee on Naval Affairs.

By Mr. LACEY: Petition of Barbers' Union, Oskaloosa, Iowa, for the construction of naval vessels in the navy-yards of this country, etc.—to the Committee on Naval Affairs.

By Mr. LITTAUER: Resolutions of Plumbers' Union No. 253, of Gloversville, N. Y., favoring the construction of war vessels at the United States navy-yards—to the Committee on Naval Affairs.

By Mr. LITTLEFIELD: Petition of L. H. Mosher and other citizens of Unity, Me., in favor of the passage of the pure-food bill—to the Committee on Agriculture.

By Mr. MIERS of Indiana: Paper to accompany House bill 10900, granting a pension to Robert Gilmore—to the Committee on Pensions.

By Mr. MOODY of Massachusetts: Resolutions of the Massachusetts State Board of Trade, favoring reciprocity with Canada—to the Committee on Ways and Means.

Also, resolutions of the Republican Club of Massachusetts, regarding the transfer of census employees—to the Committee on Reform in the Civil Service.

By Mr. MUDD: Petition of Joshua Jones, of Broomes Island, Md., for reference of war claim to the Court of Claims—to the Committee on War Claims.

By Mr. OTJEN: Petition of Bottle Blowers' Union No. 15, of Milwaukee, Wis., favoring the building of war vessels in the navy-yards—to the Committee on Naval Affairs.

By Mr. PALMER: Petitions of publishers of the Trades Unionist, Hazelton, Pa.; Washington Camp, No. 485, Patriotic Sons of America; unions 1706, 1835, 158, 300, 1434, 336, 1162, 1463, 1498, 1141, 1138, 1473, 349, 1376, 1499, 1627, and 898, United Mine Workers of America; councils 282, 918, 34, 307, and 139, Junior Order United American Mechanics; citizens of Freeland, Pa.; Freeland Branch of the National Union of United Brewery Workmen; Pioneer Fire Company, No. 1, of Hazleton; Central Labor Union of Wilkesbarre; Union No. 140, Amalgamated Sheet Metal Workers; Mountain Echo Council, No. 134, Daughters of Liberty; Lithuanian-Polish Club of Luzerne County, Pa.; Lodge No. 210, International Association of Machinists; Glen Lyon Union; Harwood Union, No. 1505; Central Labor Union of Hazleton, and survivors of the Twenty-eighth and One hundred and forth-seventh regiments of Knap's battery, all in the State of Pennsylvania, favoring the continuation of the exclusion law against Chinese laborers—to the Committee on Foreign Affairs.

Also, petitions of Brewery Workers' Union No. 163, Painters and Decorators' Union No. 41, Merchants' Union No. 210, and Team Drivers' Union No. 80, all of Wilkesbarre, Pa., and Painters' Union No. 309, of Hazleton, Pa., American Federation of Labor, favoring the construction of naval vessels at Government navy-yards—to the Committee on Naval Affairs.

Also, petition of Bricklayers and Masons' International Union No. 30, of Wilkesbarre, Pa., in relation to the employment of union bricklayers and masons in the erection of the naval dry dock at New Orleans, La.—to the Committee an Naval Affairs.

By Mr. PAYNE: Paper to accompany House bill 10840, for the relief of Susan Evans Warner—to the Committee on Invalid Pensions.

By Mr. PUGSLEY: Resolutions of Central Federated Union of New York, urging legislation to increase the pay of letter carriers—to the Committee on the Post-Office and Post-Roads.

Also, resolution of New York Odontological Society, favoring a dental corps for the United States Navy—to the Committee on Naval Affairs.

Also, resolutions of the National Board of Trade, favoring amendments to the interstate-commerce law—to the Committee on Interstate and Foreign Commerce.

Also, resolution of the Manufacturers' Association of New York, favoring an adjustment of tariff rates that will encourage trade with Cuba—to the Committee on Ways and Means.

Also, resolution of the Manufacturers' Association of New York, favoring change in the bankruptcy law—to the Committee on the Judiciary.

Also, petition of citizens of Ossining and Scarboro, N. Y., for an amendment to the National Constitution defining legal marriage to be monogamic—to the Committee on the Judiciary.

By Mr. RYAN: Affidavits to accompany House bill 1503, granting a pension to Michael Farrell—to the Committee on Invalid Pensions.

By Mr. SCHIRM: Resolution of Iron Molders' Union No. 19, of Baltimore, Md., favoring the building of war vessels in the navy-yards—to the Committee on Naval Affairs.

By Mr. SHALLENBERGER: Petition of C. F. Gund and 11 other citizens of Bluehill, Nebr., urging the repeal of the special tax on capital and surplus of banks, etc.—to the Committee on Ways and Means.

By Mr. SHERMAN: Resolutions of Teamsters' Union No. 17, of Littlefalls, N. Y., favoring the construction of war vessels at the Government navy-yards—to the Committee on Naval Affairs.

Also, papers to accompany House bill 9808, granting a pension to Nelson F. Hunt—to the Committee on Invalid Pensions.

By Mr. SHOWALTER: Petition of 20 citizens of Lawrence County, Pa., to accompany House bill 10904, granting a pension to James W. White—to the Committee on Invalid Pensions.

By Mr. SPERRY: Resolutions of the Connecticut Dairymen's Association, favoring the passage of an oleomargarine bill—to the Committee on Agriculture.

Also, resolutions of the State Grange of Connecticut, favoring schools of mining at land-grant colleges—to the Committee on Mines and Mining.

By Mr. STARK: Two papers to accompany House bill 3081, for the erection of a public building in the city of York, Nebr.—to the Committee on Public Buildings and Grounds.

By Mr. STEELE: Resolutions of Indiana State board of agriculture, favoring a bill for the establishment and maintenance of schools of mines and mining—to the Committee on Mines and Mining.

By Mr. STEWART of New York: Resolutions of Carpenters and Joiners' Union No. 6, of Amsterdam, N. Y., favoring the construction of war vessels at the Government navy-yards—to the Committee on Naval Affairs.

By Mr. WARNOCK: Petition of Mary F. Anderson, widow of Lieut. Andrew M. Anderson, for a pension—to the Committee on Invalid Pensions.

By Mr. WOODS: Resolutions of Idaho Mining and Stock Exchange, favoring House bill 7195, to establish the department of mines and mining—to the Committee on Mines and Mining.

By Mr. YOUNG: Petitions of Laura M. Koch, W. H. Hann, and others, of Philadelphia, Pa., for the suppression of polygamy—to the Committee on the Judiciary.